



**International Convention for  
the Protection of All Persons  
from Enforced Disappearance**

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**Committee on Enforced Disappearances**

**Consideration of reports submitted by States  
parties under article 29, paragraph 1,  
of the Convention**

**Reports of States parties due in 2014**

**Bosnia and Herzegovina\***

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## I. Introduction

1. We invoke the Revised Common Core Document forming part of the report of the Member State Bosnia and Herzegovina, which is deposited under number HRI/CORE/BIH/2011 with the relevant United Nations bodies.
2. The International Convention for the Protection of All Persons from Enforced Disappearance was adopted by the General Assembly on 20 December 2006. The Convention was opened for signature on 6 February 2007. Bosnia and Herzegovina ratified the International Convention for the Protection of All Persons from Enforced Disappearances in April 2012 (Official Gazette of Bosnia and Herzegovina, Treaties, 3/12 dated 15 March 2012). By confirming this Convention, Bosnia and Herzegovina committed to implement the Convention and to take appropriate measures to prevent and sanction enforced disappearances.
3. In accordance with Article 29 of the Convention, Bosnia and Herzegovina is obliged to submit to the Committee on Enforced Disappearances, through the Secretary-General, a report on measures taken to fulfil the obligations under this Convention, within two years after the entry into force of the Convention. The Initial Report on the Implementation of the International Convention for the Protection of All Persons from Enforced Disappearance was prepared by the Inter-ministerial Working Group consisting of representatives of relevant ministries and institutions in Bosnia and Herzegovina. The joint efforts of the Inter-ministerial Working Group were coordinated by the Ministry for Human Rights and Refugees of Bosnia and Herzegovina.
4. The Draft Initial Report was sent to the associations of missing persons in Bosnia and Herzegovina, the Advisory Board of the Missing Persons Institute of Bosnia and Herzegovina, ICMP, International Red Cross and others in the procedure of public consultations and debates in order to assess the situation in Bosnia and Herzegovina respecting the fulfilment of commitments Bosnia and Herzegovina has under this Convention.
5. After the declaration of independence on 6 March 1992, a brutal war broke out in Bosnia and Herzegovina. More than 100,000 people are believed to have been killed in this war and more than two million were displaced. It is estimated that 30,000 people disappeared in the war and one third of them are still missing. The war ended on 14 December 1995 when the General Framework Agreement for Peace in Bosnia and Herzegovina came into force.
6. In response to the horrors taking place in Bosnia and Herzegovina, on 25 May 1993, the Security Council issued resolution 827 which established the International Criminal Tribunal for Former Yugoslavia (ICTY) based in The Hague. Although the ICTY and national courts have parallel jurisdiction in relation to serious violations of international humanitarian law committed in former Yugoslavia, the ICTY may take priority over national investigations and proceedings at any time, if this proves to be in the interest of international justice.
7. In Bosnia and Herzegovina in 1996, the International Commission on Missing Persons (ICMP) was established and based in Sarajevo. In addition to involvement in the former Yugoslavia, ICMP is currently very active in helping governments and their institutions in various parts of the world in political and social issues related to missing persons and the establishment of an efficient system of identification after war or natural disaster.

8. In accordance with its mandate and Annex VII of the Dayton Peace Agreement, the International Committee of the Red Cross (ICRC) provides support to the process of searching for and resolving the fate of missing persons and provides support to families of missing persons in the exercise of their rights. Since 1995, families have filed with the ICRC more than 22,400 requests for search of their relatives who went missing during the war in Bosnia and Herzegovina. Updated information about the status of these cases can be found on the website of the ICRC: [www.familylinks.icrc.org](http://www.familylinks.icrc.org) (for Bosnia and Herzegovina: <http://familylinks.icrc.org/bosnia/en/Pages/Home.aspx>). Since the establishment of the Missing Persons Institute of Bosnia and Herzegovina, the ICRC contribution to the process of the search is focused on the systematic and targeted support to the Institute in close collaboration with the co-founders of the Institute – the Council of Ministers of Bosnia and Herzegovina and ICMP. The ICRC provides special support to the creation of the Central Records of Missing Persons, a database of the Institute, which will contain the names of all missing persons in Bosnia and Herzegovina after the completion.

## **II. Implementation of individual articles of the Convention**

### **Article 1 – Prohibition of enforced disappearance**

9. The Constitution of Bosnia and Herzegovina enshrines human rights and freedoms. The guaranteed human rights and freedoms may be restricted only by law, to the extent permitted by the Constitution of Bosnia and Herzegovina and to the extent that is necessary in an open and democratic society for the purpose for which the restriction is allowed. Measures of restriction may apply only as long as war or emergency lasts. The Constitution of Bosnia and Herzegovina provides that all persons in the territory of Bosnia and Herzegovina shall enjoy the following human rights and freedoms: the right to life, the right not to be subjected to torture or inhuman or degrading treatment or punishment, the right not to be held in slavery or servitude or to perform forced or compulsory labour, the right to liberty and security, right to a fair hearing in civil and criminal matters and other rights in connection with criminal proceedings, the right to private and family life, home and correspondence, freedom of thought, conscience and religion; freedom of expression, freedom of peaceful assembly and freedom of association with others, the right to marry and found a family, the right to property, the right to education, the right to freedom of movement and residence. Deprivation of liberty is allowed only on the grounds and following the procedure prescribed by law and unlawful deprivation of liberty shall be punishable. No one can repeal the following bans: inciting hatred or intolerance, discrimination and double jeopardy.

10. For the fulfilment of the standard established in the International Convention for the Protection of All Persons from Enforced Disappearance, as already mentioned in the previous paragraph, in the area respecting the protection of enforced disappearance, Bosnia and Herzegovina has general guarantees of personal liberty and the right of each individual not to be subjected to torture or inhuman or degrading treatment or punishment, the right not to be held in slavery or servitude or to perform forced or compulsory labour, the right to liberty and security, the right to a fair hearing in civil and criminal matters and other rights in connection with criminal proceedings. Article II of the Constitution of Bosnia and Herzegovina has a catalogue of rights listing rights that are in conjunction with Article 1 of the International Convention for the Protection of All Persons from Enforced Disappearance. In accordance with the Constitution of Bosnia and Herzegovina, the Entity constitutions and the cantonal constitutions, the criminal law criminalizes acts that are indirectly linked to the crime of enforced disappearance.

11. In Bosnia and Herzegovina there are four criminal codes and they are: the Criminal Code of Bosnia and Herzegovina, the Criminal Code of the Federation of Bosnia and Herzegovina, the Criminal Code of the Republika Srpska and the Criminal Code of the Brcko District of Bosnia and Herzegovina. These codes do not contain a definition of “enforced disappearance” as a separate crime, but the Criminal Code of Bosnia and Herzegovina defines instead, in Chapter XVII titled “Crimes against humanity and values protected by international law”, offences which are essentially similar to those provided for in the Convention as enforced disappearance, but the characteristics of these acts do not substantially correspond to the definition of enforced disappearance, as they lack one important feature. The crimes under Chapter XVII of the Criminal Code of Bosnia and Herzegovina can be perpetrated by any person, while the enforced disappearance involves perpetrators who are agents of the State or persons or groups of persons who have authorization, support or acquiescence of the State, which disappearance is followed by refusal to recognize the deprivation of liberty or by concealment of information about the fate or whereabouts of the missing person.

## Article 2 – Definition of enforced disappearance

12. The definition of enforced disappearance is contained in Article 172 of the Criminal Code of Bosnia and Herzegovina<sup>1</sup> (hereinafter: BiH CC) under “crimes against humanity”.<sup>2</sup> It includes all the three crime-forming elements it has to have according to the Convention (1. arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, 2. a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, 3. an intention to place such a person outside the protection of the law for a long time). However, according to the provision cited, a perpetrator is liable for the crime only when it took place in the context of widespread and systematic attacks against the civilian population.

13. Apart from the Criminal Code of Bosnia and Herzegovina, the Criminal Code of the Federation of Bosnia and Herzegovina, the Criminal Code of the Republika Srpska and the Criminal Code of Brcko District of Bosnia and Herzegovina<sup>3</sup> are applied but they do not contain a definition of enforced disappearance nevertheless.

14. Pursuant to the criminal law of Bosnia and Herzegovina, the State party has an obligation to criminalize the widespread and systematic practice of enforced disappearance defining it as a crime against humanity and to ensure that it entails internationally defined legal consequences. Pursuant to this provision, the report should include:

<sup>1</sup> The Criminal Code of Bosnia and Herzegovina (BiH Official Gazette 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10).

<sup>2</sup> (1) Whoever, as part of a widespread or systematic attack directed against any civilian population, with knowledge of such an attack perpetrates any of the following acts: (...) i) enforced disappearance of persons (...) shall be punished by imprisonment for a term not less than ten years or long-term imprisonment. (2) For the purpose of paragraph 1 of this Article the following terms shall have the following meanings: (...) h) Enforced disappearance of persons means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with an aim of removing them from the protection of the law for a prolonged period of time. (...).

<sup>3</sup> The Criminal Code of the Federation of Bosnia and Herzegovina (FBiH Official Gazette 36/03,37/03,21/04, 69/04,18/05,42/10,42/11), the Criminal Code of Republika Srpska (RS Official Gazette 49/03, 108/04, 37/06, 70/06, 73/10, 1/12, 67/13), the Criminal Code of Brčko District (BD of BiH Official Gazette 10/03, 45/04, 6/05, 21/10, 47/11, 9/13).

- Information about the definition of enforced disappearance as a crime against humanity in accordance with the current international law, i.e. when it took place in the context of widespread and systematic attacks against the civilian population;
- Information about national statutory legal consequences in the light of the current international law with a reference to the enforcement of Articles 7 and 8 of the Convention in particular.

15. Article 2 of the Criminal Procedure Code of the Republika Srpska (Republika Srpska Official Gazette 53/12) provides that prior to the rendering of a finally binding verdict the freedom and other rights of the suspect or accused shall be limited only under the conditions set forth in this Code.

16. The Criminal Code of the Republika Srpska (Republika Srpska Official Gazette 49/03, 108/04, 37/06, 70/06, 73/10, 1/12, 67/13) does not provide for a crime of “enforced disappearance”. However, Article 166 of RS CC provides for a crime of “Unlawful Deprivation of Freedom” which mostly encompass the elements of a crime of enforced disappearance given in Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance (Convention). Namely, unlawful deprivation of freedom is considered any unlawful imprisonment of persons, keeping them imprisoned or otherwise unlawfully restricting their freedom of movement and it carries a fine or imprisonment for a term not exceeding one year. Paragraph 2 of the Article determines that, if the criminal offence referred to in Paragraph 1 of this Article was committed by an official person by abuse of official position or authority, he shall be punished by imprisonment for a term not exceeding three years.

17. The crime as defined in Article 166 of RS CC lacks an important element from the Convention and it is that the unlawful deprivation of freedom was “perpetrated by agents of the State or persons or groups of persons who have authorization, support or acquiescence of the State, which disappearance is followed by refusal to recognize the deprivation of liberty or by concealment of information about the fate or whereabouts of the missing person”.

18. Accordingly, an analysis of compliance of the Republika Srpska legislation with the Convention evolves reviewing the compliance of the crime of illegal deprivation of liberty and shows that it only partially covers the elements of a crime of forced disappearance.

19. In relation to the principles set forth in Articles 2 and 7 the Convention, the Federation Ministry of Justice of Bosnia and Herzegovina emphasizes the following provisions of criminal legislation of the Federation of Bosnia and Herzegovina: The Criminal Code of the Federation of BiH (Federation of Bosnia and Herzegovina Official Gazette 36/03, 37/03, 21/04, 69/04, 18/05, 42/10) does not contain a definition of “enforced disappearance” nor does it provide for such a crime. However, taking into account the definition of enforced disappearance set forth in Article 2 of the Convention, the Federation of Bosnia and Herzegovina CC provides for the following crimes whose elements, in our opinion, cover the definition of “enforced disappearance”:

“Article 179 – Unlawful Deprivation of Freedom

(1) Whosoever unlawfully imprisons another, keeps him imprisoned or otherwise restricts his freedom of movement, shall be punished by a fine or imprisonment for a maximum term of three years.

(2) If the unlawful deprivation of freedom under paragraph 1 above lasts for more than thirty days, or if cruelty is involved, or if grave impairment to a person’s health or other serious consequences ensue, the offender shall be punished by imprisonment for a term of between two and eight years.

(3) If the person who is illegally deprived of his freedom loses his life as a result of the deprivation of freedom under paragraph one above, the offender shall be punished by imprisonment for a minimum term of five years.

#### Article 180 – Abduction

(1) (Whosoever unlawfully imprisons another person, keeps him imprisoned or otherwise restricts his freedom of movement in order to force him or some other person to do or not to do some act, or to suffer, shall be punished by imprisonment for a term of between six months and five years.

(2) Whosoever commits an offence under paragraph 1 above against a child or juvenile, or threatens to kill or inflict grievous bodily harm upon the abducted person for the reasons set out in paragraph 1 above, or who commits the said offence as one of a group of people or organized group of people, shall be punished by imprisonment for a term of between one and ten years.

(3) Any offender under paragraphs 1 or 2 above, who voluntarily releases the hostage before his demands are satisfied, may be released from liability for the offence.”

20. Article 2(2) of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina (Federation of Bosnia and Herzegovina Official Gazette 35/03, 37/03, 56/03, 78/04, 28/05 55/06, 27/07, 53/07, 9/09, 12/10, 8/13) provides: “(2) Prior to the rendering of a finally binding verdict the freedom and other rights of the suspect or accused may be limited only under the conditions set forth in this Code.”

21. The importance of Article 180(3) is derived from the enforcement of the principle set forth in Article 7(2) of the Convention. It provides for mitigating circumstances, “in particular for persons who, having been implicated in the commission of an enforced disappearance, effectively contribute to bringing the disappeared person forward alive”.

### Article 3 – Investigation

22. Article 3 of the Convention provides for an obligation of each State party to take appropriate measures to investigate acts defined in Article 2 committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice.

23. Pursuant to Article 3 of the International Convention for the Protection of All Persons from Enforced Disappearance, each State party, including Bosnia and Herzegovina, takes appropriate measures to investigate enforced disappearance and bring those responsible to justice.

24. The Prosecutor’s Office of Bosnia and Herzegovina prosecutes criminal offences and other offences prosecuted *ex officio*, uses legal means within its competences and performs other statutory duties. In order to exercise the function of prosecution of perpetrators of criminal and other offences punishable by law, the Prosecutor’s Office of Bosnia and Herzegovina, together with other competent authorities, is authorized to take necessary measures to detect criminal and other statutory offences and their perpetrators.

