

**General Allegation to the Special Rapporteur on Torture, and other Cruel,
Inhuman or Degrading Treatment or Punishment**

and the

Working Group on Arbitrary Detention

FREED, BUT NOT FREE YET!

**THE SITUATION OF FORMER CAMP DETAINEES
IN BOSNIA AND HERZEGOVINA**

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Submitted by

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1. Background

1. The Special Rapporteur on Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment (“Special Rapporteur on Torture”) is mandated, among others, to seek, receive, examine and act on information regarding torture or other cruel, inhuman or degrading treatment or punishment. Moreover, the Special Rapporteur can study existing challenges in relation to combating and preventing torture and make recommendations and observations concerning appropriate measures to prevent and eradicate such practice. In the past, the Special Rapporteur dealt with the subjects of the guarantees for individuals deprived of their liberty, impunity for those responsible for torture, and remedy and reparations for victims of torture.¹
2. The Working Group on Arbitrary Detention (“WGAD”) is mandated, among others, to seek and receive information from different sources, to investigate cases of deprivation of liberty imposed arbitrarily or otherwise inconsistently with the relevant international standards by the States concerned; and to conduct field missions upon the invitation of the government, in order to understand better the situations prevailing in countries, as well as the underlying reasons for instances of arbitrary deprivation of liberty. In the past, the WGAD dealt with the subjects of the rights of persons deprived of their liberty, secret prisons, groups in detention which are susceptible to sexual-abuse, and detention registries and powers to release prisoners.²
3. The Special Rapporteur on Torture dealt with torture committed in the context of the conflicts in the former Yugoslavia, including in Bosnia and Herzegovina (BiH), and he also conducted a country visit from 12 to 22 October 1992, jointly with the Special Rapporteur to the Commission on Human Rights on former Yugoslavia and the Representative of the Secretary-General on Internally Displaced Persons.³ Indeed, after such visit, the Special Rapporteur on Torture continued receiving allegations concerning cases of torture perpetrated during the conflict, but he expressed that “[...] with respect to Bosnia and Herzegovina the Special Rapporteur’s usual procedures for communicating allegations to the Government concerned cannot usefully be applied to a country where it is estimated that two thirds of the territory are not under the control of the recognised Government”.⁴ Accordingly, the Special Rapporteur on Torture focussed on

¹ See, *inter alia*, Special Rapporteur on Torture, *Interim Report for 2010*, doc. A/65/273 of 10 August 2010, paras. 35-74; *Study on the Phenomenon of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in the World, including an Assessment of Conditions of Detention* (“Study on the Phenomenon of Torture”), doc. A/HRC/13/39/Add.5 of 5 February 2010, paras. 132-139, 229-237, and 167-185; *Interim Report for 2007*, doc. A/62/221 of 13 August 2007, paras. 42-54; *Annual Report for 2006*, doc., A/HRC/4/33 of 15 January 2007, paras. 61-68; *Interim Report for 2003*, doc. A/58/120 of 3 July 2003, paras. 29-35; *Annual Report for 2003*, doc. E/CN.4/2004/56 of 23 December 2003, paras. 27-49; and *Interim Report for 2001* doc. A/56/156 of 3 July 2001, paras. 26-33.

² Working Group on Arbitrary Detention (WGAD), *Annual Report for 2008*, doc. A/HRC/10/21 of 16 February 2009, paras. 42-49; *Annual Report for 2007*, doc. A/HRC/7/4 of 10 January 2008, paras. 55-58 and 67-73; and *Annual Report for 2005*, doc. E/CN.4/2006/7 of 12 December 2006, paras. 53-59.

³ Special Rapporteur on Torture, *Annual Report for 1992*, doc. E/CN.4/1993/26 of 15 December 1992, paras. 548-550 and 551-558; and Special Rapporteur to the Commission on Human Rights, *Report on the Mission to former Yugoslavia*, doc. A/47/666 of 17 November 1992 (“Report Mazowiecki No. 3”). See also Special Rapporteur on Torture, *Annual Report for 1993*, doc. E/CN.4/1994/31 of 6 January 1994, paras. 632-649.

⁴ Special Rapporteur on Torture, *Annual Report for 1992*, *supra* note 3, para. 649.

the situation in Kosovo, while with regard to BiH he referred to the reports of the Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia. In the reports issued after the conclusion of the war in BiH, the Special Rapporteur on Torture made no further mention to the situation of victims of torture during the conflict and, in particular, to former camp detainees.

4. The Chairperson of the WGAD, jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur of the Commission on Human Rights visited BiH from 21 to 26 August 1992.⁵ After that visit, the WGAD did not put any specific emphasis on the situation of camp detainees in the former Yugoslavia and, in particular, in BiH.
5. In fact, it would seem that, after an initial interest in the situation of the thousands of camp detainees in the context of the conflicts of the former Yugoslavia, both the Special Rapporteur on Torture and the WGAD shifted their attention to other subjects, leaving it to the Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia to address the matter. The latter referred to the existence of detention or concentration camps set up during the conflicts throughout the former Yugoslavia.⁶ However, with regard to BiH, this specific subject was not analysed in detail.⁷ Moreover, after 2002 the mandate of the Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia was not renewed.
6. At present, although those who were kept arbitrarily in detention camps in BiH during the conflict and that were subjected to forced labour, torture and the worst forms of inhumane treatment are still seeking to obtain compensation and integral reparation for the harm suffered, as well as to see those responsible for the crimes concerned duly identified, judged and sanctioned, there is no longer a special mechanism within the United Nations system mandated to deal with this matter.
7. BiH is a State party to the International Covenant on Civil and Political Rights (on 1 September 1993 it succeeded the former Yugoslavia, which ratified the treaty on 2 June 1971), as well as to the First Optional Protocol to the International Covenant on Civil and Political Rights (ratified on 1 March 1995). Among others, among others, BiH is also a State party to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (on 1 September 1993, it succeeded the former Yugoslavia, which ratified the treaty on 10 September 1991); to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (ratified on 24 October 2008); to the Convention on the Rights of the Child (on 1 September 1993, it succeeded the former Yugoslavia, which 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 ratified the treaty on 26 February 1982) and to the European Convention for the Protection of

⁵ WGAD, *Annual Report for 1992*, doc. E/CN.4/1993/24 of 12 January 1993, para. 8.

⁶ See, *inter alia*, Special Rapporteur on the Situation of Human Rights in the Former Yugoslavia, *Report for 1999*, doc. E/CN.4/2000/39 of 28 December 1999, paras. 80-81.

⁷ Notably, while the reports of the Special Rapporteur on the Situation of Human Rights in the Former Yugoslavia contained a session called "missing and detained persons" for Croatia and the former Yugoslavia, in the case of BiH the session was called only "missing persons".

Human Rights and Fundamental Freedoms (12 July 2002). Further, BiH ratified the Rome Statute on the establishment of an International Criminal Court on 11 April 2002.⁸

8. Most of the mentioned treaties, as well as the 1949 Geneva Conventions (in particular the Third, relative to the treatment of prisoners of war; and the Fourth, relative to the protection of civilian persons in time of war)⁹ and the two 1977 Additional Protocols thereto, establish for States parties international obligations which are relevant when dealing with the subjects of arbitrary detention in camps, forced labour and torture. In this general allegation, the international legal standards to which reference will be made are, in particular, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ("Convention against Torture"), and the International Covenant on Civil and Political Rights. Indeed, reference will be made also to the Standard Minimum Rules for the Treatment of Prisoners (1955); the Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment (1988); the Basic Principles for the Treatment of Prisoners (1990); and the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2000).
9. This general allegation is submitted jointly to the Special Rapporteur on Torture and to the WGAD and aims at highlighting the ongoing violations of basic rights of former camp detainees in BiH. In this sense, the allegation is entitled "*freed, but not free yet!*". Those camp detainees that have not been killed or subjected to enforced disappearance during the war have in fact been freed, and illegal detention facilities were closed. Nevertheless, these men and women cannot be considered to be genuinely free. They are not free from frustration, suffering, psychological trauma, and debasement. In many cases, they are not yet free from fear. Real freedom will not be achieved until their fundamental rights are respected and they can realise their right to justice, compensation and full reparation. Until the State continues violating the rights of thousands of men and women, to ignore their ongoing quest for justice and redress, and to keep them at the margin of society, former camp detainees may indeed have been freed, but they are certainly not free yet.
10. In light of the above, the associations subscribing this general allegation decided to focus on this subject and on this category of people. Nevertheless, the omission of other subjects from the present allegation does not imply by any means that the subscribing associations believe that BiH fully complies with its international obligations concerning the prohibition of arbitrary detention, forced labour and torture or other forms of inhuman and degrading treatment. On the contrary, they wish to express their concern at other ongoing violations of these prohibitions, as reported, among others, by the Committee against

⁸ It is noteworthy that, under Annex 6 of the Dayton Peace Agreement ("Human Rights") BiH, the Republika Srpska and the Federation of BiH are under an obligation to secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms, including the rights and freedoms provided in various international treaties listed in the Appendix to Annex 6, including the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Rights of the Child; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; and the 1949 Geneva Convention on the Protection of the Victims of War and the two 1977 Additional Protocols thereto.

⁹ On 31 December 1992 BiH ratified the four Geneva Conventions as well as the two 1977 Protocols thereto.

Torture,¹⁰ the Human Rights Committee,¹¹ and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.¹²

1.1 General Context concerning former Camp Detainees in BiH

11. On 6 March 1992, BiH, formerly one of the six federal States constituting the Socialist Federal Republic of Yugoslavia (SFRY), declared independence. One month later, on 6 April 1992, the European Community recognised 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.
12. 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 on one side, and the Bosnian Serb forces (VRS) and the Yugoslav National Army (*Jugoslovenska Narodna Armija* - JNA) on the other. Also the Croatian Defence Council (HVO) took part to the hostilities. It must be stressed that while at the beginning of the conflict the army of BiH and the HVO fought together against VRS and the JNA, from the spring of 1993 the army of BiH and the HVO engaged in an armed conflict between themselves that lasted until 1994. On 23 February 1994 the government of BiH and the HVO signed a general cease-fire agreement which took effect one day later. On 18 March 1994, representatives of the governments of BiH and the Republic of Croatia signed the Washington Agreement on the creation of the Federation of Bosnia and Herzegovina between the government of BiH and the Bosnian Croats. The conflict was characterised by atrocities: civilians were killed, concentration camps were set up, more than two millions of human beings were forced to internally displace or to seek refuge abroad, thousands of people disappeared without leaving a trace, and thousands of people were subjected to rape or otherwise sexually abused. 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. Based on the Dayton Peace Agreement, BiH consists of two semi-autonomous entities, the Federation of Bosnia and Herzegovina (FBiH) and the Republika Srpska (RS). A special status was granted to the Brčko District in Northern Bosnia. All three "constitutive peoples" (Bosnian Muslims, Bosnian Croats and Bosnian Serbs) are represented in all public institutions of both entities and the Brčko District, in proportion to the ethnic composition of the population recorded in the 1991 census. Both entities within BiH have their own parliaments, governments and judiciaries. The Brčko District is also in charge of its own internal affairs, including the justice system. The FBiH is further decentralised into ten cantons all of which organise their judiciaries independently. The judicial system of the RS is centralised.
13. It is known that during the 1992-1995 war in BiH clandestine detention facilities were set up. More than 600 places of detention have been registered and among them are those of Manjača, Omarska, Keraterm, Trnopolje, Luka-Brčko, Čelebići, Uzamnica, Mlakve, Batković, Dretelj, Heliodrom, Gabela, Dermaljevo, KPD Foča, Sušica-Vlasenica, Zenica, Kozila, Kula-Sarajevo, Žepče, Silos-Tarčin, Viktor

¹⁰ Committee against Torture (CAT), *Concluding Observations on BiH*, doc. CAT/C/BIH/CO/2-5 of 19 November 2010.

¹¹ Human Rights Committee (HRC), *Concluding Observations on BiH*, doc. CCPR/C/BIH/CO/1 of 3 November 2006.

¹² European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), doc. CPT/Inf (2010) 10 of 31 March 2010.

Bujanj-Sarajevo, Stadium Bugojno, Stipanić-Livno, Centralni zatvor Tuzla, and Bosanska Bijela-Brčko.¹³ To date, the total number of the persons who were held in the mentioned camps has not been determined with precision, even though a figure often referred to amounts to 200,000.¹⁴ It must be stressed that among camp detainees many were women and children, who, both under international human rights and humanitarian law, are entitled to a special degree of protection. On the contrary, they were systematically subjected to the worst forms of torture, forced labour and arbitrary detention.¹⁵ As a matter of fact, the non-existence of a unified database of former camp detainees has often been used to fuel discriminatory arguments, denying the existence of certain detention camps or arguing that certain ethnic groups would have not been subjected to arbitrary detention and torture in detention camps.¹⁶

14. The existence of clandestine detention camps whereby torture was committed on a systematic scale was reported by the Special Rapporteur of the Commission on Human Rights, Mr. Tadeusz Mazowiecki, since his first visit to BiH in August 1992.¹⁷ On that occasion, he declared that “[...] credible reports have been received concerning the use of unrecognised detention facilities containing from 10 to 100 prisoners, including homes, schools, disused factories and warehouses, sport facilities and the like. [...]”

¹³ It is noteworthy that the nature of some of these detention facilities remains disputed among different ethnic groups. See, among others, *Final Report to the United Nations Security Council of the United Nations Commission of Experts* established pursuant to Security Council Resolution 780 (1992), doc. S/1994/674/Add.2 (Vol. I) of 28 December 1994 (“The Prijedor Report”), available at: www.ess.uwe.ac.uk/comexpert/ANX/V.htm, Chapter VIII. See also International Criminal Tribunal for the Former Yugoslavia (ICTY), Case *Prosecutor v. Duško Sikirica, Damir Došen and Dragan Kolundžija*, judgment by the Trial Chamber of 13 November 2001 (Case No. IT-95-8-S), paras. 52-104; Case *Prosecutor v. Milomir Stakić*, judgment by the Trial Chamber of 31 July 2003 (Case No. IT-97-24), paras. 103-107; Case *Prosecutor v. Miroslav Kvočka et al.*, judgment by the Trial Chamber of 2 November 2001 (Case No. IT-98/30-1), paras. 112-114; Case *Prosecutor v. Predrag Banović*, judgment of the Trial Chamber of 28 October 2003 (Case No. IT-02-65/1-5), paras. 23-30; Court of Bosnia and Herzegovina, Case *Prosecutor v. Željko Mejakić, Momčilo Gruban and Duško Knežević*, judgment of 30 May 2008 (Case X-KR/06/200), available at: http://www.sudbih.gov.ba/files/docs/presude/2008/Zeljko_Mejacic_First_Instance_Verdict.pdf; and Balkan Investigative Reporting Network, *Time for Truth: Review of the Work of the War Crimes Chamber of the Court of Bosnia and Herzegovina 2005-2010*, Sarajevo, 2010. See also Helsinki Watch, *War Crimes in Bosnia-Herzegovina*, New York, 1993, p. 120-131.

¹⁴ *Infra* paras. 19 and 20. Notably, the Association of the Concentration Camp Detainees of BiH claims that in its database it registered more than 500,000 former camp detainees.

¹⁵ According to the data gathered by the Association of the Concentration Camp Detainees of BiH and collected in the book *Torture in Bosnia and Herzegovina during the War 1992-1995*, co-authored by the Union of Camp Detainees of BiH and the Center for Research and Documentation (Sarajevo, 2003), camp detainees were subjected to various forms of forced labour. In particular, among others, in Rogatica to the digging of trenches; in Bratunac to forced labour in a mine field; in Foča to forced labour in the mine of Mijevina, to the cleaning of barns, to digging out dead cattle, to cleaning pigsties; in Lukavica to digging out graves; in Kula (Sarajevo) to digging trenches, and carrying dead bodies for exchange; in Prijedor to collecting cattle and loading technical products; in Bijeljina to cleaning mine fields; in Lopare, Ugljevik, Piperi and Brčko to cutting trees for the army; in Sokolac to cutting grass and collecting hay; in Pelagićevo to cutting wood and digging trenches. Notably, the majority of those subjected to forced work in Višegrad, in the camp Uzamnica, were children and women. In general, many former camp detainees were used as human shields.

¹⁶ As an example, the Croatian Association of War Prisoners of the Homeland War in Canton of Central Bosnia reported that at the end of 2011 a former commander of the BiH Army in the area of Jablanica-Konijc released a statement to the newspaper *Večernji*, alleging that the Museum in Jablanica was used to host Croats to “protect them from the war”. This declaration is the source of deep concern and anger to those who were arbitrarily held in the Museum in Jablanica during the war and there subjected to torture and ill-treatment.

¹⁷ Special Rapporteur to the Commission on Human Rights, *Report on the Mission to the former Yugoslavia*, doc. A/47/418 of 3 September 1992 (“Report Mazowiecki No. 1”), paras. 23, 29, 33-39, 43 and 54; and *Report on the Mission to the former Yugoslavia*, doc. A/47/635 of 6 November 1992 (“Report Mazowiecki No. 2”), paras. 10-12 and 15.

The situation of people detained in camps [...] is particularly dramatic”.¹⁸

15. After having conducted a country visit to BiH in 1992, the Special Rapporteur on Torture reported that: “It is no surprise that in the war-stricken areas of Bosnia and Herzegovina torture is a daily phenomenon. During an armed conflict human life as such is held in low esteem and under such conditions basic human rights violations such as arbitrary detention, torture, deliberate killings and disappearances usually go hand in hand. Disrespect for human rights seems to have reached its apex, however, in Bosnia and Herzegovina. The delegation received horrendous information about people being clubbed to death and others who died from injuries suffered during torture, in particular in detention camps in the Serbian-controlled areas. Rape of women belonging to other ethnic groups was alleged to be practiced systematically. Information about torture was also received with regard to the Croat- and Muslim-controlled areas of Bosnia and Herzegovina, although on a smaller scale and to a less systematic degree. It was alleged that Croatian police or military sometimes seriously mistreat detainees of Serbian descent”.¹⁹
16. In the report of the Special Rapporteur to the Commission on Human Rights presented after the country visit jointly carried out with the Special Rapporteur on Torture there was a whole section concerning “arbitrary detention and the treatment of prisoners”.²⁰ The report, where specific mention is made to the detention facilities in Batković, Keraterm, Omarska, Bileća, Sanski Most, Manjača, Zenica, Mostar, and Tomislavgrad, establishes that in all the mentioned detention facilities prisoners were kept in inhumane conditions of detention, often subjected to forced labour and systematic torture, including rape and other forms of sexual violence.²¹ Arbitrary executions and massacres were also reported. The great majority

¹⁸ Report Mazowiecki No. 1, *supra* note 17, paras. 34 and 54.

¹⁹ Special Rapporteur on Torture, *Annual Report for 1992*, *supra* note 3, paras. 552-553.

²⁰ Report Mazowiecki No. 3, *supra* note 3, paras. 28-47.

²¹ It is known that during the conflict in BiH both men and women were subjected to rape or other forms of sexual violence. However, to date, there are no precise data concerning the number of men that were subjected to sexual violence. With regard to women, see, *inter alia*, Report on the situation of human rights in the territory of the former Yugoslavia submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, pursuant to Commission resolution 1992/S-1/1 of 14 August 1992, doc. E/CN.4/1993/50 of 10 February 1993, Annex II. Early estimates by the BiH government suggested the number of 50,000 victims although this figure was questioned as unreliable and politicised. The Parliamentary Assembly of the Council of Europe estimated that 20,000 women were subjected to rape or other forms of sexual violence. The figure of 50,000 is mentioned also in the Report of the Secretary-General, *In-depth Study on All Forms of Violence against Women*, doc. A/61/122/Add.1 of 6 July 2006 (Secretary-General In-depth Study), para. 146. See also Commissioner for Human Rights of the Council of Europe, *Report by Thomas Hammarberg following his visit to Bosnia and Herzegovina on 27-30 November 2010* (“Report Hammarberg”), doc. CommDH(2011)11 of 29 March 2011, para. 153, whereby the reported total number of victims of sexual violence is 20,000. Indeed, the situation of women victims of rape or other forms of sexual violence is a subject of deep concern for the subscribing associations. In this sense, among other demarches, in May 2011 TRIAL, together with 12 associations dealing with the subject of women victims of rape or other forms of sexual violence, submitted a general allegation to the Special Rapporteur on Violence against Women, its Causes and Consequences. For this reason, the present allegation will not provide an in-depth analysis of such phenomenon, instead focussing on arbitrary detention and torture suffered by former camp detainees. With regard to the specific violations suffered by women victims of rape during the conflict, see also the alternative report submitted to CAT in 2010 (www2.ohchr.org/english/bodies/cat/docs/ngos/Trial_BosniaHerzegovina45.pdf), as well as the information submitted to CAT for follow-up in 2011 (www2.ohchr.org/english/bodies/cat/docs/followup/ngos/TRIAL_1_BosniaHerzegovina45.pdf), and the information submitted to the HRC in December 2011 for the drafting of the list of issues (www2.ohchr.org/english/bodies/hrc/docs/ngos/TRIAL_2_BosniaHerzegovina104.pdf).

of detainees were never notified about the reasons for their arrest and were given no way to challenge their detention before a judicial authority. Allegedly, many prisoners were deprived of their liberty simply because of their ethnic origin. Accordingly, it was concluded that the violations described in the report “[...] transgress some of the most fundamental rules of international human rights law, including the obligation to respect the right to life and the prohibition of torture and other cruel, inhuman and degrading treatment, consecrated by articles 3 and 5 of the Universal Declaration of Human Rights and articles 6 and 7 of the International Covenant on Civil and Political Rights. These rights have the status of jus cogens; they are binding on all the parties to the conflict and cannot be derogated from in any circumstances or for any reason, not even in time of war. The human rights abuses described above also constitute grave violations of international humanitarian law, in particular, common article 3 of the Geneva Conventions of 12 August 1949 [...]. There is growing evidence that war crimes have been committed. Further investigation is needed to determine the extent of such acts and the identity of those responsible, with a view to their prosecution [...]”.²²

17. In the final report issued in 1994 by the Special Commission of Experts established pursuant to Security Council Resolution 780 (1992) a whole session was devoted to concentration camps and deportation, and specific reference was made to the crimes committed in particular in the detention camps of Keraterm, Omarska, Trnopolje, Manjača, as well as in the “improvised detention facilities” set up in sports halls in schools and stadiums (notably in the Prijedor suburb of Tukovi and in Ljubija).²³
18. Reference to detention camps and to the abuses committed therein was made also in the reports drafted by Mr. Manfred Nowak, member of the Working Group on Enforced or Involuntary Disappearances (WGEID), who, within the framework of the special process on missing persons in the territory of the former Yugoslavia, conducted three country visits between 1994 and 1996.²⁴ From the mentioned reports it clearly emerges that a considerable number of people kept in detention camps was seen there for the last time before being subjected to enforced disappearance. The fate and whereabouts of thousands of people remain unknown to date.
19. The Representative of the Secretary-General on the human rights of internally displaced persons, after visiting BiH in 2005, referred with deep concern that “[...] *particularly difficult is the health situation of the estimated 200,000 camp survivors and an unknown number of victims of sexual violence, who are in need of specific social services and psychological programs.* Bosnia and Herzegovina still lacks adequate medical and psychiatric services to address their continuing suffering. This infringes on the rights of traumatised, sick and disabled IDPs to receive the medical care and attention they require

²² Report Mazowiecki No. 3, *supra* note 3, paras. 129-130 and 140.

