

General Allegation to the United Nations Working Group on Enforced or Involuntary Disappearances

1. General Context

1. At the beginning of March 1992, Bosnia and Herzegovina (hereinafter BiH), formerly one of the 6 federal States constituting the Federal Republic of Yugoslavia (FRY), declared independence. Almost one month later, on 7 April 1992, the European Community recognized BiH as an independent State. It was officially admitted as a member of the United Nations on 22 May 1992 and of the Council of Europe on 24 April 2002.
2. Its struggle for independence was marked by an armed conflict between various factions from, within and outside BiH and was primarily fought between the Bosnian governmental forces, the Bosnian Serb forces (VRS) and the Yugoslav National Army (JNA). The conflict was marked by atrocities: civilians were killed, concentration camps were set up, more than 2 millions human beings were forced to internally displace or to seek refuge abroad and thousands of people disappeared without leaving a trace.¹ On 14 December 1995, the General Framework Agreement for Peace in BiH (also known as the “Dayton Peace Agreement”) put an end to the hostilities.
3. The first wave of disappearances occurred during the armed conflict and “ethnic cleansing” operations in the spring and summer of 1992² and continued over the following years. A second wave of disappearances occurred in Bosnian Krajina between May and August 1992, most prominently in the region of Prijedor. The military attack on the town of Prijedor began on 30 May 1992 and was immediately accompanied by mass killings, enforced disappearances and other methods of “ethnic cleansing”. In Herzegovina, most of the enforced disappearances occurred during the summers of 1992 and 1993. The last and most notorious wave of enforced disappearances occurred in eastern Bosnia after the fall of UN-declared “safe areas” of Srebrenica and Zepa in July 1995. At the end of 1996 the

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¹ See Report by Mr. Manfred Nowak, Expert Member of the United Nations Working Group on Enforced or Involuntary Disappearances (UNWGEID), *Special Process on Missing Persons in the territory of the former Yugoslavia*, doc. E/CN.4/1996/36 of 4 March 1996, paras. 22, 49-60, 67-68, 85 and 88. Hereinafter: “Expert Report No. 2”.

² See Report by Mr. Manfred Nowak, Expert Member of the UNWGEID, *Special Process on Missing Persons in the territory of the former Yugoslavia*, doc. E/CN.4/1995/37 of 12 January 1995, para. 3. Hereinafter “Expert Report No. 1”.

estimates of disappeared people in BiH amounted to between 25,000 and 30,000.³ The existence of hundreds of mass graves all over the territory of the FRY was established and allegedly the great majority of people reported as “missing” was buried in such common graves.⁴

4. At the end of 2008, the International Commission on Missing Persons (ICMP) estimated that around 13,000 people remain disappeared in BiH to date⁵. Almost identical figures are provided by the International Committee of the Red Cross (ICRC).⁶

2. Bosnia and Herzegovina and the United Nations Working Group on Enforced or Involuntary Disappearances

5. Already in 1992 over 11,000 cases of disappearance occurred in the FRY were reported to the UNWGEID. In 1994 the Commission on Human Rights established the Special Process on Missing Persons as a joint mandate of strictly humanitarian and non-accusatory nature of the Special Rapporteur on the situation of human rights in the territory of the FRY and the UNWGEID, and Mr. Manfred Nowak (then member of the UNWGEID) was appointed as the expert in charge of the Special Process. In 1995, in its resolution 1995/35 entitled “Special Process dealing with the problem of missing persons in the territory of the former Yugoslavia” the Commission on Human Rights changed the Special Process into an independent mandate. Since the beginning, it was made clear that the role of the Special Process was meant to end “*when the fate and whereabouts of the missing persons have been clearly established*”.⁷ Further, it was specified that “all cases of missing persons in any part of the former Yugoslavia are subject to the Special Process, i.e. also cases resulting from a situation of armed conflict, both of an international and non-international character. The target group of the Special Process is, therefore, much broader than the ‘disappeared persons’ dealt with by the Working Group and defined in the preamble to the Declaration on the Protection of All Persons from Enforced Disappearance. In particular, not only civilians but also combatants involved in an armed conflict are considered. Therefore, the Special Process uses the wider term ‘missing persons’. In principle, the Special Process deals with all cases of missing persons, regardless of whether the perpetrators are in effect connected to government authorities or not. Only cases that are clearly the result of common crime are excluded”.⁸
6. Analyzing the root causes and the extent of the phenomenon of enforced disappearances in BiH, the

³ See Report by Mr. Manfred Nowak, Expert Member of the UNWGEID, *Special Process on Missing Persons in the territory of the former Yugoslavia*, doc. E/CN.4/1997/55 of 15 January 1997, paras. 3, 94 and 99-106. Hereinafter “Expert Report No. 3”.

⁴ See Expert Report No. 2, *supra* note 1, paras. 1 and 74-78.

⁵ See www.ic-mp.org/press-releases/icmp-commends-bih-parliament-for-marking-human-rights-day-by-highlighting-plight-of-the-missing/.

⁶ See http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/bosnia_herzegovina?OpenDocument; [http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/7EUETE/\\$FILE/icrc_ar_07_bosnia_herzegovina.pdf?OpenElement](http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/7EUETE/$FILE/icrc_ar_07_bosnia_herzegovina.pdf?OpenElement); and [http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/serbia-missing-newsletter-010408/\\$FILE/missing-newsletter-0408.pdf](http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/serbia-missing-newsletter-010408/$FILE/missing-newsletter-0408.pdf).

⁷ See Expert Report No. 1, *supra* note 2, para. 10 (b). Emphasis is added. In Expert Report No. 2, *supra* note 1, it was reiterated that “the task of the special process terminates when the whereabouts of the missing persons are located and confirmed by the source” (para. 6).

⁸ *Ibid.*, paras. 10 (c), (d) and (e). It is worthy noting that, in fact, in the 3 reports of the Special Process the terms “missing” and “disappeared” are used as interchangeable.

Special Process pointed out that the majority of the disappeared people were civilians, who were not victims of armed conflict but of “ethnic cleansing” operations.⁹ Further, it was stressed that “most of the allegations can be classified as enforced disappearance in the narrow sense of the 1992 Declaration on the Protection of All Persons from Enforced Disappearance”.¹⁰

7. Up to the end of 1995, the Special Process essentially functioned as a channel of communication between non-governmental organizations or the family members of the victims, regardless of whether the victims were combatants or civilians, and who the forces allegedly responsible for their disappearance were, with a view to establishing the fate and whereabouts of disappeared people. Most of the work was accomplished by written communications, consultations in Geneva and with the assistance of the High Commissioner's human rights field offices, and the expert undertook only three missions to the field.¹¹ However, in 1996 Mr. Nowak spent some time in the field, in order to coordinate activities with other international actors and, among other things, to monitor the process of exhumations.
8. On 26 March 1997, Mr. Nowak resigned from his functions “because of lack of support by the international community for his efforts to clarify cases of disappearances by all available means, including exhumations of mortal remains”.¹² Subsequently, the Commission on Human Rights adopted resolution 1997/57, in which (paras. 34 and 39), while expressing its appreciation to the expert, it requested the Special Rapporteur, the ICRC, the Office of the High Representative, the headquarters of the ICMP and other relevant actors to consult Mr. Nowak so that appropriate arrangements, including a transfer of relevant information acquired by the expert, could be made for these organizations to assume the functions concerning disappeared people. Furthermore, the Commission requested the Special Rapporteur on the situation of human rights in the territory of the FRY to “act on behalf of the United Nations in dealing with the question of the missing”.
9. At its 51st session, the UNWGEID decided that “for the time being cases of disappearance which occurred in the Republic of Croatia and in BiH until the date of the entry into force of the Dayton Peace Agreement on 14 December 1995 will not be dealt by the Working Group and, consequently, the Working Group will not report to the Commission on Human Rights about these cases. With respect to cases in other successor States of the former Yugoslavia and cases which occurred in Croatia and Bosnia and Herzegovina after 14 December 1995, the Working Group will examine these cases in accordance with its methods of work”.¹³
10. In its annual report for 1998, the UNWGEID still referred to the subject of enforced disappearances occurred in BiH,¹⁴ clarifying that during the period under review it had not received any newly reported

⁹ See Expert Report No. 1, *supra* note 2, para. 46; and Expert Report No. 3, *supra* note 3, paras. 97, 105 and 110.

¹⁰ See Expert Report No. 1, *supra* note 2, para. 45; and Expert Report No. 2, *supra* note 1, para. 83.

¹¹ For the 3 relevant reports, *supra* notes 1, 2 and 3.

¹² See Expert Report No. 3, *supra* note 3, para. 21.

¹³ UNWGEID, *Annual Report*, doc. E/CN.4/1998/43 of 12 January 1998, para. 22.

¹⁴ UNWGEID, *Annual Report*, doc. E/CN.4/1999/62 of 28 December 1998, paras. 51-53.

cases that occurred after the entry into force of the Dayton Peace Agreement. With regards to the clarification of the cases occurred prior to 14 December 1995, the UNWGEID referred to the report of the Special Rapporteur on the situation of human rights in BiH, the Republic of Croatia, and the FRY.¹⁵ In the two following annual reports¹⁶ of the UNWGEID reference was made to the cases of enforced disappearance occurred in BiH in the sense that, during the periods under review, no new information or comments were received from the government.