25. As of 1 February 2014, a total of 78 cases involving the criminal offence of crimes against humanity, including acts of enforced disappearance were pending before Prosecutor’s Office of Bosnia and Herzegovina against 356 persons. Of that number, 28 cases against 173 persons were at the stage of filing criminal charges, 32 cases against 93 persons were under investigation, one indictment involving 1 person was confirmed, 3 cases involving seven persons were tried at court, three cases involving 6 persons were

appealed and 11 cases involving 15 persons were finally disposed of. It should be noted that, in addition to the crime of enforced disappearance, the perpetrators were charged with other criminal acts constituting the criminal offence of Crimes against Humanity.

26. The concept and types of police activities are regulated in the Laws on Home Affairs of Bosnia and Herzegovina and they include: protecting the safety of citizens and the constitutional rights and freedoms, prevention and detection of criminal offences and misdemeanours/infractions, detection of perpetrators of criminal offences and misdemeanours/infractions and bringing them before competent authorities, providing conditions for detention and other activities provided for in the Laws in Bosnia and Herzegovina.

27. The duty of police in Bosnia and Herzegovina is the protection of rights guaranteed by providing a safe and secure environment and respecting international human rights and fundamental freedoms guaranteed by the Constitution of Bosnia and Herzegovina and the European Convention on Human Rights and Fundamental Freedoms. In addition to the police at all levels of government in Bosnia and Herzegovina, which are required to protect the rights guaranteed, the Prosecutor's Office of Bosnia and Herzegovina has a duty to prosecute offenders and perform other responsibilities impartially in accordance with the Constitution of Bosnia and Herzegovina and laws of Bosnia and Herzegovina.

28. Article 3 of the International Convention for the Protection of All Persons from Enforced Disappearance provides that each State party, including Bosnia and Herzegovina, takes appropriate measures to investigate acts defined in article 2 committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice. When Article 3 of the Convention is read in conjunction with the applicable regulations in Bosnia and Herzegovina and when the provisions that define the rights and duties of the prosecutor are compared with the requirements set by the Convention to the State to fulfil it, it can be seen that the valid criminal procedure in Bosnia and Herzegovina meets the requirements of the Convention. The law provides<sup>4</sup> that a fundamental right and a duty of the prosecutor are detection and prosecution of crimes under jurisdiction of the court. Paragraph 2 of the Article prescribes rights and duties of the prosecutor that allow the prosecution and detection of offenders. For example, the Criminal Code of BD of Bosnia and Herzegovina does not provide for a criminal offence of enforced disappearance and it will eventually have to be amended in order to prescribe the new criminal offence. Until that moment, the Prosecutor's Office cannot exercise its rights as it has to respect the principle of legality.<sup>5</sup> It is important to point out, when it comes to the principle of legality, that the Brčko District and the Entities and the State itself determined the conditions when a certain person may be restricted in his/her freedom and rights, which may indicate what characteristics will make up essential elements of the crime when defining enforced disappearance in the foreseeable future.

#### **Article 4 – Criminalization of enforced disappearance in national law**

29. Enforced disappearance is not criminalized as a separate offence in any of the criminal codes in Bosnia and Herzegovina. Enforced disappearance was included as a separate criminal offence in the Draft Law on Amendments to the Criminal Code of Bosnia and Herzegovina agreed at the 62nd meeting of the Council of Ministers of Bosnia and Herzegovina, held on 3 September 2013. However, the Draft Law failed at the 20 November 2013 session of the Parliamentary Assembly of Bosnia and Herzegovina, when constitutional grounds and principles were deliberated.

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<sup>4</sup> Article 35(1) of CPC of the Brčko District of BiH-an example of BiH BD.

<sup>5</sup> Article 2 of CPC of the Brčko District of BiH-an example of BiH BD.



30. “Enforced disappearance” is not criminalized as a separate offence in any of the criminal codes in Entities or Brčko District of Bosnia and Herzegovina.

## **Article 5 – Crime against humanity**

31. The definition of enforced disappearance as a crime against humanity is found in Article 172 of the CC of Bosnia and Herzegovina and it reads:

“(1) Whoever, as part of a widespread or systematic attack directed against any civilian population, with knowledge of such an attack perpetrates any of the following acts: (...) enforced disappearance of persons (...) shall be punished by imprisonment for a term not less than ten years or long-term imprisonment.

(2) For the purpose of paragraph 1 of this Article the following terms shall have the following meanings: (...) h) Enforced disappearance of persons means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with an aim of removing them from the protection of the law for a prolonged period of time. (...).”

32. One can see from the provisions above that, given the extreme gravity of the offence, the offence carries a sentence of imprisonment for a term not less than ten years or long-term imprisonment.

33. With regard to the statute of limitations, Article 19 of the Criminal Code of Bosnia and Herzegovina provides that prosecution and execution of a sentence for crimes of genocide, crimes against humanity and war crimes, as well as for the crimes under international law are not subject to the statute of limitations. Given the above, the statute of limitations does not apply to the prosecution and execution of a sentence for a crime of enforced disappearance as a crime against humanity.

34. With regard to Article 5 of the International Convention for the Protection of All Persons from Enforced Disappearance, it is necessary to point out that, passing the new criminal legislation which came into force on 1 March 2003, Bosnia and Herzegovina introduced a crime against humanity and it includes enforced disappearance as a separate crime. Article 172(1)(i) of the Criminal Code of Bosnia and Herzegovina (BiH Official Gazette 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10, hereinafter: BiH CC) defines enforced disappearance as a crime against humanity. 31. The definition of enforced disappearance from Article 172 of BiH CC reads: “the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with an aim of removing them from the protection of the law for a prolonged period of time.” The definition of enforced disappearance of Article 172 of BiH CC corresponds to the definition of enforced disappearance given in Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance. According to Article 35(1) of the Criminal Procedure Code of Bosnia and Herzegovina (BiH Official Gazette 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 58/08, 12/09, 16/09, 93/09, 72/13), detection and prosecution of perpetrators of crimes against humanity, including enforced disappearance, falls within jurisdiction of the Prosecutor’s Office of Bosnia and Herzegovina.

35. An excerpt from the Criminal Code of Bosnia and Herzegovina respecting enforced disappearance is given below:

“Article 172 – Crimes against Humanity

(1) Whoever, as part of a widespread or systematic attack directed against any civilian population, with knowledge of such an attack perpetrates any of the following acts:

- (a) Depriving another person of his life (murder);
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Coercing another by force or by threat of immediate attack upon his life or limb, or the life or limb of a person close to him, to sexual intercourse or an equivalent sexual act (rape), sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity;
- (h) Persecutions against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious or sexual gender or other grounds that are universally recognized as impermissible under international law, in connection with any offence listed in this paragraph of this Code, any offence listed in this Code or any offence falling under the competence of the Court of Bosnia and Herzegovina;
- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to physical or mental health, shall be punished by imprisonment for a term not less than ten years or long-term imprisonment.

(2) For the purpose of paragraph 1 of this Article the following terms shall have the following meanings:

(a) Attack directed against any civilian population means a course of conduct involving the multiple perpetrations of acts referred to in paragraph 1 of this Article against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.

(b) Extermination includes the intentional infliction of conditions of life, especially deprivation of access to food and medicines, calculated to bring about the destruction of part of a population.

(c) Enslavement means the exercise of any or all of the powers attaching to the right of ownership over a person, and includes the exercise of such power in the course of trafficking in persons, in particular women and children.

(d) Deportation or forcible transfer of population means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.

(e) Torture means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under control of the

accused; except that torture shall not include pain or suffering arising only from, or being inherent in or incidental to, lawful sanctions.

(f) Forced pregnancy means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law.

(g) Persecution means the intentional and severe deprivation of fundamental rights, contrary to international law, by reason of the identity of a group or collectivity.

(h) Enforced disappearance of persons means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with an aim of removing them from the protection of the law for a prolonged period of time.

(i) The crime of apartheid means inhumane acts of a character similar to those referred to in paragraph 1 of this Article, perpetrated in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and perpetrated with an aim of maintaining that regime.”

## Article 6 – Criminal responsibility

36. Individual criminal responsibility for enforced disappearance as a crime against humanity is defined in Article 180(1) of the BiH CC in the following manner: “A person who planned, instigated, ordered, perpetrated or otherwise aided and abetted in the planning, preparation or execution of a criminal offence referred to in Article 171 (Genocide), 172 (Crimes against Humanity), (...) shall be personally responsible for the criminal offence. The official position of any accused person, whether as Head of State or Government or as a responsible Government official person, shall not relieve such person of criminal responsibility nor mitigate punishment.”

37. A ban on invoking an order of superiors is found in Article 180(3) of the Criminal Code of Bosnia and Herzegovina, worded as follows: “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.”

38. Command responsibility (superior responsibility) for committing the crime of enforced disappearance as a crime against humanity is defined in Article 180(2) of the Criminal Code of Bosnia and Herzegovina in the following manner: “The fact that any of the criminal offences referred to in Article 171 through 175 and Article 177 through 179 of this Code was perpetrated by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.”

39. Circumstances in which a subordinate is allowed to disobey an order for the execution of enforced disappearance are defined in Article 246 of the CC of Bosnia and Herzegovina (*Responsibility for a Criminal Offence Perpetrated on Superior's Orders*), which provides that there shall be no criminal responsibility for a crime ordered by the superior and perpetrated in the line of official duty, except if such an order relates to the perpetration of genocide, war crimes, crimes against humanity or another criminal offence

for which a punishment of imprisonment for a term of ten years or a more severe punishment may be imposed, or if it is obvious that by obeying such an order a criminal offence would be perpetrated. The provision gives the right to a subordinate to refuse to act by order of a superior if he would commit the enumerated crimes, and among others, the crime of forced disappearance as a crime against humanity.<sup>6</sup>

40. Articles 20 to 26 of the Criminal Code of the Republika Srpska defines attempted criminal offences, accomplices, incitement and accessories to a crime and the rules apply to the criminal offences of unlawful deprivation of freedom, too. Article 166(5) of the Criminal Code of the Republika Srpska determines that an attempt of the criminal offences of unlawful deprivation of freedom is punishable. With regard to Article 6(b) of the Convention, we note that Article 8 of the Criminal Code of the Republika Srpska provides that a criminal offence can be perpetrated by an act or a failure to act. A criminal offence is perpetrated by failure only when the perpetrator fails to perform an act he is obliged to perform.

41. The General Part of the Criminal Code of the Federation of Bosnia and Herzegovina contains provisions respecting principles of the level of culpability depending on the suspects' participation in the crime (carrying out the crime, inciting or helping), manner of perpetrating criminal offence, limitations of criminal responsibility and punishability of accomplices and the provisions are as follows:

“Article 22 – Manner of Perpetrating Criminal Offence

- (1) A criminal offence can be perpetrated by an act or an omission to act.
- (2) A criminal offence is perpetrated by omission when the perpetrator, who is legally obligated to avert the consequence of a criminal offence defined by law, fails to do so, and such failure to act is tantamount in its effect and significance to the perpetration of such a criminal offence by an act.

Article 34 – Limitations of Criminal Responsibility and Punishability of Collaborators

- (1) The accomplice shall be considered criminally responsible within the limits set by his own intent or negligence, and the inciter and the accessory within the limits of their own intent.
- (2) The court shall refrain from imposing a punishment on an accomplice, inciter or accessory that has voluntarily prevented perpetration of the criminal offence.
- (3) The personal relations, characteristics and circumstances to which the law attaches the exclusion of criminal responsibility, or by reason of which it permits or provides for the remission of punishment or its mitigation may be taken into consideration only if they are inherent to such perpetrators, accomplices, inciters or accessories.”

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<sup>6</sup> The exact wording is as follows: “There shall be no criminal offence if its legal elements are met by a subordinate pursuant to an order from his superior and that order is given in the line of official duty, except if such an order relates to the perpetration of genocide, war crimes, crimes against humanity or another criminal offence for which a punishment of imprisonment for a term of ten years or a more severe punishment may be imposed, or if it is obvious that by obeying such an order a criminal offence would be perpetrated.”

## Article 7 – Penalties

42. Article 172 of the CC of Bosnia and Herzegovina provides for a sentence of imprisonment for a term not less than ten years or long-term imprisonment for enforced disappearance as a crime against humanity. Article 42 of the CC of Bosnia and Herzegovina (*Imprisonment*), provides that imprisonment may not be longer than twenty years, while Article 42b (*Long-term Imprisonment*) provides that, for the gravest forms of serious criminal offences perpetrated with intent, long-term imprisonment for a term of twenty-one to forty-five years may be imposed. Given these provisions and that the Code does not set forth the maximum prison sentence for this offence, a penalty of imprisonment of 20 years or a long-term imprisonment of 45 years can be imposed for this offence. When meting out punishments in accordance with Article 48 of the CC of Bosnia and Herzegovina (*General Principles of Meting out Punishments*), the court shall impose the punishment within the limits provided by law for that particular offence, having in mind the purpose of punishment and taking into account all the circumstances having bearing on the level of punishment (extenuating and aggravating circumstances), and, in particular: the degree of guilt, the motives for perpetrating the offence, the degree of danger or injury to the protected object, the circumstances in which the offence was perpetrated, the past conduct of the perpetrator, his personal situation and his conduct after the perpetration of the criminal offence, as well as other circumstances related to the personality of the perpetrator.

43. Mitigating or aggravating circumstances under Article 7(2) of the Convention are not provided for in the CC of Bosnia and Herzegovina for *enforced disappearance* as a crime against humanity.

44. Article 166 of the Criminal Code of the Republika Srpska determines that whoever unlawfully imprisons another person, keeps him imprisoned or otherwise unlawfully restricts his freedom of movement, shall be punished by a fine or imprisonment for a term not exceeding one year. If this criminal offence was committed by an official person by abuse of official position or authority, he shall be punished by imprisonment for a term not exceeding three years. If the unlawful deprivation of freedom was committed against a child or minor or lasted for more than fifteen days, or if the manner of the execution was brutal, or if such a treatment of the person who was unlawfully deprived of freedom caused grave impairment of his health, or if some other serious consequences occurred, the perpetrator shall be punished by imprisonment for a term between one and five years. If the person who had been unlawfully deprived of freedom lost his life as a result of this criminal offence, the perpetrator shall be punished by imprisonment for a term between two and twelve years.

## Article 8 – Statute of limitations

45. Article 19 of the CC of Bosnia and Herzegovina explicitly provides that criminal prosecution and execution of a sentence are not subject to the statute of limitations for criminal offences of genocide, crimes against humanity and war crimes, or for other criminal offences that, pursuant to international law, are not subject to the statute of limitations.

46. Article 111 of the Criminal Code of the Republika Srpska determines that, unless otherwise prescribed by this Code, the criminal prosecution shall not be instituted when the following time periods have elapsed since the perpetration of a criminal offence:

- Twenty years in the case of a criminal offence for which the punishment of imprisonment for a term exceeding ten years is prescribed;

- Fifteen years in the case of a criminal offence for which the punishment of imprisonment for a term exceeding five years is prescribed;
- Ten years in the case of a criminal offence for which the punishment of imprisonment for a term exceeding three years is prescribed;
- Five years in the case of a criminal offence for which the punishment of imprisonment for a term exceeding one year is prescribed;
- Three years in the case of a criminal offence for which the punishment of imprisonment for a term not exceeding one year or a fine is prescribed.