²³ Commission of Experts created pursuant to Security Council Resolution 780 (1992), *Final Report*, doc. S/1994/674 of 17 May 1994, Sect. IV.5.

²⁴ Report by Mr. Manfred Nowak, Expert Member of the WGEID, *Special Process on Missing Persons in the territory of the former Yugoslavia*, doc. E/CN.4/1995/37 of 12 January 1995 (Expert Report No. 1), paras. 36, 40-42 and 46; Report by Mr. Manfred Nowak, Expert Member of the WGEID, *Special Process on Missing Persons in the territory of the former Yugoslavia*, doc. E/CN.4/1996/36 of 4 March 1996 (Expert Report No. 2), paras. 52-53 and 56; and Report by Mr. Manfred Nowak, Expert Member of the WGEID, *Special Process on Missing Persons in the territory of the former Yugoslavia*, doc. E/CN.4/1997/55 of 15 January 1997 (Expert Report No. 3), paras. 100-102.

(guiding principle 19, para. 1). While camp survivors and victims of sexual violence have been recognised as victims of torture by the International Criminal Tribunal for the former Yugoslavia, *their status does not amount to a legal recognition which would grant them specific rights and protection measures. The absence of an umbrella law at the State level for their protection and the lack of acknowledgement by society and the State of their suffering may lead to re-traumatisation. [...]*.²⁵

20. After having conducted a mission to the country in 2007, the Commissioner for Human Rights of the Council of Europe highlighted that *“there are also an estimated 200,000 camp survivors and an unknown number of victims of sexual violence (mainly women) in BiH who are in need of specific services, which are still lacking in BiH. There is no law at the State level which would grant them specific rights”*.²⁶ Subsequent to another visit to BiH in 2010, the Commissioner for Human Rights also expressed his concern at *“the failure of the authorities of Bosnia and Herzegovina to establish an effective mechanism that would ensure reparation for all victims of war-related crimes and their families in Bosnia and Herzegovina. A representative of an NGO working in the field of assistance to the war victims, with whom the Commissioner met during his visit, stressed that the lack of adequate state support caused individual tragedies: ten former detainees of concentration camps in Bosnia and Herzegovina during the 1992-1995 war had committed suicide since 2000. Post-war justice may not be obtained solely by prosecuting and convicting war criminals, but also by restoring the human dignity of all victims who have suffered pecuniary and especially non-pecuniary damages”*.²⁷
21. All in all, former camp detainees feel that the State pretends to neglect their existence and tries to escape its responsibility towards this group of victims. Further, it is noteworthy that many former camp detainees, and in particular those living in remote areas of the country or abroad, are not aware of their rights and of the procedures to fulfil them. Indeed, so far the State failed to put in place a widespread outreach strategy in this field and, in general, the existing legal framework does not seem to adequately guarantee the rights of this category of persons. In fact, BiH failed to develop a comprehensive and unified strategy to address the needs and fulfil the rights of these victims.
22. In the light of the above, a first crucial step to address the various problems related to the subject of former camp detainees is to set up a unified and accurate database that also encompasses the cases of those currently living abroad. Indeed, the setting up of such a database shall be responsibility of the State, which must secure transparency and certainty in the process, as well as, taking into account the sensitivity of this matter, an adequate protection of the security and the privacy of the victims.²⁸

²⁵ Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, *Report on the Mission to BiH*, doc. E/CN.4/2006/71/Add.4 of 29 December 2005, para. 32 (emphasis is added).

²⁶ Commissioner for Human Rights of the Council of Europe, *Report on the Mission to BiH*, doc. CommDH(2008)1 of 20 February 2008, para. 65 (emphasis is added).

²⁷ Report Hammarberg, *supra* note 21, para. 147 (emphasis is added).

²⁸ In this sense, the provisions of the BiH Law on the Protection of Personal Data (BiH Official Gazette No. 32/01 of 20 December 2001) shall be taken into account.

2. The Inadequate Codification of Torture, Forced Labour and Arbitrary Detention

Convention against Torture

- Art. 1: 1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. 2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.
- Art. 2: 1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. 2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. 3. An order from a superior officer or a public authority may not be invoked as a justification of torture.
- Art. 4: 1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. 2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.**

International Covenant on Civil and Political Rights

- Art. 2: 2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognised in the present Covenant.
- Art. 7: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.
- Art. 8: 3: No one shall be required to perform forced or compulsory labour. [...]
- Art. 9: 1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. 2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. 3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment. 4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. 5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.
- Art. 10: 1 All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

23. As pointed out by the Special Rapporteur on Torture, "impunity for the perpetrators of torture is one of the root causes for its widespread practice worldwide. To fight impunity it is important that States establish a legal framework that unambiguously prohibits and sanctions torture. [...]"²⁹ The crucial importance of the obligation to incorporate torture as a separate offence in domestic criminal codes has repeatedly been emphasised also by the Committee against Torture.³⁰ At present, the BiH criminal legal

²⁹ Special Rapporteur on Torture, *Study on the phenomenon of torture*, *supra* note 1, para. 140.

³⁰ See, *inter alia*, CAT, *General Comment No. 2 Implementation of Article 2 by States Parties*, doc. CAT/C/GC/2 of 24 January 2008, paras. 8-11.

framework both at the national and the entity level is inadequate. In fact, ending impunity for the perpetrators of past crimes, including torture, forced labour and arbitrary detention is a circumstance pivotal, not only to the pursuit of justice, but to effective prevention.³¹

24. The BiH Criminal Code sanctions torture both when committed as an isolated instance (Art. 190) and when committed as part of a widespread or systematic attack against any civilian population, with the knowledge of the attack (Arts. 172.1.f and 172.2.e). Torture is also codified as a war crime (Art. 173.1.c). Art. 180 of the Criminal Code sanctions those who planned, instigated, ordered, perpetrated or otherwise aided and abetted in the planning, preparation or execution of, among others, crimes against humanity and war crimes, therefore including torture when committed in these specific circumstances. This provision regulates also superior responsibility for crimes against humanity and war crimes and establishes that “the fact that a person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the court determines that justice so requires”. The sanction envisaged for the crime of torture pursuant to Art. 190 is imprisonment for a term between one and ten years. According to the Special Rapporteur on Torture, torture should be punishable with imprisonment between six and twenty years.³² In order to have a deterrent effect, the sanction provided for under the BiH Criminal Code shall be modified to be commensurate to the gravity of the crime.
25. The Criminal Codes of the RS, of the FBiH and of the District of Brčko do not codify torture as a separate criminal offence. Indeed, these codes contain provisions outlawing several offences which are similar but not equal to torture, such as the infliction of bodily injuries, battery, duress, wilful violence, etc. While all these offences may constitute a type of torture, none of them is sufficient to cover all the elements contained in the definition of Art. 1 of the Convention against Torture and therefore fall short of providing an equally comprehensive protection of physical and psychological integrity. Furthermore, the incitement, instigation, superior orders or instructions, consent, acquiescence and concealment of acts of torture are not criminalised under the entities’ criminal codes.
26. The criminal codes of the FBiH, the RS and of the District of Brčko regulate “war crimes against civilians”,³³ sanctioning, among others “whoever in violation of rules of international law effective at the time of war, armed conflict or occupation, orders an attack against civilian population, settlement, individual civilians or persons unable to fight, which results in [...] that civilian population be subject to killings, torture, inhuman treatment, biological, medical or other scientific experiments, taking of tissue or organs for the purpose of transplantation, immense suffering or violation of bodily integrity or health”. This definition does not seem to duly cover torture when committed as a crime against humanity or as a war crime according to international standards. Criminal codes at the entity level fail to expressly codify that no order or instruction from any public authority, civilian, military or other, may be invoked to justify

³¹ Indeed, also the legal framework concerning rape or other forms of sexual violence is not in line with international standards on the matter. In this sense see the reports submitted both to the CAT and the HRC, *supra* note 21.

³² Special Rapporteur on Torture, *Study on the Phenomenon of Torture*, *supra* note 1, para. 144.

³³ Art. 154 of the Criminal Code of FBiH; Art. 148 of the Criminal Code of the District of Brčko; and Art. 433 of the Criminal Code of the RS.

torture.³⁴

27. In its concluding observations of 2010 on BiH, the Committee against Torture indicated that it remained concerned that “the State party has still not incorporated into domestic law the crime of torture as defined in article 1 of the Convention and that the instigation and superior orders or consent, acquiescence of acts of torture are not criminalised in the State party laws”.³⁵ Accordingly, reiterating a recommendation already formulated in 2005,³⁶ it urged BiH to “speed up the process of the incorporation of the crime of torture, as defined in the Convention into the State party laws as well as the harmonisation of the legal definition of torture in the Republika Srpska and Brčko District with the Criminal Code of Bosnia and Herzegovina. The State party should also ensure that these offences are punishable by appropriate penalties which take into account their grave nature, as set out in article 4, paragraph 2 of the Convention”.³⁷
28. The amendment of criminal legislation concerning torture was discussed at a meeting held in the spring of 2011 by the Criminal Code Implementation Assessment Team (CCIAT) that is an *ad hoc* body created for the purpose of legislative amendments by the Ministry of Justice. Notwithstanding the reiterated and clear recommendations issued by international human rights mechanisms with regard to the need of amending criminal legislation on torture, the Team estimated that existing provisions are adequate enough, and decided not to continue considering amendments or modifications of the criminal legislation on this matter.
29. Further, it must be noted that Art. 173 the Criminal Code of BiH includes among war crimes against civilians, the “unlawful bringing in concentration camps and other illegal arrests and detention” (para. e); and “forced labour” (para. f). The commission or the order of these conducts is sanctioned with imprisonment for a term not less than ten years or long-term imprisonment. Art. 147 of the Criminal Code of BiH sanctions “unlawful deprivation of liberty” with imprisonment not exceeding three years or, depending on the circumstances, for a term between two and eight years. Although these provisions are certainly important, it must be stressed that it does not seem that they would duly encompass isolated instances of forced labour, therefore leaving a gap in the criminal legal framework, nor that the sanction envisaged for arbitrary detention is commensurate to the gravity of the crime concerned.
30. At the entity level, the Criminal Code of FBiH includes forced labour, unlawful bringing in concentration camps and other illegal arrests and detentions among war crimes against civilians (Art. 154), sanctioned by imprisonment for not less than five years or long term imprisonment. Art. 187 codifies “unlawful deprivation of freedom” and sanctions it with imprisonment for a term not exceeding one year. Depending on the circumstances, the sentence can be increased to a maximum of eight years. The

³⁴ Notably, Arts. 399 (failure and refusal to execute an order) and 401 (resisting a superior) of the Criminal Code of the FBiH fail to establish that those who refuse or disobey an order to commit torture, crimes against humanity or war crimes will not be punished.

³⁵ CAT, *Concluding Observations on BiH*, *supra* note 10, para. 8.

³⁶ CAT, *Concluding Observations on BiH (2005)*, doc. CAT/C/BIH/CO/1 of 25 November 2005, para. 9.

³⁷ CAT, *Concluding Observations on BiH*, *supra* note 10, para. 8.

Criminal Code of the RS also includes forced labour, unlawful bringing in concentration camps and other illegal arrests and detentions among war crimes against civilians (Art. 433), sanctioned with imprisonment of not less than ten years or by life imprisonment. Art. 145 codifies “lawless deprivation of liberty”, establishing a sanction of imprisonment not exceeding one year, that, depending on the circumstances, may be increased to a maximum of 12 years. The Criminal Code of the Brčko District includes forced labour, unlawful taking to concentration camps or other illegal detention among war crimes against civilians (Art. 148), sanctioned by imprisonment of at least five years to long term imprisonment. Art. 182 codifies “unlawful deprivation of liberty”, establishing a sanction of prison up to one year, that, depending on the circumstances, may be increased to a maximum of 15 years. Accordingly, criminal legislation at the entity level is characterised by discrepancies in the sanctioning of similar conducts. Moreover, isolated instances of forced labour do not seem to be adequately encompassed by existing definitions, and sanctions envisaged for arbitrary detention are not always commensurate to the gravity of the crime.

3. The Failure to Adopt a General Law on the Rights of Victims of Torture

31. At present, BiH does not count on a general law addressing the rights of victims of torture. In its concluding observations of November 2010, the Committee against Torture expressed its concern over “the slow process of the adoption of the draft Law on the Rights of Victims of Torture, the absence of adequate definition of the status and rights of civil victims of war in domestic legislation as well as the insufficient medical or psycho-social support and legal protection available to victims, especially victims of war-time sexual violence”.³⁸ Accordingly, it recommended BiH to “adopt the draft Law on the Rights of Victims of Torture and Civil Victims of War as well as the Strategy for Transitional Justice without delay in order to fully protect the rights of victims, including the provision of compensation and as full a rehabilitation as possible, with aim of obtaining physical and psychological recovery and their social reintegration. To that end, the State party is strongly encouraged to reduce politicisation of these efforts, finalise a plan of action with clearly identified activities and corresponding responsibilities among State and its Entity authorities and ensure the allocation of adequate financial resources”.³⁹
32. At the time of writing, the Law on the Rights of Victims of Torture and Civil Victims of War⁴⁰ has not been adopted and the recommendations issued by international mechanisms remain unenforced. In the case of the Committee against Torture, as mentioned, the adoption of the Law was recommended in the last concluding observations of 2010. However, it is worth noting that in its previous follow-up reports to the Committee against Torture (submitted respectively in 2006 and 2007), BiH referred to the forthcoming adoption of a national Law on Rights of Victims of Torture and Civil Victims of War, as well as the establishment of a National Fund for Compensation of Victims. In this light, BiH has been violating its obligations over the past years and reiterating a pledge that it has not enforced since 2006. Victims of

³⁸ CAT, *Concluding Observations on BiH*, *supra* note 10, para. 18.

³⁹ *Ibid.*

⁴⁰ As a matter of fact, the law did not even enter the procedure before the Council of Ministers.

gross human rights violations are definitely exacerbated by this situation, particularly when the majority of them have to face harsh living conditions and economic restraints, as well as serious psychological traumas.

33. A debate concerning the adoption of a Law on the Rights of Victims of Torture was re-launched, and the Ministry of Human Rights and Refugees coordinates this initiative. In fact, a first meeting in this sense was held in November 2011 and a potential draft of the law was circulated in February 2012. Unfortunately, representatives of the RS, although invited, did not take part to the mentioned event. A second meeting was held in Fojnica on 2 February 2012, whereby representatives of victims' associations, including of victims of Serb origin, were present. Nevertheless, also in this occasion representatives of the RS were absent. For the success of this new initiative, it is crucial that all parties participate and, in particular, that associations of victims of torture during the war, including former camp detainees, are thoroughly involved in this initiative and are allowed to express their needs and expectations.⁴¹ Moreover, the adoption of a law on the rights of victims of torture must be duly coordinated with other initiatives concerning victims of the conflict in BiH, in order to avoid overlapping or lacunae.

34. Throughout 2010 and 2011 the United Nations Development Program (UNDP) provided technical, administrative and logistical support to the expert working group in charge of drafting a National Strategy on Transitional Justice.⁴² In 2010 a wide consultation process was held in order to develop a matrix for the draft text of the strategy. Allegedly, during the process the expert working group faced some challenges with regard to the commitment of its members. In particular, representatives of the three ministries of the RS involved, in line with the operational policy of the government of the RS, had to brief the government and the RS National Assembly on all the points of the strategy in order to obtain their endorsement for the finalisation of the strategy. At the time of writing, the government of the RS has not discussed the subject of the National Strategy for Transitional Justice and has not adopted a decision on it. Accordingly, the representatives of the ministries of RS that were involved in the expert working group withdrew from taking part to the process until a decision is made by the government of the RS. Thus the experts working group continued its work without representatives of the RS and it submitted the annual report on its work to the BiH Council of Ministries that, in June 2011, approved the mentioned annual report and authorised the expert working group to finalise the strategic development process. An initial draft text of the Strategy, Strategic Matrix and Action Plan was circulated among all the members of the experts working group, including those from the ministries of the RS. To date no feedback whatsoever has been obtained from the latter. The UNDP has pointed out that in case the government of the RS does not show the willingness to hold a fruitful dialogue on the draft text within a

⁴¹ It is noteworthy that in the RS associations of civil society tried twice (in 2007 and 2008) to promote a draft law for the RS on former camp detainees and torture victims. The draft laws were tabled before the National Assembly, but both proposals were rejected. Pressures in this sense were allegedly exercised by associations of war veterans in the RS and groups representing the Bosniak ethnic group living in the RS.

⁴² Representatives of a number of associations submitting the present document took part to the works of the experts working group. In this sense, see the information provided for each organization *infra* section 8.

reasonable delay, UNDP will consider the opportunity of investing in other areas in BiH, though remaining committed to promote the core values of transitional justice. If this situation of impasse is not overcome as soon as possible, it is likely that the whole exercise of putting in place a transitional justice strategy will collapse, thus leaving many problems unaddressed and deepening the sense of frustration and exclusion felt by members of associations of victims of gross human rights violations from the war and their relatives who have put in this whole endeavour many expectations. It is noteworthy that, even in the event of the eventual adoption of the strategy, fact-finding processes, although crucial for the establishment of the truth, can never replace access to justice and redress for victims of gross human rights violations and their relatives. In this sense the WGEID indicated that “victims could benefit from a truth process, but not as a substitute of justice”.⁴³ In the same sense, in a recent report the Special Rapporteur on Torture clearly pointed out that “by itself, a commission of inquiry is never sufficient to fully satisfy a State’s obligations under international law with regard to torture and other forms of ill-treatment. This framework demands that States (and, in default, the international community) ensure truth, justice, reparations for victims and guarantees of non-repetition through deep institutional reform. A policy or practice designed to fulfil one of those objectives to the detriment of others would violate well-established legal obligations. Commissions of inquiry should therefore be considered complementary to other mechanisms, including criminal investigations and prosecution of perpetrators, the provision of reparations to victims, and extensive reforms to institutions, including the vetting of public officials. [...]”.⁴⁴ With specific regard to BiH, it is noteworthy that in December 2011 the Ministry of Justice and the Ministry of Human Rights and Refugees launched an initiative to activate political dialogue on strategic issues related to the transitional justice strategy, and this initiative was welcomed by both Houses and the Human Rights Commission.

35. Another important ongoing initiative with regard to the need to address the situation of victims of gross human rights violations during the war, and in particular of victims of sexual violence is the drafting of a programme to improve the status of BiH women victims/survivors of sexual violence in conflict and beyond currently coordinated by the United Nations Population Fund (UNPFA)⁴⁵ and the BiH Ministry of Human Rights and Refugees. Consultations to draft the program started in 2010 and are ongoing. Indeed, they should involve different actors from civil society and, in particular from associations working on the subject of sexual violence during the war. According to data provided by UNPFA, the latter and the Ministry for Human Rights and Refugees hired two consultants to conduct a situational analysis and

⁴³ WGEID, *Report on the Mission to BiH*, doc. A/HRC/16/48/Add.1 of 16 December 2010, para. 38. See also para. 82. On the subject the Commissioner for Human Rights on the Council of Europe in his *Report on the Mission to BiH*, *supra* note 21, has pointed out that “genuine inter-ethnic reconciliation in the former Yugoslavia, including Bosnia and Herzegovina, cannot be achieved without justice. Justice is not only retributive, in the sense that it is aimed to punish through fair proceedings those who have committed gross human rights violations and serious violations of humanitarian law. It is also, or above all, preventive, aiming to ensure that all people in the region come to terms with the past, and live in peace in a cohesive, pluralist democratic society. Justice means, moreover, provision of adequate, effective and proportionate reparation to comfort and heal the wounds of all victims of the war without any distinction” (para. 125).

⁴⁴ Special Rapporteur on Torture, *Annual Report for 2011*, doc. A/HRC/19/61 of 18 January 2012, paras. 69 and 70.

⁴⁵ Representatives of a number of associations submitting the present document are taking part to this exercise. In this sense, see the information provided for each organization *infra* section 8.

gathering of quantitative and qualitative sources of information needed for the drafting of the programme. Originally it was expected that the draft programme would have been finalised before the end of 2011, but it would now seem more likely that this could happen during 2012. In fact, a first draft of the programme was finalised in March 2012, after which consultations with different stakeholders throughout the country were launched. However, if adequate resources and funding are not secured by the government of BiH, also this programme risks remaining merely on paper, to the further disappointment of victims of gross human rights violations, including former camp detainees who were subjected to rape or other forms of sexual violence.

4. The Failure to Effectively Investigate, Identify, Judge and Sanction those Responsible for Crimes, including Torture, inflicted to former Camp Detainees

Convention against Torture

Art. 5: 1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases: (a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State; (b) When the alleged offender is a national of that State; (c) When the victim is a national of that State if that State considers it appropriate. 2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article. 3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Art. 7: 1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution. 2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1. 3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

Art. 12: Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

International Covenant on Civil and Political Rights⁴⁶

Art. 2: 3 Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

Principle 7.1: States should prohibit by law any act contrary to the rights and duties contained in these principles, make any such act subject to appropriate sanctions and conduct impartial investigations upon complaints.

Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

Principle 1: The purposes of effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter "torture or other ill-treatment") include the following: a) Clarification of the facts and establishment and acknowledgement of individual and State responsibility for victims and their families; b) Identification

⁴⁶ Arts. 7; 8, para. 3; 9; and 10, para.1 of the ICCPR are reproduced above, under section 2.

of measures needed to prevent recurrence; c) Facilitation of prosecution and/or, as appropriate, disciplinary sanctions for those indicated by the investigation as being responsible and demonstration of the need for full reparation and redress from the State, including fair and adequate financial compensation and provision of the means for medical care and rehabilitation.

Principle 2: States shall ensure that complaints and reports of torture or ill-treatment are promptly and effectively investigated. Even in the absence of an express complaint, an investigation shall be undertaken if there are other indications that torture or ill-treatment might have occurred. The investigators, who shall be independent of the suspected perpetrators and the agency they serve, shall be competent and impartial. They shall have access to, or be empowered to commission investigations by, impartial medical or other experts. The methods used to carry out such investigations shall meet the highest professional standards and the findings shall be made public.

Principle 3. a)The investigative authority shall have the power and obligation to obtain all the information necessary to the inquiry. 1 The persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige all those acting in an official capacity, allegedly involved in torture or ill-treatment to appear and testify. The same shall apply to any witness. To this end, the investigative authority shall be entitled to issue summonses to witnesses, including any officials allegedly involved, and to demand the production of evidence.

Principle 4: Alleged victims of torture or ill-treatment and their legal representatives shall be informed of, and have access to, any hearing, as well as to all information relevant to the investigation, and shall be entitled to present other evidence.

36. In cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violation and, if found guilty, the duty to punish him or her.⁴⁷ Indeed, if the State acts in such a way that a violation goes unpunished and the victim's full enjoyment of his or her rights is not restored as soon as possible, the State failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of fundamental human rights.
37. Besides the trials carried out before the ICTY, the main responsibility to investigate, judge and sanction those responsible for the grave violations committed during the conflict lies with the judicial system of BiH.⁴⁸
38. In its concluding observations of 2010, the Committee against Torture declared that it is "gravely concerned that taking into account the number of such war-time crimes, the number of cases prosecuted so far by the Bosnia and Herzegovina judiciary is extremely low and local courts still face serious obstacles in prosecuting war crimes cases".⁴⁹ Accordingly, it recommended BiH to "fight impunity by

⁴⁷ See, *inter alia*, *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity* ("UN Principles to Combat Impunity"), recommended by Commission on Human Rights Resolution 2005/81 of 21 April 2005, doc. E/CN.4/2005/102/Add.1 of 8 February 2005, Principle 1; Special Rapporteur on Torture, *Study on the phenomenon of torture*, *supra* note 1, paras. 140 and 146-155; HRC, *General Comment No. 31, The Nature of the General Legal Obligation imposed on State Parties to the Covenant*, doc. CCPR/C/21/Ver.1/Add.13 of 29 March 2004, para. 18.