11. The Special Rapporteur of the Commission on Human Rights on the situation of human rights in BiH, the Republic of Croatia and the FRY included in his reports to the Commission a concise reference to the issue of “missing people” in BiH. Indeed, he generally focused on the matter of “exhumations and identifications” and limited his considerations to the advancement of such process.¹⁷ No reference was made to the rights of the families of disappeared people¹⁸ and to whether the BiH authorities were fulfilling their international obligations with regards to the right to know the truth and to be granted integral reparation of the families of the disappeared, and to carry out thorough, prompt and independent investigations, and to judge and sanction those responsible. In the report released by the Special Rapporteur in January 2001 there was no further reference to the subject of missing people in BiH.¹⁹ From that date on, no UN special procedure has addressed the question.²⁰
12. At present, although the fate and whereabouts of about 13,000 people in BiH remain unknown, and while it was solemnly pledged that the role of the Special Process would have lasted until the fate and whereabouts of disappeared people had been clearly established,²¹ there is no longer a special mechanism within the UN system mandated to deal with this matter.
13. The expert member of the UNWGEID indicated since 1996 that the majority of the thousands of cases occurred in BiH can be qualified as enforced disappearance under the 1992 Declaration.²² In his last report before resigning, he pointed out that “the families of the missing persons have the legitimate right to know the truth and to get their loved ones back, alive or dead. They also have the right to

¹⁵ See *Report of the Special Rapporteur on the Situation of Human Rights in the former Yugoslavia*, doc. E/CN.4/1999/42 of 20 January 1999.

¹⁶ UNWGEID, *Annual Report*, doc. E/CN.4/2000/64 of 21 December 1999, para. 131; and *Annual Report*, doc. E/CN.4/2001/68 of 18 December 2000, para. 117.

¹⁷ See *Reports of the Special Rapporteur of the Commission on Human Rights on the Situation of Human Rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia*, doc. A/53/322 of 11 September 1998 (paras. 32-33); doc. A/53/322/Add.1 of 30 October 1998 (para. 11); doc. E/CN.4/1999/42 of 20 January 1999 (para. 28); doc. A/54/396-S/1999/1000 of 24 September 1999 (paras. 63-65); and doc. E/CN.4/2000/39 of 28 December 1999 (paras. 25-26).

¹⁸ A general reference to the “need” to know the fate of their loved ones of relatives of the missing was inserted by the Special Rapporteur in doc. A/53/322, *supra* note 17, para. 32.

¹⁹ See *Report of the Special Rapporteur of the Commission on Human Rights on the Situation of Human Rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia*, doc. E/CN.4/2001/47 of 29 January 2001; and doc. E/CN.4/2001/47/Add.1 of 22 March 2001.

²⁰ Recently, reference to the subject of disappeared people and the ongoing related obligations of BiH was made by the Committee against Torture and by the Human Rights Committee. See Committee against Torture, *Concluding Observations on Bosnia and Herzegovina*, doc. CAT/C/BIH/CO/1 of 15 December 2005, para 20; and Human Rights Committee, *Concluding Observations on Bosnia and Herzegovina*, doc. CCPR/C/BIH/CO/1 of 22 November 2006, para. 14.

²¹ *Supra* para. 2.5.

²² *Supra* para. 2.6.

compensation, and to provide their deceased relatives with a decent burial. Finally, they have the right to demand that those who are primarily responsible for the disappearance, torture or arbitrary execution of their loved ones are brought to justice”.²³ In thousands of cases, families of disappeared people in BiH remain deprived of these rights until today.

14. Enforced disappearance is an ongoing crime which lasts until the fate and whereabouts of the victim are established with certainty. Almost 14 years after the end of the conflict, 13,000 people can be qualified as victims of enforced disappearance: a) they have been deprived of their liberty against their will; b) by State agents or by persons or groups of persons acting with the authorization, support or acquiescence of the State; and c) authorities refused to acknowledge their deprivation of liberty and, in the majority of cases, their fate and whereabouts have been and remain concealed. The consequence is that 13,000 people are outside the protection of the law and their relatives are subjected to ongoing anguish, suffering, frustration and distress as a result of the uncertainty on the fate and whereabouts of their loved ones and of the inability to find out what exactly happened to them. BiH remains under an ongoing obligation to establish the truth on the circumstances of the disappearance, the progress and results of the investigations and the fate of the disappeared people; as well as to search for, locate, respect and return the mortal remains of the disappeared people to their relatives; to investigate, judge and sanction those found to be responsible for the commission of acts of enforced disappearance; and to guarantee to victims of enforced disappearance and to their relatives the right to obtain integral reparation and prompt, fair and adequate compensation. These rights are recognized by the 1992 Declaration and the UNWGEID has the mandate to evaluate the existence of any obstacle to the proper application of the Declaration and to recommend means of overcoming it.
15. Although over the past years some administrative, legislative and judicial initiatives have been undertaken by the BiH authorities to guarantee the aforementioned rights to victims of enforced disappearance and to their relatives, significant obstacles to their realization and to the full implementation of the 1992 Declaration remain and must be duly addressed.

3. Competent Authorities in BiH on the Issue of Disappeared People

16. Over the years a number of different authorities and entities have dealt with the issue of disappeared people in BiH.²⁴ The multiplicity of actors (official and non governmental, domestic and international) collecting tracing requests, carrying out exhumations, releasing certificates and assisting relatives in the attempt to exercise their rights, has not always proved to be effective. On the contrary, it has often been a source of confusion for relatives of disappeared people, who felt the lack of a stable and credible

²³ See Expert Report No. 3, *supra* note 3, para. 4. Accordingly, the Expert requested to all relevant authorities to “disclose all information on missing persons and refrain from the policy of reciprocity in respect of missing persons, whether alive or dead”; to “continue their efforts to clarify the fate and whereabouts of missing persons by means of exhumation, and to provide forensic experts working for the other parties or relevant international organizations with full and unrestricted access to all grave sites on territory under their control”; and to “fully investigate all reported cases of enforced disappearance, to bring the perpetrators to justice and to provide the victims and their families with adequate compensation” (paras. 117-118).

²⁴ For a comprehensive overview (updated at the beginning of 1997) see Expert Report No. 3, *supra* note 3, paras. 18-48.

counterpart and were forced to engage in lengthy and complicated bureaucratic processes, which several times were mere duplicates and did not lead to any significant result.²⁵ Here the analysis will be limited to those entities that at present deal with the issue.

17. Annex 7, Article V of the Dayton Peace Agreement referred to the problem of missing persons and stated that the parties shall provide information through the tracing mechanisms of the ICRC on all persons unaccounted for and cooperate fully with the ICRC in its efforts to determine the identities, whereabouts and fate of those unaccounted for. In compliance with this provision, in 1996 the ICRC established a Working Group on Missing Persons (chaired by the ICRC itself and made up of representatives of the parties to the conflict in BiH). Such Group aimed at bringing onboard all those involved in tracing missing persons and serving as a channel through which tracing requests were submitted to the authorities and answers on missing cases were communicated. The ICRC currently co-chairs, together with the ICMP, the Sub-Committee on Regional Cooperation, which meets several times a year and aims at enhancing coordination and acceleration of cross-border exhumations and repatriation of human remains. Further, the ICRC, in cooperation with National Societies of the Red Cross, collects tracing requests from the families of disappeared people as well as the ante-mortem data (AMD), which is information on a disappeared person prior to his or her disappearance. Collected requests are submitted to the relevant authorities on behalf of the families of the disappeared.
18. The ICMP was set up in 1996 and since then it has become one of the main actors dealing with the issue of enforced disappearance in BiH. It is an independent and impartial organization headquartered in Sarajevo, whose primary role is to ensure the cooperation of governments in locating and identifying disappeared people. It supports other institutions working on the subject of enforced disappearance and it performs the DNA testing to facilitate the identification of disappeared people. Such tests are performed in the ICMP laboratories and by its experts and the results are then forwarded to the BiH authorities for further identification steps.
19. A number of official institutions have been of particular relevance for the issue of enforced disappearances in BiH, namely: the Federation of BiH Office for Tracing Missing and Captured Persons, the State Commission for Tracing Missing Persons, and the Republika Srpska Office for Tracing Missing Persons. The division of tasks among the mentioned entities is not always clear and instances of overlapping have been frequent.
20. In order to solve these problems, in 2005 the BiH Council of Ministers (CoM) and the ICMP co-founded

²⁵ Some instances are: the State Commission of BiH for the Tracing of Missing Persons; the Republika Srpska Office for Tracing Detained and Missing Persons; the Federation Commission for Missing Persons; the Office for the Exchange of Prisoners and Missing Persons of the Croatian Side of the Federation of BiH; the State Commission of the Republika Srpska for the Exchange of Prisoners of War and Missing Persons; the State Commission of BiH for gathering Facts on War Crimes; the Croatian government Commission for Detained and Missing Persons; the UN Office of the High Representative; the ICMP; the ICRC; the BiH Red Cross; the Federation BiH Red Cross; the Republika Srpska Red Cross; the International Police Task Force (ITPF); the BiH Research and Documentation Centre; the organization Physician for Human Rights; the Association for the Promotion of the Ludwig Boltzmann Institute of Human Rights; the Finnish Experts Team; the Expert Group on Exhumations and Missing Persons; and the Joint Forensic Expert Commission on Exhumation.