47. If several punishments are prescribed for a single criminal offence, the statute of limitations applicable to the most severe punishment prescribed shall be applied.

48. According to Article 112 of the Criminal Code of the Republika Srpska the running of the period set by statute of limitations to institute criminal prosecution shall commence on the day on which the criminal offence has been perpetrated. According to Article 9 of the Criminal Code of the Republika Srpska, a criminal offence is perpetrated at the time the perpetrator acts or ought to have acted, irrespective of the time when the consequences of his action or omission<sup>4</sup> to act occurred.

49. The following articles of the Criminal Code of the Federation of Bosnia and Herzegovina contain a statute of limitations:

“Article 15 – Application of Statute of Limitations Regarding the Institution of Criminal Prosecution

(1) Unless otherwise stipulated in this Code, criminal prosecution shall not be instituted when the following time periods have elapsed since the perpetration of a criminal offence:

(a) Thirty-five years in the case of a criminal offence for which a punishment of long-term imprisonment is prescribed;

(b) Twenty years in the case of a criminal offence for which the punishment of imprisonment for a term exceeding ten years is prescribed;

(c) Fifteen years in the case of a criminal offence for which the punishment of imprisonment for a term exceeding five years is prescribed;

(d) Ten years in the case of a criminal offence for which the punishment of imprisonment for a term exceeding three years is prescribed;

(e) Five years in the case of a criminal offence for which the punishment of imprisonment for a term exceeding one year is prescribed;

(f) Three years in the case of a criminal offence for which the punishment of imprisonment for a term not exceeding one year or a fine is prescribed.

(2) If several punishments are prescribed for a single criminal offence, the period of limitation shall be determined according to the most severe punishment prescribed.”

50. It can be considered that the principle of a long duration of the term of limitation set forth in Article 8 of the Convention is applied.

## Article 9 – Jurisdiction

51. Jurisdiction of Bosnia and Herzegovina over enforced disappearances committed in any territory under its jurisdiction or on board a ship or aircraft registered in it is found in Article 8 of the Criminal Code of Bosnia and Herzegovina.<sup>7</sup> Article 9(1) and 9(2) of the Criminal Code of Bosnia and Herzegovina<sup>8</sup> provide for jurisdiction of Bosnia and Herzegovina over criminal offences perpetrated outside the territory of Bosnia and Herzegovina when they are perpetrated by a citizen of Bosnia and Herzegovina, when they are criminal offences which Bosnia and Herzegovina is bound to punish according to the provisions of international law and international treaties or intergovernmental agreements and when they are perpetrated against a Bosnia and Herzegovina's national. Article 9(4) of the Criminal Code of Bosnia and Herzegovina<sup>9</sup> provides for universal jurisdiction of Bosnia and Herzegovina over any alien who, outside the territory of Bosnia and Herzegovina, perpetrates a criminal offence against a foreign State or a foreign national.

## Article 10 – Custody

52. Deprivation of a person of liberty if there are grounds for suspicion that he may have committed a criminal offence in Bosnia and Herzegovina is governed in provisions of the laws governing criminal proceedings and they are: the Criminal Procedure Code of Bosnia and Herzegovina, the Criminal Procedure Code of the Federation of Bosnia and Herzegovina, the Criminal Procedure Code of the Republika Srpska and the Criminal Procedure Code of the Brcko District of Bosnia and Herzegovina.<sup>10</sup> The provisions of the

<sup>7</sup> Article 8 of BiH CC: “(1) The criminal legislation of Bosnia and Herzegovina shall apply to anyone who perpetrates a criminal offence within its territory. (2) The criminal legislation of Bosnia and Herzegovina shall apply to anyone who perpetrates a criminal offence aboard a domestic vessel, regardless of its location at the time of perpetration of the offence. (3) The criminal legislation of Bosnia and Herzegovina shall apply to anyone who perpetrates a criminal offence aboard a domestic civil aircraft during a flight, or aboard a domestic military aircraft, regardless of its location at the time of perpetration of the offence.”

<sup>8</sup> Article 9 of BiH CC: “(1) The criminal legislation of Bosnia and Herzegovina shall apply to anyone who, outside of its territory, perpetrates: a) Any criminal offence against the integrity of Bosnia and Herzegovina prescribed in Chapter Sixteen of this Code (Criminal Offences against The Integrity of Bosnia and Herzegovina); b) The criminal offence of Counterfeiting Money or of Counterfeiting Securities of Bosnia and Herzegovina, the criminal offence of Counterfeiting Instruments of Value or of Forgery of Trademarks, Measures and Weights issued on the basis of regulations of the institutions of Bosnia and Herzegovina, as defined in Articles 205 through 208 of this Code; c) A criminal offence which Bosnia and Herzegovina is bound to punish according to the provisions of international law and international treaties or intergovernmental agreements; d) A criminal offence against an official or responsible person in the institutions of Bosnia and Herzegovina, in relation to his office. (2) The criminal legislation of Bosnia and Herzegovina shall apply to a citizen of Bosnia and Herzegovina who, outside the territory of Bosnia and Herzegovina, perpetrates any criminal offence.”

<sup>9</sup> Article 9(4) of BiH CC: “The criminal legislation of Bosnia and Herzegovina shall apply to an alien who, outside the territory of Bosnia and Herzegovina, perpetrates a criminal offence against a foreign state or a foreign national which under this legislation carries a punishment of imprisonment for a term of five years or a more severe punishment.”

<sup>10</sup> Criminal Procedure Code of Bosnia and Herzegovina (BiH Official Gazette 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 58/08, 12/09, 16/09, 93/09, 72/13, hereinafter: BiH CPC) Criminal Procedure Code of the Federation of Bosnia and Herzegovina (Federation of Bosnia and Herzegovina Official Gazette 35/03, 37/03, 56/03, 78/04, 28/05 55/06, 27/07, 53/07, 9/09, 12/10, 8/13) Criminal Procedure Code of the Republika Srpska (Republika Srpska Official Gazette 53/12) Criminal Procedure Code of the Brcko District of Bosnia and Herzegovina (Republika Srpska Official Gazette 33/13 – Consolidated text).

codes are fully consistent and we will refer to the CPC of Bosnia and Herzegovina when explaining these codes below. So, Article 139 of the CPC of Bosnia and Herzegovina provides *inter alia* the following:

“(1) Police may deprive a person of liberty if there are grounds for suspicion that he may have committed a criminal offence and if there are any of the reasons as referred to in Article 132 of this Code,<sup>11</sup> but they must immediately, but no later than 24 hours, bring that person before the Prosecutor. In apprehending the person concerned, the police authority shall notify the Prosecutor of the reasons for and time of the deprivation of liberty. Use of force in accordance with law is allowed when apprehending the person. (...)”

(3) A person deprived of liberty must be instructed in accordance with Article 5 of this Code.<sup>12</sup> (...)”

(5) The Prosecutor is obligated to question the apprehended person without delay, and no later than 24 hours. The Prosecutor shall decide within that time whether he will release the apprehended person or file the request for custody of the person in question to the preliminary proceeding judge.

(6) The preliminary proceeding judge shall immediately, and no later than 24 hours, issue a decision on custody or on releasing of the apprehended person (...)”

53. The person who is in detention has the right to consular assistance provided for in Article 144(2) of the CPC of Bosnia and Herzegovina reading: “(2) Foreign detainees shall be entitled to visits by their diplomatic and consular representatives or representative of the country protecting their interests, in compliance with international law and subject to internal regulations of the custody except where the preliminary proceedings judge issues a written decision prohibiting specific visits due to their detrimental effect on the conduct of the proceedings.”

54. Deprivation of liberty of a person whose extradition is requested is governed by the Law on Mutual Assistance in Criminal Matters (LMACM).<sup>13</sup> This Law provides in

<sup>11</sup> Article 132 of the CPC of Bosnia and Herzegovina (Grounds for Pre-trial Custody):

(1) If there is a grounded suspicion that a person has committed a criminal offense, custody may be ordered against him:

- a) if he hides or if other circumstances exist that suggest a possibility of flight;
- b) if there is a justified fear to believe that he will destroy, conceal, alter or falsify evidence or clues important to the criminal proceedings or if particular circumstances indicate that he will hinder the inquiry by influencing witnesses, accessories or accomplices;
- c) if particular circumstances justify a fear that he will repeat the criminal offense or complete the criminal offense or commit a threatened criminal offense, and for such criminal offenses a prison sentence of five (5) years may be pronounced or more;
- d) if the criminal offense is punishable by a sentence of imprisonment of ten (10) years or more, where the manner of commission or the consequence of the criminal offense requires that custody be ordered for the reason of public or property security. If the criminal offense concerned is the criminal offense of the terrorism, it shall be considered that there is assumption, which could be disputed, that the safety of public and property is threatened.

<sup>12</sup> Article 5 of the CPC of Bosnia and Herzegovina (Rights of a Person Deprived of Liberty):

(1) A person deprived of liberty must, in his native tongue or any other language that he understands, be immediately informed about reasons for his apprehension and instructed on the fact that he is not bound to make a statement, on his right to a defence attorney of his own choice as well as on the fact that his family, consular officer of the foreign state whose citizen he is, or other person designated by him shall be informed about his deprivation of liberty.

(2) A person deprived of liberty shall be appointed a defence attorney upon his request if according to his financial status he cannot pay the expenses of a defence.



Article 37 the following: “The person whose extradition is sought shall be deprived of liberty by competent police authorities of Bosnia and Herzegovina, based on the international arrest warrant specifying a request of requesting State for custody of the person and he shall be brought before a judge for preliminary proceedings of the Court of Bosnia and Herzegovina, with the aim of making decision on the request of the requesting State to order provisional custody if there is a danger that the alien whose extradition is sought to escape or hide.”

55. Article 38 of LMACM<sup>14</sup> prescribes the manner of treatment of the arrested person, while Article 39 governs ordering of extradition custody.<sup>15</sup> The treatment of a Bosnia and Herzegovina citizen sought by a foreign country is prescribed in Article 40 of LMACM.<sup>16</sup>

<sup>13</sup> Law on Mutual Assistance in Criminal Matters (BiH Official Gazette 53/09, 58/13) (LMACM).

<sup>14</sup> Article 38 of LMACM: “(1) After the person deprived of liberty, whose extradition is requested, is brought before the preliminary proceedings judge based on the international arrest warrant issued on a request of the requesting State or based on a request by the foreign state, after his identity has been established, that person shall be informed without delay about the reasons why his extradition is requested, and based on which evidence, and he shall be called on to present his defence. (2) The preliminary proceedings judge shall inform the person referred to in paragraph (1) of this Article that he is entitled to hire a defence counsel of his choosing who may be present during his hearing and that, in case he does not do so, the court shall appoint to him a defence counsel ex officio in case of a criminal offence for which the criminal legislation of Bosnia and Herzegovina prescribes mandatory defence. (3) Minutes on the hearing and defence shall be taken. (4) The provisional custody shall be ordered by the judge for preliminary proceedings and it may last for 18 days. The order (*rješenje*) on custody shall be delivered to the Prosecutor’s Office of Bosnia and Herzegovina and the Ministry of Justice of Bosnia and Herzegovina in order to seek an extradition request from the state which has issued the arrest warrant. (5) The deadline under paragraph 4 above can be extended but it shall not exceed 40 days. (6) If the requesting State fails to submit the extradition request and the supporting documents within the deadline, the Court of Bosnia and Herzegovina shall render a decision terminating the custody of the person whose extradition is requested, which shall be delivered to the Ministry of Justice of Bosnia and Herzegovina. The release shall be without prejudice to a new arrest and extradition if the extradition request is received after the expiry of the deadline under paragraphs (4) and (5) above. (7) If a person sought is in custody on some other grounds, the deadline under paragraph 5 above shall start running on the date of decision on custody issued at a request for provisional arrest. (8) If a person sought is realized due to the failure to meet the deadline under paragraph 5 above, extradition custody shall not be ordered but it may be ordered only on the grounds of extradition request instead.”

<sup>15</sup> Article 39 of LMACM: “(1) Upon receipt of an extradition request, the preliminary proceedings judge shall order extradition detention issuing a decision upon a motion by the prosecutor under Article 36(3) above if: a) there is a risk that the person would avoid the extradition procedure or enforcement of the extradition; b) there are circumstances indicating that the accused would destroy, conceal, alter or falsify traces of the criminal offence or other evidence; c) there are special circumstances indicating that the person whose extradition is sought would hinder the criminal proceedings or the extradition procedure by influencing the witnesses, accomplices or accessories. (2) If there is one of the reasons under paragraph (1) items a), b) and c) above, upon receipt of the request under Article 36(3) above, the preliminary hearing judge shall issue a decision, which will revoke the provisional custody under Article 38(5) above and order extradition custody of the person. (3) Custody may last until the enforcement of the decision on extradition, but no longer than six months from the day the custody was ordered. (4) Custody shall not be ordered if it is clear from the extradition request that the extradition is not warranted. (5) If special reasons so warrant, the relevant court may undertake other measures instead of custody for securing the alien’s presence. (6) When custody is ordered pursuant to paragraphs (1) and (2) above, the preliminary proceedings judge shall inform the Ministry of Justice of Bosnia and Herzegovina of custody, so that the information thereon can be provided to the foreign state. (7) The preliminary proceedings judge shall release the alien when grounds for custody cease to exist.”

56. Article 13 of the Republika Srpska CPC provides that a suspect or accused shall be entitled to be brought before an independent and impartial court in the shortest reasonable time period and to be tried without delay. The court shall also conduct the proceedings without delay and prevent any abuse of the rights of any participant in the criminal proceedings. The duration of custody shall be for the shortest necessary time.

57. The criminal legislation of the Federation of Bosnia and Herzegovina contains a framework for the prosecution of persons suspected of committing offences under Articles 179 and 180 of the Federation of Bosnia and Herzegovina CC and for ensuring their right to a fair trial.

58. Article 14 of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina provides:

“Article 14 – Right to Trial without Delay

(1) The suspect or accused shall be entitled to be brought before the court in the shortest reasonable time period and to be tried without delay, and no later than one year from the date of confirmation of the indictment.

(2) The court shall also conduct the proceedings without delay and to prevent any abuse of the rights of any participant in the criminal proceedings.

(3) The duration of custody must be for the shortest necessary time.”