⁴⁸ Trials carried out before the ICTY will not be further analysed and considered in this general allegation. For judgments concerning former camp detainees rendered both by the ICTY and BiH State Court, see *supra* note 13. In general, it has to be pointed out that all trials before the ICTY are expected to be completed by the end 2012. The trial of Mr. Radovan Karadžić is expected to finish in 2014. Considering the recent arrest of Mr. Ratko Mladić and Mr. Goran Hadžić, the date of the judgement in these two cases will have to be assessed at an appropriate time. The appeals judgement in the *Lukić and Lukić* case is expected to be delivered in 2012, with a further five delivered in 2013, including in the two multi-accused cases of *Šainović et al.* and *Popović et al.* Appeals proceedings in three of the ongoing cases are expected to run into 2014, two into 2015 and finally those in the case of *Prlić et al.* into 2016.

⁴⁹ CAT, *Concluding Observations on BiH*, *supra* note 10, para. 12.

ensuring prompt and effective investigation into all allegations of war-time crimes, prosecuting and punishing the perpetrators by appropriate penalties commensurate with their grave nature”.⁵⁰

38. In the 2011 progress report on BiH, the European Commission denounced that “[...] *the processing of war crime cases in the Cantonal and District courts remains limited and uneven*. The ability of the Entities and the Brčko District to prosecute war crime cases continues to be hindered by *the lack of human resources in the various Prosecutors’ offices, as well as by limited facilities and lack of adequate witness protection and support services*. Moreover, diverging practices on the applicability of different criminal codes between courts at different levels remains an issue to be addressed in order to guarantee equality of citizens before the law. With a case pending before the European Court of Human Rights, the application of different criminal codes continued to result in uneven sentencing”.⁵¹
40. Along the same line, the WGEID indicated that “impunity remains a problem”⁵² and recommended a number of measures to be undertaken to bring to justice those responsible for enforced disappearance. In the 2010 progress report on BiH, the European Commission had indicated that “the impartiality of courts is not always guaranteed. The backlog of cases [remains] one of the most acute problems facing the judiciary and court proceedings are generally lengthy. [...] the backlog still stands at over 2.1 million cases country-wide. [...] Implementation of the national war crimes strategy [is] severely delayed and [remains] minimal”.⁵³ In particular “war crimes trials at Cantonal and District courts advanced slowly. Progress was hindered by a lack of capacity in the Prosecutor’s Offices, inadequate facilities and a lack of appropriate witness protection and support services”.⁵⁴
41. Impunity related to war-time rape, that was often committed against camp detainees, is also one of the main concerns expressed by the Special Representative of the Secretary-General on Sexual Violence in Conflict after her visit to BiH in November 2010. Indeed, she highlighted that “the process of pursuing justice has been painfully slow. The UN estimates that there were between 20,000 and 50,000 rapes during the conflict (1992-1995), yet there have been just 12 convictions by national courts and 18 ICTY prosecutions. [...] The conviction rate for sexual violence is roughly 10 percent lower than for other crimes (81% if suspects indicted for sexual violence are convicted: for crimes of a non-sexual character, a guilty verdict is rendered in 92% of cases”.⁵⁵ Finally, also the Commissioner for Human Rights of the Council of Europe referred to the “[...] failure of the authorities of Bosnia and Herzegovina to fulfil their

⁵⁰ *Ibid.*

⁵¹ European Commission, *2011 Progress Report on BiH*, doc. SEC(2011) 1206 of 12 October 2011, p. 13 (emphasis is added). At p. 12 of the report it is indicated that in general the functioning of the judiciary in BiH is hindered by “insufficient allocation of human and financial resources”.

⁵² WGEID, *Report on the Mission to BiH*, *supra* note 43, para. 49.

⁵³ European Commission, *Bosnia and Herzegovina 2010 Progress Report*, doc. Sec(2010) 1331 of 9 November 2010, p. 13. Further, at p. 21 it is highlighted that: “the estimated total number of untried cases remains high (over 10,000). Further steps are needed to strengthen the capacity to deal with war crimes cases, in particular by improving the functioning of cantonal and district courts and to ensure adequate financial resources. Regional cooperation and the provision of adequate victim and witness protection will be key in this regard”.

⁵⁴ *Ibid.*, p. 14.

⁵⁵ Special Representative of the Secretary-General on Sexual Violence in Conflict, *Report on the Mission to BiH*, 1 February 2011, para. 4.

international obligations to effectively prosecute war-related crimes of sexual violence, and to provide adequate protection and reparation to the victims of these crimes. The Commissioner has noted with serious concern that many perpetrators of war-related crimes of sexual violence enjoy impunity and often live in the same communities as their victims. There are no reliable statistics on the number of unresolved cases of war-related crimes of serious sexual violence. However, there are reports indicating that the number of cases prosecuted so far is extremely low compared to the alleged number of the acts of these crimes that amounts to several thousand. [...]”⁵⁶ In this vein, he urged the authorities of BiH to undertake all necessary measures to ensure that the war-crimes of rape or other forms of sexual violence are effectively investigated and prosecuted, so as to enable the victims to have access to justice and to adequate reparation. This should also enable the victims who wish to return to their pre-war homes to do so in safety and without fear.⁵⁷

42. Although various trials against persons accused of war crimes or crimes against humanity, including against people accused of torture inflicted on camp detainees, have been conducted, considering that the events concerned occurred almost 20 years ago, the pace of the overall process is far from satisfactory. In this light, it must be stressed that although expressing appreciation for the adoption of the National Strategy for War Crimes and the steps undertaken so far to combat impunity for the crimes perpetrated during the war, various international institutions and human rights mechanisms have highlighted the existence of a number of pitfalls in the implementation of the mentioned strategy, which ultimately amount to violations by BiH of its obligation to investigate, prosecute and sanction those responsible for the mentioned crimes, including arbitrary detention in concentration camps, forced labour, torture and rape or other forms of sexual violence. In the 2010 progress report on BiH of the European Commission it was pointed out that “implementation of the national war crimes strategy was severely delayed and remained minimal. [...] the estimated total number of untried cases remains high (over 10,000). *Little has been done to implement the 2008 National War Crimes Strategy to reduce the backlog of cases and witnesses protection mechanisms are insufficient. Further steps are needed to strengthen the capacity to deal with war crimes cases, in particular by improving the functioning of cantonal and district courts and to ensure adequate financial resources*”.⁵⁸ Furthermore, the Commissioner for Human Rights of the Council of Europe expressed deep concern for the “[...] reports indicating that currently the justice systems in both entities, including the cantonal and district courts and prosecutors’ offices, appear to face serious obstacles in trying war crime cases. Many obstacles are practical, such as limited prosecutorial resources, lack of necessary expertise and lack of witness protection. There also appear to exist obstacles related to the application of different criminal codes throughout Bosnia and Herzegovina, a lack of willingness of the police to investigate crimes, and the failure of prosecutors to make use of available evidentiary sources. The Commissioner is concerned by reports indicating the existence of a serious backlog of unresolved court cases in the country, amounting

⁵⁶ Report Hammarberg, *supra* note 21, paras. 156-157. In general, on the problem of impunity for war crimes see *ibidem* paras. 132-133 and 136.

⁵⁷ *Ibid.*, para. 193.

⁵⁸ European Commission, *Progress Report on BiH for 2010*, *supra* note 53, pp. 13 and 21.

to almost two million. Of this backlog 160,000 are unresolved criminal cases; among them it has been estimated that *between 6,000 and 16,000 are unresolved war-related crimes cases, at different stages of prosecution, registered in all 13 jurisdictions of the country*.⁵⁹ With regard to the National Strategy for War Crimes, the Commissioner for Human Rights expressed his concerns for “reports indicating that limited progress has been made in its implementation, mainly due to lack of political will, insufficient coordination between the various justice sector institutions at the State level, in the Entities and the Brčko District, and the of funds for its implementation”.⁶⁰

43. It results from the mentioned conclusions and recommendations issued by several international human rights institutions that the mere adoption of the National Strategy for War Crimes cannot be used to justify the lack of activity by BiH prosecutors and courts. Further, associations of victims of gross human rights violations during the war or their relatives express particular concern at the fate of those cases that were investigated by the ICTY and referred to the State Court of BiH under category “A”,⁶¹ because they do not seem to be treated with the level of priority to which they are entitled. Moreover, associations refer to the particularly grave situation of cantonal, municipal and entity courts that allegedly remain not adequately staffed and equipped to deal with war crimes. In this context, where the prosecution and judgment of war criminals does not seem to be working properly, various associations of victims of gross human rights violations from the war highlighted their frustration because of the fact that there are some areas where war crimes were committed and that, so far, have not seen any of those responsible sentenced (among others Stolac, Nevesinje, Uborak-Prozor, Busovača, and Trebinje were mentioned). Moreover, this situation also fosters the claims that prosecutions and judgments may be politicised or ethnically biased, favouring the sentencing of criminals of a particular ethnic group instead of others. This kind of perceptions is particularly worrying in the extremely delicate political and social climate of today BiH and should not be further fuelled by the lack of effectiveness in investigation, judgment and sanction by competent authorities.
44. Numerous remain the instances where victims of gross human rights violations during the war, their relatives or representative associations report having submitted to BiH authorities detailed complaints indicating the identity of those responsible for war crimes or crimes against humanity and even having provided indications on where these people can be found. Notwithstanding, little or no progress in the investigation and judgement of those responsible has been registered and often those accused are free or have managed to escape.

⁵⁹ Report Hammarberg, *supra* note 21, paras. 132 and 133.

⁶⁰ *Ibid.*, paras. 136 and 184. See also para. 189, whereby the Commissioner recalls the authorities' obligations arising notably from Arts. 2 and 3 of the European Convention on Human Rights. Along the same line, see also United States State Department, *2010 Human Rights Report: Bosnia and Herzegovina*, p. 11: “Despite local and international efforts to prosecute war crimes, many lower-level perpetrators remained unpunished, including those responsible for the approximately 8,000 persons killed in the Srebrenica genocide and those responsible for approximately 13,000 to 15,000 other persons who are missing and presumed to have been killed during the 1992-95 war”. Available at: <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154416.htm>.

⁶¹ Cases referred from the ICTY to Bosnian tribunals were divided into three categories (A, B and C). Referrals of cases categorized as “A” indicated that, in the view of the ICTY, the evidence against the suspect was sufficient to justify the indictment. ICTY referred to Bosnian judicial authorities 846 cases categorised as “A”.

45. One example is the case of L.M., who was raped during the conflict in the detention facility of Bosanski Šamac.⁶² L.M. identified the person responsible for her rape and accordingly informed without delay the Prosecutor's Office and the competent Court. In 2008 she rendered a formal statement and she was requested to identify the perpetrator through a photo, which she did. Between 2008 and the end of 2010 she did not receive other information on the progress and results of the investigation. She knows that the case with the Prosecutor's Office of BiH who, however, explained her that due to the huge backlog, the case will be dealt with within the next 15 years. At present, the case remains pending before the State Prosecutor's Office.
46. Another outstanding example has been referred by a member of the team of *Vive Žene* Tuzla who in 2009 visited the premises of the ICTY. During the visit, the lady met a person in charge of the investigation of cases related to rape or other forms of sexual violence. The latter recalled to have collected around 35 statements by victims of rape or other forms of sexual violence back in 2003. Those statements were allegedly collected in the village of Salihovići in the municipality of Zvornik and they referred to cases of rape occurred in the detention facility of Liplje, where around 400 people were kept during the conflict and 120 women were raped. The member of the team of *Vive Žene* Tuzla learned this information with great surprise, since, so far, none of those responsible for the multiple cases of rape perpetrated in Liplje have been judged and sentenced. The victims on the other hand, often complain about this situation of impunity, although they have also sent claims and documentation to the competent Prosecutor's Office. Accordingly, the lady from *Vive Žene* Tuzla was told by the ICTY's employee that the case would have been transferred to the BiH State Court. Since November 2009, *Vive Žene* Tuzla and the victims of rape perpetrated in Liplje have not received any information about the developments in the investigations of these cases and the potential beginning of the criminal proceedings.
47. Another instance has been reported from Prijedor area, with regard to crimes against humanity and war crimes committed between 20 and 25 July 1992 in the region known as Mataruško Brdo, composed by the villages of Biščani, Hambarine, Zecovi, Rakovčani, Čarakovo, Briševo and Rizvanovići. On that occasion, at least 1,800 civilians were arbitrarily killed and others were subjected to arbitrary detention, forced labour and torture in concentration camps (mainly in Keraterm and Omarska). Associations of former camp detainees working in the area have reported the events to authorities. Notably, many of those accused for the heinous crimes committed in Mataruško Brdo are allegedly still living free in Prijedor. Moreover, it is noteworthy that the BiH State Court decided not to deal with the events concerning Mataruško Brdo as a single case, but to raise separate indictments. According to the association Prijedor 92, the Prosecutor's Office of BiH launched an investigation. Nevertheless, at the time of writing this does not seem to have produced any meaningful result. In November 2011, representatives of the association Prijedor 92 had a meeting with the acting Chief prosecutor of the BiH

⁶² Due to security and privacy reasons, certain victims of gross human rights violations, including torture and rape, who accepted to render their testimony for this general allegation to the Special Rapporteur and the WGAD, expressly requested that their identity is not disclosed to the wider public. In the present allegation, letters are used to designate the persons concerned. Their full names could be disclosed, upon request, to the Special Rapporteur on Torture and the WGAD, given that guarantees are provided that these data will not be made public in any way.

Prosecutor's Office, calling once more for the prompt and thorough investigation of the crimes concerned, as well as for the judgment and sanction of those responsible. To the knowledge of the representatives of the association, despite 20 years have passed, no significant concrete step has been undertaken by BiH authorities and impunity remains rampant.

48. Mr. Marko and Mr. Marijan Krajina from Fojnica reported that in December 2010 they filed a criminal complaint to the BiH Prosecutor's Office concerning the crimes committed from 1993 onwards in the detention camp "Silos" in Busovača. In June 2011, since the applicants had not heard back anything from the BiH Prosecutor's Office, the Croatian Association of War Prisoners of the Homeland War in Canton of Central Bosnia wrote a letter to seek information from the BiH Prosecutor's Office. At the time of writing, they have never received a formal reply. On the occasion of a public event, Mr. Marko Krajina was informally told by a representative of the BiH Prosecutor's Office that the case will be dealt with in the next 7 to 15 years. The two applicants have never been contacted from the BiH Prosecutor's Office or from SIPA in order to collect further information and details on the case.
49. The Association of the Concentration Camp Detainees Bosnia and Herzegovina reported that in the region of BiH known as Kraijna many persons accused of war crimes and crimes against humanity, including torture committed on camp detainees, are still walking freely in the streets. In particular, the association indicates that it has drafted a list containing the names and basic data concerning those accused of war crimes committed in the region and who are currently residing in different places throughout BiH.⁶³ In 2009, such list was submitted by the association to the Prosecutor's Office of BiH. Nevertheless, it would seem that at the time of writing little or nothing has been done by the Prosecutor's Office of BiH in this regard and the association has not been contacted or provided any feedback on this case.
50. Another area where impunity is rampant is Brčko District. In particular, the association of Camp Detainees of Brčko District maintains that none of the top police officers in Brčko District between 1992 and 1995 has been sanctioned for the crimes committed, even though a number of formal claims have been filed in this sense.⁶⁴ Allegedly, some of the heads of the police in Brčko during the conflict would be now holding public offices, including high-rank political positions in the RS.⁶⁵
51. Moreover, it would seem that the fight against impunity is still very much connected to security risks for those involved in it. As an instance, Prijedor 92, one of the associations subscribing this general

⁶³ A copy of such list can be provided to the Special Rapporteur on Torture and to the WGAD upon request.

⁶⁴ Among others, in 2011 a criminal claim was filed against C.L., member of the crisis headquarter and President of the Serbian War Municipality of Brčko, currently residing in Brčko and allegedly responsible for the setting up of the detention camps of Laser, Fiskulturni dom, Jelenka Vočkić School, SUP Building, Partisan-guy building, and Luka. Claims have been filed also against Q.K., currently living in Brčko and allegedly responsible for torture committed in the mentioned detention camps.

⁶⁵ Notably, the Association of Camp Detainees in Brčko District collected the testimonies of around 500 former camp detainees. According to the association, since 1992 this documentation (also containing a list of 100 names of alleged perpetrators of crimes against humanity) has been forwarded to different State institutions: namely to SIPA; to the Intelligence Security Agency of BiH; to the police in Brčko; to Brčko's Prosecutor; to the Court in Tuzla; to BiH State Court; and to the BiH Prosecutor's Office. According to the association, BiH authorities have not undertaken all necessary steps to investigate, judge and sanction those responsible for the crimes concerned.

allegation, reports having received death threats immediately after the first appearance of Mr. Ratko Mladić before the ICTY on 3 June 2011. When the secretary of the association, Mr. Sudbin Musić went to open the office in the morning, he found printed labels on the door. On one of the said labels, there was the name of a group called “Patriot boys” with the raised three fingers (nationalistic Serb symbol). On another one, there was written “RS-SRB”, which could allegedly mean “Republika Srpska is Serbia”. The phrase “we are going to kill you” was added in hand-writing to the label. Mr. Musić was not alone when he reached the office and, together with eye-witnesses, he immediately went to the police station in Prijedor to report the events. To date, none of those responsible for the death threats and the attack against the office of the association Prijedor 92 has been identified, judged and sanctioned. In the meantime, out of fear of other reprisals, Prijedor 92 moved the offices to different premises.

52. The overall problem related to impunity is further aggravated by instances of flight of war crimes perpetrators occurred during the trials or even while those already convicted were serving their sentences. One outstanding case is the flight of Mr. Dušan Janković who on 21 December 2010 was sentenced by the Judgment Council of the 1st Department for War Crimes to 27 years of imprisonment for crimes against humanity. On 29 May 2008 Mr. Dušan Janković had been arrested in Prijedor and placed in pre-trial detention. However, on 11 November 2009 he obtained the conditional release pending trial, notwithstanding the representatives of relatives of the victims of the Korićanske stijene massacre had repeatedly pointed out that there was a risk of flight.⁶⁶ As mentioned, on 21 December 2010 Mr. Dušan Janković was sentenced in his quality of Commander of the police Station in Prijedor, and he was found guilty of crimes against humanity (Art. 172 of the BiH Criminal Code) in conjunction with command criminal responsibility under Art. 180.2 of the BiH Criminal Code. However, Mr. Dušan Janković failed to appear in court when the verdict was delivered. His defence counsel, Mr. Ranko Dakić, explained to the judges that he had received a message from Mr. Dušan Janković saying that “his car broke down in the vicinity of Doboj”. Since then, Mr. Dušan Janković is nowhere to be found and has been officially declared at large. An international arrest warrant has been issued, and the BiH Court has informed the SIPA and the border crossing staff about Mr. Janković’s flight.⁶⁷ It is noteworthy that the escape of Mr. Dušan Janković, which could easily have been avoided had the necessary preventive measures been put in place by the competent authorities, is not an isolated instance, but rather seems to be part of a common pattern.⁶⁸ On 24 February 2012, on the occasion of the beginning of the retrial of the four persons sentenced in December 2010, Mr. Dušan Janković eventually appeared before the Appellate Chamber of the Court of BiH. Indeed, the Court confirmed that, pursuant to a decision issued

⁶⁶ The State Court of BiH recognised the existence of loopholes in the current legal framework on pre-trial detention. In this sense see, Balkan Investigative Reporting Network, *Weaknesses of Laws in Bosnia and Herzegovina*, 24 December 2010, at www.bim.ba/en/250/10/31433/.

⁶⁷ Mr. Janković’s flight was broadly covered by BiH press. For a press article in English see: Balkan Investigative Reporting Network, *The Search for Dušan Janković*, 22 December 2010, at <http://www.bim.ba/en/250/10/31414/>.

⁶⁸ Among others, see Balkan Investigative Reporting Network, *Runaway Indictees Undermine Bosnian Justice*, 2008, at: www.bim.ba/en/113/10/9785/. A general allegation concerning the flight of Mr. Janković was transmitted to the government of BiH by the WGEID on 4 May 2011. BiH did not submit any reply to the WGEID. In this sense see WGEID, *Annual Report for 2011*, doc. A/HRC/19/58 of 6 February 2012, paras. 115-121 and 123.

on 31 October 2011, Mr. Dušan Janković will be taken to a detention facility.⁶⁹ At the time of writing, Mr. Dušan Janković has been taken in detention. In fact, the mentioned decision issued by the Court on 31 October 2011 establishes that Mr. Dušan Janković will spend one year in detention.⁷⁰ At present, no mention has been made either by the Prosecutor of BiH or by the Court of BiH on whether Mr. Dušan Janković will be subjected to any consequence or sanction for his previous flight and for having been at large over more than one year. While the capture and subsequent detention of Mr. Dušan Janković are certainly to be welcomed as an encouraging step forward to combat impunity, it is of the utmost importance that BiH authorities undertake all necessary measures to thoroughly investigate on the flight of Mr. Dušan Janković, also in order to determine the identity of potential accomplices, or persons who aided or abetted him, and to sanction this event with penalties commensurate to the gravity of the crime. This would be a strong signal in the sense that impunity is not tolerated and, ultimately, this will contribute to preventing similar episodes from happening again.

53. In fact, it is all too frequent that BiH authorities fail to ensure that persons indicted with or convicted for, crimes against humanity or war crimes do not flee. At present, a number of persons indicted before the War Crimes Section of the BiH Court in Sarajevo are at large.⁷¹ Moreover, people already convicted, as Mr. Dušan Janković, managed to escape before being brought to jail or shortly afterwards. Allegedly, the fact that often those indicted await trial and those sentenced serve their term of imprisonment in their home town puts them in a position of undue advantage, which in some cases has resulted in their escape from prison.⁷²

⁶⁹ See, among others, Balkan Investigative Reporting Network, *Koricanske Stijene: Runaway Jankovic in Court Room*, 2012, www.bim.ba/en/310/10/34545/.

⁷⁰ On 1 March 2012 TRIAL sent a letter to update the Special Rapporteur on Torture, the WGEID, the Special Rapporteur on Human Rights Defenders and the Special Rapporteur on Extra-judicial, Summary or Arbitrary Executions on the mentioned events.

⁷¹ Among others, Mr. Jakov Duvnjak (charged with war crimes against civilian population in Kraljeva Sutjeska); Mr. Milsav Gavrić (charged with crimes against humanity and genocide in Srebrenica); Mr. Ivan Hrkać (charged with war crimes against prisoners of war and civilian population in Široki Brijeg); Mr. Jovo Jandrić and Mr. Slobodan Pekez (charged with war crimes against civilian population in Jajce); Mr. Damir Lipovac (charged with war crimes against civilian population in Derventa); Mr. Marinko Marić (charged with war crimes against civilian population in Capljina); and Mr. Novak Stjepanović (charged with crimes against humanity in Bratunac).