the Missing Persons Institute (MPI), pursuant to Article 7 of the Law on Missing Persons.²⁶ The MPI is currently the national institution tasked to resolve the fate of disappeared people from BiH through locating the disappeared, exhuming and safeguarding human remains, examining and identifying, collecting, processing and protecting information.²⁷ The MPI is also tasked with cooperating with the relevant authorities and judicial bodies, including the International Criminal Tribunal for the Former Yugoslavia (ICTY). The MPI is currently the competent authority to receive tracing requests (Art. 8 of the Law on Missing Persons).²⁸ Requests regarding the disappearance of any person submitted prior to the enforcement of the Law on Missing Persons must be considered valid and submitted in accordance with the Law, provided that they consist of minimum required data. Ideally, the MPI is meant to take over all the responsibilities, staff and budgets of the current entity bodies and, under Article 21 of the Law on Missing Persons, it should be in charge of creating and maintain the “Central Records of Missing Persons in BiH” (CEN BiH), which shall include all records that were or are kept at local or entity levels, by associations of families of missing persons and other associations of citizens and Tracing Offices of the organizations of the Red Cross BiH, according to their mandate, as well as the data on missing persons kept by international organizations, applying the principle of confidentiality. Almost 5 years after the entry into force of the Law on Missing Persons, the CEN BiH has not been set up.²⁹

4. Existing Legal Framework and the Adoption of the Law on the Missing

21. BiH has ratified several human rights instruments. Among others, it is a State party to the International Covenant on Civil and Political Rights (on 1 September 1993, it succeeded the former Yugoslavia, which had ratified the treaty on 2 June 1971); to the First Optional Protocol to the International Covenant on Civil and Political Rights (1 March 1995); to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (on 1 September 1993, it succeeded the former Yugoslavia, which had ratified the treaty on 10 September 1991); to the Convention on the Rights of the Child (on 1 September 1993, it succeeded the former Yugoslavia, which had ratified the treaty on 3 January 1991); to the Convention on the Elimination of All Forms of Discrimination against Women (on 1 September 1993, it succeeded the former Yugoslavia, which had ratified the treaty on 26 February 1982) and to the European Convention for the Protection of Human Rights and Fundamental Freedoms (12 July 2002).
22. On 6 February 2007, BiH signed the International Convention for the Protection of All Persons from Enforced Disappearance. According to Article 18 of the 1969 Vienna Convention on the Law of the Treaties, a State that has signed a treaty is under an obligation not to defeat the object and purpose of

²⁶ See *infra* paras. 4.23 and 4.24.

²⁷ Representatives from Republika Srpska have left the MPI and on 6 June 2008 have formed a parallel structure on the entity level named the Operative Team of Republika Srpska for Finding Missing Persons.

²⁸ However, it must be stressed that submitting a tracing request to the MPI does not mean that it will initiate the procedure for establishing the circumstances of disappearance. The investigation into the circumstances of disappearance is subject to criminal proceedings that may be initiated by the relatives of the disappeared person and also *ex officio* by the relevant prosecutor and all other officials.

²⁹ *Infra* para. 4.24. Under the Law on Missing Persons, the CEN BiH had to be completed within a year from the establishment of the MPI, i.e. by 1 March 2007.

the treaty prior to its entry into force.

23. A major development in the domestic legal framework on the subject of enforced disappearance has been the adoption of the Law on Missing Persons (LMP), which entered into force on 17 November 2004 and aims at providing a uniform discipline of the matter.³⁰ The Law defines a “missing” as a “person about whom his family has no information and/or is reported missing on the basis of reliable information as a consequence of the armed conflict that happened on the territory of the former FRY” (Art. 2.1). Under the same law, a missing person can be considered as “identified” only when “during the process of identification, it has been reliably determined that the mortal remains correspond to the specific person’s physical, hereditary, or biological characteristics, or if the missing person appears alive” (Art. 2.7). Article 9 provides that “the status of missing person is terminated on the date of identification, and the process of tracing the missing person is concluded. In the event that a missing person is proclaimed dead, but the mortal remains have not been found, the process of tracing shall not be terminated”. Article 3 of the LMP establishes that “families of missing persons have the right to know the fate of their missing family members and relatives, their place of (temporary) residence or, if dead, the circumstances and cause of death and location of burial, if such location is known, and to receive the mortal remains”. Accordingly, State authorities remain under an ongoing obligation to search for and identify the missing, as well as to investigate on the circumstances and cause of the death and location of burial of the missing and to return the mortal remains (Art. 4).³¹
24. As previously mentioned, the LMP provided for the creation of the MPI as the new independent institution in charge of dealing with the issue of victims of enforced disappearance (Art. 7).³² The LMP established also the setting up of the CEN BiH (Art. 21). At the time of writing, the CEN BiH has not been set up, thus preventing the full implementation of the law and leaving relatives of disappeared people in the impossibility to fulfill their rights.

³⁰ Official Gazette of BiH No. 50/04. An unofficial English translation of the LMP can be found at: http://www.ic-mp.org/wp-content/uploads/2007/11/lawmp_en.pdf (last visited on 2 June 2009). For guidance and useful information on the interpretation of the LMP see Ministry for Human Rights and Refugees of BiH, *Application of the Law on Missing Persons in Bosnia and Herzegovina*, available at http://www.ic-mp.org/wp-content/uploads/2007/11/vodic_web_en.pdf (last visited on 2 June 2009).

³¹ Aside from the LMP, there is a Freedom of Access to Information Act in BiH that allows relatives of disappeared people as individuals, institutions, associations, etc. to request any information in possession of public organs and institutions. Relatives of disappeared people, using the Freedom of Access to Information Act, have the right to request, *inter alia*, both information regarding the circumstances of disappearance and information regarding the tracing process itself. Public organs are obliged to furnish the information within 15 days of the day of submission of the request. In case the requested information is not received within the legal deadline, the persons requesting the information have the right to appeal to the second-instance organ of the institution or to initiate an administrative dispute. When a person submitting the request doesn’t receive any information (so-called “silent administration”) within the 30 day deadline, the party may initiate an administrative dispute with the relevant court. However, to date, these provisions have not been implemented basically because the majority of relatives of disappeared people in BiH are not aware of their very existence and, further, because they would require qualified legal assistance, which they usually cannot afford due to a difficult economical situation. At present, BiH does not guarantee the right to free legal counsel.

³² *Supra* para. 3.20.

5. The Failure of Bosnia and Herzegovina to Fully Implement the 1992 Declaration on the Protection of All Persons from Enforced Disappearance

5.1 The Codification of the Offence

25. Article 4 of the 1992 Declaration establishes that “all acts of enforced disappearance shall be offences under criminal law punishable by appropriate penalties which shall take into account their extreme seriousness [...]”.
26. The LMP provides only for a definition of “missing person” and limits such concept to those who have been reported missing during the armed conflict (from 30 April 1991 to 14 February 1996).³³ It shall be noted that, notwithstanding the choice of the word “missing”, the notion is declaredly meant to cover also victims of “enforced disappearance” as defined by the preamble of the 1992 Declaration. In fact, the 1992 Declaration has been admittedly used as a source and as a reference in the drafting of the LMP.³⁴ However, given that there is a difference between the concepts of “missing” and “disappeared” person, the two main limitations of the LMP are that: a) it covers only the period from 30 April 1991 to 14 February 1996; and b) it cannot be considered as a provision of criminal law as required by Article 4 of the 1992 Declaration, as it does not set forth any criminal discipline or sanction for those responsible for acts of enforced disappearance.³⁵
27. The Criminal Code of BiH³⁶ codifies “enforced disappearance” only as a crime against humanity, when committed as a part of a widespread or systematic attack directed against any civilian population, with knowledge of such attack (Art. 172). The provision reproduces the wording of Article 7 (crimes against humanity) of the 1998 Rome Statute for the Establishment of an International Criminal Court. According to Article 172 of the BiH Criminal Code, those found responsible shall be punished by imprisonment for a term not less than ten years or long-term imprisonment.³⁷
28. In the case of enforced disappearance of persons, its definition as an autonomous offence and the

³³ The fact that enforced disappearances have actually occurred in BiH even after the armed conflict and not necessarily as part of a widespread and systematic attack directed against any civilian population, is corroborated by the acknowledgment by the BiH authorities of at least 6 cases of extra-ordinary renditions carried out in the territory under their jurisdiction. See Council of Europe, Parliamentary Assembly, *Alleged Secret Detentions and Unlawful Inter-State Transfers Involving Council of Europe Members States, Draft Report – Part II (Explanatory Memorandum)*, doc. AS/JUR (2006) 16 Part II of 7 June 2006, paras. 133-149 and 288; and *Secret Detentions and Illegal Transfers of Detainees Involving Council of Europe Members States: Second Report*, doc. AS/JUR (2007) 36 of 7 June 2007, paras. 3 and 315. On these cases see also Supreme Court of the United States of America, *Case Boumediene et al. v. Bush President of the United States et al.*, judgment of 12 June 2008; and European Court of Human Rights, *Case Boumediene and others v. Bosnia and Herzegovina*, decision of 18 November 2008.

³⁴ See Article 1 of the LMP.