59. Suspects are guaranteed treatment in accordance with Article 10(3) of the Convention.

### **Article 11 – Obligatory prosecution and extradition**

60. An obligation of the competent authorities of our country to initiate criminal proceedings against any person who is not extradited to a foreign country and who allegedly committed an offence of enforced disappearance is contained in Article 9(1)(c) and 9(4) of the CC of Bosnia and Herzegovina, which is mentioned above and provides for jurisdiction of Bosnia and Herzegovina over criminal offences perpetrated outside the territory of Bosnia and Herzegovina by whomever when they are criminal offences which Bosnia and Herzegovina is bound to punish according to the provisions of international law and international treaties or intergovernmental agreements and for jurisdiction over any alien who, outside the territory of Bosnia and Herzegovina, perpetrates a criminal offence against a foreign State or a foreign national which under this legislation carries a

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<sup>16</sup> Article 40 of LMACM: “(1) If, acting upon an international arrest warrant, the BiH Office for Cooperation with Interpol establishes by inspecting the citizens’ register or in some other manner that the person wanted is a national of Bosnia and Herzegovina, it shall notify Interpol of the requesting state which issued an international arrest warrant and Interpol headquarters of the inability to extradite its own national, unless an international agreement that allows the extradition of its own nationals stipulates otherwise, and of the inability to issue an arrest warrant in the territory of Bosnia and Herzegovina for its own citizen’s extradition to another country. (2) If an international agreement allows the extradition of citizens of Bosnia and Herzegovina, the procedure for their extradition shall be followed as provided in articles of this Law respecting the extradition of foreigners. (3) Sending the notice under paragraph (1) above, the competent authorities of Bosnia and Herzegovina for cooperation with Interpol shall notify the foreign country that the competent judicial authorities of that country may submit a request to the competent judicial authority of Bosnia and Herzegovina to take over the prosecution. (4) The competent authorities of Bosnia and Herzegovina for cooperation with the Interpol shall inform the Ministry of Justice of Bosnia and Herzegovina about the international arrest warrant for a national of Bosnia and Herzegovina and the measures taken (...)”.

punishment of imprisonment for a term of five years or a more severe punishment (universal principle).

61. The CPC of Bosnia and Herzegovina and the Criminal Procedure Codes of Entities and Brčko District of Bosnia and Herzegovina fully incorporates the procedural guarantees Article 11 of the Convention contains. The basic principles of criminal procedure, which are embedded in the law, apply to all perpetrators of criminal proceedings, regardless of what offence was committed and by whom it was committed. These principles of the protection of human rights are an elaboration of international standards and constitutional principles. They include the following principles: – principle of legal and fair criminal proceedings (Art. 2), – presumption of innocence and *in dubio pro reo* (Art. 3), – *ne bis in idem* (Art. 4), – procedural rights protection (Art. 5), – right to defence (Arts. 6, 7), – language and alphabet (Arts. 8, 9), – legally invalid evidence (Art. 10), – right to compensation and rehabilitation for miscarriage of justice (Art. 11), – right to trial without delay (Art. 13), – equality of arms (Art. 14), – free evaluation of evidence (Art. 15), – accusatory principle (Art. 16) and – Principle of Legality of Prosecution (Art. 17).

62. Regular judicial authorities are responsible for the prosecution and trial of perpetrators of this crime,<sup>17</sup> as well as any other criminal offence and there is no possibility of this crime being prosecuted by military authorities.

## Article 12 – Effective investigation

63. The Criminal Procedure Codes of Bosnia and Herzegovina (Article 213 and 214 of the CPC of Bosnia and Herzegovina)<sup>18</sup> provides for an obligation and a right to report any criminal offence, including an offence of enforced disappearance.

64. Reporting a criminal offence is provided for in the Criminal Procedure Code of Bosnia and Herzegovina (Article 215 of the CPC of Bosnia and Herzegovina).<sup>19</sup> The Prosecutor decides whether to initiate an investigation. He makes a decision independently in the form of order on conducting the investigation. The Prosecutor shall order the conduct

<sup>17</sup> Article 1 of BiH CPC: “This Code shall set forth the rules of the criminal procedure that are mandatory for the proceedings of the Court of Bosnia and Herzegovina (hereinafter: the Court), the Chief Prosecutor of Bosnia and Herzegovina (hereinafter: the Prosecutor) and other participants in the criminal proceedings provided by this Code, when acting in criminal matters.”

<sup>18</sup> Article 213 of BiH CPC: “(1) Official and responsible persons in all the governmental bodies in Bosnia and Herzegovina, public companies and public institutions shall be bound to report criminal offenses of which they have knowledge, through information provided to them or learned by them in some other manner. Under such circumstances, the official and responsible person shall take steps to preserve traces of the criminal offense, objects upon which or with which the criminal offense was committed, and other evidence, and shall notify an authorized official or the Prosecutor’s Office without delay.(2) Medical workers, teachers, pedagogues, parents, foster parents, adoptive parents and other persons authorized or obligated to provide protection and assistance to minors, to supervise, educate and raise the minors, are obligated to immediately inform the authorized official or the Prosecutor about their suspicion that the minor is the victim of sexual, physical or any other form of abuse...” Article 214 of BiH CPC: “(1) A citizen shall be entitled to report a criminal offense.(2) All persons must report commission of a criminal offense in those instances where failure to report such a criminal offense itself constitutes a criminal offense.”

<sup>19</sup> Article 215 of BiH CPC: “(1) The report must be filed with the Prosecutor in writing or orally.(2) If a person files an oral report concerning a criminal offense, such person shall be warned of the consequences of providing a false report. The minutes shall be taken concerning oral report and if the report is communicated by telephone, an official note shall be made. (3) If the report is filed with the Court, authorized official or some other court or prosecutor in Bosnia and Herzegovina, they shall accept the report and shall immediately submit the report to the Prosecutor.”

of an investigation if grounds for suspicion that a criminal offence has been committed exist. The existence of grounds for suspicion is the main prerequisite for investigation. The Prosecutor shall inform the injured party and the person who reported the offence within three (3) days of the fact that the investigation shall not be conducted, as well as the reasons for not doing so. The injured party and the person who reported the offence have a right to file a complaint with the Prosecutor's Office within eight (8) days (Art.216. of the CPC of Bosnia and Herzegovina).

65. In the course of investigation, the Prosecutor may undertake all investigative actions, including the questioning of the suspect and hearing of the injured party and witnesses, crime scene investigation and reconstruction of events, undertaking special measures to protect witnesses and information and may order the necessary expert evaluation (Art.217 of the CPC of Bosnia and Herzegovina).

66. Reporting persons and witnesses are protected from the intimidation by enforcement of the Law on Protection of Witnesses under Threat and Vulnerable Witnesses. This Law was passed at the level of Bosnia and Herzegovina<sup>20</sup> and the same laws are enacted at the level of the Entities and Brcko District of Bosnia and Herzegovina.<sup>21</sup> The Law on Witness Protection Programme of Bosnia and Herzegovina was passed at the State level.<sup>22</sup>

67. The criminal legislation in Bosnia and Herzegovina criminalizes tampering with evidence (Art. 236 of the Criminal Code of Bosnia and Herzegovina).<sup>23</sup>

67. In the case of proceedings for the criminal offence of enforced disappearance, the reported person may be suspended from work in accordance with the laws governing the rights and obligations of employees in administration at the level of Bosnia and Herzegovina, as well as at the entity level, so that he can be prevented from using the office he holds to influence the investigation. Article 58 of the Law on Civil Service in the Institutions of Bosnia and Herzegovina provides for preventive suspension that shall be ordered when criminal proceedings against a civil servant are instituted for a crime carrying a sentence of imprisonment of minimum five years. Also Article 66 of the Labour Law in the Institutions of Bosnia and Herzegovina provides for suspension of an employee when criminal proceedings against him are instituted for a crime carrying a sentence of imprisonment of minimum five years.

68. The Republika Srpska Ministry of the Interior (RS MoI) is required to comply with all applicable laws, and in particular with RS CPC, which clearly explains provisions of Article 12 of the Convention. Treating citizens, either to take a statement, detention, etc., RS MoI cooperates with the competent prosecutor's office, so this kind of cooperation to some extent facilitates a performance control of the officers of the Ministry. In order to

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<sup>20</sup> Law on Protection of Witnesses under Threat and Vulnerable Witnesses (BiH Official Gazette 3/03, 21/03, 61/04, 55/04).

<sup>21</sup> Law on Protection of Witnesses under Threat and Vulnerable Witnesses (FBiH Official Gazette 36/03).

Law on Protection of Witnesses in Criminal Proceedings (RS Official Gazette 48/03).

Law on Protection of Witnesses under Threat and Vulnerable Witnesses Brčko distrikta BiH (BiH BD Official Gazette 10/03, 8/07, 19/07).

<sup>22</sup> Law on Witness Protection Programme of Bosnia and Herzegovina (BiH Official Gazette 29/04).

<sup>23</sup> Article 236 of BiH CC: "(1) Whoever makes a witness or a court witness give a false testimony in court, minor offence, administrative or disciplinary proceedings before the institutions of Bosnia and Herzegovina by use of threat or any other form of force or promise of a gift or some other benefit, shall be punished by imprisonment for a term between six months and five years. (2) Whoever, with the aim of preventing or hampering the collection of evidence in court, minor offence, administrative or disciplinary proceedings before the institutions of Bosnia and Herzegovina, conceals, destroys, damages or renders unserviceable, someone else's object or documents that may be used as evidence, shall be punished by a fine or imprisonment for a term not exceeding three years."

eliminate or reduce the possibility of any enforced disappearance, the Minister and the Director of Police issued several buy-laws governing this area, while the Republican Prosecutor's Office of the Republika Srpska issued Instructions A-487/12 dated 17 May 2013, which are binding and govern the work of prosecutor's offices in the Republika Srpska in cooperation with police officers of RS MoI.

69. Articles 229 and 230 of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina provide the following:

“Article 229 – Citizens Reporting a Criminal Offence

- (1) A citizen shall be entitled to report a criminal offence.
- (2) All persons must report commission of a criminal offence in those instances where failure to report such a criminal offence itself constitutes a criminal offence.

Article 230 – Filing a Report

- (1) The report must be filed with the prosecutor in writing or orally.
- (2) If a person files an oral report concerning a criminal offence, such person shall be warned of the consequences of providing a false report. The minutes shall be taken concerning oral report and if the report is communicated by telephone, an official note shall be made.
- (3) If the report is filed with the court, authorized official or some other court or the prosecutor in the Federation, they shall accept the report and shall immediately submit the report to the prosecutor.”

### **Article 13 – Extradition**

70. The most important multilateral extradition treaty that obliges Bosnia and Herzegovina, the 1957 European Convention on Extradition and two additional protocols thereto, namely, the 1975 First Additional Protocol and the 1978 Second Additional Protocol.<sup>24</sup> This Convention provides that its provisions supersede all prior existing bilateral agreements between States parties and bilateral agreements may be entered into only for the purpose of supplementing or facilitating the application of principles of the Convention. Article 1 of the 15 October 1975 Additional Protocol on Extradition determines that the crime of genocide, crimes against humanity, war crimes (grave breaches of the Geneva Conventions) and crimes against the peace shall not be considered political offences.

71. Based on a notification of succession Bosnia and Herzegovina has taken over a number of bilateral treaties on the extradition from the former Yugoslavia, some of them being enumerated here: Albania – Convention on Extradition, 1926; Austria – Agreement on Extradition, 1982; Belgium – Convention on Extradition and Mutual Legal Assistance in Criminal Matters, 1971; France – Convention on Extradition of Accused and Convicted Persons, 1970; Federal Republic of Germany – Agreement on Extradition, 1970; Switzerland – Convention on Extradition between Serbia and Switzerland, 1887; USA – Convention on Extradition between the Kingdom of Serbia and the United States, 1901; Turkey – Convention on Extradition, 1973. In addition to the treaties taken over from the former Yugoslavia, Bosnia and Herzegovina has concluded bilateral extradition agreements with Macedonia, Slovenia, Croatia, Montenegro and Serbia.<sup>25</sup>

<sup>24</sup> Documents published in the “Official Gazette of BiH-International Agreements”, 4/05.

<sup>25</sup> The agreement with Serbia is at the stage of ratification.

72. Unless an international treaty provides otherwise, the extradition of suspects or accused or convicted foreign nationals from Bosnia and Herzegovina to another country is carried out under the provisions of the Law on Mutual Legal Assistance in Criminal Matters. Article 33 of this Law provides for the cases where extradition is allowed. According to this provision, the extradition of aliens to another State is allowed for the purpose of criminal prosecution or enforcement of a prison sentence pronounced in a final judgement for the criminal offences punishable pursuant to the legislation of Bosnia and Herzegovina and the legislation of the requesting State. Furthermore, extradition for the purpose of criminal prosecution may only be granted for criminal offences that are punishable by a sentence of at least one year of imprisonment pursuant to both the criminal legislation of Bosnia and Herzegovina and the legislation of the requesting State or, for the purpose of enforcement of a prison sentence imposed by a final judgement, it may be granted if the imposed sentence or its part that remains to be served is not less than four months.

73. Given the extreme gravity of the crime of enforced disappearance, this offence is extraditable under all agreements that oblige Bosnia and Herzegovina as well as under domestic law.

74. The definition of a political offence is not contained in any law in Bosnia and Herzegovina. Whether an offence for which extradition is sought is of political nature is assessed in each particular case. In the past practice of deciding on a request for extradition, Bosnia and Herzegovina had a very restrictive approach in assessing whether an offence is political or not.

75. Pursuant to the Law a request for extradition is submitted through diplomatic channels or directly to the Ministry of Justice, if so stipulated in an international agreement. The request for extradition must be accompanied with documents establishing the identity of the alien, the warrant of arrest or other order having the same legal effect, the name of the offence for which provisional arrest is requested and a statement of the foreign requesting authority that extradition will be requested. If the requesting authority fails to submit the request within the national statutory deadline of 18 days, the person arrested is released. The time-limit may be extended at the request of the foreign State but it may not, in any event exceed 40 days from the date of such arrest (Art. 38).

76. During the extradition proceedings, while ruling on the extradition request of foreign State, the Court of Bosnia and Herzegovina decides whether the legal requirements for extradition have been met or not (Art. 43). If the Panel of the Court of Bosnia and Herzegovina has found that legal requirements for the extradition of the alien have been fulfilled, it confirms it in a (procedural) decision. The alien and his counsel are entitled to file an appeal against the (procedural) decision with the Appellate Division Panel of the Court of Bosnia and Herzegovina within 3 days of receipt of the decision. The Appellate Division Panel of the Court of Bosnia and Herzegovina decides the appeal against the decision issuing a decision. If, deciding the appeal against the (procedural) decision, the Appellate Division Panel of the Court of Bosnia and Herzegovina finds that the appeal is unfounded and that legal requirements for the extradition of the alien have been fulfilled or if an appeal is not lodged against the decision, the file is transmitted to the Minister of Justice to issue a (procedural) decision on extradition (Art. 44).

#### **Article 14 – Mutual legal assistance and Article 15 – States parties’ cooperation**

77. Mutual legal assistance in Bosnia and Herzegovina is governed by the above-mentioned Law on Mutual Assistance in Criminal Matters. Article 1 of this Law provides

that this Law governs the manner and procedure of mutual legal assistance in criminal matters, unless otherwise provided by an international agreement. So, if there is an international agreement between Bosnia and Herzegovina and another State, provisions of the agreement are applied to providing and seeking mutual legal assistance between the States.