⁷² Among others, two instances can be here recalled. In the case of Mr. Momir Savić, on 3 July 2009 he was sentenced to 18 years' imprisonment for crimes against humanity (persecution, murder, deportation, imprisonment, rape and other inhuman acts) by the War Crimes Section of the BiH Court. On 21 May 2010 the Appellate Chamber reduced the sentence to 17 years of imprisonment and ordered to keep Mr. Savić into custody until the moment he was sent to prison to serve his sentence. Indeed, Mr. Momir Savić had been released from custody by the Trial Chamber since 2008 and was allegedly obliged to report to the Višegrad Police Station every day. Nonetheless, and in spite of the fact that victims and the Prosecutor had repeatedly pointed out that there was a risk of escape, exactly as in the case of Mr. Dušan Janković, Mr. Momir Savić managed to escape one day before the Appellate Chamber rendered its judgment and he is currently at large. Another outstanding instance is that of Mr. Radovan Stanković who on 17 April 2007 was sentenced to 20 years long-term imprisonment for crimes against humanity (including enslavement, torture and rape). Indeed, Mr. Stanković was assigned to serve his sentence to the prison in Foča, which is his hometown. On 25 May 2007 Mr. Stanković managed to escape from the detention facility. Ten persons (including prison guards as well as relatives) were charged with helping him to escape. In March 2010 the State Court sentenced his brother to two years in prison for assisting his escape in a first instance judgment. Under a decision of the Appeals chamber, a first instance verdict was revoked by which seven staff members of the Penal and Correctional Facility in Foča were freed of having helped convict Mr. Radovan Stanković escape from prison and a retrial was ordered. On 12 January 2012 Mr. Radovan Stanković was finally arrested by the police in Foča.

54. In the view of victims of crimes against humanity or war crimes, their relatives as well as witnesses these events are of particular gravity and contribute to re-traumatisation. On the one hand, they frustrate the attempts to obtain justice and redress for the harm suffered by fostering the impunity of those responsible for such grave crimes. On the other, they create an overall climate of fear of reprisals and harassment among those who have participated in the trials in quality of witnesses⁷³ or relatives of victims, who feel to be at risk in case the fugitive or his accomplices may want to seek revenge or intimidate them. Indeed, the fact that no serious preventive measures are put in place by BiH authorities and that no thorough investigation is usually launched to clarify these kind of events and that those responsible for having facilitated the escape are not duly identified, judged and sanctioned, contributes to nourish the sense of frustration, anger, debasement and fear of victims, relatives, witnesses and their representatives.
55. In general, associations of former camp detainees highlight that the contact between them and prosecutors are poor or non-existent and this makes it extremely complicated to get information about specific cases. After its mission to BiH the WGEID expressed deep concern at this situation and it recommended to the State to give more regularly information to victims of war crimes, their relatives, or their representative associations on the process of investigation, the results of those investigations and whether trials might be forthcoming or not.⁷⁴ At the time of writing, it would seem that this recommendation has been disregarded by the State and access to information or the establishment of regular communication with prosecutors remains a crucial issue for associations of former camp detainees.
56. Another subject of great concern is that in some of those cases where relatives of victims of war crimes or crimes against humanity eventually established communication with prosecutors' offices, they were informed, in particular by Cantonal Prosecutor's Offices, of the intention to investigate their cases under provisions of the Criminal Code of the Socialist Federal Republic of Yugoslavia (SFRY) and not of those of the 2003 Criminal Code of BiH. This indeed would be contrary to the principles affirmed by the Constitutional Court of BiH in the leading case *Maktouf* (AP/1785/06 of 30 March 2007) as well as to the recommendations formulated by a number of international institutions. Most notably, the WGEID addressed the issue in this sense: "at the local level (Federation, Republika Srpska, Brčko District) the criminal codes do not include crimes against humanity and thus the specific crime of enforced disappearance. Even if the laws were to be amended, the jurisprudence of local courts would prevent them from convicting the accused on the basis of this crime, as they refuse to apply the 2003 criminal codes to crimes perpetrated in the period 1992-1995. They instead apply the Code of the former Yugoslavia. This position remains, despite the fact that the issue was dealt with in the *Maktouf* case, first by the War Crimes Chamber appellate panel of the Court of Bosnia and Herzegovina (judgment of 4 April 2006), and then by the Constitutional Court. In its judgment, the Court found that the retroactive application of the Bosnia and Herzegovina Criminal Code was permissible under article 7, paragraph 2,

⁷³ On the lack of adequate psychological support and protection for witnesses at war crimes trials, see *infra* paras. 60-78.

⁷⁴ WGEID, *Report on the Mission to BiH*, *supra* note 43, paras. 63 and 90.b).

of the European Convention on Human Rights because those acts, at the time when they were committed, were already criminal according to the 'general principles of law recognised by civilised nations' (judgment of 30 March 2007).⁷⁵ Also, the WGEID underlined the fact that an enforced disappearance is a continuous crime and thus can be punished on the basis of an *ex post* legislation without violating the principle of non-retroactivity, for as long as the fate or whereabouts of the disappeared person has not been clarified.⁷⁶ In this sense, the WGEID recommended that the local courts change their position on the issue of the non-retroactivity of the new criminal codes, as far as international crimes are concerned.⁷⁷ Unfortunately, the indications provided by some Cantonal Prosecutors seem to disregard these recommendations and to run in the opposite direction.

57. Moreover, it must be stressed that BiH failed to carry out a comprehensive programme of vetting and this contributes to foster the overall climate of impunity, since in certain communities perpetrators of war crimes still hold high positions in public offices or the police. In this sense, the Special Representative of the Secretary-General on Sexual Violence in Conflict recommended that "a system of screening individuals in public service based on their war record is also needed to ensure that perpetrators are not integrated into the police or other branches of the government".⁷⁸ On his side, the Commissioner for Human Rights of the Council of Europe highlighted that "[...] despite the vetting process that was carried out by the UN International Police Task Forces in the late 1990s, there is still a certain number of active law enforcement officers who are suspected of having committed war-related crimes".⁷⁹ While the fact that war criminals continue to hold public offices is detrimental to the whole BiH society, this situation is likely to produce a tremendous impact on victims of rape or other forms of sexual violence, fostering their sense of humiliation, frustration and defencelessness.
58. One particularly delicate situation has been reported to exist in the RS. In many cases victims of violence refrained from submitting their documentation to obtain the disability pension as victims of war,⁸⁰ as they feared that it could be evaluated by the very perpetrators of the crimes they were subjected to or that the people working at the Ministry could disclose their identity or personal details to perpetrators. In Prijedor, a high ranking officer of the Department of Veteran's and Disabled Care – the institution competent for assessing the status of civilian victims of war – who is in charge of interrogating prisoners, allegedly inflicted torture and inhuman and degrading treatment on detainees in the detention camps of Omarska and Keraterm.
59. A further example concerns the personal adviser of the Federal Ministry of War Veterans, who allegedly

⁷⁵ WGEID, *Report on the Mission to BiH*, *supra* note 43, para. 56.

⁷⁶ *Ibid.*, para. 57. See also WGEID, *General Comment on Enforced Disappearance as a Continuous Crime*, 2010.

⁷⁷ WGEID, *Report on the Mission to BiH*, *supra* note 43, paras. 57 and 87 (e).

⁷⁸ *Ibid.* Also the WGEID has stressed that "in many cases perpetrators continue to hold office, often in the same communities where victims and their families live. At times the perpetrators still hold high-level offices. This constitutes a permanent threat and intimidation for the victims. Measures of vetting should be improved and/or systematised. When such measures have been taken in the past, it is not clear whether those identified as perpetrators have been dismissed from public offices, including the police force and public companies" (WGEID, *Report on the Mission to BiH*, *supra* note 43, para. 69).

⁷⁹ Report Hammarberg, *supra* note 21, para. 143.

⁸⁰ On the problems related to compensation and redress for former camp detainees see *infra* paras. 79-123.

used to be a commander in the detention camp known as “Gimnazija” in Bugojno. Members of the Croatian Association of War Prisoners of the Homeland War in Canton of Central Bosnia report that recently they had to take part to a formal meeting where the gentleman concerned was present. Indeed, this had a disruptive psychological effect on one of the members of the association taking part to the meeting, who had been arbitrarily detained and torture for two and a half months precisely in the detention camp of “Gimnazija”.

5. The Failure to Adequately Protect and Support Witnesses in War Crimes Proceedings, including in Cases concerning former Camp Detainees

Convention against Torture

Art. 13: Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Principle 3.b) Alleged victims of torture or ill-treatment, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation that may arise pursuant to the investigation. Those potentially implicated in torture or ill-treatment shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as those conducting the investigation.

60. Victims of gross human rights violations from the war and their relatives continue struggling with the lack of comprehensive and adequate witness protection measures as well as the lack of appropriate programs of psychological support before, during and after testifying at war crimes trials.
61. Witness protection is regulated by the Law on Protection of Witnesses under Threat and Vulnerable Witnesses (Official Gazette of BiH No. 21/2003) and the Law on Witness Protection Programme (Official Gazette of BiH No. 29/2004). Under this legal framework, the obligation to protect witnesses at the pre-trial investigation and after the completion of the testimony lies with the Witness Protection Unit of the SIPA, which was set up at the end of 2004. The protection of witnesses in criminal proceedings before the State Court of BiH and before the District Court in Banja Luka is provided for, while there is no such comprehensive protection at the other district, municipal and cantonal level. Notably, a number of trials concerning war crimes are taking place before district, cantonal or municipal courts, which lack a comprehensive strategy of witnesses' protection. In this context, it must be kept in mind that cantonal and district courts will have an ever-increasing role in processing war crimes cases. Moreover, support to witnesses in proceedings before the State Court should be provided by the Witness Support Section (WSS). No similar programme is envisaged before district, cantonal or municipal courts, with the exception of the Cantonal Court of Sarajevo and the Sarajevo Cantonal Prosecutor's Office. It appears that also the District Court in Doboj in fact undertook measures to secure witness protection; and the Cantonal Court in Livno is allegedly in the process of building a new entrance door to court for the

exclusive use of witnesses. With regard to other courts at the district, municipal and cantonal level, protection of witnesses remains highly deficient.

62. In this sense, among others, in its concluding observations of 2010, the Committee against Torture declared to remain “gravely concerned at the lack of adequate measures of witness protection and witness support before, during and after the trials, which have negative impact on the willingness and ability of witnesses to participate in investigations or to testify in proceedings. The Committee also expresses concerns over the reported cases of intimidation against witnesses and attempts at bribery by perpetrator, the insufficient support for witnesses by the competent authorities, such as the State Investigation and Protection Agency (SIPA) and the Witness Support Section (WSS)”.⁸¹ Accordingly, it recommended BiH to “ensure that victims are effectively protected, not further distressed or pressurised to withdraw their testimony and that they are not threatened by alleged perpetrators, in particular by: a) Strengthening the capacity of the competent organs, in particular the SIPA and its Department for Witness Protection (OZS), and ensuring that they respect the right to privacy of the survivors and provide witnesses at serious risk with long-term or permanent protection measures, including changing their identity or relocation within or outside of Bosnia and Herzegovina; b) Giving more attention to the psychological needs of witness in order to minimise possible re-traumatisation of survivors in court proceedings; and c) Ensuring that witnesses have appropriate means to travel to and from the court and providing escorts for their travel, as necessary”.⁸²
63. Other international human rights mechanisms have echoed the concerns and the recommendations of the Committee against Torture. For instance, the WGEID indicated that “more should be done to protect and offer assistance to victims and witnesses, in particular women. In particular, the programme for the protection of witnesses should be improved and expanded at the State level, and similar programmes should be created at the local level”.⁸³ In Resolution 1784 (2011) of 26 January 2011 on the protection of witnesses as a cornerstone for justice and reconciliation in the Balkans, the Parliamentary Assembly of the Council of Europe noted with deep concern that “in the region of the former Yugoslavia, several witnesses have been killed and numerous others have been intimidated, threatened or have had their identity revealed by people determined to obstruct the course of justice and conceal the truth. The Assembly regrets that, due to these threats, many witnesses finally decide not to testify because they fear for their lives or those of their families”.⁸⁴ Moreover, the Assembly reaffirmed that “witnesses have the right to be physically protected so that they can deliver their testimonies safely and free from fear. Furthermore, it considers that witnesses should be given support – including legal and psychological support – before, during and after the trial. [...]”.⁸⁵ Accordingly, it called on the authorities of BiH to, among others, “enact legislation to enable the State Agency for Investigations and Protection to provide witnesses protection programmes in all courts across the country and ensure that this Agency has

⁸¹ CAT, *Concluding Observations on BiH*, *supra* note 10, para. 17.

⁸² *Ibid.*

⁸³ WGEID, *Report on the Mission to BiH*, *supra* note 43, para. 90 (e).

⁸⁴ Council of Europe, Parliamentary Assembly, Resolution 1784 (2011) of 26 January 2011, para. 4.

⁸⁵ *Ibid.*, para. 7.

adequate resources, both financial and human, to support witnesses during the investigation phase as well as during the trial and post-trial phase. Similar legislation should be enacted and adequate resources should be made available, in order to provide witness protection in criminal proceedings before the courts in all entities”.⁸⁶ Along the same line, in the report of the Special Representative of the Secretary-General on Sexual Violence in Conflict it is pointed out that “[...] many of the women who testified before the national court said they would never repeat the ordeal, due to the tendency to interrogate the conduct of the victim in ways that are humiliating and legally irrelevant. This is compounded by logistical hurdles, a lack of emotional support, and inadequate follow-up on the progress of cases. [...] the climate of impunity has thus become a climate of intimidation. [...] While the opportunity to testify has brought some solace, there is still no government-subsidised support system. Women are left, in the words of one survivor, to be ‘psychiatrists for each other’. Women’s groups advocate a dedicated police unit to investigate sexual violence, as well as more female police officers to serve as first points of contact between the survivor and the State”.⁸⁷ On this issue the Commissioner for Human Rights of the Council of Europe expressed that the authorities in BiH “[...] have not taken sufficient steps to effectively guarantee the right of witnesses to life, to stop and prevent unjustified infringements to protect witnesses from acts of harassment and violence, and to enable them to participate in trials with dignity. In reported cases where witnesses have been threatened, the judiciary has not taken action to determine whether these threats are real or serious. Despite the explicit guarantees in the relevant laws relating to psycho-social support to vulnerable victims and witnesses, there is only one structure that provides such services in a sustainable manner, the Witness and Victim Section at the Court of Bosnia and Herzegovina. The Section was established in May 2005 and is equipped to protect witnesses during trials. The Commissioner is seriously concerned by reports indicating that, due to the fear for their physical integrity, an increasing number of witnesses are unwilling to testify in trials. Many suspects of war-related crimes enjoy impunity for such a long period of time that victims no longer believe that the trials can deliver justice. [...] Another major problem is the lack of systematic protection of witnesses in the war-related criminal proceedings at the Entity level. In some instances the Entity prosecutors avail themselves of services provided by SIPA. However, SIPA does not have sufficient resources to perform its functions to the extent needed for the successful protection of witnesses. The National War Crimes Processing Strategy adopted in 2008 addresses this problem, as it provides that SIPA shall be additionally staffed and equipped with material and technical resources. It further provides that basic and specialised training and education of officers in the field of witness protection will be organised and available”.⁸⁸ Accordingly, he urged BiH authorities to “[...] implement the National War Crimes Processing Strategy in relation to the provision of adequate staff and equipment for the State Investigation and Protection Agency (SIPA) [...] and to investigate promptly all reported cases of threats and intimidation of witnesses, initiate criminal proceedings in such cases,

⁸⁶ *Ibid.*, para. 16.2.2.

⁸⁷ Special Representative of the Secretary-General on Sexual Violence in Conflict, *Report on the Mission to BiH*, *supra* note 55, para. 4.

⁸⁸ Report Hammarberg, *supra* note 21; paras. 140-142 and 143. In general, on the pitfalls in the system of protection of witnesses in war-related criminal proceedings, see *ibidem* paras. 138-145.

and fully protect the security of the witnesses concerned”.⁸⁹ Finally, in the 2011 progress report on BiH the European Commission indicates that: [...] *the current legal framework on witness protection remains fragmented and provisions for the protection of witnesses during and after the criminal proceedings are limited and largely inadequate*. The lack of human and financial resources is an issue to be addressed”.⁹⁰

64. All in all, the existing legal framework concerning witness protection is inadequate: among others, the existing law fails to articulate the Witness Protection Unit’s operational autonomy within SIPA, and it does not contain detailed provision on separation from the investigation, confidentiality of procedure and operations, and organisational autonomy from regular police.⁹¹ In this sense, it is noteworthy that previous attempts to amend the existing law on witness protection failed. In August 2011 the BiH Ministry of Security formed a working group to put forward another draft law. At the time of writing, the mentioned draft has not been passed.
65. There are numerous instances where victims rendering their testimonies during trials are subjected to some sort of open mockery and this brings no consequence whatsoever for those responsible, thus fostering a climate of impunity. An outstanding example is that of Ms. Hasna Čusto. She is a former camp detainee, who was held and subjected to inhumane and degrading treatment for over 40 days in the camp Kalinovik. Moreover, her son Mr. Almir Čusto was arbitrarily deprived of his liberty and seen for the last time in life-threatening circumstances in the hands of members of the Serb police. Ms. Čusto’s son remains missing. Furthermore, the husband and two brothers of Ms. Čusto were arbitrarily killed during the conflict. On 1st February 2011 Ms. Čusto went to give her testimony before the State Court of BiH in the trial against Mr. Milan Perić and others. When Ms. Čusto entered the trial room, she was verbally insulted and humiliated by Mr. Perić. While Ms. Čusto was requested by the judge to leave the court-room without the possibility to defend herself, Mr. Perić did not receive any warning. This event has inflicted on Ms. Čusto serious psychological trauma and she is not willing to render her testimony before any court in the future as she does not trust institutions. The Association of Relatives of Missing Persons from Kalinovik raised this matter with authorities, but so far they have not received any significant reply.
66. Another example is that of P.B., a former camp detainee from Zvornik, who in 2009 rendered his testimony at a trial for war crimes through a video-link testified before a Court in Belgrade. His testimony was covered by confidentiality. Nonetheless, two days after having testified, his neighbour addressed him sharing that he was aware of his testimony. This suggests that there may have been a leak of information that hampered the confidentiality promised to P.B. determining a violation of his privacy and risks for his safety and integrity. Moreover, the whole episode undermined P.B.’s trust towards authorities.

⁸⁹ *Ibid.*, paras. 191-192.

⁹⁰ European Commission, *2011 Progress Report on BiH*, *supra* note 51, p. 13 (emphasis is added).

⁹¹ Human Rights Watch, *Justice for Atrocity Crimes – Lessons of International Support for Trials before the State Court of Bosnia and Herzegovina*, New York, March 2012, pp. 29-31.

67. Also the case of Mrs. Milojka Antić can be mentioned. In 1992 Mrs. Antić was detained in the prison-camp located in the village of Čelebići. In such facility Mrs. Antić was subjected to ill-treatment and rape. She was a witness at the trial before the ICTY against some of the perpetrators.⁹² Indeed, on 6 January 2009, immediately after the release of one of those sentenced (Mr. Hazim Delić), Mrs. Antić received a phone call from him, whereby she was threatened. In particular, Mr. Delić repeated that Mrs. Antić would “suffer much worse things than those she was subjected to in 1992”. As a consequence of this threatening phone call Mrs. Antić felt fear and deep distress. However, she duly reported the episode of harassment to the police in Višegrad. At April 2012, she has never heard back from the police about the investigative steps undertaken or about the progresses of the investigation. To the knowledge of Mrs. Antić, Mr. Delić has not been questioned by the police about this episode.
68. Further, there are cases where those accused or their representatives have publicly disclosed the identity of protected witnesses, putting the life and personal integrity of these people at risk and causing serious re-traumatisation. To date, there seems to be only one indictment raised in this regard by domestic authorities. More must be done to prevent this kind of behaviours and to sanction them in a manner that is commensurate to the gravity of the crimes concerned.
69. The Association of Former Camp Detainees of BiH mentioned, among many possible examples, a grave episode occurred in January 2012 and concerning a protected witness. Mr. P.M. gave his testimony in a case relating a war crime, upon being granted that his identity would have been maintained confidential. Nevertheless, his identity has been made public by local media, and also Mr. Radovan Karadžić referred to this person during a hearing before the ICTY, alleging that Mr. P.M. is releasing false statements. After the real identity of Mr. P.M. has been publicly disclosed, he has been receiving a number of threats. Since Mr. P.M. has been requested by SIPA to render his testimony also in another case concerning war crimes before a domestic court, he is now particularly worried and he is not sure whether to testify or not because of safety concerns.
70. The Croatian Association of Camp Detainees from the Homeland War in Vareš⁹³ reported the instance of Ms. F.R., who gave her testimony in the trial before the Cantonal Court in Zenica for crimes committed at Stpni Do. Allegedly, while waiting to render her testimony, Ms. F.R. was kept in the same room with the accused and this caused her a deep psychological trauma. Ms. F.R. requested the Cantonal Prosecutor to allow a representative from the private organisation offering her psychological support to accompany her during the trial. The request was rejected. The same association also reported that one judge formerly living in Vareš and currently serving as a judge in the Court of Visoko and in charge of hearing the claims for non-pecuniary damage of former camp detainees has been showing a particularly aggressive and insulting attitude towards victims whenever they render their testimony. This situation has been repeatedly denounced by lawyers in court, but to no avail. The referral of this case to the High Judicial and Prosecutorial Council is now being considered.

⁹² ICTY, Case *Prosecutor v. Mucić et al.* (case IT-96-21), judgment of 16 November 1998.

⁹³ The mentioned information was shared by the Association of detainees 23 October 1993 that cooperates with the Croatian Association of Camp Detainees from the Homeland War in Vareš.

71. Further, it must be underlined that numerous are the instances where former camp detainees felt generally threatened by the attitude kept by relatives of people accused of war crimes or crimes against humanity or by the accused themselves. As a first instance, it can be recalled that in January 2012 the brother of one of those arrested for the crimes against humanity committed at Korićanske stijene in 1992, approached the secretary of the association Prijedor 92, asking him whether he is also included in the list of those suspected for war crimes. The secretary of Prijedor 92 felt particularly uncomfortable and insecure after this episode. A second issue is related to the trial of some of the members of the former War Crisis Headquarters in Ključ that took place before the State Court of BiH. In November 2009, a group of victims and relatives of victims from Ključ travelled to hold a demonstration in front of the Court to protest against the liberation of one of the accused persons. Among the protesters there was the mother of a person who had been arbitrarily killed by one of those accused. While the lady was giving a statement to the Federal TV, a car arrived and precisely the person accused of having killed her son disembarked to enter the premises of the Court. Notably, the entrance to be used by the accused is a different one, which avoids any contact between the accused and other people. The shock caused to the lady by the sight of the alleged murdered of her son caused her an attack and she fainted on the spot. This episode could easily have been avoided, had the regular procedure been followed by authorities and some more sensitivity shown for relatives of victims of war crimes.⁹⁴
72. It must be stressed that not only individuals, but also associations, including those dealing with former camp detainees, and in particular those working with women victims of rape or other forms of sexual violence during the war are subjected to harassment and attacks.⁹⁵ One outstanding case is that of the association Sumejja Gerc in Mostar. This association works with survivors from the detention camp Vojno and numerous women who have been subjected to rape or other forms of sexual violence during the war. In the night of 26/27 January 2011, the building where the Association's offices are located (500 meters from the police Station in Potoci) was violently broken even though every part of the facility was secured with safety metal grilles. Nevertheless, the padlocks were broken off as well as the door of the association. Inside the office of the association's President's documentation was dispersed, the drawers containing sensitive documentation were emptied despite the locked closet, and certain documentation was alienated. The Registry – Cartulary of women victims of rape from the Vojno concentration camp, the basic documentation of the association, its Statute and Rules of Procedure, press clippings, etc. were all taken away. Also alienated were four computers as well as the President's computer containing huge written and video materials which the association has been collecting for years. The computer from the facility for psychological counselling was also stolen as well as two computer boxes from the Educational Cabinet. The video projector, telephone and fax machines, photo camera were also taken, while the monitors, key-boards and the various computers' mouse were left behind. Also taken were a

⁹⁴ It has been reported by representatives of the Association of the Concentration Camp Detainees in BiH that they noted down the number plate of the car from which the accused disembarked (709-J-431). From a research conducted by the association, it results that the car holding such number plate is the property of the State Attorney of BiH. This circumstance has been reported to the media and to the police. Nevertheless, to the knowledge of the association, no investigation has been launched on this unfortunate episode.