³⁵ Article 25 of the LMP (Punitive Provisions) establishes pecuniary sanctions for officials found responsible for hindering the access to information to family members of disappeared people. To date, no one has ever been convicted for the violation of this provision.

³⁶ Official Gazette of BiH No. 03/03. It has to be noted that in BiH there are 4 criminal codes: Criminal Code of BiH (State level); Criminal Code of the Federation of BiH (entity level); Criminal Code of the Republic Srpska (entity level); and Criminal Code of the Brčko District (entity level). “Enforced disappearance” is not codified under any of the 3 latter codes.

³⁷ To date, no one has been convicted for the violation of this provision. Other relevant provisions of the Criminal Code are Article 147 (Unlawful deprivation of freedom); Article 190 (Torture, Cruel, Inhuman or Degrading Treatment); and Article 191 (Taking of Hostages).

specific description of punishable conducts that constitute the offence are essential for the effective eradication of the practice. In fact, considering the particularly grave nature of enforced disappearance, the protection offered by criminal laws on offences such as abduction or kidnapping, torture and homicide is insufficient. Enforced disappearance of persons is a different offence, distinguished by the multiple and continuing violation of various human rights. Often, the failure to define enforced disappearance of persons as an autonomous offence or the adoption of a particularly narrow definition has prevented the carrying out of effective criminal proceedings that encompass the constitutive elements of enforced disappearance, this allowing impunity to be perpetuated.

29. Since 1996 the UNWGEID pointed out that the obligation to codify enforced disappearance as an autonomous criminal offence “applies to all States, regardless of whether acts of enforced disappearance actually take place or not. It is not sufficient for governments to refer to previously existing criminal offences relating to enforced deprivation of liberty, torture, intimidation, excessive violence, etc. In order to comply with Article 4 of the Declaration, the very act of enforced disappearance as stipulated in the Declaration must be made a separate offence”.³⁸
30. Further, the UNWGEID has recently pointed out that an enforced disappearance can be qualified as a crime against humanity only when committed in a certain context,³⁹ therefore differentiating enforced disappearance as common crime from enforced disappearance when occurring as a crime against humanity.
31. This difference is not currently mirrored under the BiH criminal law which refers only to the particular case of enforced disappearances committed as a crime against humanity and reproduces a particularly narrow definition, which, in practice, imposes an almost impossible burden of proof. As noted by the independent expert charged with examining the existing international criminal and human rights framework for the protection of persons from enforced or involuntary disappearances, the definition of enforced disappearance given by the 1998 Rome Statute (literally reproduced by the Criminal Code of BiH) introduces a subjective element (namely the “intention to place the victim outside the protection of the law for a prolonged period of time”) “which in practice will be difficult to prove. The perpetrators usually only intend to abduct the victim without leaving any trace in order to bring him (her) to a secret place for the purpose of interrogation, intimidation, torture or instant but secret assassination. Often many perpetrators are involved in the abduction and not everybody knows what the final fate of the victim will be”.⁴⁰ The expert stressed out that: “in any case, if criminal law is to provide an effective instrument of deterrence, the definition of enforced disappearance in domestic criminal law [...] has to be broader than that included in the ICC Statute”.⁴¹

³⁸ UNWGEID, *Annual Report*, doc. E/CN.4/1996/38 of 15 January 1996, para. 54.

³⁹ UNWGEID, *General Comment on Enforced Disappearance as a crime against humanity*, para. 8.

⁴⁰ UN, Commission on Human Rights, *Report submitted by Mr. Manfred Nowak, independent expert charged with examining the existing international criminal and human rights framework for the protection of persons from enforced or involuntary disappearances*, doc. E/CN.4/2002/71 of 8 January 2002, para. 74.

⁴¹ *Ibid.*

32. For the above reasons, at present, the BiH criminal law concerning enforced disappearance fails to meet the requirements of Article 4 of the 1992 Declaration.

5.2 The Continuing Nature of the Crime

33. Article 17.1 of the 1992 Declaration establishes that acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified". In a general comment about this provision, the UNWGEID noted that:

"The definition of 'continuing offence' (para. 1) is of crucial importance for establishing the responsibilities of the State authorities. Moreover, this article imposes very restrictive conditions. The article is intended to prevent perpetrators of those criminal acts from taking advantage of statutes of limitations. It can be interpreted as seeking to minimize the advantages of statutes of limitations for the perpetrators of these criminal acts. At the same time, as the criminal codes of many countries have statutes of limitations for various offences, paragraph 2 stipulates that they shall be suspended when the remedies provided for in article 2 of the International Covenant on Civil and Political Rights are no longer effective. The Covenant refers in particular to the possibility of having 'an effective remedy' when a human rights violation 'has been committed by persons acting in an official capacity'.

Owing to the seriousness of acts of enforced disappearance a number of irrevocable rights are infringed by this form of human rights violation, with obvious consequences in criminal law. Recent developments in international law require clear priority to be given to action against the serious forms of violations of human rights in order to ensure that justice is done and that those responsible are punished. Thus, according to article 1 (2) of the Declaration, 'Any act of enforced disappearance ... constitutes a violation of the rules of international law guaranteeing, inter alia, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life".

The interpretation of article 17 must be consistent with the provisions of articles 1 (1), 2 (1), 3 and 4 of the Declaration, which seek to punish these crimes severely in order to eradicate the practice. This explains and justifies the restrictive approach to the application of statutes of limitation to this type of offence. Thus, article 1 (1) stipulates that 'Any act of enforced disappearance is an offence to human dignity. It is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field'. [...]"⁴²

34. The Criminal Code of BiH establishes that criminal prosecution shall not be instituted when the following time periods have elapsed since the perpetration of the crime: a) 35 years in the case of a criminal offence for which a punishment of long-term imprisonment is prescribed; and b) 20 years in the case of a criminal offence for which the punishment of imprisonment for a term exceeding 10 years is prescribed.⁴³ Article 172 of the BiH Criminal Code establishes imprisonment for a term not less than 10 years or long-term imprisonment to those found responsible for enforced disappearances committed as a part of a systematic and widespread attack directed against any civilian population.⁴⁴ Article 15 of the

⁴² UNWGEID, *Annual Report*, doc. E/CN.4/2001/68, *supra* note 16, paras. 28 and 31-32.

⁴³ Article 14 of the Criminal Code of BiH (Period Set by Statute of Limitation of Criminal Prosecution).

⁴⁴ *Supra* para. 5.1.27.

Criminal Code defines, *inter alia*, that the running of the period set by statute of limitation to institute criminal prosecution commences on the day on which the criminal offence has been perpetrated, without referring to any exception in the case of continuing offences or crimes. Article 19 of the Criminal Code provides that “criminal prosecution and execution of a sentence are not subject to the statute of limitations for criminal offences of genocide, crimes against humanity and war crimes, or for other criminal offences that, pursuant to international law, are not subject to the statute of limitations”.

35. Under the existing legal framework it does not result sufficiently clear whether a statute of limitations for criminal proceedings would be applied to crimes of enforced disappearance that do not fall under the narrow definition provided by Article 172 of the BiH Criminal Code. In order to respect the requirements by Article 17 of the 1992 Declaration, it should be clarified that the term of limitation for criminal proceedings for any act of enforced disappearance, irrespective of its commission as part of a widespread and systematic attack directed against any civilian population, can commence only from the moment when the offence ceases, that is to say, when the fate and whereabouts of the victim are established with certainty.

5.3 The Obligation of the State to Investigate, Judge and Sanction those Responsible for Acts of Enforced Disappearance

36. Article 3 of the 1992 Declaration establishes that “each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction”. The UNWGEID, commenting this provision noted that:

“[...] this is a broad obligation which is assumed by States and is primarily an obligation to do something. This provision cannot be interpreted in a restrictive sense, since what it does is to serve as the general model for the purpose and nature of the measures to be taken, as well as for the content of the international responsibility of the State in this regard.

The purpose of the measures to be taken is clear: ‘to prevent and terminate acts of enforced disappearance’. Consequently, the provision calls for action both by States in any territory under its jurisdiction of which acts of enforced disappearance might have occurred in the past and by States in which such acts have not occurred. All States must have appropriate machinery for preventing and terminating such acts and are therefore under an obligation to adopt the necessary measures to establish such machinery if they do not have it.

With regard to the nature of the measures to be taken, the text of the article clearly states that legislative measures are only one kind. In referring to ‘legislative, administrative, judicial ...’ measures, it is clear that, as far as the Declaration is concerned, it is not enough to have formal provisions designed to prevent or to take action against enforced disappearances. It is essential that the entire government machinery should adopt conduct intended for this purpose. To this end, administrative provisions and judicial decisions play a very important role.

The article also refers to ‘other measures’, thus making it clear that the responsibility of the State does not stop at legislative, administrative or judicial measures. These are mentioned only by way of example, so it is clear that States have to adopt policy and all other types of measures within their power and their jurisdiction to prevent and terminate disappearances. This part of the provision must be understood as giving the State a wide range of responsibility for defining policies suited to the proposed objective.

It is, however, not enough for legislative, administrative, judicial or other measures to be taken, since they also have to be 'effective' if they are to achieve the objective of prevention and termination. If the facts showed that the measures taken were ineffective, the international responsibility of the State would be to take other measures and to adapt its policies so that effective results would be achieved. The main criterion for determining whether or not the measures are suitable is that they are effective in preventing and, as appropriate, terminating acts of enforced disappearance.