78. Bosnia and Herzegovina ratified the European Convention on Mutual Assistance in Criminal Matters<sup>26</sup> and have concluded bilateral agreements on legal assistance in criminal matters with a number of States, such as Croatia, Serbia, Slovenia, Macedonia, etc.

79. In relation to war crimes cases, protocols have been signed to solve some outstanding issues concerning regional cooperation between Bosnia and Herzegovina, the Republic of Serbia and Croatia. The Protocol of Cooperation on the prosecution of perpetrators of war crimes, crimes against humanity and genocide between the Prosecutor's Office of Bosnia and Herzegovina and the War Crimes Prosecutor of the Republic of Serbia and the Prosecutor's Office of Bosnia and Herzegovina and the Croatian State Attorney's Office were signed on 31 January 2013 and 3 June 2013 respectively (this is a unified comment on Articles 14 and 15).

80. In accordance with the above-mentioned legislation the Ministry of the Interior of the Republika Srpska is obliged to provide all necessary assistance both in searching, locating and releasing of missing persons and in the exhumation and identification in the course of an investigation or other actions required by competent prosecutor.

## **Article 16 – Non-refoulement**

81. Article 34(i) of the Law on Mutual Assistance in Criminal Matters provides for a requirement that the extradition of an alien is not requested for the following purposes: criminal prosecution or punishment on the grounds of the person's race, gender, national or ethnic origin, religious or political belief, as well as that the extradition is not requested for a criminal offence which carries the death penalty pursuant to the law of the requesting State, unless the requesting State provides guarantees that the death penalty would not be imposed or carried out.

82. The protection from all forms of forced disappearance, in the context of treatment of foreigners, is directly incorporated into the Law fully guaranteeing the level of safeguarding required by the Convention.

### “Article 91 – Principle of non-refoulement

(1) Aliens shall not be returned or expelled in any manner whatsoever to the borders of territories where their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion, regardless of whether or not they have formally been granted international protection. The prohibition of return or expulsion (non-refoulement) shall also apply to persons in respect of whom there is a reasonable suspicion for believing that they would be in danger of being subjected to torture or other inhuman or degrading treatment or punishment. Aliens may not be sent to a country where they are not protected from being sent to such a territory either.

### Article 92

(1) When an alien has expressed the reasons referred to in Article 91 (Principle of non-refoulement) of this Law, the authority to which such a statement was given

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<sup>26</sup> “BiH Official Gazette” 4/05 –Supplement and 10/07 –Supplement.

shall refer the alien in accordance with Article 107 (Intention and request for international protection) paragraph (2) of this Law to the Service for the purpose of rendering the intention to submit the request to initiate the procedure for verifying the justification of his/her statement and determining the existence of requirements for approving international protection in accordance with Article 105 through 138 (Chapter VII – International and temporary protection) of this Law.

(2) In case described under paragraph (1) herein, the decision on expulsion may be executed only after requirements of Article 117 (Expulsion in case of rejection of the request for international protection) of this Law have been met.

#### Article 95 – Repatriation country

(1) If the enforcement of the decision is not subject to the restrictions referred to in Article 91 (Principle of non-refoulement) of this Law, an alien who has been expelled shall be sent to his/her country of origin, or to country of habitual residence, or to the country wherefrom he/she arrived in BiH or to a country which will accept him/her.

(2) The alien shall be informed as to which country he/she will be sent.”

83. From the standpoint of foreign nationals, the Service for Foreigners’ Affairs of the Ministry of Security of Bosnia and Herzegovina has had no cases of violation of the rights guaranteed by the Convention since its establishment.

### **Article 17 – Prohibition of secret detention**

84. The answer concerning Article 10 of the Convention provides information about the conditions under which a person may be deprived of liberty and the authorities that can order it.

85. The criminal legislation of Bosnia and Herzegovina (Article 5 of the CPC of Bosnia and Herzegovina) provides that a person deprived of liberty must, in his native tongue or any other language that he understands, be immediately informed about reasons for his apprehension and instructed on the fact that he is not bound to make a statement or answer questions, on his right to a defence attorney of his own choice as well as on the fact that his family, consular officer of the foreign State whose citizen he is, or other person designated by him shall be informed about his deprivation of liberty. A person deprived of liberty shall be appointed a defence attorney upon his request if according to his financial status he cannot pay the expenses of a defence.

86. Pursuant to the Criminal Procedure Code of Bosnia and Herzegovina (Article 140 of the CPC of Bosnia and Herzegovina), custody is executed in the institutions so designated by the minister of competent ministry of Bosnia and Herzegovina in cooperation with competent bodies of entities and District Brčko of Bosnia and Herzegovina. The task of execution of custody may be performed only by those employees of the ministry who have necessary knowledge and skills and professional qualifications as prescribed by legislation. Pursuant to Article 141 of the CPC of Bosnia and Herzegovina, custody must be executed in such a manner as not to offend the personal integrity and dignity of the accused. In executing custody, authorized officials of the Judicial police and guards of the institution may use means of force only in cases prescribed under law. The rights and freedoms of the person taken into custody may be restricted only insofar as it is necessary to achieve the purpose for which custody has been ordered and to prevent the flight of the person taken into custody, commission of a criminal offence or endangerment to the life and health of people. The administration of the institution collects, processes and stores data on the person taken into custody, including data concerning the identity of the person in custody



and his psychophysical condition, the duration, extension and cancellation of his custody, the work performed by the person in custody, and his behaviour and disciplinary measures applied. The custody records concerning the detainees shall be kept by the competent Ministry of Bosnia and Herzegovina. Article 142 of the Code<sup>27</sup> provides that persons in custody are accommodated in rooms of appropriate size that satisfy required health conditions. Persons in custody have other rights that are listed in Article 143 of the CPC of Bosnia and Herzegovina.<sup>28</sup> Article 144 of the CPC of Bosnia and Herzegovina provides for communication of persons in custody with outside world.<sup>29</sup>

87. Provisions of Entity and Brcko District Criminal Procedure Codes respecting persons in custody have been brought in line with the above-mentioned provisions of the CPC of Bosnia and Herzegovina.

88. The Law on Execution of Criminal Sanctions, Custody and Other Measures of Bosnia and Herzegovina, the Law on Execution of Criminal Sanctions of the Federation of Bosnia and Herzegovina, the Law on Execution of Criminal Sanctions of the Republika Srpska and the Law on Execution of Criminal Sanctions, Custody and Other Measures of the Brčko District of BiH<sup>30</sup> govern the exercise of rights by persons in custody. These

<sup>27</sup> Article 142 of BiH CPC “Persons in custody shall be accommodated in rooms of appropriate size that satisfy required health conditions. Individuals of different sexes may not be accommodated in the same room. As a rule, persons in custody shall not be put in the same room with persons serving a sentence. A person taken into custody shall not be accommodated together with persons who might have an adverse influence on him or with persons whose company might have adverse influence on the conduct of the proceedings.”

<sup>28</sup> Article 143 of BiH CPC “(1) Persons in custody have the right to eight (8) hours of uninterrupted rest within each 24-hour period. In addition, they shall be guaranteed at least two (2) hours of walking in the open air daily. (2) A person in custody shall be allowed to have personal belongings and hygienic items in his possession, and shall also be allowed to procure at his own expense books, newspapers and other printed media. A detainee shall also be allowed to keep other objects in such a quantity and size so as not to disturb the living environment in the room and the internal regulations of the custody. In admitting a person to custody, objects related to the criminal offense shall be seized from him during the search of his person, and any other objects that the arrestee is not allowed to have in his possession while in custody shall be put aside and stored according to his instruction or delivered to a person designated by him.”

<sup>29</sup> Article 144 of BiH CPC “(1) Detainees shall be entitled to visits by persons of their choosing except where the preliminary proceedings judge issues a written decision prohibiting specific visits due to their detrimental effect on the conduct of the proceedings. (2) Foreign detainees shall be entitled to visits by their diplomatic and consular representatives or representative of the country protecting their interests, in compliance with international law and subject to internal regulations of the custody except where the preliminary proceedings judge issues a written decision prohibiting specific visits due to their detrimental effect on the conduct of the proceedings. (3) A detainee may correspond confidentially with any other person, except where the preliminary proceedings judge issues a written decision prohibiting such correspondence. A detainee may not be prohibited from sending a request, complaint or appeal. (4) A detainee shall be prohibited from using cellular phone but shall have the right, subject to internal regulations of the custody, to make telephone calls at his own expense. To that end, the detention administration shall provide the detainees with a sufficient number of public telephone connections. The preliminary proceedings judge, the preliminary hearing judge, the individual judge or the presiding judge may, for a reason of security or due to the existence of one of the reasons referred to in Article 132 Paragraph 1 Item a) through c), of this Code restrict or prohibit, by a decision, the use of the telephone by a detainee. (5) A detainee shall be entitled to free and unrestrained communications with his defence attorney.”

<sup>30</sup> The Law on Execution of Criminal Sanctions, Custody and Other Measures of Bosnia and Herzegovina – Consolidated text (“BiH Official Gazette” 12/10), the Law on Execution of Criminal Sanctions of the Federation of Bosnia and Herzegovina (“FBiH Official Gazette” 44/98, 42/99, 12/09, 42/11), the Law on Execution of Criminal Sanctions of the Republika Srpska (“RS Official Gazette ”

Codes govern supervision over custodial institutions, which is carried out by respective ministries of justice according to the location of the institution.

89. These Codes govern accommodation standards for persons in custody, e.g. Article 66 of the Law on Execution of Criminal Sanctions, Custody and Other Measures of Bosnia and Herzegovina.<sup>31</sup>

90. According to the reply given by the Ministry of Health and Social Protection of the Republika Srpska about Article 17, paragraph 1, item (g) and paragraph 3, point (g), the RS Institute of Forensic Medicine keeps appropriate records on deaths of people deprived of liberty, whether they were in pre-trial detention or serving their prison term on the basis of a final verdict. We had such cases where autopsy was performed and all other necessary post-mortem procedures were followed in accordance with applicable laws and regulations and in accordance with the rules of forensic profession. The documentation prepared by the Institute in such cases is available to all relevant and interested parties in accordance with applicable laws.

91. In the reply given by the Ministry of Justice of the Republika Srpska, the Criminal Procedure Code of RS governs the manner and conditions of depriving a person of liberty and the rights of persons deprived of liberty (the right to counsel, the right to communicate with family and the like). The Law on Execution of Criminal Sanctions (“Official Gazette of the Republika Srpska” 12/10, 117/11, 98/13) lists the institutions for enforcement of criminal sanctions and measures of detention and they are under supervision of the Ministry of Justice of the Republika Srpska (RS MoJ). Articles from 83 to 85 of the Law guarantee that all persons deprived of liberty can communicate and that they can be visited by family members, lawyer or any other person of their choice, but only in accordance with statutory conditions. Furthermore, Article 2 of the Law clearly states that RS MoJ is obliged to provide convicted persons, detainees and juveniles with access to and confidential communication with national and international organizations and other institutions responsible for monitoring and implementation of human rights and fundamental freedoms in accordance with the law and relevant international instruments RS MoJ has enacted the Instructions on types and manner of keeping records of prisoners and detainees (“Official Gazette of the Republika Srpska” 3/00) which includes the data listed in Article 17(2) of the Convention.

92. Further, RS MoJ enacted the Instructions on the conduct of police officers with persons deprived of their liberty and the Guidance on keeping records of persons deprived

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12/10, 117/11, 98/13), the Law on Execution of Criminal Sanctions, Custody and Other Measures of the Brčko District of BiH (“BiH BD Official Gazette” 31/11).

<sup>31</sup> Article 66 of the Law on Execution of Criminal Sanctions, Custody and Other Measures of Bosnia and Herzegovina “(1) All rooms in which detainees and prisoners spend time must have satisfactory health and hygiene requirements, sufficient air, light, heating and ventilation.(2) Those accommodated in a single cell shall have a minimum of seven square metres space and those in dormitories four square meters space each, and not less than ten cubic meters per person.(3) Windows in rooms for accommodation of detainees and prisoners must be large enough to enable working and reading in daylight in normal conditions, and fresh air entry, unless air-conditioning is installed, and to match, by shape and size, standard windows. (4) Artificial light shall be in conformity with existing technical standards. (5) Sanitary facilities shall allow detainees and prisoners to meet their physiological needs in privacy and in clean and decent conditions.(6) Each detainee and prisoner shall be able to use appropriate facilities for having a bath and shower at the temperature suitable to the climatic conditions and at intervals necessary to maintain normal personal hygiene, but at least daily. (7) All the rooms in the Establishment shall be appropriately maintained and be cleaned regularly. (8) The work referred to in Paragraph 7 shall be performed by prisoners for up to two hours a day without any reimbursement. (9) Disabled detainees and prisoners shall be provided accommodation appropriate to the kind and degree of their disability.”

of liberty which lists all the provisions of Article 17(3) of the Convention. We note that the records of persons deprived of liberty are kept in written and electronically and that they are subject to constant control by the competent authorities of RS MoJ.

93. The State Investigation and Protection Agency – SIPA is an independent administrative organization within the Ministry of Security of Bosnia and Herzegovina. Pursuant to the Law on State Investigation and Protection, it consists of organizational units. One of the organizational units within SIPA is the Centre for the investigation of war crimes and criminal offences punishable under international war and humanitarian law.

94. The main task of the Centre is investigation of criminal offences under Chapter XVII of the Criminal Code of Bosnia and Herzegovina, including Article 172 of the Bosnia and Herzegovina CC – Crimes against Humanity, which includes acts prohibited by the International Convention for the Protection of All Persons from Enforced Disappearance. (The data on the number of cases can be found in the records of the Prosecutor’s Office of Bosnia and Herzegovina).

95. Based on Articles 35, 216 and 218 of the CPC of Bosnia and Herzegovina, an arrest warrant for a person for whom there is a reasonable suspicion/probable cause of having committed a criminal offence under Article 172 of Bosnia and Herzegovina is issued by the Prosecutor’s Office of Bosnia and Herzegovina, as the Prosecutor’s Office of Bosnia and Herzegovina is the only authorized authority to conduct investigations into these cases, in accordance with the National Strategy for Prosecution of War Crimes. An arrest of people suspected of this crime is carried out exclusively by order of the prosecutor of Bosnia and Herzegovina in charge.

96. Acting by orders of one of the prosecutors of the Prosecutor’s Office of BiH, who is in charge of the investigation, police officers of SIPA Centre arrest the suspect and bring him to the official premises of the State Agency for Investigation and Protection where the facts about the suspect are ascertained and other criminal investigative actions start.

97. A person deprived of liberty is written down in a register of persons deprived of liberty on any grounds and it is obligatory to be kept in the Centre.

98. The register of persons deprived of liberty contains information about the identity of persons deprived of liberty – personal data, date, time and location where the person is deprived of liberty, criminal offence over which he has been arrested, number of order based on which he has been arrested, use of force during the arrest, identity of the police officers who arrested the person, superior who approved the arrest, mode of transport of arrested persons from the place where he was arrested to SIPA building or Prosecutor’s Office, police officer who searched the arrested person, items seized as evidence, communications with the competent prosecutor’s office, rights of the arrested person (advise on his rights, his request for defence counsel, his request for medical personnel), minors and persons with mental disabilities, document on arrests, surrender of arrested person, release of arrested person and additional remarks.