⁹⁵ See also *supra* para. 51.

laptop, a voice recorder, and video tapes containing archive documentation and materials of the association, CDs with testimonies about crimes committed in Prozor and the Vojno area, i.e. the *OT/SC/* documentary film about the sufferings in Vojno, a CD with the speech of Mr. Marko Radić condemning those who cooperate with Bosniaks taped in 1998 during the commemoration of the suffering of soldiers of the HVO and a voice recorder. A large LCD TV was taken from the Educational Cabinet and a small LCD TV. Most notably, the money (a total of 450 KM – approximately 231 Euros) which was in the association's premises was taken out of the drawer but left on the table. This episode was reported to the police station, but at April 2012 those responsible have not been duly identified, judged and sanctioned.⁹⁶ Indeed, between 2006 and 2010 Sumejja Gerc had suffered previous attacks against the office. Although every time the association reported the events to the police, those responsible have never been identified, judged and sanctioned. The association continues its work in a climate of fear and frustration, seriously damaged by the irreparable loss of testimonies and material and testimonial evidence which had been collected over the years. Many women whose testimonies about the violence suffered were among the stolen documents live in fear from the night of 26 January 2011 and this caused a serious psychological trauma to them.

73. Also the Croatian Association of Camp Detainees from the Homeland War in Vareš has been subjected to repeated instances of violations of their premises, the last one happened in the spring of 2011. In the different episodes, the premises of the association were violated, even though nothing was stolen. The purpose of these break-ins is therefore intimidation. All instances have been reported in due course to the local police. Nevertheless, at the time of writing no one has been formally charged for the break-ins into the office of the association.
74. Another issue of deep concern for many associations of victims of gross human rights violations from the war and their relatives is also the lack of an adequate legal support to those willing to render their testimony in court. In fact, at present BiH does not offer any comprehensive legal aid programme⁹⁷ and therefore only those who can pay for a legal counsel may have access to some sort of support. Many witnesses at war crimes trials indicate that they feel very uncomfortable with the fact that while those accused of war crimes or crimes against humanity are provided with one or more legal counsels, they are not given such a possibility. In many cases, witnesses have therefore felt somehow intimidated by the proceedings before court, as they perceived that they did not have the full understanding of the legal implications of some of their statements or of some of the questions they were asked. This situation fosters the perception that the legal system is more favourable to the accused rather than the victim or the witness, thus nourishing a sense of exclusion and frustration.
75. It is also noteworthy that many potential witnesses face significant material difficulties in travelling to the

⁹⁶ A letter of allegations on this episode has been sent on 17 February 2011 to the United Nations Special Rapporteur on Human Rights Defenders and copied also to the Special Rapporteur on Torture and to the Special Rapporteur on Violence against Women, its Causes and Consequences. To date, the association has not received any feedback from any of these special procedures.

⁹⁷ See, among others, European Commission, *2011 Progress Report on BiH*, *supra* note 51, p. 16. See, *inter alia*, WGEID, *Report on the Mission to BiH*, *supra* note 43, para. 90 (a).

courts where they shall be rendering their testimony. On the one hand, domestic authorities fail to provide witnesses with adequate material and logistical support in these cases,⁹⁸ and on the other hand, potential witnesses are notified that if they do not appear in court, they will be fined.⁹⁹ In 2007 E. B., who was raped in May 1992 in Foča and is currently living in Sarajevo, was called to render her testimony before a court in Trebinje. When summoned to testify, E. B. received a legal warning that, in case of failure to appear before the court, she would have been sanctioned with a fine of 5,000 KM – approximately 2,500 Euros. E. B. is in a poor state of health and suffers serious psychological disturbs as a consequence of what she underwent during the war. Moreover, she lives in very poor financial conditions. When she received the notification, she experienced a new trauma, also for the way in which it was formulated and for the fear generated by the idea of having to pay a fine. Eventually, after the representative of the Women’s Section of the Association of Concentration Camp Detainees insisted, E. B. managed to ensure escort to and back from the court by members of the SIPA.

76. A similar example is that of another lady victim of rape during the conflict that, due to her physical conditions, cannot move from bed. She was summoned to appear in Court, indicating that in case she failed to do so, she would be sentenced to pay 5,000 KM. Upon receiving such summon, the lady entered in a state of deep shock and stress, since she clearly could not appear in Court and, at the same time, she did not dispose of the means to pay the fine. The fact that a prosecutor’s office summons a person who cannot move from bed to appear in court shows that there is an inadmissible lack of attention to the needs of witnesses and their situation, and a failure to consider the particular vulnerability of victims of rape or other forms of sexual violence.
77. It is noteworthy that, in general, those willing to testify in war crimes’ trials do not receive adequate psychological support by BiH authorities. In this context, the situation of victims of rape or other forms of sexual violence during the war is particularly delicate, since the lack of adequate support not only acts as a deterrent, but also may create re-traumatisation of the person concerned.¹⁰⁰ Victims of gross human rights violations during the war, including former camp detainees, complain that they do not receive adequate psychological support before, during and after testifying. Reportedly, at the State level, they only have a preparatory meeting with the Prosecutor and they are generally told by the Court staff to “be strong”. However, they do not receive any form of real and professional support to undergo this extremely delicate experience, which, if not properly handled, may cause further traumatisation. The situation is even more critical before cantonal, district and municipal courts, where no form of

⁹⁸ When they accept to testify in war crimes trials, victims receive a *per diem* of 15 KM (approximately 7,50 Euros) and are entitled to the coverage of travel expenses. Instances where travel expenses were not covered at all have been reported with regard to the Court in Zenica, the Court in Brčko, and the Prosecutor’s Office in Tuzla.

⁹⁹ Art. 81, para. 5 (Summons to Examine Witnesses), of the Code of Criminal Procedure BiH establishes that: “Should the witness fail to appear or justify his absence the Court may impose upon him a fine an amount up to 5,000 KM, or may order the apprehension of the witness”. Para. 7 sets forth: “should the witness refuse to testify, upon the proposal of the Prosecutor, the Court may issue a decision imposing on the witness a fine in an amount up to 30,000 KM. An appeal against this decision shall be allowed, but shall not stay the execution of the decision”.

¹⁰⁰ See Amnesty International, *Whose Justice? The Women of Bosnia and Herzegovina are still Waiting*, London, 2010, pp. 24-29.

psychological support whatsoever is envisaged.

78. The protection and support of witnesses shall therefore be more victim-oriented. In this light, the provision of psychological support granted to victims of abuses wishing to testify in court shall be envisaged from the earliest stages of the proceedings until after the conclusion of the trial and shall be given by teams of experts funded by the State.¹⁰¹ In general, the judicial personnel that deals with victims of gross human rights violations shall be trained to adequately address this particularly delicate kind of situation and the taking of statements shall be done in satisfactory premises, which guarantee privacy and security to the witness. A unified protocol shall be adopted and applied throughout BiH to deal with witnesses victims of gross human rights violations, and to guarantee them adequate psycho-social support before and after the trial (it shall encompass also municipal and cantonal courts and prosecutors).

6. The Failure to Provide Adequate Compensation and Integral Reparation to former Camp Detainees

Convention against Torture

Art. 14: 1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation. 2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

International Covenant on Civil and Political Rights

Art. 2: 3. Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted".

Art. 9: 5: Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

Principle 35.1: Damage incurred because of acts or omissions by a public official contrary to the rights contained in these principles shall be compensated according to the applicable rules or liability provided by domestic law.

Principles on the Effective Investigation and Documentation of Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment

Principle 1.c: The purposes of effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment include the following: [...] facilitation of prosecution and/or, as appropriate, disciplinary sanctions for those indicated by the investigation as being responsible and demonstration of the need for full reparation and redress from the State, including fair and adequate financial compensation and provision of the means for medical care and rehabilitation.

¹⁰¹ Certain organizations, such as Medica from Zenica, provide psychological accompaniment to victims of rape or other forms of sexual violence that testify during trials. However, this form of cooperation is provided without any concrete support by the State. The same holds true in the case of *Vive Žene* Tuzla which, to make up for these drawbacks, has signed an agreement of cooperation with the Prosecutor's Office of the Tuzla Canton to take care of the psychological preparation of witnesses in war crimes trials whenever there is a need for that. *Vive Žene* Tuzla also provides professional training to judges and prosecutors who deal with victims of rape or other forms of sexual violence.

79. The existence of an obligation for States to provide reparations¹⁰² when they are responsible for gross human rights violations is undisputed under international law¹⁰³ and it is also enshrined in domestic law of BiH.¹⁰⁴ States bear the primary responsibility for providing reparation to victims of human rights violations in their country. There is an express legal obligation on the State to provide reparation when violations are committed by agents of the State or under the State's authority. In some cases, it may be appropriate for authorities to establish reparation programmes to ensure that victims have access to a range of services and benefits. When crimes are committed by agents of other States or non-State actors, then the State has an obligation to ensure that victims can claim reparation against those responsible, including claims before national courts. When obtaining redress from other States or non-State actors is not possible or where there are obstacles that will delay the vital measures of assistance required by survivors or victims, the State should step in and provide reparation to survivors and victims and then seek to reclaim any costs from those responsible.¹⁰⁵
80. The aim of reparation is to eliminate, as far as possible, the consequences of the illegal act and to restore the situation that would have existed if the act had not been committed. Reparation can thus take many forms and the contents of the right to a remedy will depend on the nature of the substantive right in question. Indeed, such remedy must be effective in practice as well as in law and it cannot be merely illusory or theoretical. Reparations for gross human rights violations have developed their own features. Special rules (*lex specialis*) on the subject, different from those regulating inter-State or inter-individual reparations, have emerged. The main characters of these rules are the articulated notion of

¹⁰² See Rubio-Marín, *The Gender of Reparations. Unsettling Sexual Hierarchies while Redressing Human Rights Violations*, Cambridge University Press, 2009; Giulio Bartolini, *Riparazione per violazione dei diritti umani e ordinamento internazionale*, Napoli, 2009; Office of the High Commissioner for Human Rights, *Rule of Law Tools for Post-conflict States, Reparations Programmes*, doc. HR/PUB/08/1, New York, 2008; Buyse, *Post-Conflict Housing Restitution: The European Human Rights Perspective, with a Case Study on Bosnia and Herzegovina*, Intersentia, February 2008; International Center for Transitional Justice, *Reparations in Theory and Practice*, New York, 2007; Pablo de Greiff (ed.), *The Handbook on Reparations*, Oxford University Press, 2006; International Commission of Jurists, *The Right to a Remedy and to Reparation for Gross Human Rights Violations: A Practitioner's Guide*, Geneva, 2006; Koen De Feyter, Stephan Parmentier, Mark Bossuyt, Paul Lemmens (eds.), *Out of the Ashes: Reparation for Victims of Gross and Systematic Human Rights Violations*, Intersentia, Anvers, 2006; Dinah Shelton, *Remedies in International Human Rights*, Oxford, 2005; Ilaria Bottigliero, *Redress for Victims of Crimes under International Law*, Brill Academic Publishers, Leiden, 2004; International Review of the Red Cross, *Special Issue: Victims after the War – Humanitarian action, Reparation and Justice*, No. 851, September 2003; Roy Brooks (ed.), *When Sorry Isn't Enough: the Controversy over Apologies and Reparations for Human Injustice*, New York University Press, New York, 1999; UNODCCP, Center for International Crime Prevention, *Handbook on Justice for Victims: On the Use and Application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, New York, 1999; Roger S. Clark, *The United Nations Crime Prevention and Criminal Justice Program: Formulation of Standards and Efforts at their Implementation*, Philadelphia, 1994.

¹⁰³ The leading reference on this subject is the judgment rendered by the Permanent Court of International Justice on 26 July 1927 on the case concerning the *Factory at Chorzów*, where it is established that: "It is a principle of international law that the breach of an engagement involves an obligation to make a reparation in an adequate form".

¹⁰⁴ Based on Annex 6 of the Dayton Peace Agreement, the European Convention on Human Rights and its Protocols as well as the International Covenant on Civil and Political Rights, the Convention against Torture and other Cruel Inhuman and Degrading Treatment are directly applicable in BiH and so is the right to a remedy enshrined by them.

¹⁰⁵ Currently, the legal framework for claiming compensations from individual perpetrators is unreasonably complicated and BiH authorities have failed to develop a system of free legal aid which would enable survivors to claim compensation in civil proceedings. In this sense see Amnesty International, *Whose Justice? The Women of Bosnia and Herzegovina are Still Waiting*, *supra* note 100, p. 66. See *infra* paras. 66-72.

victims (individuals, groups, direct victim, relatives and society as a whole) and the wide range of measures of reparation that must be accompanied by the effective guarantee of the rights to truth and justice of the victims and their relatives. Consequently, taking into account individual circumstances, victims of gross human rights violations shall be provided with full and effective reparation,¹⁰⁶ which comprises pecuniary compensation (covering material and non-pecuniary damages), as well as other forms of reparation aiming at granting restitution, rehabilitation, satisfaction, including restoration of dignity and reputation, and guarantees of non-repetition.¹⁰⁷ In fact, a comprehensive approach to the dimensions of the human being and the human suffering demands for an integral form of reparation.¹⁰⁸ Furthermore, when the victims pertain to particularly vulnerable categories, such as children, the measures of reparation adopted must adequately mirror this aspect and try to meet the specific features and needs of the people harmed.¹⁰⁹

81. So far, in BiH there is neither a comprehensive program nor a State law designed to guarantee civilian victims of war adequate compensation and integral reparation. In general, these notions are identified with that of social assistance.¹¹⁰ The notions of “civilian victim of war” and “beneficiary of welfare measures”¹¹¹ shall be clearly distinguished and this shall result in the adoption of a State law fully addressing the needs and fulfilling the rights of victims of torture. In its follow-up reports to the CAT (submitted respectively in 2006 and 2007), BiH referred to the forthcoming adoption of a national Law on Rights of Victims of Torture and Civil Victims of War, as well as the establishment of a National Fund for Compensation of Victims. As already pointed out above, this initiative has not produced any concrete result yet.¹¹² Accordingly, in its last concluding observations on BiH, the CAT expressed concern “[...] over the slow process of the adoption of the draft Law on the Rights of Victims of Torture, the absence

¹⁰⁶ See, *inter alia*, Report of the Special Rapporteur on Torture, doc. A/HRC/4/33 of 15 January 2007, para. 61.

¹⁰⁷ See also CAT, *General Comment on Art. 14*, 2011.

¹⁰⁸ CAT, *Case Kepa Urra Guridi v. Spain*, views of 17 May 2005, para. 6.8.

¹⁰⁹ See Special Rapporteur on Violence against Women, its Causes and Consequences, *Report on Reparations to Women who have been Subjected to Violence*, doc. A/HRC/14/22 of 23 April 2010. See also, *inter alia*, Oficina en México del Alto Comisionado de las Naciones Unidas para los Derechos Humanos, *Reparaciones con perspectiva de género*, Mexico, 2009; CEDAW, *General Recommendation No. 19 – Violence against Women*, 1992, para. 24.(i); United Nations Declaration on the Elimination of Violence against Women, 1993, Art. 4.(c) and (d); *Beijing Platform for Action*, adopted at the 4th World Conference on Women, 1995 para. 124.(d). See also Nairobi Declaration on Women’s and Girls’ Rights to Remedy and Reparation, 2007, available at: www.womensrightscoalition.org/site/reparation/signature_es.php.

¹¹⁰ See, among others, Popić, Panjeta, *Compensation, Transitional Justice and Conditional International Credit in Bosnia and Herzegovina*, Sarajevo, 2010, pp. 13-18.

¹¹¹ According to existing legal framework in BiH, economic and social support should in fact be provided by social welfare institutions. However, it is noteworthy that in BiH there is no central government body responsible for the social welfare system. This responsibility is discharged at the entity level, including through the introduction and implementation of legislation, the allocation of resources and the delivery of services. In the RS the social welfare system is organized at the entity level, by the government of the RS, and delivered through municipal departments of social welfare which provide services directly to citizens. The system of the FBiH is decentralised. The federal authorities are responsible for the introduction of legislation and the allocation of resources to cantonal authorities, which then provide services directly to citizens. Each of the ten cantons of the FBiH organises social care services in its own way, and the level and type of social support varies between different cantons. In this sense see, *inter alia*, Amnesty International, *Whose Justice? The Women of Bosnia and Herzegovina are Still Waiting*, *supra* note 100, pp. 6-7.

¹¹² *Supra* paras. 31-35.

of adequate definition of the status and rights of civil victims of war in domestic legislation as well as at the insufficient medical or psychological support and legal protection available to victims, especially victims of war-time sexual violence”.¹¹³ In this light it recommended that BiH “adopts the draft Law on the Rights of Victims of Torture and Civil Victims of War as well as the Strategy for Transitional Justice without delay in order to fully protect the rights of victims, including the provisions of compensation and as full a rehabilitation as possible, with aim of obtaining physical and psychological recovery and their social reintegration. To that end, the State party is strongly encouraged to reduce politicisation of these efforts, finalise a plan of action with clearly identified activities and corresponding responsibilities among State and its Entity authorities and ensure the allocation of adequate financial resources”.¹¹⁴

82. At the entity level, the two relevant legal references are the Law on the Protection of Civilian Victims of War in the RS (Official Gazette of the RS No. 25/93, 1/94 – special edition, 32/94, 37/07 and 60/07) and the Law on the Basis of the Social Protection, Protection of Civilian Victims of War and Families with Children in the FBiH (Official Gazette of the FBiH No. 36/99 and later amendments). As already pointed out, both these laws entitle civilian victims of war to social benefits. Accordingly, they cannot be considered as a basis for adequate compensation and integral reparation *stricto sensu*. Furthermore, both pieces of legislation are plagued by serious gaps and discrepancies in the applicable legal framework in the entities result in instances of discrimination between victims who suffered the same violation. Therefore, the harmonisation of the legislation dealing with civilian victims of war shall be considered a priority. In general, civilian victims of war receive lower social benefits if compared to war veterans. This discrimination shall also be eliminated. Finally, it must be pointed out that the Brčko District does not count with any law that regulates the situation of former camp detainees.
83. Along the same line, after her visit to BiH in November 2010, the Special Representative of the Secretary-General on Sexual Violence in Conflict noted that “[...] in comparison with other war victims, women suffer discrimination in accessing benefits. [...] Unlike veterans, rape survivors are often only eligible for a *disability pension, which is a form of social welfare rather than reparation*. Administering war reparations through a welfare system creates practical problems. For instance, a woman who was raped during the war but had a pre-existing disability is barred from continuing her disability pension as she now receives a ‘pension’ for war-time rape. Moreover, if a woman receiving a pension in the FBiH relocates to the RS, she risks losing her benefits. This is because only the FBiH recognises rape victims as war victims; the RS still only recognises victims able to demonstrate ‘60 percent physical damage’. Furthermore, sequestration is not provided for in the criminal process, making it difficult to enforce orders for compensation”.¹¹⁵
84. With regard to the Law on the Protection of Civilian Victims of War in the RS, it entitles civilian victims of war (assuming that this expressing encompasses also “concentration camp detainees”) to receive a

¹¹³ CAT, *Concluding Observations on BiH*, *supra* note 10, para. 18.

¹¹⁴ *Ibid.*

¹¹⁵ Special Representative of the Secretary-General on Sexual Violence in Conflict, *Report on the Mission to BiH*, *supra* note 55, para. 6.

monthly pension. Pursuant to Art. 1 of the Law “the rights prescribed can be awarded to citizens of the RS who have suffered body harm after 9 January 1992. The rights prescribed by this Law can also be awarded to citizens of the Socialist Republic of BiH and the Social Federative Republic of Yugoslavia, if they settle on the territory of the RS, acquire a Serbian citizenship and if they have body harm caused after 17 August 1990”.¹¹⁶ As noted, the Law guarantees to those who are recognised as civilian victims of war the access to pure welfare measures (e.g. monthly disability pensions ranging between 100 and 350 KM – 50 and 175 Euros, nursing, help for those incapable to work, etc.)¹¹⁷ which cannot be considered *stricto sensu* as measures of reparation for the gross human rights violations suffered.¹¹⁸ Further, strict limitations are imposed to those who wish to apply for the measures offered pursuant to this Law: among others, only those who can prove a certain degree of physical harm suffered due to the war (at least 60%)¹¹⁹ and assessed by health commission, or that can demonstrate that they are incapable for work will obtain a monthly pension. Victims of rape are not recognised as a separate category of victims and this falls short of acknowledging the specificity of the damage they have suffered and its consequences. In general, all those who suffered psychological impairment as a consequence of the war are not considered as victims under this Law and are excluded from the enjoyment of social benefits. Moreover, it must be pointed out that the Law on Protection of Civilian Victims of War in the RS poses strict deadlines for those wishing to apply (notably, the final deadline expired on 31 January 2007).¹²⁰ This resulted in the exclusion of many victims from the possibility to obtain the benefits they would be entitled to under the Law. This is the case, in particular, of people living, also temporarily, outside BiH, who were not informed about the existence of this law and therefore failed to submit their claims in due time. On this matter, the Special Rapporteur of the Sub-Commission on the right to reparation for victims of gross violations of human rights and humanitarian law, Mr. Theo van Boven, noted that under the current state of international law, civil claims relating to reparations for gross violations of human rights and humanitarian law shall not be subject to statutes of limitations in any

¹¹⁶ Art. 2 of the Law defines as civilian victim of the war a person who: “1) Has suffered body harm because of harassment, rape, detention (jail, concentration camp, interment, forced labour etc.) or who during escape from the enemy has suffered injuries or wounds which have caused at least 60% of body harm as well as those persons who have been killed, died or went missing in these circumstances; 2) Has suffered at least 60% of body harm because of wounding or injuring caused by warfare such as: bombing, street fights, bullets, grenades from a cannon or a bazooka and similar; 3) Has suffered at least 60% of body harm because of wounding or injuring caused by old army materials or as a consequence of commando actions by the enemy”.

¹¹⁷ The great majority of victims of torture, rape or other forms of sexual violence are in need of medical treatment and often of expensive medicines. Since the State fails to guarantee free access to such treatment (*infra* paras. 121-123) to survivors of torture, they see themselves forced to purchase the mentioned medicines, which may cost up to 150 KM – 70 Euros – a month, with their own resources. It follows that the situation is unsustainable for those unable to work who live on a monthly disability of 100 KM.