Consequently, the provision contained in article 3 must be understood as the general framework for guiding States and encouraging them to adopt a set of measures. It must be understood that the international responsibility of States in this regard arises not only when acts of enforced disappearance occur, but also when there is a lack of appropriate action to prevent or terminate such acts. Such responsibility derives not only from omissions or acts by the Government and the authorities and officials subordinate to it, but also from all the other government functions and mechanisms, such as the legislature and the judiciary, whose acts or omissions may affect the implementation of this provision".⁴⁵

37. Article 5 of the 1992 Declaration sets forth "in addition to such criminal penalties as are applicable, enforced disappearances render their perpetrators and the State or State authorities which organize, acquiesce in or tolerate such disappearances liable under civil law, without prejudice to the international responsibility of the State concerned in accordance with the principles of international law". Article 9 of the 1992 Declaration provides that "the right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty and/or identifying the authority ordering or carrying out the deprivation of liberty is required to prevent enforced disappearances under all circumstances, including those referred to in article 7 above. In such proceedings, competent national authorities shall have access to all places where persons deprived of their liberty are being held and to each part of those places, as well as to any place in which there are grounds to believe that such persons may be found. Any other competent authority entitled under the law of the State or by any international legal instrument to which the State is a party may also have access to such places". Further, Article 13 of the 1992 Declaration establishes that "each State shall ensure that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority. Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation. Each State shall ensure that the competent authority shall have the necessary powers and resources to conduct the investigation effectively, including powers to compel attendance of witnesses and production of relevant documents and to make immediate on-site visits. Steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal. The findings of such an investigation shall be made available upon request to all persons concerned, unless doing so would

⁴⁵ UNWGEID, *Annual Report*, doc. E/CN.4/1996/38, *supra* note 38, paras. 48-53.

jeopardize an ongoing criminal investigation. Steps shall be taken to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished. An investigation, in accordance with the procedures described above, should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclarified". Under Article 14 of the 1992 Declaration: "any person alleged to have perpetrated an act of enforced disappearance in a particular State shall, when the facts disclosed by an official investigation so warrant, be brought before the competent civil authorities of that State for the purpose of prosecution and trial unless he has been extradited to another State wishing to exercise jurisdiction in accordance with the relevant international agreements in force. All States should take any lawful and appropriate action available to them to bring to justice all persons presumed responsible for an act of enforced disappearance, who are found to be within their jurisdiction or under their control". Finally, Article 18 of the 1992 Declaration reads as follows: "Persons who have or are alleged to have committed offences referred to in article 4, paragraph 1, above, shall not benefit from any special amnesty law or similar measures that might have the effect of exempting them from any criminal proceedings or sanction. In the exercise of the right of pardon, the extreme seriousness of acts of enforced disappearance shall be taken into account".⁴⁶

38. First, it is only in 2004 (almost 9 years after the conclusion of the conflict), with the adoption and entry into force of the LMP, that BiH attempted to elaborate a comprehensive and articulated discipline to cover different aspects relating to enforced disappearance. However, such framework does not address all relevant aspects (in particular "judicial measures" and the criminal dimension of the phenomenon) connected with the prevention and suppression of enforced disappearance and refers only to cases occurred within a limited period of time; and, further, it cannot be considered as an "effective" measure under Article 3 of the 1992 Declaration as long as it has not been fully and properly implemented.
39. With regards to the undertaking of effective judicial measures to prevent, investigate, judge and sanction people responsible for enforced disappearance, answers provided until now by the BiH authorities are far from satisfying and do not seem to meet the requirements of the 1992 Declaration. Although in the past years, work has been done on reforming the relevant institutions and bringing to trial those indicted for war crimes,⁴⁷ the victims are disappointed with the way that these processes have been dealt with. To date, no domestic court has convicted any single person for enforced disappearance, thus fostering an overall climate of impunity. Before the evident inefficiency of regular courts a considerable number of law suites concerning disappeared people was addressed first to the Human Rights Chamber for BiH and later, to the Constitutional Court of BiH. None of these two tribunals is meant to establish individual

⁴⁶ For an extensive and detailed general comment on this provision see UNWGEID, *Annual Report for 2005*, doc. E/CN.4/2006/56 of 27 December 2005, para. 49.

⁴⁷ The activity of the ICTY will not be analyzed in the present general allegation. However, it is worthy noting that enforced disappearance was not listed among crimes against humanity under the Statute of the ICTY. Although the Tribunal has recognized that enforced disappearance can be considered as included in the category of "inhumane acts" under its Statute (see ICTY, *Prosecutor v. Zoran Kupreskic and others*, judgment of the Trial Chamber of 14 January 2000, doc. IT-95-16-A, para. 566), to date no one has been convicted by the ICTY for enforced disappearance. At the domestic level, as already pointed out, no one has ever been convicted under Article 172 of the Criminal Code, *supra* note 37.

responsibility. Under this perspective, BiH is not fulfilling its obligation to carry out a thorough, prompt, impartial and independent investigation over cases of enforced disappearance; and to identify, judge and sanction those responsible, in violation of Articles 3, 5, 9, 13 and 14 of the 1992 Declaration.

40. Under Annex 6 (Agreement on Human Rights) of the Dayton Peace Agreement, a Human Rights Chamber, composed of 14 members was established in March 1996 and functioned until 31 December 2003. It had the mandate to consider alleged violations of human rights, as provided in the European Convention on Human Rights and the Protocols thereto, and alleged discriminations arising in the enjoyment of the rights and freedoms provided for in the same Convention and 15 other treaties listed in the Appendix to Annex 6 to the Dayton Agreement. The Chamber was entitled to receive applications by referral from the Ombudsperson or on behalf of an applicant or directly from any Party to Annex 6, or from any person, NGO or group of individuals claiming to be the victim of a violation by a Party or acting on behalf of alleged victims who were deceased or disappeared. The Chamber could only receive applications concerning matters which were within the responsibility of one of the Parties to Annex 6 of the Dayton Agreement and which occurred or continued after 14 December 1995. The Chamber could issue decisions on whether the facts indicate a breach by the Party concerned of its obligations under the Dayton Agreement and on “what steps shall be taken by the Party to remedy such breach, including orders to cease and desist, monetary relief (including pecuniary and non pecuniary-damages), and provisional measures” (Art. XI, para. 1). Although having a limited competence *ratione temporis*, the Chamber delivered decisions on cases of enforced disappearance, finding violations of Articles 3 (prohibition of torture) and 8 (right to respect for private and family life) of the European Convention on Human Rights with regards to the relatives of disappeared people.⁴⁸
41. Once the Chamber finalized its mandate, its functions were transferred to the Human Rights Commission within the Constitutional Court of BiH, which delivered a number of judgments referring to

⁴⁸ See Human Rights Chamber for BiH, Decision on Admissibility, *Josip, Bozana and Tomislav Matanović v. Republika Srpska*, 13 September 1996 (Case No. CH/96/1); Decision on the Admissibility, *Ratko Grgić v. Republika Srpska*, 5 February 1997 (Case No. CH/96/15); Decision on the Merits, *Ratko Grgić v. Republika Srpska*, 5 August 1997 (Case No. CH/96/15); Decision on the Merits, *Josip, Bozana and Tomislav Matanović v. Republika Srpska Republic*, 11 July 1997 (Case No. CH/96/1); Decision on the Admissibility, *Dzermal Balić v. Republika Srpska*, 10 September 1998 (Case No. CH/97/74); Decision on Admissibility and Merits *Avdo and Esma Palić v. Republika Srpska*, 11 January 2001 (Case No. CH/99/3196); Decision on Admissibility and Merits *Selimović (Srebrenica cases) and others v. Republika Srpska*, 7 March 2003; Decision to Strike Out, *Case Ibisević and 1804 others v. Republika Srpska*, 3 June 2003 (Case No. CH/01/7604); Decision on Admissibility and Merits *Čebić v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina*, 4 July 2003 (Case No. CH/98/668); Decision on Admissibility and Merits *Pašović, Nikšić and Burić v. Republika Srpska*, 7 November 2003 (Cases No. CH/01/8569, CH/02/9611, CH/02/9613, CH/02/11195, CH/02/11391); Decision on Admissibility and Merits *Popović v. the Federation of Bosnia and Herzegovina*, 7 November 2003 (Case No. CH/02/10074); Decision on the Admissibility and the Merits *Smajić and others v. Republika Srpska*, 5 December 2003 (Case No. CH/02/8879); Decision on the Admissibility and the Merits *Jovanović v. the Federation of Bosnia and Herzegovina*, 5 December 2003 (Case No. CH/02/9180); Decision on Admissibility and the Merits *Husković and others v. the Federation of Bosnia and Herzegovina*, 22 December 2003, (Case No. CH/02/12551); Decision on Admissibility and the Merits *Mujić and others v. Republika Srpska*, 22 December 2003 (Case No. CH/02/10235); Decision on Admissibility and the Merits *M. Ć. and others v. Republika Srpska*, 22 December 2003 (Case No. CH/02/9851); and Decision on Admissibility and the Merits *Malkić and others v. Republika Srpska*, 22 December 2003 (Case No. CH/02/9358).

enforced disappearance.⁴⁹ The Constitutional Court found the violation of Articles 3 and 8 of the European Convention on Human Rights with regards to relatives of disappeared people. It further concluded that there exist special conditions concerning the inefficiency of the relevant institutions because of which the applicants are relieved from exhausting domestic remedies before ordinary courts, as “no specialized institution on enforced disappearance in BiH seems to be operating effectively”.⁵⁰ The Constitutional Court did not deal with the matter of compensation, as it considered the issue to be covered by the provisions of the LMP concerning “financial support” and the establishment of the Fund for Missing Persons. Unfortunately, to date those provisions remain dead letter.⁵¹ However, the Court ordered to the government of the Federation of BiH and that of the Republika Srpska to “forward the applicants, through their competent commissions for tracing missing persons, all accessible and available information on members of their families who went missing during the war on the territory of BiH, urgently and without further delay and no later than 30 days from the date of the receipt of the Decision”. The Court also ordered to “the parties referred to in Article 15 of the LMP”⁵² to provide for operational functioning of the institutions established in accordance with the LMP, namely the MPI, the Fund for Providing Assistance to the Families of Missing Persons in BiH and the CEN BiH in BiH *immediately and without further delay and no later than 30 days*. Finally, the Council of Ministers of BiH, the government of the Federation of BiH, the government of the Republika Srpska and the government of the Brčko District of BiH were ordered to submit information within 6 months to Constitutional Court about the measures taken to implement the decision of the latter.