99. After the facts about the arrested person are ascertained at SIPA premises, an arrested person is immediately surrendered for further treatment to the prosecutor who ordered the detention. The surrender is confirmed with a certificate that the arrested person has been handed over to the prosecutor in charge.

100. In exceptional cases, if it is not possible to hand an arrested person immediately over to the prosecutor in charge, the arrested person is handed over to the detention unit of Canton Sarajevo Police, since SIPA does not have its own detention facilities, which is confirmed in a certificate of surrender of arrested person to another authority. So, after the first interrogation in the official premises of SIPA, the arrested person is handed over to the prosecutor in charge within 24 hours, which is the statutory duration of police custody,

since SIPA arrested the person, together with the certificate of surrender of arrested person to another authority, and a certificate of surrender of arrested person to the prosecutor in charge is issued.

101. Upon bringing an arrested person into the official premises of SIPA, the person is allowed to make a phone call to family members and to inform his defence counsel that he will be required in his interrogation before prosecutor. When it comes to this criminal offence, SIPA does not interrogate a suspect but a prosecutor in charge does it and put it down in the register.

102. If an arrested person gives a statement that he has certain health problems, it is entered in the records and the police officers offer him medical care and if the arrested person needs medical care, they will bring him to the nearest health care facility.

### **Article 18 – Information about persons deprived of liberty**

103. Every natural or legal person in Bosnia and Herzegovina has the right of access to information under the control of a public authority and each public authority has an obligation to disclose such information. This right of access is subject only to such formalities and restrictions as prescribed in the Law on Freedom of Access to Information of Bosnia and Herzegovina,<sup>32</sup> at the State level, and the Laws on Freedom of Access to information of the Entities.<sup>33</sup>

104. In accordance with these laws, all authorities that have information about a person deprived of liberty are obliged to provide persons who have a legitimate interest with information that is demanded of them, but we should bear in mind the provisions of the Criminal Procedure Code which set forth rights of persons deprived of liberty. A decision on refusal to provide information requested may be appealed against by the applicant in accordance with the applicable laws governing administrative procedure.

105. In accordance with the Republika Srpska CPC and other laws relating to the subject area, i.e. “enforced disappearance”, police officers are bound and obliged to ensure defence counsel access to all the information listed in Article 18 of the Convention. During arrest and release of arrested person a certificate stating the information prescribed in Article 18 of the Convention is issued.

106. Article 5 of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina provides:

#### “Article 5 – Rights of a Person Deprived of Liberty

(1) A person deprived of liberty must, in his native tongue or any other language that he understands, be immediately informed about the reasons for his apprehension and, before the first interrogation, instructed on the fact that he is not bound to make a statement, on his right to a defence attorney of his own choice as well as on the fact that his family, consular officer of the foreign State whose citizen he is, or other person designated by him shall be informed about his deprivation of liberty.

(2) A person deprived of liberty shall be appointed a defence attorney upon his request if according to his financial status he cannot pay the expenses of a defence.”

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<sup>32</sup> Law on Freedom of Access to Information of Bosnia and Herzegovina (“BiH Official Gazette” 28/00,45/06,102/09, 100/13).

<sup>33</sup> Law on Freedom of Access to Information of the Federation of Bosnia and Herzegovina (“FBiH Official Gazette” 32/01, 48/11) Law on Freedom of Access to Information of Republika Srpska (“RS Official Gazette” 20/01).

107. The reply of the State Investigation and Protection Agency (SIPA) states that, upon bringing an arrested person in the official premises of SIPA, he is allowed to contact his family members and lawyer and, at any time in accordance with applicable legislation, they can get information about the authority that ordered the arrest, about the place and date of the arrest and the place of detention, the name of the prosecutor in charge and the prosecutor's office where the arrested person is handed over for further treatment and health of the person deprived of liberty.

## **Article 19 – Protection of personal information**

108. The Forensic Examination and Expertise Agency at the Ministry of Security of Bosnia and Herzegovina was established according to the Law on the Directorate for Coordination of Police Bodies and Agencies for Police Structure Support of Bosnia and Herzegovina and started its operations in 2009. This Law defines the responsibilities of the Agency including the dactyloscopy evaluation and analysis of DNA, and keeping records of the Agency, in accordance with applicable laws and regulations.

109. In its work and activities, when it comes to the protection of personal data, the Agency is mainly guided by the Law on Directorate for Coordination of Police Bodies and Agencies for Police Structure Support of Bosnia and Herzegovina, the Criminal Procedure Code of Bosnia and Herzegovina and the Law on the Protection of Personal Data of Bosnia and Herzegovina defining principles of treatment and protection of personal data, which can include medical and genetic data and the process of providing mutual legal assistance and enforcement of international treaties in criminal law matters.

110. Articles 112, 113, 114 and 115 of the CPC of Bosnia and Herzegovina define analysis and use of the results of DNA analysis and, in this sense, the key article is Article 115, which provides for a DNA data base. Based on Article 115(2) of the CPC, the Ministry of Justice of Bosnia and Herzegovina enacted the Rulebook on the Method of Collecting and Taking Biological Samples for DNA Analysis in Criminal Proceedings. Articles 8, 9 and 11 of this Rulebook define the protection of personal data and communication of this information to foreign bodies.

111. As to the Law on Personal Data Protection, Article 4 defines the principle of personal data processing, while Article 18(1) prescribes the prevention of transmission of data abroad in those cases when that State's protection of personal data does not satisfy conditions set forth in Article 4 of this Law.

112. In addition, at the State level, there is the Law on Mutual Legal Assistance in Criminal Matters, according to which the Ministry of Justice of Bosnia and Herzegovina is the authority receiving requests submitted by foreign judicial authorities and vice versa. In urgent cases, requests for mutual legal assistance may go through INTERPOL as provided in this Law.

113. With regard to Article 19(2), the Ministry of Health and Social Protection of the Republika Srpska believes that the genetic data of missing and unidentified persons as well as comparative genetic data of their relatives taken to establish the identity of a missing or non-identified persons, are collected and stored in a database and used in a manner that is very precisely prescribed in the Law on the Database of DNA Analysis Performed. The Republika Srpska has regulated this area fully and comprehensively by this Law. Such a law exists neither in the Federation of Bosnia and Herzegovina nor at the level of Bosnia and Herzegovina.

114. The CPC of the Republika Srpska and the Law on the Protection of Personal Data govern the protection of personal data, including medical and genetic data and they cannot

be given or used except for searching for a missing person or in criminal proceedings and only in accordance with the above-mentioned two laws.

## **Article 20 – Restriction of the right to information**

115. The Law on Freedom of Access to Information of Bosnia and Herzegovina provides for exemptions from disclosure when, on a case-by-case basis public interest testing, it is found that the information evolves personal interests encroaching privacy of third parties (Art. 5 and 8 of the Law on Freedom of Access to Information of Bosnia and Herzegovina).

116. Article 5 of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina provides:

“Article 5 – Rights of a Person Deprived of Liberty

(3) A person deprived of liberty must, in his native tongue or any other language that he understands, be immediately informed about the reasons for his apprehension and, before the first interrogation, instructed on the fact that he is not bound to make a statement, on his right to a defence attorney of his own choice as well as on the fact that his family, consular officer of the foreign State whose citizen he is, or other person designated by him shall be informed about his deprivation of liberty.

(4) A person deprived of liberty shall be appointed a defence attorney upon his request if according to his financial status he cannot pay the expenses of a defence.”

117. In accordance with the CPC of the Republika Srpska and the Law on Protection of Personal Data, any person arrested is given a certificate of arrest and a certificate of release after release and the police officers who also have such information are required and authorized to provide the information to persons who are allowed to have access to it.

## **Article 21 – Release of persons deprived of liberty**

118. An answer respecting Article 21 of the International Convention for the Protection of All Persons from Enforced Disappearance is contained in the Law on the Execution of Criminal Sanctions, Custody and Other Measures of Bosnia and Herzegovina (“Bosnia and Herzegovina Official Gazette” 12/10, 100/13) and Entity Laws on the Execution of Criminal Sanctions.

119. The Law on the Execution of Criminal Sanctions, Custody and Other Measures contains provisions respecting release of prisoners, i.e. Article 182 of the Law provides that a prisoner is released from the facility on the day when his sentence expires or on the day when conditional release starts and that the facility is obliged to inform the Criminal Division of the Court of the release of each prisoner within eight days. The Law contains special provisions regulating assistance to a released prisoner such as transportation costs and provision of appropriate clothes and shoes and, if a prisoner is seriously ill at the time of release from the facility and because of this is incapable of travelling, the facility places him into the closest medical institution for treatment. If the prisoner is not able to pay for the costs of medical treatment, and the illness occurred during imprisonment, the costs for the first month of the treatment are borne by the Ministry of Justice, and after that by the municipality in which the prisoner had permanent or temporary residence at the time of committal to the facility.

120. When a prisoner is released (Article 184 and 186 of the Law) the facility informs the responsible social welfare authority, before release or three days before conditional release starts, about the prisoner’s needs and type of assistance to be provided to him, which proves

the existence of post-penal assistance and care for the persons who have been released after having served their prison sentences.

121. The Law on the Execution of Criminal Sanctions, Custody and Other Measures contains provisions governing a prisoner's release from the facility in accordance with the Law on Amnesty within 24 hours of receiving the decision on amnesty and provides that each person released is given a certificate of completion of sentence and the format and the content of the certificate is prescribed by the Minister of Justice.

122. Release of a person in pre-trial custody from the facility is carried out on the basis of the decision to terminate custody or upon the expiration of the period of custody and to supervise the execution of detention conducted by the Ministry of Justice by inspectors as officials with special powers.

123. Bosnia and Herzegovina has independent bodies that monitor the regularity of treatment of persons deprived of their liberty, the extent of the application of laws or regulations, as well as the conditions in facilities and the exercise of human rights of persons in pre-trial custody, serving a prison term or other measures imposed.

124. By ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Bosnia and Herzegovina has accepted the obligation to establish one or more bodies – national preventive mechanisms to monitor the human rights situation of persons deprived of liberty as well as making the environment that prevents torture or inhuman or degrading treatment or punishment. In accordance with the Paris Principles the Law on Amendments to the Law on Ombudsman for Human Rights in Bosnia and Herzegovina establishes a national preventive mechanism within the Institution of Ombudsman for Human Rights in Bosnia and Herzegovina.

## **Article 22 – Measures to prevent and impose sanctions for delaying or obstructing legal remedies, failure to record the deprivation of liberty and denial access to information**

125. Unlawful deprivation of liberty is defined as a criminal offence in Article 147 of the Criminal Code of Bosnia and Herzegovina<sup>34</sup> when it is perpetrated by an official or responsible person in the institutions of Bosnia and Herzegovina. The Criminal Codes of Entities and Brcko District also contain provisions criminalizing unlawful deprivation of liberty.<sup>35</sup>

126. Article 436 of the CPC of Bosnia and Herzegovina provides for compensation for the following persons: (a) a person who was in detention, but criminal proceedings were not initiated or proceedings were suspended or an effective verdict was pronounced acquitting the person of charges or charges were rejected; (b) a person who served a sentence of imprisonment, and was pronounced a shorter imprisonment sentence in new criminal proceedings than the sentence he had served, or was pronounced a criminal sanction other

<sup>34</sup> Article 147 of BiH CC: “(1) An official or responsible person in the institutions of Bosnia and Herzegovina who unlawfully imprisons another person, keeps him imprisoned or otherwise restricts his freedom of movement, shall be punished by a fine or imprisonment for a term not exceeding three years.(2) If the unlawful deprivation of freedom lasted for more than thirty days, or if the manner of the execution was cruel, or if such a treatment of the person who was illegally deprived of freedom caused grave impairment of his health, or if some other serious consequences occurred, the perpetrator shall be punished by imprisonment for a term between two and eight years.(3) If the person who has been illegally deprived of freedom lost his life as a result of the deprivation, the perpetrator shall be punished by imprisonment for a term not less than five years.”

<sup>35</sup> Article 179 of FBiH CC, Article 166 of RS CC and Article 176 of BiH BD CC.

than imprisonment or he was pronounced guilty and freed from sanction; (c) a person who was subject to groundless apprehension or retained in detention or a correctional institution due to a mistake; (d) a person who was in detention longer than the sentence to which he was convicted. Further, a person who was imprisoned without a legal ground shall be entitled to compensation of damages if no pre-trial detention was ordered against him or the time for which he was imprisoned was not included in the sentence pronounced for a criminal offence or minor offence.

127. The Criminal Procedure Codes of Entities and Brcko District also contain provisions which provide for the right to compensation for unlawful arrest.<sup>36</sup>

128. The claim for compensation is submitted to the competent court, provided that prior recourse to the competent Ministry of Justice in order to reach an agreement on compensation to avoid an action for damages has been exhausted.

129. Article 155 of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina provides that:

“Article 155 – The Rights and Freedoms of Persons Taken into Custody and Data on Them

(1) Custody must be executed in such a manner as not to offend the personal integrity and dignity of the accused. In executing custody, authorized officials of the Judicial Police and guards of the institution may use means of force only in cases prescribed by law.

(2) The rights and freedoms of the person taken into custody may be restricted only insofar as it is necessary to achieve the purpose for which custody has been ordered and to prevent the flight of the person taken into custody, commission of a criminal offence or endangerment to the life and health of people.

(3) The administration of the institution shall collect, process and store data on the person taken into custody, including data concerning the identity of the person in custody and his psycho-physical condition, the duration, extension and termination of his custody, the work performed by the person in custody, and his behaviour and disciplinary measures applied.

(4) Custody records concerning detainees shall be kept by the Federal Ministry of Justice.”

130. The Republika Srpska Ministry of the Interior fully complies with Article 6 of the Convention. The Rulebook on Disciplinary Responsibility of Police Officers (*RS Official Gazette 45/14*), which elaborates on the provisions of Article 22 of the Convention in connection with the requirement to prescribe disciplinary sanctions in the case of violation thereof. Further, there are two bodies that are independent of the RS MoI and exercise control and supervision over the work and conduct of police officers on the matter and they are the Bureau of Citizens’ Complaints and Security Committee of the Parliament of the Republika Srpska.

### **Article 23 – Training of law enforcement personnel**

131. Judges and prosecutors in Bosnia and Herzegovina are trained by Entity *Judicial and Prosecutorial Training Centres*,<sup>37</sup> which design professional development programmes

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<sup>36</sup> Article 412 of RS CPC, Article 439 of FBiH CPC and Article 418 of BiH BD CPC.

<sup>37</sup> Judicial and Prosecutorial Training Centre of Republika Srpska and Judicial and Prosecutorial Training Centre of the Federation of BiH.



in accordance with identified needs. Frequent themes of the training are adequate application of international standards and practices, so judges and prosecutors are getting familiar with the conventions that Bosnia and Herzegovina is obliged to implement, including this Convention.