¹¹⁸ See Art. 8 of the Law.

¹¹⁹ It is noteworthy that war veterans are eligible for social support if their bodily damage amounts to 20%.

¹²⁰ Art. 33 of the law establishes that “a request for granting of rights on the basis of bodily harm can be submitted within 5 years after the harm was caused, i.e., since the day when the circumstances under which the harm was caused ceased to exist. The fact that the bodily harm occurred under circumstances described in Art. 2 of the Law is inevitably proved by medical documentation about a treatment which should have been obtained one year after the harm was caused, i.e. after the circumstances under which the harm was caused ceased to exist and which the applicant should attach to the request [...]”.

event.¹²¹

85. Another piece of legislation that has been used in the RS to claim for compensation for pecuniary or non-pecuniary damage suffered during the war is the Law on the Right to a Compensation for Pecuniary and non-Pecuniary Damage, caused by the War Activities in the Period from 20 May 1992 to 19 June 1996 (Official Gazette No. 01-409/05 of 30 June 2005 and Amendments of 15 December 2008 published in the Official Gazette of the RS No. 1/09, Annexes 24 and 25 in the local language and relevant excerpts in English).¹²² Nevertheless, it must be pointed out that the great majority of claims submitted by former camp detainees pursuant to this law have been rejected by the RS State Attorney's Office and the RS Ministry of Justice, thus proving this a non effective legal tool to obtain compensation. First, the claims submitted by civilians have systematically been rejected, as the RS State Attorney's Office and the Ministry of Justice deemed to be incompetent to judge on damages not suffered "in connection with the conduct of military service and military defence activities". This interpretation of the law seems to unduly penalise civilian victims of the conflict. Moreover, the law establishes strict deadlines for the submission of the claims and most applicants missed such deadlines. In many cases the claims submitted were rejected either on the basis of an alleged lack of competence or on the basis of the application of the statute of limitations.¹²³ Furthermore, compensation awarded under this scheme is to be paid in government bonds, which are to be amortised in ten annual instalments,¹²⁴ and the enforcement of the decisions already issued (apart from legal costs and associated default interest which have recently been paid) has been suspended since 28 May 2002 pursuant to the Postponement of Enforcement Act 2002, the Temporary Postponement of Enforcement Act 2003 and the Domestic Debt Act 2004.
86. As an instance, the association Prijedor 92 reported that all the claims for compensation for non-pecuniary damage submitted by their members have been rejected on the basis of an alleged lack of competence of the RS State Attorney's Office. Accordingly, on 16 February 2011 the association filed a collective claim on behalf of 418 former camp detainees before the District Court in Banja Luka.¹²⁵ At the time of writing, the judge in charge has not even fixed the date of the first hearing. This situation is the source of particular concern to the members of the association, as many of them are in a precarious state of health and are getting old, thus fearing to die without obtaining justice and redress for the harm suffered during the war. As a matter of fact, ten of the claimants already died since the filing of the complaint.

¹²¹ See doc. E/CN.4/Sub.2/1996/17 of 24 May 1996, para. 9. See also *Principles on the right to a remedy and reparation for victims of gross violations of human rights law and serious violations of humanitarian law* ("UN Principles on the Right to a Remedy"), adopted by General Assembly Resolution No. 60/147 of 16 December 2005, Principle 7, which sets forth "domestic statutes of limitations for other types of violations that do not constitute crimes under international law, including those time limitations applicable to civil claims and other procedures, should not be unduly restrictive".

¹²² Pursuant to Art. 5 of the Amendments of 2008 to the mentioned law, applications to receive compensation should be submitted to the Office of the State Attorney of the RS before 31 December 2009.

¹²³ See *infra* paras. 99-100.

¹²⁴ It is noteworthy that under the RS Law on Debts, there is a deadline of 50 years for cashing the bonds.

¹²⁵ Registered under the file No. 71 0 P 11123411P.

87. A notable exception to the situation above described is the judgment issued on 26 September 2011 by the Basic Court in Trebinje, that ordered the FBiH to pay KM 100,000 to Ms. Olga Draško, as compensation for non-pecuniary damage suffered due to the torture inflicted on her while she was arbitrarily held in the detention camp of Dretelj from the beginning of May to August 1992.¹²⁶
88. In the case of returnees, Art. 33, para. 5, of the Law establishes that “a person who has realised the right as a civilian victim of war or a family-member of a civilian victim of war under the regulations of the Federation or a surrounding country has no right to file a request for the granting of rights under this law”. This provision has often been interpreted as excluding those who decide to return in the RS from the enjoyment of any social benefits. In practice, this specific interpretation of the law has prevented a considerable number of people from returning to their pre-war houses, since they realised that moving back to the RS would have brought as a consequence the loss of their monthly disability pensions which, in the majority of cases, are their only means of subsistence. It is noteworthy that on 2 February 2011 the Supreme Court of RS rendered a significant decision (Annexes 30 and 31 in the local language and excerpts in English) according to which lower courts should not automatically deny access to social benefits to those who received monthly disability pensions in the FBiH and later on returned to RS. This decision should represent a landmark judgment that sets the criteria to be followed by lower administrative bodies and courts throughout the RS. Nevertheless, it would seem that at the time of writing such decision has not been implemented and, on the contrary, lower administrative bodies continue interpreting the law as it has been done in the past. In this light, on 27 January 2012 the applicant concerned filed a complaint before the Ombudsperson. The complaint has been registered under file number Ž-BL-05-79/12 and is currently pending.
89. The Law on the Basis of the Social Protection, Protection of Civilian Victims of War and Families with Children in the FBiH makes clear that measures adopted in favour of civilian victims of war and their families are of the nature of welfare and social protection (e.g. monthly disability pensions which may be up to 506 KM – 259 Euros, nursing and other material benefits). Access to the mentioned measures of protection is reserved for people unable to work or financially insecure. To obtain the status of civilian victim of war a bodily damage of at least 60%¹²⁷ is required. The mentioned condition is not applied to victims of rape or other forms of sexual violence, who are considered a different category of victims. Art. 9 of the Law openly discriminates against the category of civilian victims, since it prescribes the maximum monthly financial allowance for the civilian victims of war which should equal 70% of the maximum allowance available to war invalids. Also this Law establishes short deadlines¹²⁸ to apply to

¹²⁶ See, among others, <http://www.bim.ba/en/290/10/33518/>. It is noteworthy that the mentioned case concerns a victim of Serb origin, while the events took place in the FBiH and Trebinje Court is in the RS.

¹²⁷ It is noteworthy that also in this case war veterans are eligible for social support if their bodily damage amounts to 20%.

¹²⁸ Art. 101 of the law as amended in 2005 established that “the current users who have realized their rights as well as those who have filed requests for the realisation of the rights and whose requests have not been answered under the provisions on social and children protection and the protection of civilian victims of war, which were applied on the territory of the Federation until the coming into force of this Law, are obliged to apply for the granting of rights under this Law *within six months after the entering of the Law into force. Persons from paragraph 1 of this article, who do not file requests in the deadline prescribed in paragraph 1, will have their rights terminated*” (emphasis added).

obtain the status of civilian victim of war and many people have been excluded.¹²⁹ One particular problem that has been raised with regard to the procedure to obtain the status as civilian victims of war concerns the fact that the medical documentation that shall be produced to show the damage suffered by the applicant, must have been gathered or obtained before the end of 1997.¹³⁰ This criterion is particularly restrictive, since, due to the conflict and as a result of forced displacement, until 1998 many people did not even have an identity document and they could obtain it only later on. It is therefore particularly unlikely that such people can dispose of the required medical documentation. An outstanding situation in this regard has been reported by the Regional Association of Concentration Camp Detainees Višegrad, whose members are almost all victims of forced displacement from the area of Herzegovina. During the conflict, they were forced to leave their houses and therefore they lost all their original documents (including identification documents). Indeed, the almost totality of these persons have never obtained a medical certificate or a document attesting their detention during the war and this caused their exclusion so far from any social benefit.¹³¹

90. It must also be pointed out that even when victims obtain a certificate attesting their status, they cannot accede directly the benefits they would be entitled to, but they are referred by the Centres for Social Work to Medical Commissions which shall assess their percentage of disability. This other procedure in many cases re-traumatizes victims and discourages many potential beneficiaries from applying. Furthermore, to have their status duly certified, former camp detainees shall produce the testimony of two eye-witnesses. The whole procedure is lengthy and extremely complicated from a bureaucratic view-point. As a consequence, many people felt discouraged and avoid submitting claims at all.
91. Among the many problems raised by this system that unduly overlaps the notion of social assistance to that of compensation, it can be mentioned that when a person receives a monthly disability pension, this

¹²⁹ It results that, among civilian victims of war, those residing outside BiH, also temporarily, see their rights particularly impaired. In this sense, the Women's Section of the Association of Concentration Camp Detainees expressed its concern for the fact that Art. 76.(a) of amended version of the Law on Civilian Victims of War in the FBiH (Official Gazette FBiH No. 39/06) establishes that "the user of rights under this Law will have those rights terminated if the user leaves BiH for more than three months, counting from the day the person left. When the person returns to BiH" he/she can reapply for the granting of the same rights". One example referred to by members of the Women's Section of the Association of Concentration Camp Detainees is that of G. C. from Prijedor, who in 1992 was taken with her two children to the concentration camp of Trnopolje, where she was raped. The same year G. C. was exchanged with other prisoners and managed to reach Germany, where her two children live to this day. Due to the mentioned provision, G. C. feels at risk to lose her monthly disability pension, since from time to time she remains in Germany for more than three months when she visits her children, although her place of residence is the municipality of Novi Grad in Sarajevo.

¹³⁰ This problem has been emphasized in particular by the Women's Section of the Association of Concentration Camp Detainees. Indeed, they raised the question with Ms. Mevlida Kemura, who at the time was the Director of the Institute for Medical Forensic and Health Ability (tasked to issue an evaluation necessary for the granting of the status as "civilian victim of the conflict"), and she emphasized that this requirement is established under the Federal law. See Art. 79 of the Law on Civilian Victims of War in the FBiH.

¹³¹ It must be stressed that also war veterans are confronted with the problem of documentation. In fact, the RS Law on the Rights of Soldiers, War Disabled Persons and Families of Fallen Soldiers of the Defence-Homeland War requires war veterans who were captured and held in detention centre and wish to obtain a disability pension for it to produce a certificate of detention issued immediately after the war. Many people could never obtain such certificates and are therefore excluded from the enjoyment of any form of social assistance.

prevents him or her from access to bank-loans. In this view, victims are ultimately prevented from moving on with their lives and are forced to remain dependent on a sometimes meagre pension. In this sense, it must also be duly stressed that there are instances where victims are requested to undergo multiple examinations in order to challenge contradictory medical evaluations of their situation. This exposes them to a serious and clearly unnecessary humiliation.

92. A particular situation which is worth mentioning since it affects a considerable number of victims of torture during the war and has already been brought to the attention of BiH authorities without any significant result is that of the women in Una-Sana Canton. About 15 women victims of rape or other forms of sexual violence during the war who obtained decisions awarding them a monthly disability pension, found themselves in a situation of not being able to obtain the mentioned pension due to the obstruction exercised in this sense by an employee of the Cantonal Ministry of Health from Una Sana in Bihać (Mr. Jasmin Fikić). Allegedly, when the mentioned women claimed the payment of monthly pensions they are entitled to under the law, Mr. Jasmin Fikić refused to proceed with the payment and therefore fails to enforce the decisions legally obtained from the competent authorities. On one occasion he allegedly indicated to a woman who was requesting some clarifications on this situation that if she wants to receive monthly disability pension she has to go to the Ministry office and bring along with her the perpetrator who has to confirm what had happened to her. Indeed, this is not required by any legal provision. On another occasion, Mr. Fikić allegedly went door to door to verify if the victims in fact live at the addresses they have indicated in the documentation submitted. In this context, Mr. Fikić allegedly also posed questions to neighbours to verify whether they are familiar with what had happened to the victims, therefore disclosing the identity of the ladies concerned and jeopardising their right to privacy and security. It is noteworthy that this procedure is not prescribed anywhere in the law. On the contrary, the initiative on Mr. Fikić has had the result of putting at risk the women whose identities he has disclosed, as well as subjecting them to serious stigma and discrimination within their local communities. As mentioned, this situation has been reported to the former Cantonal Minister (Mr. Mustafa Avdagić) as well as to the Federal Ministry of Labour and Social Policy (Mr. Perica Jelečević). The latter organised a meeting in Sarajevo with associations representing victims of violence and former camp detainees as well as with the Cantonal Minister to discuss this problem. At the meeting the authorities promised that the situation would have been duly addressed. In fact, some cases were resolved. However, after a while, Mr. Fikić resumed his former practice, until at the beginning of 2012 he was removed from his post.
93. Another problem that has been reported as source of great concern by associations of former camp detainees in the FBiH is the process of revision of disability pensions of former war veterans that has been launched at the end of 2011 by the Federal Ministry of War Veterans (Annexes 26 and 27 in the local language and English). Pursuant to this order, war veterans who were captured and detained in detention camps during the war and who had obtained monthly disability pensions for this must now undergo a process of revision of their title and already many former camp detainees lost their social benefits. According to associations of former camp detainees, the whole procedure is characterised by a number of problems. First, war veterans must undergo a re-assessment of their degree of disability

before an *ad hoc* commission in Sarajevo. For those not living in Sarajevo this implies additional expenses that often they are not in a capacity to afford. Second, veterans are requested to produce a “copy of the certificate of detention as a member of the military”. Indeed, this documentation is not very easy to obtain. Further, the whole revision process is mainly based on the assessment of the existence of formal discrepancies in the documentation submitted to obtain the disability pension (e.g. differences in the dates reported on documents, or in the writing of the names). Indeed, this criterion does not seem to take into account that the great majority of documents concerning war veterans were issued in the past, under exceptional circumstances, that caused a generally poor quality and a low level of precision. The fact that potential mistakes committed by administrative authorities and other offices are now interpreted at the total detriment of former war prisoners with the consequence to deprive them of social benefit does not seem to respond to any particular logic nor to international standards.

94. With regard to the process of revision of disability pensions for veterans, the Croatian Association of War Prisoners of the Homeland War in the Canton of Central Bosnia highlighted the existence of a specific problem affecting veterans of Croat ethnicity. In fact, the majority of them obtained a disability pension pursuant to an *ad hoc* inter-State agreement with the Republic of Croatia. It is alleged that the revision process would affect also the rights obtained pursuant to the inter-State agreement, thus leaving members of the association without any form of support both from BiH and the Republic of Croatia.
95. With regard to the specific problems faced by victims of rape or other forms of sexual violence, including several former camp detainees, in receiving compensation and integral reparation, the CEDAW urged BiH “to explicitly recognise and adequately protect women who were civilian victims of sexual violence during the armed conflict through a State law as well as through the allocation of financial resources for adequate social provisions for them, including health insurance and housing, so that their rights and entitlements are guaranteed in the entire State party at a level comparable to that applicable to military victims of war”.¹³² Along the same line, the Committee on Social and Economic Rights expressed grave concern about “the absence of a coherent strategy to support victims of sexual violence suffered during the armed conflict of 1992-1995 and that Entity laws pertaining to civilian war victims are gender-insensitive and provide inadequate social protection for victims of sexual violence”¹³³ and it recommended BiH to “ensure that victims of sexual violence suffered during the armed conflict of 1992-1995 obtain the status of civilian war victims, to devise and implement a coherent strategy at State level to protect the economic, social and cultural rights of victims of sexual violence and their family members, and to ensure the participation of victims of sexual violence in any decision-making processes affecting them”.¹³⁴

¹³² CEDAW, *Concluding Comments on BiH*, doc. CEDAW/CO/BH/CO/3 of 2 June 2006, para. 38.

¹³³ CESCR, *Concluding Observations on BiH*, doc. E/C.12/BIH/CO/1 of 24 January 2006, para. 19. See also para. 23, where the Committee expresses its concern about the extent of poverty in the BiH, especially in rural areas and among internally displaced persons, minority returnees, families headed by single parents and victims of sexual violence during the armed conflict.

¹³⁴ *Ibid.*, para. 41. See also paras. 39-40.

96. As already indicated,¹³⁵ on this subject the Commissioner for Human Rights of the Council of Europe expressed that he “[...] remains concerned by the failure of the authorities of Bosnia and Herzegovina to establish an effective mechanism that would ensure reparation for all victims of war-related crimes and their families in Bosnia and Herzegovina. A representative of an NGO working in the field of assistance to the war victims, with whom the Commissioner met during his visit, stressed that the lack of adequate state support caused individual tragedies: *ten former detainees of concentration camps in Bosnia and Herzegovina during the 1992-1995 war had committed suicide since 2000*. Post-war justice may not be obtained solely by prosecuting and convicting war criminals, but also by restoring the human dignity of all victims who have suffered pecuniary and especially non-pecuniary damages. The existing system of complicated individual payments through the social protection and disability scheme in the Federation of Bosnia and Herzegovina does not effectively address the needs of the victims of war-related crimes. The relevant legislation on Entity and cantonal levels aimed at providing reparation to the victims of the war is significantly more favorable to war veterans than to civilian victims. Furthermore, the authorities have so far failed to provide adequate reparation to the survivors of war crimes of sexual violence, in order to enable them to rebuild their lives”.¹³⁶ Furthermore, referring specifically to victims of rape or other forms of sexual violence, he noted “[...] reports indicating that many women, who are victims of war related crimes of sexual violence, have continued to live in poverty, being unable to find a job still suffering from the physical and psychological consequences of their war-time experience. [...]”.¹³⁷ Accordingly, he recommended that “everyone claiming to be a victim of war-related crimes should have effective access to justice and be provided with effective remedies, making reparation possible. The Commissioner urges the authorities of Bosnia and Herzegovina to take all necessary measures to ensure reparation to victims of war-related crimes and their families, in line with the established principles of international law as reiterated in the 2005 UN 'Basic Principles and Guidelines'. The authorities are urged, in particular, to examine with care the cases of civilian victims of war-related crimes and to provide them with adequate social protection, eliminating unequal treatment that exists between civilian and military victims of war”.¹³⁸
97. In fact, several associations of former camp detainees reported instances of suicides among their members. An outstanding example that can be quoted is that of Mr. Sakib Balić, a 40-year old former camp detainee who, in January 2012, set himself alight in front of the Croatian Embassy in Sarajevo and passed away due to the injuries. Apparently, Mr. Balić had recently undergone the revision process of his disability pension,¹³⁹ and the ad hoc Commission of the Federal Ministry of Veterans had reduced his disability from 80% to 30%.¹⁴⁰ Another example is that of Mr. E.Z., a former camp detainee who

¹³⁵ *Supra* para. 20.

¹³⁶ Report Hammarberg, *supra* note 21, paras. 147-148.

¹³⁷ *Ibid.*, para. 158.

¹³⁸ *Ibid.*, paras. 187-188.

¹³⁹ On problems related to the revision process of disability pensions see *supra* para. 93.

¹⁴⁰ This tragic episode has been covered by the media in BiH. See, among others: www.bportal.ba/index.php?option=com_content&view=article&id=3795:drama-pred-ambasadom-hrvatske-u-sarajevu-zato-se-spalio-hos-ovac-sakib-bali-foto&catid=43:vijesti-crna&Itemid=61; and <http://www.braniteljski-portal.hr/sadržaj/hrvatska/13856>.

survived to the torture suffered in Omarska and Keraterm, whereby his two brothers were arbitrarily killed. Mr. E.Z. had serious health problems as a consequence of the torture he was subjected to in the detention camp, but he could not afford the necessary medical expenses. In the summer 2000, at the age of 35, Mr. E.Z. committed suicide in Sanski Most, by shooting himself. Mr. R.P., a former camp detainee from Tuzla who had been detained and arbitrarily deprived of his liberty in 1993 in Travnik by members of the HVO, attempted to commit suicide when his claim for disability pension was rejected. At present, he is in the Psychiatric Clinic in Tuzla.

98. Moreover, the Association of the Concentration Camp Detainees of BiH highlighted that there is an uncommon rate of deaths of former camp detainees aged between 35 and 50. These deaths have been attributed to “natural causes”. Nevertheless, it must be pointed out that the average age of death in BiH is higher and to date there has been no serious study to determine whether these deaths could be attributed to the ill-treatment suffered while in detention during the war. According to the data gathered by the association, in the municipality of Sanski Most in the period 2008-2011, 80 former camp detainees aged between 35 and 50 passed away.
99. Former camp detainees face particular troubles in obtaining compensation for the harm suffered. Indeed, they are not recognised as an autonomous category of victims of the conflict, and therefore fall in a grave legal loophole. In this sense, they would have to turn to regular courts in order to claim for compensation, but many of them are not in a position to afford this for a number of reasons. As a matter of fact, proceedings before ordinary courts¹⁴¹ require a number of expenses in terms of court fees and other legal costs that the great majority of former camp-detainees are not able to bear.¹⁴² While the exemption from court fees can sometimes be ordered by a judge, this is not automatic and many persons do not want to take the risk to find themselves in a situation where they are not able to afford the costs of the proceedings. Moreover, expert testimonies and medical certificates (required in this kind of proceedings) must be obtained at the expense of the claimant and, again, this is often not feasible for victims or their families. It seems to be the practice of ordinary courts to reject claims for non-pecuniary damage concerning harm suffered during the war, as they apply a statute of limitations of subjective 3 years and objective 5 years.
100. It is noteworthy that on 15 November 2011 the Supreme Court of the FBiH rendered a landmark judgment (Annexes 28 and 29 in the local language and English), whereby it is affirmed that the statute of limitations cannot be applied to claims for non-pecuniary compensation submitted by former camp

¹⁴¹ The notable exception of the Canton of Una Sana must be mentioned. In Una Sana the Law on Court Taxes has been amended as to exempt victims of gross human rights violations applying for non-pecuniary damage from paying court fees.

¹⁴² As an example, the case of Mr. Semir Brzina can be quoted. Mr. Brzina is a former camp detainee who was subjected to ill-treatment during the war in the detention camp known as “Heliodrom”. In 2011, the Court in Mostar ruled in his favour, ordering the payment of 12,000 KM (almost 6,000 Euros) as non-pecuniary compensation for the harm suffered. Indeed, he was charged the court fees, amount to 1,900 KM (800 Euros), to be paid within eight days. In case of non-payment, the amount of the court fee is doubled. Mr. Brzina does not hold such amount of money and his non-pecuniary compensation has not been paid to him yet. It appears clearly that the current system is only detrimental to the applicants and prevents a number of former camp detainees from filing claims for non-pecuniary damages as they are unable to sustain the required expenses.

detainees. Indeed, this precedent shall be followed by all other tribunals in BiH, even though the practice so far has been the contrary.