42. The time limits set forth by the Constitutional Court in its judgments have abundantly expired. Nevertheless, relevant institutions have not submitted to the Court any information on the measures undertaken to implement its decisions. Further, in some cases, the Commissions on Missing Persons contacted families with template letters stating that the person they are searching for can not be found in their records and that the Commission in question will give its fullest contribution to ascertaining the fate of the family member in question. Without even questioning the efficiency of these Commissions, and at the same time taking into account the large number of cases that these Commissions must deal with, the fact that these letters are being sent as templates is, in the very least, degrading to families of disappeared people.

43. On the basis of Article 74.6 of the Rules of Procedure of the Constitutional Court of BiH, the Court can

⁴⁹ Constitutional Court of BiH, Case *M. H. and others* (Case No. AP-129/04), judgment of 27 May 2005; and Case *Selimović and others* (Case No. AP 1226/05), judgment of 23 February 2006. See also Case *Jele Stjepanović and others* (Case No. AP 36/06), judgment of 16 July 2007; Case *Leka and others* (Case No. AP-1226/05), judgment of 23 February 2006; and Case *Association of Family of Missing Persons and Association of Families of Missing Persons and City Organization of Camp Inmates Istočno Sarajevo and others* (Case No. AP – 228/04), judgment of 13 July 2005.

⁵⁰ Constitutional Court of BiH, Case *M. H. and others*, *supra* note 49, paras. 37-40. At para. 39 the Court noted that “[...] there is no specialized institution at the level of Bosnia and Herzegovina that operates efficiently, its task being conductance of impartial investigations concerning persons who went missing during the war”.

⁵¹ See *infra* paras. 5.4.49 and 5.4.50 and note 60.

⁵² Council of Ministers of BiH, government of the Federation of BiH, government of the Republika Srpska, and government of Brčko District of BiH.

render a ruling in which it establishes that a previous decision has not been duly implemented and fully enforced. Such ruling shall be transmitted to the Prosecutor's Office of BiH, responsible for criminally prosecuting those who do not enforce the decisions of the Constitutional Court. In spite of the existence of these provisions, to date this scheme has proved inefficient: a) the Constitutional Court does not render the mentioned rulings or, when it does so, they do not respect the given deadline;⁵³ and b) according to the available information, the Prosecutor's Office of BiH has done nothing with regards to these decisions, at least in cases concerning disappeared people.⁵⁴

44. Relatives of disappeared people therefore find themselves trapped between the impossibility to recur to domestic courts, which have been considered "ineffective" by the Constitutional Court of BiH; the further inapplicability of the decisions of the Constitutional Court itself; and the inactivity of the Prosecutor's Office. This situation continuously frustrates the rights of relatives of disappeared people as established by Articles 3, 5, 9, 13 and 14 of the 1992 Declaration.⁵⁵
45. Further, under paragraph 5 of Article 13 of the 1992 Declaration, BiH has the obligation to "undertake all necessary steps to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished". While it is known that witnesses have often been harassed prior and after having participated to trials; and that associations of relatives of disappeared people have frequently received threats, no one to date has been investigated, judged and sanctioned for these acts of intimidation, by this means fostering an overall climate of insecurity.
46. Finally, Article 118 of the BiH Criminal Code provides that: "(1) By an amnesty, to the persons covered by it, a release from criminal prosecution, complete or partial release from the execution of punishment, substitution of the imposed punishment by a less severe one, deletion of the conviction, or cancellation of legal consequences incident to conviction is given. (2) An amnesty for the criminal offences prescribed under this Code, may be granted by the Parliamentary Assembly of Bosnia and Herzegovina by virtue of a law".⁵⁶ The BiH Criminal Code does not establish any exception to the application of

⁵³ See for instance Case AP 36/06 from July 2007, where the Court failed to deliver the judgment on due time for the eventual referral to the Prosecutor's Office. See also Constitutional Court of BiH, Decision of 27 May 2006 on the Failure to Implement the Decision rendered on 13 July 2005 on the Case AP 228/04; and the Decision of 18 November 2006 on the Failure to Implement the Decision rendered on 23 February 2006 on the Case AP 1226/05.

⁵⁴ On this subject see Bičakčić Eriha, *Constitutional Court and the Bonn Power – The State in the Rift between Human Rights and International Obligations*, in Puls Demokratije, 2007, available at: <http://www.pulsdemokratije.net/index.php?id=348&l=en> (last visited on 2 June 2009); and http://reportingproject.net/court/index.php?option=com_content&task=view&id=26&pop=1&page=0&Itemid=1&lang=English (last visited on 2 June 2009).

⁵⁵ The Human Rights Committee noted with concern that: "[...] the fate and whereabouts of some 15,000 persons who went missing during the armed conflict (1992 to 1995) remain unresolved. It reminds the State party that the family members of missing persons have the right to be informed about the fate of their relatives, and that failure to investigate the cause and circumstances of death, as well as to provide information relating to the burial sites, of missing persons increases uncertainty and, therefore, suffering inflicted to family members and may amount to a violation of article 7 of the Covenant. (arts. 2(3), 6 and 7). The State party should take immediate and effective steps to investigate all unresolved cases of missing persons and ensure without delay that the Institute for Missing Persons becomes fully operational, in accordance with the Constitutional Court's decision of 13 August 2005. It should ensure that the central database of missing persons is finalized and accurate, that the Fund for Support to Families of Missing Persons is secured and that payments to families commence as soon as possible". See Human Rights Committee, *Concluding Observations on Bosnia and Herzegovina*, *supra* note 20, para. 14.

⁵⁶ Of interest are also Article 119 (Pardons) and 120 (Impact of Amnesty and Pardon on Third Parties).

amnesty. This does not seem in accordance with the requirements of Article 18 of the 1992 Declaration, under which those responsible of acts of enforced disappearance cannot be exempted from criminal proceedings or sanction.

5.4 The Right to a Remedy and to Obtain Reparation

47. Article 19 of the 1992 Declaration establishes that “the victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible. In the event of the death of the victim as a result of an act of enforced disappearance, their dependants shall also be entitled to compensation”⁵⁷. In 1996 the UNWGEID adopted a general comment on this provision, stressing out that:

“[...] States are, therefore, under an obligation to adopt legislative and other measures in order to enable the victims to claim compensation before the courts or special administrative bodies empowered to grant compensation. In addition to the victims who survived the disappearance, their families are also entitled to compensation for the suffering during the time of disappearance and in the event of the death of the victim; his or her dependants are entitled to compensation.

Compensation shall be “adequate”, i.e. proportionate to the gravity of the human rights violation (e.g. the period of disappearance, the conditions of detention, etc.) and to the suffering of the victim and the family. Monetary compensation shall be granted for any damage resulting from an enforced disappearance such as physical or mental harm, lost opportunities, material damages and loss of earnings, harm to reputation and costs required for legal or expert assistance. Civil claims for compensation shall not be limited by amnesty laws, made subject to statutes of limitation or made dependent on penal sanctions imposed on the perpetrators.

The right to adequate compensation for acts of enforced disappearance under article 19 shall be distinguished from the right to compensation for arbitrary executions. In other words, the right of compensation in relation to an act of enforced disappearance shall not be made conditional on the death of the victim. ‘In the event of the death of the victim as a result of an act of enforced disappearance’, the dependants are, however, entitled to additional compensation by virtue of the last sentence of article 19. If the death of the victim cannot be established by means of exhumation or similar forms of evidence, States have an obligation to provide for appropriate legal procedures leading to the presumption of death or a similar legal status of the victim which entitles the dependants to exercise their right to compensation. The respective laws shall specify the legal requirements for such procedure, such as the minimum period of disappearance, the category of person who may initiate such proceedings, etc. As a general principle, no victim of enforced disappearance shall be presumed dead over the objections of the family.