132. The Republika Srpska Minister of Justice issued memorandum No. 08 030/240-27/12 dated 13 March 2012 prescribing the Training Programme for Officers in Correctional Facilities. This programme, which defines the curriculum, syllabi and teaching units, governs training and professional development of all staff employed in correctional facilities of the Republika Srpska.

133. The objective of training and professional development is to ensure continuous improvement of knowledge and professional capacity of staff working in direct contact with prisoners and detainees. In addition to general training, correctional facilities are obliged to provide special training for the staff working with special categories of prisoners, such as women, juveniles, foreigners, mentally ill and high-risk prisoners, who will be professionally specialized.

134. In addition to general and specialized training, in order to undergo full training and professional development, all staff in correctional facilities have on-going training in international instruments and human rights standards, in particular in the European Convention on Human Rights, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the European Prison Rules. This document provides that theoretical and practical knowledge is assessed at the end of each training. Further, taking into account the Rules of Procedure and Criteria for Performance Appraisal of Employees in Correctional Facilities of the Republika Srpska ("Official Gazette of the Republika Srpska" 19/14), it can be concluded that there is an established mechanism for evaluating effects of training and training programmes.

135. The curriculum of the High School of Internal Affairs envisages that the United Nations Convention against Torture and Other Inhuman and Degrading Treatment and Punishment (CAT) and the International Convention for the Protection of All Persons from Enforced Disappearance are studied in the following courses: Constitutional Law, Substantive Criminal Law, International Criminal Law, Criminal Procedural Law, Fundamentals of International Law, Criminology and Penology with Police Ethics, Culture and Communication. The Curriculum of Basic Police Training Level I implemented in the Unit for Basic Training/ Police Academy envisages that the United Nations Convention against Torture and Other Inhuman and Degrading Treatment and Punishment (CAT) and the International Convention for the Protection of All Persons from Enforced Disappearance are studied in the following courses: Police Officers (Rights, Obligations and Duties), Substantive and Procedural Criminal Law and Human Rights and Police Ethics. In addition to these courses, the Conventions are studied in the following modules: Wielding of Police Authorizations and Use of Force and Suppression of Crime. The Curriculum of Basic Police Training Level II implemented in the Unit for Basic Training/ Police Academy envisages that the United Nations Convention against Torture and Other Inhuman and Degrading Treatment and Punishment (CAT) and the International Convention for the Protection of All Persons from Enforced Disappearance are studied in the following courses: Policing and Rules of Conduct, Criminology, Constitutional System and the Administration, Criminal and Misdemeanour Law, Criminal Procedural Law and Human Rights.

136. The Federation Ministry of Justice does not have official information about training of the judiciary and civil servants in accordance with Article 23(1) of the Convention.

137. Training events of judges and prosecutors from the Federation of Bosnia and Herzegovina who may be involved in guarding or treatment of persons deprived of liberty that took place in the period between 1 April 2012 and 31 March 2014 were:

- 2 conferences;
- 2 round tables;
- 10 seminars;
- 1 train-the trainer seminars.

## **Article 24 – Victims’ rights**

138. Article II of the Constitution of BiH defines that Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms. Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina determines that the human rights instruments, as set out in Annex 1 to the Constitution of Bosnia and Herzegovina, are directly applied in the legal system of Bosnia and Herzegovina. Constitutions of the Entities, the Statute of Brcko District of BiH and constitutions of 10 cantons in the Federation of Bosnia and Herzegovina prioritize human rights. There is a reference to a person “whose fate is unknown” in Article 5 of Annex 7 to the General Framework Agreement for Peace in Bosnia and Herzegovina, which stipulates that “The Parties shall provide information through the tracing mechanisms of the ICRC on all persons unaccounted for. The Parties shall also cooperate fully with the ICRC in its efforts to determine the identities, whereabouts and fate of the unaccounted for.”

139. The criminal legislation of Bosnia and Herzegovina does not recognize the concept of victim, although this word and word “the injured (party)” are often used interchangeably. The Law on Protection of Witnesses under Threat and Vulnerable Witnesses focuses on the protection of victims particularly in case of victims who are witnesses in criminal proceedings.

140. For the purposes of the Convention, “victim” means any disappeared person and any individual who has suffered harm as direct result of an enforced disappearance.

141. “Missing person” is defined in the Law on Missing Persons of Bosnia and Herzegovina, which was passed in 2004. The definition of a missing person under the Law on Missing Persons is as follows: “A missing person is a person about whom his family has no information and/or is reported missing on the basis of reliable information as a consequence of the armed conflict that happened on the territory of the former SFRY.”

142. This Law is a combination of the standards established under humanitarian law and standards relating to fundamental human rights and freedoms. The Law on Missing Persons guarantees and ensures the right to know, also regulates the right to social welfare and other rights to family members of missing persons. The Law on Missing Persons of Bosnia and Herzegovina applies to persons who disappeared in the period from 30 April 1991 to 14 February 1996. The Law provides for the equal protection of war victims-the families of missing persons who have long been searching for the truth about the fate of their family members who went missing in the tragic conflict in Bosnia and Herzegovina that took place in the period from 1992 to 1995.

143. The main actors in activities on the preparation and harmonization of the text of this Law were associations of family members of missing persons and representatives of the international community (International Commission for Missing Persons and the International Committee of the Red Cross) with representatives of the Ministry for Human Rights and Refugees of Bosnia and Herzegovina. This Law has transposed core

values/standards from the international legal framework (conventions, protocols) in the field of humanitarian law and human rights and fundamental freedoms.

144. When drafting the Law on Missing Persons in Bosnia and Herzegovina in defining the concept of a missing person, different definitions from international sources were used. Among the international sources, the definition from the following instrument was used: the International Convention for the Protection of All Persons from Enforced Disappearance, adopted by the General Assembly, Article 2, and the concept of missing person in the Law on Missing Persons of Bosnia and Herzegovina means:

“a person arrested, detained or taken against his/her will or otherwise deprived of liberty by officials of different levels of government or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, after which a refusal to disclose the fate or whereabouts of the person concerned or a refusal to acknowledge the deprivation of liberty has ensued, which places the person outside the protection of the law.”

145. Manfred Nowak, a member of the Working Group on Enforced and Involuntary Disappearances who was involved in special proceedings in respect of missing persons in Bosnia and Herzegovina, informed the Security Council that: “The target group of the special procedure is, therefore, much broader than term ‘victim of enforced disappearance’, which the ICRC Working Group mostly uses, and it should be associated with the definition of Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance”.

146. The definition of a missing person in the Law refers partly to the working definition used by the ICRC, which was applied in conflict situations and circumstances of imminent danger, where persons are defined as person “whose families have no information about them or are reported missing on the basis of reliable information due to armed conflict.”

147. In the post-war period the legal practice of Bosnia and Herzegovina mainly uses general term “missing persons”, which includes not only civilians but also combatants who were involved in armed conflicts, whose disappearance happened in the period from 30 April 1991 to 14 February 1996.

148. Article 3 of the Law on Missing Persons provides that families of missing persons have the right to know the fate of their missing family members and relatives, their place of (temporary) residence, or if dead, the circumstances and cause of death and location of burial, if such location is known, and to recover the mortal remains.

149. International human rights mechanisms have recognized that the anguish and stress of family members due to an unknown fate of their relatives constitute inhuman treatment and, in conjunction with the European Convention, a violation of the right to private and family life. In safeguarding these rights the State has an unconditional obligation to conduct an effective investigation and reveal information about the location of a victim of enforced disappearance.

150. The Law on Missing Persons of Bosnia and Herzegovina (Arts. 4, 5, 6 and 7) provides that relevant institutions and authorities of Bosnia and Herzegovina must provide required and necessary information regarding the circumstances in which a person disappeared and these provisions oblige the State party to provide necessary information, a method of exchange of information by civil servants at all levels of government and mandatory cooperation with associations of missing persons, as well as the obligatory exchange of information and mutual cooperation.

151. With the aim of improving the process of tracing missing persons and more efficient identification of missing persons the authorities of Bosnia and Herzegovina founded the Missing Persons Institute of Bosnia and Herzegovina. The establishment of the Missing

Persons Institute of Bosnia and Herzegovina and the transfer of responsibilities from the entity commissions is a requirement for the elimination of possible discrimination in the process of exhumation and identification of missing persons, improving and speeding up the process of searching for missing persons and their identification.

152. The Missing Persons Institute engages in the activities as follows:

(a) Collects, processes and systematizes the information on missing persons, individual and mass graves;

(b) Establishes central and unique database on missing persons; keeps records and notifies families of missing persons, including issuing certificates on disappearance and identity of victims;

(c) Finds, checks and marks locations of mass and individual graves;

(d) Participates in excavations and exhumations of mass and individual graves, participates in the collection of visible surface remains, autopsies, anthropological examinations, identifications, on-site investigation and other procedures pertaining to missing persons;

(e) Cooperates with relevant authorities, including judicial bodies and other organizations and the International Criminal Tribunal for the former Yugoslavia, cooperates with international and domestic organizations and institutions engaged in resolving the issue of missing persons, notably with the ICRC;

(f) Supports families of missing persons and their associations, including projects put forward by the Advisory Board;

(g) Secures funds from the budget and donations;

(h) Cooperates with relevant authorities of the Republic of Croatia, Serbia and Montenegro and other States in accordance with the laws in force in Bosnia and Herzegovina and international agreements;

(i) Informs the public about the outcomes of investigations and the facts established and carries out other activities related to tracing and identifying of missing persons.

153. The management bodies of the Institute are: the Board of Directors, the Steering Board and the Supervisory Board.

154. Article 15 of the Law on Missing Persons of Bosnia and Herzegovina establishes the Fund for Support to the Families of Missing Persons of Bosnia and Herzegovina with the purpose of providing funds and realizing the rights of family members of the missing. The Fund is an independent administrative organization that has the status of a legal person, its seal and stamp.

155. The Fund was established in the decision of the Council of Ministers dated 4 December 2006 with the main purpose to provide and exercise rights of family members of missing persons, which include the right to financial support, health care, assistance to associations of families of missing persons, marking the place of burial and exhumation of missing persons and other rights in accordance with the Law.

156. The above-mentioned Law provides for the right to financial support for family members of missing persons in Bosnia and Herzegovina, as well as possibilities for the exercise of other rights by family members of missing persons (health care, education, marking the place of burial and exhumation of missing persons, assistance to associations).

157. In order to exercise equal rights by family members of missing persons, it was necessary to establish a new body (the Fund), which will grant financial support and

implement activities related to the exercise of the right to other forms of assistance to families of missing persons under a single administrative procedure, as provided for in this Law and the afore-mentioned decision of the Council of Ministers of Bosnia and Herzegovina.

158. Activities aimed at implementing the Agreement on the Funding of the Fund for Support of Families of Missing Persons have repeatedly been initiated by the Ministry for Human Rights and Refugees of BiH, but an understanding on the seat/base and funding of the Fund has not been reached by representatives of Entity governments. The key disagreement concerns the percentage of funds that Entities are supposed to provide for funding the Fund at the level of Bosnia and Herzegovina and the provision on the basis of the following criteria: the number of missing persons and places where they went missing.

159. In the meantime, in connection with the enforcement of this legal obligation, the Constitutional Court of Bosnia and Herzegovina has issued a number of decisions. As conditions for the operation of the Fund in Support of Families of Missing Persons have not been created to date, nor has the Agreement on the Funding of the Fund in Support of Families of Missing Persons been agreed on, the Prosecutor's Office of Bosnia and Herzegovina instituted, in relation to the Decision, proceedings KTA-333/06, based on decisions of the Constitutional Court No. AP 228/04 dated 13 July 2005 rendered on the application filed by the Association of Families of Missing Persons and the City Association of Camp Prisoners of Istocno Sarajevo and others against the Council of Ministers of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, the Government of the Republika Srpska and Brcko District Government.

160. This decision and all decisions enumerated herein relate to issues of the process of searching for missing persons in Bosnia and Herzegovina. All decisions of the Constitutional Court are identical: AP-129/04 dated 27 May 2006, AP-1226/05 dated 18 November 2006, AP-228/04 dated 27 May 2006, AP-159/06 dated 26 June 2007, AP-171/06 dated 13 September 2007, AP-1143/06 dated 13 September 2007 and AP-36/06 dated 16 July 2007.

161. The decisions order the Council of Ministers of Bosnia and Herzegovina, Governments of the Federation of Bosnia and Herzegovina, the Republika Srpska and Brcko District of BiH to take certain activities with a view to ensuring the operation of the institutions established under the Law on Missing Persons of Bosnia and Herzegovina ("Bosnia and Herzegovina Official Gazette" No. 50/04) (i.e. Missing Persons Institute of BiH, the Fund for Support of Families of Missing Persons and the Central Records on Missing Persons, which was established within the Institute), i.e. as ordered in the decisions:

"... The Constitutional Court of BiH ordered the Council of Ministers of Bosnia and Herzegovina, the Federation Government and the Government of the Republika Srpska to ensure the operation of the institutions established under the Law on Missing Persons, i.e. Missing Persons Institute, the Fund for Assistance to the Families of Missing Persons in Bosnia and Herzegovina and Central Records of Missing Persons in Bosnia and Herzegovina."

162. At a proposal by the Ministry of Human Rights and Refugees of Bosnia and Herzegovina, at its 101st meeting held on 15 October 2010, the Council of Ministers of Bosnia and Herzegovina agreed on the Draft Law on Amendments to the Law on Missing Persons and sent it to the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina for deliberation. The Joint Commission on Human Rights, Rights of the Child, Youth, Immigration, Refugees, Asylum and Ethics of the Parliamentary Assembly considered the Draft Law pursuant to Article 104 of the Rules of Procedure of

the House of Representatives and Article 98 of the Rules of Procedure of the House of Peoples at its 29th meeting on 28 October 2010.

163. The passage of the proposed amendments to the Law on Missing Persons would create the required conditions for the establishment of a fund for the support of missing persons, whose responsibilities do not diminish responsibilities of the entity institutions because the Fund would have the role of an administrative institution applying a single legal framework on the basis of the Law on Missing Persons Bosnia and Herzegovina. The House of Representatives passed the Law in the first reading at the 64th session held on 7 December 2009. The House of Peoples failed to pass the Law at the 39th meeting held on 15 December 2009 (first reading).

164. Entitlement to financial support, criteria for receiving financial support and calculation of the monthly financial support are regulated in the Law on Missing Persons.

165. The family members of missing persons who were supported by the missing person and who are in need of support are entitled to monthly financial support. This financial support cannot be received concurrently with support on other grounds. So, the benefit cannot be received simultaneously with a benefit on some other grounds. The base for calculating the amount of monthly financial support is 25 per cent of the average salary paid in Bosnia and Herzegovina in the previous quarter.