6.1 Problems related to Claiming Compensation from Perpetrators

101. According to the domestic legal framework, a possibility exists to claim compensation for damage (claims under property law) suffered during the war in civil proceedings. Indeed, it is a complex procedure, which is regulated in a different manner in the entities.¹⁴³ This procedure has proved effective in a very limited amount of cases.
102. Art. 195 of the Code of Criminal Procedure of BiH establishes that “1) A petition to pursue a claim under property law in criminal proceedings shall be filed with the Court. 2) The petition may be submitted no later than the end of the main trial or sentencing hearing before the Court. 3) The person authorised to submit the petition must state his claim specifically and must submit evidence. 4) If the authorised person has not filed the petition to pursue his claim under property law in criminal proceedings before the indictment is confirmed, he shall be informed that he may file that petition by the end of the main trial or sentencing hearing. If a criminal offence has caused damage to the property of the State of Bosnia and Herzegovina, and no petition has been filed, the Court shall so inform the body referred to in Art. 194, Paragraph 2 of this Code. 5) If the authorised person does not file the claim under property law until the end of the main trial or if he requests a transfer to civil action, and the data concerning the criminal proceedings provide a reliable grounds for a complete or partial resolution of the claim under property law, the Court shall decide in the convicting verdict to pronounce on the accused the measure of forfeiture of property gain”. Art. 198, para. 2 adds that: “in a verdict pronouncing the accused guilty, the Court may award the injured party the entire claim under property law or may award part of the claim under property law and refer him to a civil action for the remainder. If the data of criminal proceedings do not provide a reliable basis for either a complete or partial award, the Court shall instruct the injured party that he may take civil action to pursue his entire claim under property law”. It results that the Court has the option to award part of a claim to the injured parties or to refer them to civil actions. It results that courts and prosecutors are extremely reluctant to award directly compensation. Injured parties have instead been instructed that they may take civil action to pursue their entire claims under property law.¹⁴⁴
103. On this subject, the Special Rapporteur on Torture pointed out that “while the State bears the primary responsibility to provide an effective remedy and full reparation for victims of torture, the individual perpetrator, his or her superiors and the authorities directly responsible should be held accountable to bear the costs for as full as rehabilitation as possible, which may also have a deterrent effect”.¹⁴⁵ He

¹⁴³ For a thorough analysis of the problems existing on this subject at the entity level, which, for reasons of space, here will not be further considered, see, Amnesty International, *Whose Justice: The Women of Bosnia and Herzegovina are Still Waiting*, *supra* note 100, pp. 47-49.

¹⁴⁴ Arts. 193 and 194 of the Code of Criminal Procedure of BiH regulate respectively the “subject of the claim under property law” and “petition to satisfy a claim under property law”.

¹⁴⁵ Special Rapporteur on Torture, *Study on the Phenomenon of Torture*, *supra* note 1, para. 167.

also declared that “[...] it is important that victims of torture themselves be entitled to initiate such procedures and enjoy equal access to these mechanisms without fear of reprisals. [...] In this context, it also needs to be emphasised that, as the standard of proof may be higher in criminal proceedings, *the availability of civil procedures to claim reparation should not be dependent on the outcome of a criminal procedure*”.¹⁴⁶

104. Problems concerning the existing procedure in BiH may be summarised as follows: in the majority of cases, victims are not aware of their right to apply for compensation from perpetrators and of the functioning of the procedure to enforce such right and are not duly informed on the existence and functioning of the procedures to enforce their rights; victims who give their testimony in the course of a trial are not automatically included among those who are notified about the delivery of a decision that refers them to civil action for compensation; although the State Court would be entitled to award compensation to the injured party, this is a discretionary choice depending on the initiative of the competent prosecutor which, so far, has not been taken, rather favouring referral to civil action; victims would need a lawyer to represent them in civil claims for compensation and, in almost the totality of cases, they cannot afford it, while free legal aid is not granted to them by the State.¹⁴⁷ This situation creates a vicious circle that penalises the most vulnerable parties, who find themselves trapped between complicated procedural burdens, the failure of prosecutors to apply for compensation claims on behalf of the injured parties and the lack of adequate legal aid and representation.
105. It is also noteworthy that, to exercise the right to obtain compensation from a perpetrator, victims must be represented by a lawyer, while the great majority of them cannot afford to pay for legal representation.¹⁴⁸ At the same time, the State failed to guarantee free legal aid and legal services, thus *de facto* making it impossible for victims of torture, forced labour and arbitrary detention to enforce their right to compensation. Indeed, in many cases victims of sexual violence feel particularly frustrated due to the fact that, while they have such considerable obstacles in acceding to free legal aid, those accused and undergoing criminal proceedings can avail themselves of the representation which is provided to them by the lawyers of the Criminal Defence Section. While this is a fair trial guarantee that shall be preserved, victims of torture and arbitrary detention should also be placed in a position to enjoy similar guarantees.

¹⁴⁶ *Ibid.*, para. 171 (emphasis is added).

¹⁴⁷ There is no State institution guaranteeing free legal aid to civilian victims of war. Although there are some NGOs (e.g. Vaša Prava and the FLD) that provide this service, this remains an obligation of the State which, so far, has not been implemented by BiH. On this problem see European Commission, *Bosnia and Herzegovina 2010 Progress Report*, *supra* note 53, p. 16, whereby it is reported that “the adoption of the framework Law on free legal aid needed to comply with the ECHR is still pending. [...] Legal aid in civil cases continues to be provided on a mainly *ad hoc* basis by privately founded NGOs”.

¹⁴⁸ On this subject, the Special Rapporteur on Torture pointed out that “[...] in order to make effective use of existing remedies, victims are also often in need of legal aid and legal services, including forensic and medical expertise to secure evidence and substantiate their claims” (*Study on the Phenomenon of Torture*, *supra* note 1, para. 171). Indeed, victims of rape or other forms of sexual violence referred that they perceive as a form of discrimination that fact that, according to the Code of Criminal Procedure (Art. 40), those suspected or accused of war crimes are entitled to have more than one defence lawyer, while there is no similar provision to grant them adequate representation.

106. Finally, it has to be highlighted that, upon indictment, many people charged for crimes against humanity or war crimes, including torture, immediately declare to have no property whatsoever. In these cases, even if the conviction eventually enables witnesses or injured parties to apply for compensation, they would not have concrete perspectives of success.¹⁴⁹ Accordingly, the State shall guarantee that, even though the person convicted claims to have no property the rights of injured parties must be secured anyway. Victims of torture during the war, including former camp detainees, repeatedly pointed out that payment of compensation shall be in cash and not in bonds and that they should be exempted from the payment of court fees (which the majority of them cannot afford).

6.2 Problems related to Adequate Housing as a Measure of Restitution

107. As a result of the violations suffered during the war, many of those who were arbitrary detained and subjected to forced labour and torture, were forced to leave their homes. Those who obtained the status as internally displaced persons were entitled to stay in alternative accommodation. BiH is under an obligation, as a measure of restitution for the harm suffered, to guarantee, if victims so wish, return to their place of origin in safe and dignified conditions, or otherwise the access to alternative housing programmes.¹⁵⁰

108. To date, access to adequate housing¹⁵¹ remains one of the major problems for former camp detainees and victims of torture. The Women's Section of the Association of Concentration Camp Detainees reports that many of their members have been victims of several violations of their rights: originally they were raped or otherwise sexually abused, afterwards they were banned from their places of origin and from their homes (mainly in Eastern and North-Western Bosnia) and to date they still live in collective centres in the Sarajevo Canton.¹⁵²

109. The existence of this kind of problems has been pointed out with concern by the Committee against Torture in its last concluding observations on BiH: "the Committee expresses its concern at persistent reports claiming that existing programs of property restitution have failed to take into account gender and psychological needs of the victims of sexual violence. The Committee is also concerned at their

¹⁴⁹ An example that can be recalled is that of Mr. Veselin Vlahović ("Batko") who in March 2010 was arrested in Spain. He is accused, among others, of crimes against humanity, including rape or other forms of sexual violence, committed from 1992 to 1995 in the district of Grbavica, in Sarajevo. Upon arrest, Mr. Vlahović immediately declared that he does not have any property. Victims of rape or other forms of sexual violence therefore fear of not being able to obtain compensation. Mr. Vlahović was extradited from Spain to BiH and is currently awaiting trial.

¹⁵⁰ See also Committee on the Rights of the Child (CRC), *Concluding Observations on BiH*, doc. CRC/5/15/Add.260 of 21 September 2005, para. 62 a) and b); and Representative of the Secretary-General on Human Rights of Internally Displaced Persons, *Report on the Mission to Bosnia and Herzegovina*, doc. E/CN.4/2006/71/Add.4 of 29 December 2005, paras. 38-53 and 57. See Buyse, *Post-Conflict Housing Restitution: The European Human Rights Perspective, with a Case Study on Bosnia and Herzegovina*, *supra* note 102.

¹⁵¹ In general, BiH lacks a housing national strategy. In this sense, CESCR, *Concluding Observations on BiH*, *supra* note 133, paras. 24 and 46.

¹⁵² Over the years the Women's Section of the Association of Concentration Camp Detainees has been in contact with the Ministry of Labour, Social Politics, Displaced Persons and Refugees to solve the problem of victims of rape during the war members of the Section who have not obtained adequate housing.

lack of economic opportunities and the poor living conditions".¹⁵³

110. A first instance that may be recalled is that of C. C. and A. R.. Both ladies are originally from Foča where, in 1992, they were subjected to sexual violence and subsequently banned from their houses by members of the VRS.¹⁵⁴ From Foča they were forced to move to Sarajevo Canton, where they were accommodated in houses that had been abandoned and where Bosnian Serb people used to live. However, Annexe 7 to the Dayton Peace Agreement gave the opportunity to all people to go back to their pre-war houses until the year 2003. That year C. C. and A. R. were notified that within 15 days they should leave the apartments they were living in. Consequently, they were transferred from the places where they were living to collective centres. In the Sarajevo Canton there were three centres of collective housing, namely in Gladon polje, Stup and Hrasnica. C. C. and A. R. were accommodated in Hrasnica, where they live until this very date together with their families, while other victims of sexual violence managed to move to individual flats through the support of international donors.¹⁵⁵ Since 2007 the Women's Section of the Association of Concentration Camp Detainees has been sending letters to the Ministry of Labour, Social Policy and Displaced Persons, but to no avail. The Association never received any formal answer by the Ministry, but, informally, they were repeatedly told that there are not enough resources to implement a housing program (Annexes 2-5 in the local language and in English). The Women's Section of the Association of Concentration Camp Detainees sent letters also to the municipal mayors of the municipalities where the ladies concerned live, but this did not produce any significant result.
111. A second significant instance is that of B. P. who used to live in Sarajevo but, when the conflict started, remained trapped in Vogošća, where she was deprived of her liberty and conducted to the JNA army barrack. There she was arbitrarily detained and subjected to sexual violence until she was exchanged with Bosnian Serb prisoners and returned to Sarajevo. Together with her four children B. P. went to live with her mother in a small room in the suburb of Panjina Kula, where she resides until present. B. P.'s mother is in a very precarious health situation. The Women's Section of the Association of Concentration Camp Detainees sent letters to the Ministry of Labour, Social Policy and Displaced Persons and to the municipal mayor (Annexes 6-9 in the local language and English). However, to date these steps have not produced any significant result and the Association has not received any formal answer by the authorities concerned.

¹⁵³ CAT, *Concluding Observations on BiH*, *supra* note 10, para. 16.

¹⁵⁴ C. C. was raped by members of the VRS in 1992 in the village of Brod, in the municipality of Foča. In the case of A. R., after her husband was deprived of his liberty by members of the VRS and detained in the prison in Foča (known as KPD Foča), she remained in the village of Saš with her two children (respectively 8-month and 1-year and half old). From 1992 to 1993 A. R. was repeatedly subjected to rape or other forms of sexual violence by members of the VRS. In 1993 also A. R. and her children were transferred to the KPD Foča and, after having spent some time there, A. R. was eventually forced to leave to Goražde. Due to the harm inflicted on her as a result of the repeated acts of sexual violence, A. R. had to undergo seven surgeries and, to date she would need constant medical care and support.

¹⁵⁵ It is noteworthy that not all of those who received support from international donors were granted adequate housing. For instance, one member of the Women's Section of the Association of the Concentration Camp Detainees, was accommodated together with her four children in a 39 square meters' flat.

112. Another example is that of two former detainees at the camp known as “Silos”, in Busovača. Since Mr. Marko and Mr. Marijan Krajina were released from the detention camp, they addressed several authorities to obtain help in the reconstruction of their house that was destroyed during the war. It is noteworthy that both former camp detainees are in poor health conditions due to the torture they were subjected to at Silos. At the time of writing, they have not obtained any support from the State.
113. In BiH, internally displaced persons are entitled to this status and to related benefits until a “safe and dignified” return to their pre-war residence is possible. When obstacles to return exist, regardless of the opinion of the persons involved, those displaced are forced to return and they are no longer entitled to social benefits. In this context, many people, including survivors of rape or other forms of sexual violence, were forced to return to their pre-war houses, although they did not consider that conditions for “safe and dignified return existed”.¹⁵⁶ In its concluding comments on BiH, the CEDAW expressed concern “at the pending threat of eviction from their accommodations in the Federation of BiH of women who are civilian victims of sexual violence and internally displaced persons”¹⁵⁷ and it accordingly urged BiH to “review its current regulations and plans on accommodation issues for women who are civilian victims of war and displaced persons in order to prevent additional forms of indirect discrimination”.¹⁵⁸ In this context, it must be also added that the Committee on Economic, Social and Cultural Rights expressed its deep concern for the fact that “returnees, in particular those belonging to ethnic minorities, are often denied access to social protection, health care, school education for their children and other economic, social and cultural rights, thereby impeding their sustainable return to their communities”¹⁵⁹ and it recommended BiH to “intensify its efforts to ensure the sustainable return of returnees to their home communities by ensuring their equal enjoyment of the Covenant rights, especially in the fields of social protection, health care and education”.¹⁶⁰
114. The Women’s Section of the Association of Concentration Camp Survivors referred to the outstanding example of M. R. from Bijeljina, who was raped by members of the VRS over a period of an entire year from 1992 to 1993.¹⁶¹ In 1993 M. R. was granted an accommodation by the municipality of Novi Grad (Sarajevo), where she resides to date with her husband and two children. The tenants of the flat passed away. M. R. suffers from post-traumatic stress disorder (PTSD) and her husband has hepatitis C. In 2005 M. R. received a notification saying that if she did not sign a ‘voluntary return certificate’ for her return to Bijeljina in an apartment which was destroyed and was not her property but the property of her husband’s family, she would be evicted from Sarajevo to Bijeljina in three days. M. R. turned to the Women’s Section of the Association of Concentration Camp Detainees and they advised her to sign the certificate, promising that they would see what they could do in five or six-month time. M. R. signed the

¹⁵⁶ See, *inter alia*, Amnesty International, *Whose Justice? The Women of Bosnia and Herzegovina are Still Waiting*, *supra* note 100, p. 50.

¹⁵⁷ CEDAW, *Concluding Comments on BiH*, *supra* note 132, para. 37.

¹⁵⁸ *Ibid.*, para. 38.

¹⁵⁹ CESCR, *Concluding Observations on BiH*, *supra* note 133, para. 12.

¹⁶⁰ *Ibid.*, para. 32. See also para. 42.

¹⁶¹ To date no one has been formally accused, prosecuted and sanctioned for the sexual crimes committed against M. R. from 1992 to 1993 in Bjeljina.

certificate while the government repaired the house in Bijeljina. In a couple of months, M. R. was asked to leave the apartment in Sarajevo and to go back to the renovated house in Bijeljina. She refused to do so because she feels she cannot live in the same city where she had been raped for a year. Luckily, the Women's Section of the Association of Concentration Camp Detainees addressed the mayor of the municipality and managed to keep M. R. and her family in their apartment in Sarajevo (Annexes 10-13 and 14-21 in the local language and English). Lately, Mrs. M.R. obtained a property title over the flat and she is paying a monthly amount to become the owner of the flat.

6.3 Problems related to Restitution and Preferential Treatment in Employment

115. Another serious problem faced by several former camp detainees is the lack of access to stable employment.¹⁶² This must be seen as a measure of restitution for the harm suffered.¹⁶³ In the FBiH the Law on the Basis of the Social Protection, Protection of Civilian Victims of War and Families with Children establishes that, among others, civilian victims of war are entitled to receive vocational trainings and special measures to qualify them for jobs. This part of the law remains almost a dead letter. On the other hand, the Law on the Protection of Civilian Victims of War in the RS does not recognise any right to preferential treatment in employment or trainings for victims of torture.
116. This situation was referred to as a matter of deep concern by the Commissioner for Human Rights of the Council of Europe, who indicated that: “[...] the relevant legislation in the Federation of Bosnia and Herzegovina provides that the civilian victims of war-related crimes of rape and other forms of sexual violence shall have preferential treatment in employment. Access to vocational training to help them qualify for jobs is also provided for by the law. The Commissioner is concerned by reports indicating that these parts of the law remain largely unimplemented. Moreover, in the RS the right to preferential treatment in employment or to vocational training is not enshrined in the law regulating the status of the civilian victims of war”.¹⁶⁴
117. As an example of this situation, it may be quoted that out of the 60 members of the Women's Section of the Association of the Camp Concentration Detainees who were raped or otherwise sexually abused during the war, 99% do not have a stable employment to date. These women would like to have a job and not to depend merely on disability pensions. In their view, this would have a very positive impact for them, both materially and psychologically. So far, the State has failed to guarantee them any preferential treatment in the access to employment and they were not admitted to any vocational training. Accordingly, the Women's Section of the Association of the Camp Concentration Detainees offered to its members access to, among other activities, a sewing school. The women who participated in this activity benefited from a solid therapeutic impact. However, members of the Section who live outside

¹⁶² See, *inter alia*, Amnesty International, *Whose Justice? The Women of Bosnia and Herzegovina are Still Waiting*, *supra* note 100, pp. 51-52. Indeed, this subject shall be seen in the wider context of unemployment in BiH: CESCR, *Concluding Observations on BiH*, *supra* note 133, paras. 14 and 35.

¹⁶³ In this sense see, *inter alia*, *Principles on the Right to a Remedy*, *supra* note 121, Principle 19; and HRC, *Case Busyo v. Democratic Republic of Congo*, views of 9 August 2003, para. 6.2.

¹⁶⁴ Report Hammarberg, *supra* note 21, para. 160.

Sarajevo cannot accede to this programme. Overall, it remains the responsibility of the State to guarantee access to stable employment and to vocational trainings to all victims of torture, regardless of where they live.

118. In general, it is noteworthy that many former camp detainees perceive that if they disclose their past and the abuses they have gone through, they would be discriminated at work and they would lose their job. Associations working with former camp detainees point out that many of them repeatedly ask themselves questions such as “how will people look at me? Will I get fired if they learn that I was a camp detainee and they think I am weak?”. In this light, many former camp detainees hide their status in fear of discrimination and, by this means they foster their sense of frustration, isolation and debasement. This situation, coupled with BiH’s failure to adopt a comprehensive programs to guarantee them preferential treatment in employment, as well as adequate psychological support,¹⁶⁵ represent an ongoing form of ill-treatment to which former camp detainees are constantly subjected.

6.4 Problems related to Access to Education for Children of Victims of Torture and Arbitrary Detention as a Measure of Restitution

119. Children of victims of torture and arbitrary detention have often been subjected to discrimination and they have to face additional obstacles in the access to school and employment.¹⁶⁶ The possibility for these children to receive adequate education and to find a job is a particular concern for their relatives. While in the RS the legal framework does not specifically address this matter, in the FBiH it is stipulated that preferential treatment shall be accorded to this particularly vulnerable category. Nevertheless, this is largely unimplemented.¹⁶⁷
120. The members of the Women’s Section of the Association of the Camp Concentration Detainees referred to the specific instance of L. K., who is the son of a victim of rape during the war. He wanted to enrol to the Electro-Technical Faculty, but neither he nor his family had the sufficient means to pay the fee. Notwithstanding the Women’s Section of the Association of the Camp Concentration Detainees sent a letter to the Faculty requesting that L. K. is guaranteed a preferential treatment (Annexes 22-23 in the local language and English), his application has been rejected. This situation has been lived by the mother of L. K. as an additional trauma that fostered her feelings of marginalization, inadequacy and further damaged her self-esteem.

6.5 Problems related to Medical and Psychological Rehabilitation

121. Torture can seriously affect the victim’s mental health, with dire consequences in the short, medium or

¹⁶⁵ *Infra* paras. 121-123.

¹⁶⁶ Indeed, the rights of children born during the war and, in particular, from former camp detainees, shall be read in the light of the international obligations established for BiH by the Convention on the Rights of the Child. BiH is a State party to such treaty, see *supra* para. 7.

¹⁶⁷ CRC, *Concluding Observations on BiH*, *supra* note 150, para. 64.

long term.¹⁶⁸ Accordingly, victims of torture shall be guaranteed, as measures of rehabilitation for the harm suffered, access to adequate, timely and appropriate medical and psychological care, consistent with the right to the highest attainable standard of physical and mental health.¹⁶⁹

122. One of the main problems reported by all associations of former camp detainees subscribing this report is the fact that the great majority of their members lack medical insurance. Only those that can prove a disability of 60% are entitled to health insurance, while others should purchase it privately and cannot afford it. Many former camp detainees were affected by the deadlines applied to file the requests for health insurance that was one year after the end of the war or the bankruptcy of the company they used to work for before the conflict. In the many cases where former camp detainees used to work for companies that closed or went bankrupt during the war, no health insurance could be obtained. The same holds true for all the cases where the relevant documents to demonstrate that these people were employed by a particular company during the war have been lost, destroyed or burnt during the war.
123. Although in some cases medical and psychological care are provided to former camp detainees by the Centre for Victims of Torture or by other NGOs, such as Medica or *Vive Žene* Tuzla, it shall be emphasised that this is limited to those who live close to the mentioned organisations and, therefore, a large number of people who would be entitled to receive treatment cannot actually accede to it.¹⁷⁰ Furthermore, it must be stressed that organisations such as the Centre for Victims of Torture, Medica and *Vive Žene* Tuzla are NGOs that work on the basis of their own resources, which are usually almost entirely based on international donations. Nonetheless, it remains an obligation of the State (BiH) to provide medical and psychological support as a form of rehabilitation.¹⁷¹ Indeed, it results that so far there are certain areas of BiH, such as Bosanska Krajina, where no programme of psychological support for victims of sexual violence during the war has ever been carried out by State institutions.¹⁷² Programmes of health and psychological rehabilitation must be implemented at the community level, with the input of those who have been traumatised. Such programs shall be conceived as non-

¹⁶⁸ For a thorough analysis of the psychological and physical consequences of torture see, *inter alia*, Josse, "They Came with Two Guns": the Consequences of Sexual Violence for the Mental Health of Women in Armed Conflicts", in *International Review of the Red Cross*, Vol. 92, No. 877, March 2010, pp. 177-195; Refugee Protection Division Professional Development Branch, *Training Manual on Victims of Torture*, 2004, available at: www.irb.gc.ca/eng/tribunal/rpdspr/victorture/Pages/index.aspx; and Goldfeld, Mollica, Pesavento, Faraone, *The Physical and Psychological Sequelae of Torture*, in *Journal of the American Medical Association*, 1988, pp. 2725-2729. See also CEDAW, *General Recommendation No. 19*, *supra* note 109, para. 7; *General Recommendation No. 24, Women and Health*, 1999, para. 15.(a); Report of the Special Rapporteur on the Right to the Highest Attainable Standard of Physical and Mental Health, doc. E/CN.4/2004/49 of 16 February 2004, para. 25.