In addition to the punishment of the perpetrators and the right to monetary compensation, the right to obtain redress for acts of enforced disappearance under article 19 also includes “the means for as complete a rehabilitation as possible”. This obligation refers to medical and psychological care and rehabilitation for any

⁵⁷ For further developments of the concept of “measures of reparations” to be adopted in cases of enforced disappearance, see Art. 24.5 of the International Convention on the Protection of All Persons from Enforced Disappearance: “The right to obtain reparation referred to in paragraph 4 of this article covers material and moral damages and, where appropriate, other forms of reparation such as: a) restitution, b) rehabilitation, c) satisfaction, including restoration of dignity and reputation; and d) guarantees of non-repetition”. See also UN, Principles on the right to a remedy and reparation for victims of gross violations of human rights law and serious violations of humanitarian law, adopted by General Assembly resolution 60/147 of 16 December 2005 (in particular Principles 15-23); and UN Updated Set of Principles for the protection and promotion of human rights through action to combat impunity, recommended by the Commission on Human Rights resolution 2005/81 of 21 April 2005 (in particular Principle 32-38).

form of physical or mental damage as well as to legal and social rehabilitation, guarantees of non-repetition, restoration of personal liberty, family life, citizenship, employment or property, return to one's place of residence and similar forms of restitution, satisfaction and reparation which may remove the consequences of the enforced disappearance".⁵⁸

48. In spite the adoption of a number of laws concerning compensation to relatives of disappeared people (including the LMP),⁵⁹ almost the majority of the latter could not benefit from any measure of reparation, mainly due to the lack of information about the very existence of these provisions and the failure to implement the legal framework by the authorities.
49. Article 11 of the LMP (Right to Financial Support) provides that "the family members of missing persons, as defined in Article 2, paragraph 2 of this Law, who were supported by the missing person and who are in need of support, are entitled to monthly financial support".⁶⁰ Under the LMP, a relative of a disappeared person shall be considered to have a need for support if he or she does not enjoy any other rights for support such as: rights based on social welfare, pension-disability insurance, veteran-disability insurance, income from work, individual performance of economic or independent activity and other income that can be considered support in accordance with the BiH legislation. With the purpose of providing funds and realizing the rights of family members of the missing, Article 15 of the LMP establishes the creation of a Fund for Support to the Families of Missing Persons of Bosnia and Herzegovina. Almost 5 years after the entry into force of the LMP, this Fund has not been set up.
50. The Ministry for Human Rights and Refugees in BiH, the institution that the LMP names to oversee its implementation (Art. 24), has initiated an action for the creation of more delegated legislation including a decision on establishing the Fund and the CEN BiH. As part of this initiative, a work group has been formed consisting of representatives of the Ministry of Human Rights and Refugees, the Office on Missing and Detained Persons of Republika Srpska, the Federal Commission for Missing Persons, the Brčko District Commission for Missing Persons, the ICMP and ICRC. The Ministry has obliged itself to continually inform representatives of associations of relatives of disappeared people about drafts and suggestions with the possibility of their participation in the work of this Working Group. With the aim of establishing a Fund for Missing Persons as the most urgent obligation of this initiative, the Ministry has recognized the need for gathering as precise as possible information on the potential number of users of

⁵⁸ UNWGEID, *Annual Report*, doc. E/CN.4/1997/34 of 13 December 1996, paras. 72-75.

⁵⁹ In particular, reference shall be made to the Law on the Basic Principles of Social Welfare, Welfare of Civilian Victims of War and Welfare of the Families with Children of the Federation Bosnia and Herzegovina; and Law on Protection of Civilian Victims of War of Republika Srpska. These laws were motivated by the idea to treat all civilian war victims as a single category. With these laws, families of disappeared people are also recognized as civilian war victims and as such, at least *de jure*, are assured financial support. Again, it must be pointed out that "reparation" and "financial support" are two different concepts. Some members of families of disappeared people have managed to exercise their right to family invalid pensions through the aforementioned legal framework. Indeed, the majority of relatives were not even granted access to such pensions because they have been forced to go through long lasting, complicated and contradictory bureaucratic procedures. Other relevant laws are those for veterans, namely the Law on the Rights of Demobilized Soldiers and Their Families of the Federation of Bosnia and Herzegovina and the Law on the Rights of Veterans, Military Disabled and Families of Killed Soldiers of Republika Srpska.

⁶⁰ Other relevant provisions of the LMP are: criteria to financial support (Art. 12); determining the amount of financial support (Art. 13); termination of the right to financial support (Art. 13); and procedure for regulating the right to financial support (Art. 16); and decision on establishing the right to financial support (Art. 17).

this Fund and has initiated an activity to gather all this information by way of questionnaires for families of disappeared people. The fact that, after more than 5 years since the LMP was adopted, this initiative has still not been finalized shows a serious inadequacy of legal solutions for families of disappeared people in BiH.⁶¹

51. As a general comment, it should be pointed out that the notion of “financial support” is different from those of “reparation” or “compensation”. Indeed, the right to obtain integral reparation and prompt, fair and adequate compensation must be granted to all relatives of disappeared people, irrespective if they enjoy or have enjoyed any other rights for support.
52. In the few cases relating to disappeared people that have reached the Constitutional Court of BiH,⁶² the latter, while finding the existence of serious human rights violations, has not ordered the payment of pecuniary compensation, instead turning the issue to relevant institutional solutions. Namely, in each of the judgments of the Constitutional Court, the latter ordered to the relevant domestic institutions to promptly establish and make provisions for operation of institutions under the LMP, including the establishment of the Fund for Support to the Families of Missing Persons in BiH, which would enable the realization of the financial aspect of reparations. The orders of the Constitutional Court concerning pecuniary compensation have not been implemented so far.
53. With regards to medical or psychological rehabilitation of relatives of disappeared people, the State has not provided any form of free medical or psychological care. *Ad hoc* support activities in this field have been carried out in specific areas and with selected groups of relatives by the ICRC or NGOs. Nonetheless, it remains the primary responsibility of the State to grant to all relatives of disappeared people measures of rehabilitation. Indeed, Article 18 of the LMP establishes that “supported family members of a missing person who do not realize the right to health protection on any other basis shall be *entitled to health protection and other rights concerning health insurance*, with the same coverage as employed individuals. For the purpose of realizing the right to health protection, within 90 days of the date of the coming into force of this Law, the Federation of BiH, the Republika Srpska and Brčko District of BiH shall determine the method of realization of this right in accordance with applicable regulations”.
54. Article 18 of LMP provides also that “children of missing persons shall have priority in the realization of the rights to education and employment, on an equal basis. Adherence to this principle shall be supervised by the competent inspection authorities of the Federation of BiH, the Republika Srpska and Brčko District of BiH”.
55. Almost 5 years have passed since the entry into force of the LMP and Article 18 seems to remain dead letter. Associations of relatives of disappeared people have been complaining that 95% of the local civil servants (in this case, the Social Welfare Centres) do not know anything about provisions of the LMP.

⁶¹ See Hadžimešić Lejla, *The Rights of Families of Missing Persons in Continuous Systematic Neglect*, in Puls Demokratije, 2009, available at: <http://www.pulsdemokratije.net/index.php?id=1459&l=en> (last visited on 2 June 2009).

⁶² *Supra* para. 5.3.41.

The allegedly apply “local provisions” and when the initiative is taken by the families to try to invoke the provisions of the LMP, usually they are told by the local Social Welfare Centres that they need an official instruction by the higher hierarchical authority to tell them what to do in these cases, and that they cannot implement “some provisions from some State law”. Accordingly, lack of knowledge of families and intricate administration jeopardize the application of the LMP. Finally, it shall be recalled that free medical and psychological assistance by State authorities as well as measures granting education and employment to children are part of the right to integral reparation of relatives of disappeared people and should not be designed as a form of social assistance.

56. In general, it seems that legislative, administrative and judicial actions undertaken until now by BiH do not meet with the requirements of Article 18 of the 1992 Declaration and thousands of relatives of disappeared people have been left for more than 15 years without any “prompt, fair and adequate compensation” and any integral programme of measures of reparation including restitution, rehabilitation, satisfaction, restoration of dignity and reputation and guarantees of non-repetition.

5.5 The Presumption of Death

57. Over the past years several relatives of disappeared people initiated proceedings before local courts in order to realize their rights (mainly pensions) on the basis of the Law on the Basic Principles of Social Welfare of Civilian Victims of War and Welfare of the Families with Children of the Federation of BiH, the Law on Protection of Civilian Victims of War of Republika Srpska, the Law on the Rights of Demobilized Soldiers and their Families of the Federation of BiH or the Law of the Veterans, Military Disabled and Families of the Killed Soldiers of Republika Srpska.⁶³ To accede to pensions, under the Law on Non-Contentious Act, these relatives were requested to obtain a decision from local courts declaring their loved ones dead in a non-litigation procedure. Many relatives of disappeared people, in spite of the severe additional emotional pain caused by such procedures, did so as it was the only way for them to alleviate an often difficult material situation. At present their loved ones are registered as dead although in fact they do not know their fate and whereabouts.
58. The LMP changes this procedure and the declaration of death will no longer be a requisite to obtain financial support.⁶⁴ However, as pointed out, most of the families have already declared dead their loved ones in accordance with the previous procedure.
59. At the same time, Article 27 of the LMP (Entry into the Register of Deaths) provides that “three years after the date of the coming into force of the Law, persons registered as missing in the period from 30 April 1991 to 14 February 1996 whose disappearance has been verified within the CEN BiH, shall be considered dead and this fact shall be officially entered in the Register of Death [...]”. Article 9 of the LMP clarifies that “in the event that a missing person is proclaimed dead, but the mortal remains have not been found, the process of tracing shall not be terminated”. To date, as the CEN BiH has not been

⁶³ *Supra* note 59.