¹⁶⁹ See, *inter alia*, *UN Principles on the Right to a Remedy*, *supra* note 121, Principle 21; Redress, *Rehabilitation as a Form of Reparation under International Law*, London, 2009; and *UN Principles to Combat Impunity*, *supra* note 47, Principle 34. Indeed, the notion of rehabilitation includes also "access to legal and social services". Former camp detainees have so far not been guaranteed access to legal services either. See also of the Special Rapporteur on the Right to the Highest Attainable Standard of Physical and Mental Health, doc. E/CN.4/2004/49 of 16 February 2004, paras. 12 and 46.(a).

¹⁷⁰ Report Hammarberg, *supra* note 21, para. 161.

¹⁷¹ This obligation was clearly spelled out already in 1993 by the then UN Special Rapporteur on the Situation in the former Yugoslavia, Report Mazowiecki, *supra* note 3, para. 269.1.(d).

¹⁷² In the first months of 2011 some NGOs have launched a program in the area (using offices in Prijedor) to address victims of sexual violence during the war. However, these organizations are not receiving any kind of support from the State.

stigmatising for victims of torture and shall cover the whole territory of BiH. It is also crucial that the existing personnel of the Centre for Mental Health is educated to the specific problems faced by victims of torture.

7. Conclusions and Recommendations

124. Although almost 20 years have passed since the conclusion of the war in BiH, thousands of former camp detainees have not been guaranteed access to justice, compensation and integral reparation for the harm suffered. On the contrary, they remain among the most marginalised and stigmatised categories within BiH society. BiH remains in breach of its international obligations as spelled out, among others, by the Convention against Torture and the International Covenant on Civil and Political Rights. In particular, the present situation corresponds to ongoing violations by BiH of its obligations under Arts. 1, 2, 4, 5, 7, 12, 13 and 14 of the Convention against Torture; and of Arts. 2, paras. 2 and 3, 7, 8, para. 3, 9, and 10 of the International Covenant on Civil and Political Rights.
125. The subscribing associations are persuaded that a country visit, jointly or separately, of the distinguished Special Rapporteur on Torture and the WGAD to BiH would provide them with a firsthand account of the situation concerning former camp detainees and would greatly contribute to maintaining such a fundamental item on the agenda, until thousands of women and men are granted their rights to justice and integral reparation. Indeed, this would be an opportunity for the Special Rapporteur on Torture and the WGAD to also address other issues related to torture and other forms of inhuman or degrading treatment or punishment, and arbitrary detention in BiH that were not addressed in the present general allegation, but that are nonetheless a source of concern for the subscribing associations and international organisations. Therefore, we would request the Special Rapporteur on Torture and the WGAD to solicit an invitation to carry out such visit to the government of BiH, bearing in mind that on 7 May 2010 BiH issued a standing invitation to all United Nations thematic procedures, thereby announcing that it will always accept requests to visit.
126. Moreover, for the reasons explained above, the associations submitting the present document respectfully request the Special Rapporteur on Torture and the WGAD to recommend BiH to:
- ▶ set up a unified and accurate database of former camp detainees that also encompasses the cases of those currently living abroad. The setting up of such a database shall be responsibility of the State, which must secure transparency and certainty in the process, as well as, taking into account the sensitivity of this matter, an adequate protection of the security and the privacy of the victims.
 - ▶ undertake all necessary actions to ensure that former camp detainees are recognised as an autonomous category of victims, encompassing both civilians and war prisoners, and the legal vacuum concerning their rights is filled as soon as possible.
 - ▶ ensure that the Criminal Code of BiH is amended and that the punishment for the offence of

torture is commensurate to the gravity of the crime. Ensure that the criminal codes at the entity level integrate the crime of torture as defined under Art. 1 of the Convention against Torture, criminalising also the incitement, instigation, superior orders or instructions, consent, acquiescence and concealment of acts of torture. Entities shall also integrate torture as a crime against humanity and as a war crime in accordance with international standards.

- ▶ ensure that criminal codes at all levels explicitly define that a person who acted pursuant to an order to commit torture, shall not be relieved of criminal responsibility and that those who refuse to obey such an order will not be punished.
- ▶ ensure that criminal codes at all levels are harmonised with regard to the crimes of arbitrary detention and forced labour. The latter shall be sanctioned even when committed as an isolated instance. Arbitrary detention shall be sanctioned taking into account the gravity of the crime.
- ▶ ensure that a law on the rights of victims of torture is adopted without any further delay and adequate financial resources are secured for its implementation. The drafting of this law shall be the result of a broad consultation of civil society, including in particular victims of torture and, especially, former camp detainees. In order to avoid instances of overlapping or duplication, the adoption of this law shall be coordinated with other relevant initiatives concerning victims of the conflict, such as the National Strategy on Transitional Justice and the program to improve the status of BiH women victims/survivors of sexual violence in conflict and beyond coordinated by UNPFA and the Ministry for Human Rights and Refugees.
- ▶ ensure that the National Strategy on Transitional Justice is implemented without further delay.
- ▶ ensure that the National Strategy for War Crimes is duly implemented without delay and its application is thoroughly explained to the wide public in a transparent manner, thus fostering a climate of trust towards institutions. Undisputedly, the existence of the strategy cannot be used to delay indefinitely investigations and to avoid providing information to victims of gross human rights violations, their relatives or their representative associations. BiH authorities shall take all necessary measures to prevent the flight of people accused of or convicted for war crimes and crimes against humanity and to investigate, judge and sanction those responsible for these events.
- ▶ ensure that former camp detainees are given information on a regular basis on the process of investigation carried out by the Prosecutor's Office, the results of those investigations and whether trials might be forthcoming. Courts at all levels shall have consistent rules in dealing with the public in general and with former camp detainees in particular.
- ▶ ensure that a comprehensive programme of vetting is undertaken in order to avoid that war criminals hold public offices and work in the police.
- ▶ ensure that in the investigation and prosecution of war crimes and crimes against humanity, including those committed against former camp detainees, prosecutors and courts at all levels must apply the 2003 Criminal Code and not the Criminal Code of the SFRY.

- ▶ ensure the passage of the 2011 draft witness protection programme law and allocate resources to SIPA as needed to provide effective protection.
- ▶ ensure that a comprehensive programme of witness protection and psychological accompaniment is granted at all levels prior, during and after the trial takes place. Instances of threats or harassment against witnesses, victims, their families, their counsels as well as against their representative associations shall be promptly and thoroughly investigated and those responsible shall be judged and sanctioned. Witnesses shall obtain adequate material support, including safe and free of charge transportation to and from the court and other judicial institutions. Witness protection and support shall be victim-oriented and supplied by experts who are adequately trained to provide these services and are financed by the State. The State shall ensure that witnesses in war crimes trials have access to adequate legal consultancy free of charge. The State must ensure to set up without delay an effective public system of free legal aid enabling victims of war to receive legal support (counselling and, if need be, access to court), if they are not able to afford it.
- ▶ implement a national programme on measures of reparations for civilian victims of war, including former camp detainees that encompasses compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition. Also civilian victims of war currently living abroad shall be entitled to realise their right to compensation and restitution. The notions of “civilian victim of war” and “beneficiary of social assistance” shall be clearly distinguished, as well as those of “compensation and reparation” and “social assistance”. In general, civilian victims of war shall not receive a worst treatment compared to that of war veterans.
- ▶ take all necessary measures to raise awareness about the status as civilian victim of war, the conditions and procedures to apply for it and the rights deriving from this. BiH must ensure that adequate and effective criteria are applied to recognise the status of civilian victim of war without discrimination.
- ▶ the process of revision of social benefits awarded to war veterans in the FBiH shall not depend solely on the existence of formal mistakes in the documentation and certificates held by the veterans and shall be conducted without discrimination. Moreover, those living outside Sarajevo who have to travel there to be subjected to the revision process and are not able to cover travel costs shall receive support in this sense.
- ▶ guarantee that claims relating to reparations for gross violations of human rights and humanitarian law shall not be subject to statutes of limitations in any event. Furthermore, proceedings concerning claims for compensation for the harm suffered by former camp detainees and victims of torture should not be subjected to court fees and they should not depend on the production of documentation issued during the conflict.
- ▶ ensure that former camp detainees are adequately informed about their right to claim compensation from individual perpetrators and, where a judgment of the State Court refers them to civil proceedings for this purpose, they are automatically notified about the relevant decision

and provided with free legal aid to effectively fulfil their rights.

- ▶ adopt all necessary measures to ensure that the psychological impact on individuals, in particular on former camp detainees as a result of their return to the pre-war places of residence, is duly considered when evaluating whether there are the conditions for a “safe and dignified” return of internally displaced persons or refugees. No one shall be forced to return if they do not wish to do so. Those not willing to return shall be provided with alternative options of resettlement, guaranteeing access to safe and adequate housing to them and their families. In no case shall the return to the pre-war place of residence determine the loss of the social benefits to which the victim is entitled.
- ▶ undertake without delay all necessary measures to guarantee the reintegration of former camp detainees in the labour market as well as access to vocational trainings. Both at the State and the entity level preferential treatment in employment shall be assured to former camp detainees and the legal framework shall be amended accordingly.
- ▶ guarantee to the children of former camp detainees the access to education.
- ▶ develop a system to provide former camp detainees in BiH, including those who live in remote areas of the country, with access to psychological accompaniment, medical insurance and medical treatment free of charge. Indeed, special attention shall be devoted to the amendment of the legal framework in the Republika Srpska and in the District of Brčko in order to overcome the existing gaps.

On behalf of:

Association of the Concentration Camp Detainees of Bosnia and Herzegovina

Association of Detained – Association of Camp Detainees of Brčko District Bosnia and Herzegovina

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

Croatian Association of Camp Detainees from the Homeland War in Vareš

Prijedor 92

Regional Association of Concentration Camp Detainees Višegrad

Sumejja Gerc

Vive Žene Tuzla

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

Philip Grant

TRIAL Director

The Associations Submitting this General Allegation

a) TRIAL (Swiss Association against Impunity)

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



Considering that the needs of victims of gross human rights violations during the war, their relatives and the organisations which represent them are sadly overwhelming and that there is no similar initiative in BiH and the region, TRIAL has been active and present in the country since early 2008. TRIAL is thus currently providing legal support to victims of gross human rights violations committed during the war and their relatives who wish to bring their cases before an international human rights mechanism. So far, TRIAL has submitted 38 applications related to gross human rights violations perpetrated during the war to the European Court of Human Rights (ECtHR) and to United Nations Human Rights Committee (HRC). On 29 June 2009 TRIAL submitted a general allegation to the WGEID about the numerous obstacles encountered in the implementation of the 1992 Declaration for the Protection of All Persons from Enforced Disappearance. As a consequence of the general allegation submitted by TRIAL, the WGEID visited BiH from 14 to 21 June 2010 and in March 2011 it presented the report on its mission to the Human Rights Council.

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

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

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b) Association of the Concentration Camp Detainees of Bosnia and Herzegovina

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



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

- ▶ Contact person: Mr. Murat Tahirović (President)
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c) Association of Detained – Association of Camp Detainees of Brčko District Bosnia and Herzegovina

Association of Detained – Association of Camp Detainees of Brčko District Bosnia and Herzegovina is a non-governmental and non-partisan association of citizens, former detainees from the area of Brčko District in BiH, and it gathers the persons who went through different types of torture during the war. It was established on 25 September 2005 in Brčko. In its database, the association registered 1,300 persons who were arbitrarily detained in different camps on the territories of BiH, Serbia and Croatia. 421 members of the association went through the procedure for obtaining a status of camp detainees. In its activities, among others, the association does the following: registers former detainees, gives statements for the purposes of proving the arrests and detention, identifies mass graves, gathers documents and other evidences of detention, cooperates with domestic judicial institutions.



- ▶ Contact person: Mr. Fadil Redžić, President
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d) Croatian Association of War Prisoners of the Homeland War in the Canton of Central Bosnia

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



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

- ▶ Contact person: Mr. Anđelko Kvesić (President)
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e) Croatian Association of Camp Detainees from the Homeland War in Vareš

The Croatian Association of Camp Detainees from the Homeland War in Vareš was established in 1998 but after the reorganisation, it started being active only in 2004. It works with families of missing persons and former camp detainees from Vareš,



HRVATSKA UDRUGA LOGORAŠA
domovinskog rata u ZE-DO županiji
Ogranak Vareš

Kakanj, Breza, Ilijaš, Visoko and Olovo, aiming to be of help to war victims through its work. The association is a multi-ethnic non-governmental organisation whose main characteristic is the good cooperation with other association, especially with the Bosniak association of former camp detainees from Vareš.

- ▶ Contact person: Mr. Zlatko Prkić, President
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f) Prijedor 92

The Association Prijedor 92 from Prijedor was established in July 2007. Previously, they worked informally due

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



- ▶ Contact person: Mr. Mirsad Duratović (President)

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g) Regional Association of Concentration Camp Detainees Višegrad

The Regional Association of Concentration Camp Detainees Višegrad was founded in December 2003 and it is a member of the Association of Concentration Camp Detainees of Republika Srpska. The association is organized and operates at a regional level and includes the following



municipalities: Višegrad, Rudo, Foča, Čajniče, Kalinovik and Novo Goražde. In its work, the association strives to gather information regarding camp detainees in the region. The association has been implementing different activities and by now has implemented projects of different nature, including healthcare treatment, employment, and housing. The primary goal of the association is to help the population of former camp detainees, especially ensuring that they overcome their trauma and are fully inserted in Bosnian society.

- ▶ Contact person: Mr. Dragiša Andrić (President)

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h) Sumejja Gerc

The Association Sumejja Gerc, also known as Centre for Victims of the Vojno Concentration Camp fights for the



U.G. "GERC SUMEJJA -CENTAR ŽRTAVA LOGORA VOJNO"
Mostar Sjever - Potoci

rights of 120 women victims of concentration camps and war torture, 56 children victims of torture, 134 men former concentration camp-detainees of Herzegovina camps and 28 women victims of war torture from the area of Prozor Municipality. The Association has a mandate to empower victims to regain their dignity; to gather information and written statements about places and manner of suffering; to cooperate with the Prosecutor's Office and the Court of BiH and establish a network of children and women who have suffered on the territory of Herzegovina. The protection of social rights of the victims is also one part of the mandate of the Association as well as the organising of rehabilitation activities (organising field-trips, social events, and

medical treatments). Educational programmes for the economical empowerment for victims are also initiated and realized by the Association and they lead to the overall development of the local community. The Association cooperates with social and medical institutions with the aim of providing expert help in the treatment of victims of war.

Sumejja Gerc participates to the extended working group coordinated by UNFPA for the development of a National Strategy to deal with Women victims of violence during the war.

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i) **Vive Žene Tuzla**

The Association Vive Žene Tuzla (Centre for Therapy and Rehabilitation) is a NGO which was established in 1994 and that focuses on psycho-social help and support, education, and promotional-editorial activities with a multi-disciplinary, democratic and participatory approach to the work with traumatised families and individuals. The primary goal of Vive Žene Tuzla is to improve the mental health of people who were subjected



to torture during the conflict in BiH, minimising the effects of trauma-related disorders in the lives of tortured, raped or abused victims and facilitating their emotional healing. Vive Žene Tuzla considers that the maintaining and protection of the mental health of citizens is a sound way to contribute to the reconstruction of a war-torn society. While respecting the basic principles of humanity and human rights, the organisation implements basic values laid through the work with marginalised groups, civilian victims of war and the protection of the families with children. The work carried out by Vive Žene Tuzla aims at preventing torture through a multidisciplinary approach, including psychotherapy, psychosocial, social, medical and legal counselling. Accordingly, the team of Vive Žene Tuzla consists of psychologists, social workers, instructors, teachers, doctors, a nurse, a psychotherapist and a legal counsel. Besides working with individuals, the organisation works also in the community, with a view to foster reconciliation, representation, rebuilding of trust and reconstruction of broken relationships and reduction of ethnic barriers.

Representatives of Vive Žene Tuzla took part to the consultation process for the development of a National Strategy for Transitional Justice lead by the UNDP. The Association also participates to the extended working group coordinated by UNFPA for the development of a National Strategy to deal with Women victims of violence during the war.

Vive Žene Tuzla, in cooperation with the Ministry of Human Rights and Refugees, implements the project

called Together against Torture in BiH – Network Project financed by the European Commission. The main associations of former camp detainees participate to the project.

- ▶ Contact persons: Ms. Teufika Ibrahimfendić (Psychotherapist and coordinator of the education programme), and Ms. Jasna Zečević (Director)

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

The Women's Section of the Concentration Camp Torture Survivors Canton Sarajevo which functions as part of the Union of Concentration Camp Torture Survivors of Canton



Sarajevo (formed in 1997) is a non-governmental association which gathers women who were forcibly taken away and interned in concentration camps during the war in BiH. The Section has about 1,000 members out of which around 60% came from Eastern Bosnia: Foča, Rogatica, Rudo, Višegrad, Čajniče while around 40% from the area of Sarajevo Canton. Most of the members of the association suffered the worst possible psychological and physical torture, rape or other forms of sexual violence which left a deep mark on their mental and physical health. The Section of Women works with people who have altered their personality, who consider themselves persons who have been changed forever and for whom it is unlikely that they would ever be able to function in line with their role in the family and society. The Women's Section offers to these victims the following programmes of support: computer school; English school; sewing classes; nature empowerment programme; human rights classes; discount on bus tickets; support packages (including food and hygienic items); medical and psychological support in collaboration with the Centre for Victims of Torture; and massage treatments in collaboration with the Healing Hands Network. It is noteworthy that ten members of the Women's Section participated in the award-winning film Grbavica directed by Ms. Jasmila Žbanić.

The Women's Section of the Concentration Camp Torture Survivors Canton Sarajevo participates to the extended working group coordinated by UNFPA for the development of a National Strategy to deal with Women victims of violence during the war.

- ▶ Contact persons: Ms. Alisa Muratčauš (Project coordinator) and Mrs. Enisa Salčinović (President of the Women's Section of the Association)

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Annexes

1. List of detention camps set up in BiH during the conflict.
2. Letter No. 05-502/07 of 11 December 2007 from the Women's Section of the Association of Concentration Camp Detainees to the President of the Commission of Awarding Apartments in the Municipality of Ilidža (in the local language).
3. Letter No. 05-502/07 of 11 December 2007 from the Women's Section of the Association of Concentration Camp Detainees to the President of the Commission of Awarding Apartments in the Municipality of Ilidža (unofficial translation in English).
4. Letter No. 05-128/09 of 21 April 2009 from the Women's Section of the Association of Concentration Camp Detainees to the Public Facility Centre for Social Work of the Sarajevo Canton – Service for Social Work of the Vogošća Municipality (in the local language).
5. Letter No. 05-128/09 of 21 April 2009 from the Women's Section of the Association of Concentration Camp Detainees to the Public Facility Centre for Social Work of the Sarajevo Canton – Service for Social Work of the Vogošća Municipality (unofficial translation in English).
6. Letter No. 05-23/08 of 15 June 2008 from the Women's Section of the Association of Concentration Camp Detainees to the President of the Commission for Awarding Apartments of the Sarajevo Canton (in the local language).
7. Letter No. 05-23/08 of 15 June 2008 from the Women's Section of the Association of Concentration Camp Detainees to the President of the Commission for Awarding Apartments of the Sarajevo Canton (unofficial translation in English).
8. Letter No. 05-168/08 of 20 May 2009 from the Women's Section of the Association of Concentration Camp Detainees to the Ministry of Labour, Social Politics, Displaced Persons and Refugees (in the local language).
9. Letter No. 05-168/08 of 20 May 2009 from the Women's Section of the Association of Concentration Camp Detainees to the Ministry of Labour, Social Politics, Displaced Persons and Refugees (unofficial translation in English).
10. Letter No. 05-289/07 of 23 May 2007 from the Women's Section of the Association of Concentration Camp Detainees to the Department of Housing Affairs of the Sarajevo Canton (in the local language).
11. Letter No. 05-289/07 of 23 May 2007 from the Women's Section of the Association of Concentration Camp Detainees to the Department of Housing Affairs of the Sarajevo Canton (unofficial translation in English).
12. Letter No. 05-72/10 of 6 March 2010 from the Women's Section of the Association of Concentration Camp Detainees to the Municipal Commission of Novi Grad for awarding apartments (in the local language).

13. Letter No. 05-72/10 of 6 March 2010 from the Women's Section of the Association of Concentration Camp Detainees to the Municipal Commission of Novi Grad for awarding apartments (unofficial translation in English).
14. Letter No. 13-05-36-23013 of 28 December 2005 from the Ministry of Labour, Social Politics, Displaced Persons and Refugees to the Women's Section of the Association of Concentration Camp Detainees (in the local language).
15. Letter No. 13-05-36-23013 of 28 December 2005 from the Ministry of Labour, Social Politics, Displaced Persons and Refugees to the Women's Section of the Association of Concentration Camp Detainees (unofficial translation in English).
16. Letter No. 05-155/05 of 25 June 2005 from the Women's Section of the Association of Concentration Camp Detainees to the Ministry of Labour, Social Politics, Displaced Persons and Refugees (in the local language).
17. Letter No. 05-155/05 of 25 June 2005 from the Women's Section of the Association of Concentration Camp Detainees to the Ministry of Labour, Social Politics, Displaced Persons and Refugees (unofficial translation in English).
18. Letter No. 05-73/10 of 6 March 2010 from the Women's Section of the Association of Concentration Camp Detainees to the Municipal Mayor of Novi Grad (in the local language).
19. Letter No. 05-73/10 of 6 March 2010 from the Women's Section of the Association of Concentration Camp Detainees to the Municipal Mayor of Novi Grad (unofficial translation in English).
20. Letter No. 20-01-91/10 of 13 April 2010 from the Clinical Centre of the University of Sarajevo to the Municipal Commission for Awarding Apartments (in the local language).
21. Letter No. 20-01-91/10 of 13 April 2010 from the Clinical Centre of the University of Sarajevo to the Municipal Commission for Awarding Apartments (unofficial translation in English).
22. Letter No. 05-150/10 of 28 June 2010 from the Women's Section of the Association of Concentration Camp Detainees to the Dean of the Electro-Technical Faculty of the University of Sarajevo (in the local language).
23. Letter No. 05-150/10 of 28 June 2010 from the Women's Section of the Association of Concentration Camp Detainees to the Dean of the Electro-Technical Faculty of the University of Sarajevo (unofficial translation in English).
24. Law on Right to a Compensation for Pecuniary and non-pecuniary Damage, caused by the War Activities in the Period from 20.05.1992 to 19.06.1996, Official Gazette RS No. 1, 5 January 2009 (in the local language).
25. Law on Right to a Compensation for Pecuniary and non-pecuniary Damage, caused by the War Activities in the Period from 20.05.1992 to 19.06.1996, Official Gazette RS No. 1, 5 January 2009

(unofficial translation of relevant excerpts in English).

26. Order No. 01-41-6112/11 of 7 December 2011 issued by the Federal Ministry of War Veterans (in the local language, on two separate pages).
27. Order No. 01-41-6112/11 of 7 December 2011 issued by the Federal Ministry of War Veterans (unofficial translation in English).
28. Decision delivered on 15 November 2011 by the Supreme Court of the FBiH on the non applicability of statutory limitations to claims for non-pecuniary damage filed by former camp detainees (in the local language).
29. Decision delivered on 15 November 2011 by the Supreme Court of the FBiH on the non applicability of statutory limitations to claims for non-pecuniary damage filed by former camp detainees (unofficial translation in English of relevant excerpts).
30. Decision issued on 2 February 2011 by the Supreme Court of the RS (in the original language).
31. Decision issued on 2 February 2011 by the Supreme Court of the RS (unofficial translation of relevant excerpts and summary)