⁶⁴ *Supra* para. 5.4.49.

established yet, Article 27 has not been implemented either.

60. As already recalled, enforced disappearance is an ongoing crime and this brings a number of relevant legal consequences, among which the impossibility for statute of limitations for criminal proceedings to commence until the moment when the fate and whereabouts of the disappeared person are established with certainty. Under the current formulation of the LMP it is unclear if, after Article 27 will be implemented, the obligatory inscription of disappeared people in the Register of Death will bring significant consequences (and in case of positive answer, which) to the application of statute of limitations for criminal proceedings.
61. The UNWGEID has declared that the fact that relatives, in order to obtain reparation, must apply for a certificate of presumption of death and then for a death certificate, “re-victimizes families by making them go through the process of having a death certificate, although neither the fate nor the whereabouts of the disappeared person are known”.⁶⁵ Further, “the fact that a disappearance is treated as a 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”.⁶⁶ Article 27 of the LMP may have the effect to treat enforced disappearances as direct deaths and this may create major obstacles in the implementation of the 1992 Declaration. It should be made clear that the State not only remains under an obligation of continuing tracing activities, but also of granting the right to know the truth and to obtain integral reparation of the families, and of continuing investigations in order to identify, judge and sanction those responsible for the acts of enforced disappearance.

6. Conclusions

62. Almost 15 years have passed since the conclusion of the armed conflict in BiH and about 13,000 people remain disappeared to date, while their relatives endure a permanent state of anguish, frustration, distress and uncertainty.
63. In the past, the UNWGEID closely followed the situation of disappeared people in BiH over a number of years through one of his members (Mr. Manfred Nowak), who acted as expert member of the UNWGEID in the Special Process on missing persons in the territory of FRY. When Mr. Nowak resigned, the UNWGEID took the decision not to deal with cases of enforced disappearance occurred in BiH prior to 14 December 1995 and left it with the Special Rapporteur on the situation of human rights in BiH, the Republic of Croatia, and the FRY to follow the relevant developments concerning the subject. The UNWGEID mentioned for the last time cases of disappearance occurred in BiH in its annual report for 2000.⁶⁷ The Special Rapporteur mentioned for the last time the subject of missing people in BiH in his report for 2001, limiting his reference to a general comment on the progress of exhumations and

⁶⁵ UNWGEID, *Annual Report*, doc. A/HRC/10/9 of 6 February 2009, para. 113.

⁶⁶ *Ibid.*, para. 114.

⁶⁷ *Supra* para. 2.10 and note 16.

without deepening his analysis with regards to other obligations of BiH.⁶⁸ Since that date, the subject of victims of enforced disappearance in BiH was basically left to domestic authorities and to initiatives undertaken by other actors – domestic and international – working in the field.

64. Some exhumations have been carried out and a number of legislative initiatives have been undertaken. However, significant obstacles to the full implementation of the 1992 Declaration remain and the rights of victims of enforced disappearance and their relatives continue to be impaired.
65. Accordingly, we would kindly request the distinguished UNWGEID to take into consideration our allegations and to transmit them to the government of BiH, inviting it to comment thereon. In particular, we would appeal to the UNWGEID:
 - a) *to call on BiH to take all necessary measures to ensure the right to know the truth of relatives of disappeared people, to investigate the cause and circumstances of the disappearance, as well as to provide information relating the burial sites, to locate, respect and return the mortal remains;*
 - b) *to evaluate the compatibility of the LMP with Article 3 of the 1992 Declaration (in particular with regards to the obligation to adopt effective judicial measures to prevent and suppress enforced disappearance) and to call on BiH to implement without delay all the provisions of the law (in particular concerning the setting up of the CEN BiH and the creation of the Fund for Missing Persons);*
 - c) *to evaluate the compatibility of the BiH Criminal Code with the requirements of Article 4 of the 1992 Declaration and to remind the BiH authorities that the crime of enforced disappearance shall be an offence and included in criminal law as an autonomous crime, and not incorporated in domestic legislation as part of other offences or only if committed as a part of a widespread and systematic practice directed against any civilian population;*
 - d) *to evaluate the compatibility of the BiH Criminal Code with the requirements of Article 18 of the 1992 Declaration and to remind the BiH authorities that the crime of enforced disappearance is ongoing and shall not be subjected to statutes of limitations for criminal proceedings until the fate and whereabouts of the disappeared person are established with certainty;*
 - e) *to evaluate the compatibility of the “declaration of death” of victims of enforced disappearance (in particular of Art. 27 of the LMP) with the requirements of the 1992 Declaration and to remind to BiH that the continuous nature of the crime of enforced disappearance has direct consequences on the impossibility to apply statutes of limitation to criminal proceedings and on the right to know the truth and to obtain integral reparation of the relatives, as well as on the obligation of the State to continue the relevant investigations;*

⁶⁸ *Supra* para. 2.11 and note 19.

- f) *to remind BiH of its ongoing obligation to carry out a thorough, prompt, impartial and independent investigation over cases of enforced disappearance; and to identify, judge and sanction those responsible, as established under Articles 3, 5, 9, 13 and 14 of the 1992 Declaration;*
- g) *to evaluate whether the present lack of implementation of the decisions on disappeared people delivered by the Constitutional Court of BiH and the inactivity of the Prosecutor's Office are compatible with Articles 3, 5, 9, 13 and 14 of the 1992 Declaration;*
- h) *to evaluate the compatibility of Article 118 of the BiH Criminal Code with Article 18 of the 1992 Declaration and to remind to BiH that those responsible for acts of enforced disappearance cannot be exempted from criminal proceedings or sanction;*
- i) *to remind to BiH that, under Article 13.5 of the 1992 Declaration it shall take all necessary steps to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure over cases of enforced disappearance is appropriately punished; and*
- j) *to evaluate the compatibility of the measures adopted by BiH (in particular of Arts. 11-18 of the LMP) with Article 19 of the 1992 Declaration and to remind the State that the right to obtain integral reparation shall not be treated as a welfare tool and shall not be subjected to the condition of not having received other forms of financial support and shall be granted without any further delay.*

66. Finally, a country visit of the UNWGEID to BiH would provide it with a first hand account of the situation concerning enforced disappearance in the country and would greatly contribute to maintaining such a fundamental item on the agenda, until relatives of disappeared people are granted their rights to justice, truth and integral reparation. Therefore, we would request the UNWGEID to solicit an invitation to carry out such visit to the government of BiH.

67. We remain at full disposal of the UNWGEID for any clarification or further information and we take this opportunity to acknowledge in advance the kind attention and to commend the Group and its Secretariat for their commitment and indispensable work in the struggle against one of the most serious international crimes and heinous human rights violations.

Respectfully,



Philip Grant, on behalf of TRIAL (Track Impunity Always - Swiss association against impunity)

Geneva, 29 June 2009

TRIAL – Track Impunity Always

TRIAL is an association under Swiss law founded in June 2002 and headquartered in Geneva. It is apolitical and non-confessional. Its principal goals are in the fight against impunity for the perpetrators accomplices and instigators of genocide, war crimes, crimes against humanity, enforced disappearances and acts of torture. To accomplish its goals, TRIAL coordinates a network of lawyers capable of rapidly and efficiently instituting legal proceedings. These lawyers offer the victims of international crimes the necessary skills for their proper defence: filing of legal complaints at domestic and international level; defence of civil rights within the criminal trial; and liability procedures. TRIAL has also set up an Advocacy Centre (ACT) which was born from the premise that, despite the existence of legal tools able to provide redress to victims of international crimes, these mechanisms are considerably underused. Accordingly, the ACT aims at offering victims the requisite professional help to prepare and file their complaints before existing international mechanisms and tribunals.

Since 2008, ACT has opened a small field office in Sarajevo, Bosnia and Herzegovina, and it is currently working on a number of complaints – mainly concerning cases of enforced disappearance – which have been or will be submitted to the European Court of Human Rights, the Human Rights Committee and the Committee against Torture.⁶⁹

⁶⁹ Applications already submitted concern the following cases: *Muharem Elezović v. BiH* (multiple violations due to the lack of investigation and effective remedy following the disappearance of the two sons of the applicant, Edin Elezović and Emir Elezović); *Munira Mujkanović v. BiH* (multiple violations due to the lack of investigation and effective remedy following the disappearance of the husband of the applicant, Fahrudin Mujkanović); *Naila Bajrić v. BiH* (multiple violations due to the lack of investigation and effective remedy following the disappearance of the husband of the applicant, Serif Bajrić, and of her son, Zafir Bajrić); *Sabiha Huskanović v. BiH* (multiple violations due to the lack of investigation and effective remedy following the disappearance of the husband of the applicant, Zijad Huskanović); *Vahidin Elezović v. BiH* (multiple violations due to the lack of investigation and effective remedy following the disappearance of the father of the applicant, Fahrudin Elezović); and *Asima Memić v. BiH* (multiple violations due to the lack of investigation and effective remedy following the disappearance of the son of the applicant, Asmir Memić).