166. The International Convention for the Protection of All Persons from Enforced Disappearance obliges State parties to ensure the exercise of the right to reparation and fair and adequate compensation. Reparation is war damages. Restitution is the restoration of previous conditions and restitution of property and goods looted by hostile army. Restitution involves the recovery of the reputation or rights (e.g. in the Criminal Code: expungement of sentence).

167. With regard to Article 24, paragraph 3, the Ministry of the Interior of the Republika Srpska has a department in charge of missing persons whose disappearance is reported to the competent authorities.

168. If unidentified human remains are found, the Institute performs all the necessary procedures with a view to identifying the unknown human remains as well as to determine the cause of death. In this regard, the Republika Srpska has no problems.

169. When it comes to missing and unidentified persons from the previous conflict, the Republika Srpska has the Operational Team of the RS Government Office for Missing Persons with which the Institute collaborates closely.

170. At the level of Bosnia and Herzegovina there is the Institute for Missing Persons, established in accordance with the Law on Missing Persons passed at the level of Bosnia and Herzegovina, too.

171. With regard to Article 24, paragraph 4, as noted in the position of the Ministry of Health and Social Protection of the Republika Srpska, the Republika Srpska has jurisdiction over the protection of victims of enforced disappearance which suffered damage as a direct consequence of enforced disappearance in wartime and they are covered by the Law on the Protection of Civilian Victims of War – Consolidated text (“Republika Srpska Official Gazette” 24/10), because the victims of enforced disappearance in wartime are grouped in the category of civilian victims of war.

172. According to Article 2, paragraph 1 of the Law, civilian victims of war are considered to be, *inter alia*, the persons who have suffered a bodily impairment of at least 60 per cent as a result of abuse, rape or detention (in prison, concentration camp, internment, forced labour) as well as persons who were killed, died or disappeared in specified circumstances. So, in terms of the aforementioned Law, survivors of enforced

disappearance that have sustained a bodily impairment of at least 60 per cent in these circumstances and family members of victims of enforced disappearance enjoy personal and family entitlements to the same extent and under the same conditions as other beneficiaries covered by this Law.

#### **Procedure of granting the entitlements**

173. Upon a claim, the municipal / city administrative body in charge of protection of war veterans and the protection of civil war victims on whose territory the applicant has a domicile or residence decides on the entitlements. However, there are obstacles to filing new claims as the statutory period for filing claims expired (31 December 2007).

(a) Civilian victims of war acquire the right to a civilian personal disability allowance if they have sustained a bodily impairment of at least 60 per cent–100 per cent and they are classified into six groups according to the percentage of bodily impairment. Thus, a requirement for the exercise of the entitlement is a bodily impairment of at least 60 per cent (the sixth group).

174. The procedure for exercising the entitlement requires documentation of medical treatment that dates less than one year of the date the impairment occurred, i.e. the date of termination of the circumstances in which the impairment occurred, and evidence of the circumstances in which the impairment occurred.

(b) Family members of the missing person may submit a claim for recognition of family entitlements within five years of disappearance or the date of termination of the circumstances in which the person went missing or within one year of the exhumation and identification of remains missing.

175. The aforementioned law does not impose an obligation of family members to declare their missing family member dead in order to exercise the rights set forth in legislation in this area. So, family members of the missing person may exercise the rights on this basis without an obligation to declare the missing person dead.

#### **Entitlements**

176. Entitlements under the Law on the Protection of Civilian Victims of War are:

- (1) Civilian (personal) disability allowance or civilian family disability allowance;
- (2) Attendance allowance (granted to civilians with disabilities from the first group),
- (3) Additional allowance for a family member unfit for work (under certain conditions);
- (4) Additional financial assistance (under certain conditions);
- (5) Additional allowance for single parents (under certain conditions);
- (6) Health care, which includes the right to health insurance if they cannot have it on any other grounds according to the law on health insurance);
- (7) Vocational rehabilitation.

#### **Participation of associations in the relevant legislative drafting**

177. Associations that represent and advocate interests of missing persons must participate in drafting the relevant legislation in this field and the general public participates through public consultations.

**Article 24, paragraph 5, points a) and b)***(a) Reparation*

178. The base for calculation of allowances under the Law on Protection of Civilian Victims of War in 2014 is BAM 405.56:

Civilian personal disability allowance:

1st category	100 per cent of the base	BAM 405.56
2nd category	70 per cent of the base	BAM 283.89
3rd category	50 per cent of the base	BAM 202.78
4th category	40 per cent of the base	BAM 162.22
5th category	35 per cent of the base	BAM 141.95
6th category	30 per cent of the base	BAM 121.67

Attendance allowance is granted to:

- Only civilian victims of war in the 1st category are eligible to attendance allowance and it amounts to BAM 324.45.
- Civilian victims of war from 1st to 5th category are eligible to additional financial assistance regardless of fitness for work, while civilian victims in the 4th category and family members of a deceased person who had the status of civilian victims of war are eligible for it only if they are unfit for work and in addition:
  - (1) They have no job;
  - (2) They are not self-employed;
  - (3) They are not pensioners;
  - (4) If their share of household income per member of household does not exceed 10 per cent of the average wage in the RS in the month for which payment is made.

Additional financial assistance for a beneficiary of civilian personal disability allowance:

- 20 per cent of the civilian disability allowance, which makes the following:

1st category	BAM 81.11
2nd category	BAM 56.78
3rd category	BAM 40.56
4th category	BAM 32.44
5th category	BAM 28.39
6th category	BAM 24.33.
- The entitlement for family members unfit for work and the entitlement to single parent allowance may be granted only to beneficiaries of additional financial assistance.



Additional allowance for a family member unfit for work, who is a beneficiary of civilian personal disability allowance:

- 50 per cent of the civilian disability allowance, which makes the following:
 

1st category.	BAM 202.78
2nd category	BAM 141.95
3rd category	BAM 101.39
4th category	BAM 81.11
5th category	BAM 70.97
6th category	BAM. 60.83.

Single parent allowance for a beneficiary of civilian personal disability allowance:

- 50 per cent of the additional financial assistance, which makes the following:
 

1st category	BAM 40.56
2nd category	BAM 28.39
3rd category	BAM 20.28
4th category	BAM 16.22
5th category	BAM 14.19
6th category	BAM 12.17.

Civilian family disability allowance:

- Civilian family disability allowance is 40 per cent of the base and amounts to BAM 162.22 and is divided into flat amounts to family members of the murdered, killed or missing civilian war victim who meet the statutory requirements.
  - Additional financial assistance for a beneficiary of civilian family disability allowance is BAM 32.44;
  - Additional allowance for a family member unfit for work, who is a beneficiary of civilian family disability allowance, is BAM 81.11;
  - Single parent allowance for a beneficiary of civilian family disability allowance is BAM 16.22.

(b) *Rehabilitation*

179. With regard to rehabilitation, rehabilitative measures include hospitalization as the clinical pathway of each patient and, after discharge, recuperation in the community to be conducted in mental health centre is recommended. The hospital implements an information safety and security policy. The “Dr Miroslav Zotović” Institute of Physical Medicine and Rehabilitation has organized a service for psychosocial and educational rehabilitation of adults with all required professional staff (psychologist, social worker and occupational therapist) who perform team assessment of individual cases. When it comes to alternative forms of treatment, the Modrica Hospital refers patients at discharge point to the relevant centres for mental health and social work centres, which provide rehabilitation and other services. The Hospital has organized activities within working-occupational treatment where the patient has the opportunity to participate in various workshops, therapeutic groups, recreational activities and the like.

180. According to the reply of the Ministry of Justice of the Republika Srpska, Article 11 of the RS CPC provides that a person who is unjustly convicted of a criminal offence or unlawfully deprived of liberty has the right to rehabilitation, compensation for damage from the budget, as well as other rights provided for by law.

181. According to the reply of the Federation Ministry of Justice, Chapter XXXII of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina provides for procedure of compensation for damage, rehabilitation and other rights of persons subject to unjust conviction and groundless apprehension. The chapter ensures compensation for damage caused by unjust conviction and groundless apprehension, which is provided for in Article 439, paragraph 1, point c) providing the right to compensation also to: “c) a person who was subject to groundless apprehension or retained in detention or a correctional institution due to miscarriage of justice or a person who was in detention longer than the sentence to which he was convicted.”

182. However, this cannot be applied to victims of abduction, but only to cases of illegal/unlawful deprivation of liberty or unlawful detention.

183. The Federation of Bosnia and Herzegovina partially applies this provision in the Law on Social Protection, Protection of Civilian Victim of War and Families with Children (“Federation of Bosnia and Herzegovina Official Gazette” 36/99, 54/04, 39/06, 14/09, hereinafter: the Law).

184. Article 2 of the Convention provides that: “Enforced disappearance” is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

185. People who were subjected to the above in the period 1992–1995 can be classified into the following groups:

- (1) Disappeared, killed and never found persons;
- (2) Disappeared, killed and found, but unidentified persons;
- (3) Disappeared, found and identified persons;
- (4) Disappeared persons who have survived torture with a bodily impairment of at least 60 per cent;
- (5) Disappeared persons who have survived without any bodily impairment or with a bodily impairment of to less than 60 per cent.

186. Persons under points 1 to 4 are entitled to compensation in accordance with the Law. This applies to their family members or to them personally. The persons under point 5 are the most numerous group and they do not enjoy any legal protection. Exceptions are survivors of sexual assault and rape, who are classified in a separate category. The listed group of potential beneficiaries are not specifically provided for in the Law, but they can be classified like this taking the broader context of the Law in account.

#### **Article 54 of the Law**

187. For the purpose of this Law, a civilian victim of war is a person who suffered in wartime or imminent threat of war a bodily impairment, including mental impairment or substantial deterioration of health or disappearance or killing.

188. Pursuant to paragraph 1 of this article, the status of civilian victim of war is recognized to:

- “1. any person who has sustained a bodily impairment of at least 60 per cent or significant deterioration in health due to torture, inhuman and degrading treatment, unlawful punishment, unlawful detention, imprisonment, concentration camp, internment, forced labour during the war or imminent threat of war
2. any person who has sustained a bodily impairment of at least 60 per cent in war events (bombardment, street fights, ordnance explosion, a stray bullet)
3. any person who has sustained a bodily impairment of at least 60 per cent due to the explosion of ordnance after the war ended,
4. any person who has sustained a bodily impairment of at least 60 per cent due to diversionist and terrorist actions which endanger the security and order in the Federation of the Federation.
5. family members of a missing person if he was a civilian not a serviceman,
6. family members of a person killed in war events (bombardment, street fights, ordnance explosion, a stray bullet).”

189. A special group within the group of civilian victims of war are persons who were victims to sexual assault and rape. The characteristic of this category of civilian victims of war is the fact that their bodily impairment is not assessed, but only the facts are established. What is important to emphasize that this right is not afforded only to women but also to men who have turned out to have been subjected to the process of sexual assault and rape.

190. Article 58 provides for the entitlements the persons with the status of civilian victim of war have and they are:

- (1) Civilian personal disability allowance;
- (2) Family disability allowance;
- (3) Attendance allowance;
- (4) Orthopaedic allowance;
- (5) Right to help with health costs and procurement of orthopaedic aids;
- (6) Vocational training (professional rehabilitation, new qualification and additional qualification);
- (7) Preferential treatment concerning employment;
- (8) Preferential treatment concerning housing;
- (9) Psychological and legal assistance.

191. The entitlements under paragraph 1, items 1), 2), 3) and 4) are exercised under the conditions, in the manner and following the procedure set forth in this Law. The entitlements under paragraph 1, items 5), 6), 7) and 8) of this Article are exercised in accordance with health insurance, health care, protection of families with children and employment legislation. Monthly civilian personal disability allowance is granted to survivors of sexual assault and rape in the full amount of the base.

#### **Article 59 – Personal disability allowance**

192. Personal disability allowance is determined in a monthly amount according to the physical impairment under Article 56 of this Law, with an exception of persons under Article 54, paragraph 3 of this Law (sexually abused and raped persons), in the amount of 70 per cent of the monthly allowance for military disabled person of the corresponding

group under the Law on the Rights of Veterans and Their Family Members and it is paid in the following ratio: 50 per cent from the Federation budget and 20 per cent from the cantonal budget in the following manner:

- |     |           |              |
|-----|-----------|--------------|
| (1) | I group   | 100 per cent |
| (2) | II group  | 73 per cent  |
| (3) | III group | 55 per cent  |
| (4) | IV group  | 43 per cent  |
| (5) | V group   | 32 per cent  |
| (6) | VI group  | 18 per cent  |

193. Personal disability allowance of persons under Article 53, paragraph 3 of this Law is 70 per cent of the base under paragraph 1 of this Article.

#### **Article 60 – Attendance allowance**

194. The right to attendance allowance is given to disabled people in I to IV group who cannot meet their daily needs without assistance of another person. The attendance allowance is calculated in the monthly amount of 70 per cent of the monthly allowance for military disabled person of the corresponding group and it is paid in the following ratio: 50 per cent from the Federation budget and 20 per cent from the cantonal budget.

#### **Article 61 – Orthopaedic allowance**

195. The right to orthopaedic allowance is given to people with disabilities whose physical disability is determined based on impairment that is a direct consequence of wound or injury that caused amputation of a limb or severely restricted its function or caused a total loss of sight on both eyes.

196. The orthopaedic allowance is determined in a monthly amount of 70 per cent of the monthly amount of orthopaedic allowance of military disabled people of the corresponding group and it is paid in the following ratio: 50 per cent from the Federation budget and 20 per cent from the cantonal budget.

#### **Article 62 – Family disability allowance**

197. Members of families of civilian victims of war under Article 54, paragraph 3 of this Law, subject to conditions set forth in this Law, are entitled to family disability allowance.

198. Family members of a deceased civilian victim of war who was in I to IV group of disability and enjoyed attendance allowance until his death have the right to family disability allowance, under the conditions set by this Law, provided that the death of civilian victim of war was due to the wound, injury or illness was the grounds for establishing his disability under this Law.

199. The family members of a deceased civilian victim of war must meet a series of requirements to qualify for the family disability allowance after the deceased spouse. In addition to the requirement that the deceased spouse had to be in I to IV group of disability and to enjoy attendance allowance until his death, his death must be in the causal relation with the wound or injury that was the grounds for establishing his disability.

**Article 65**

200. The base for calculation of family disability allowance is 70 per cent of the base for calculation of family disability allowance of fallen warriors and it is paid in the following ratio: 50 per cent from the Federation budget and 20 per cent from the cantonal budget.

201. Family disability allowance is calculated on the base under paragraph 1 of this Article on a monthly basis in the following manner:

- For an individual: 43 per cent of the base;
- For a two-member family: 55 per cent of the base;
- For a three-member family: 60 per cent of the base;
- For a four-member family or more: 65 per cent of the base.

202. Article 69 paragraph 2 of the Law reads:

“The family members of a missing civilian victims of war are entitled to family disability allowance until the missing person has been declaration deceased and not longer than two years of entry into force of this Law when the entitlement shall cease if they do not initiate the proceedings for declaring the civilian victim disappeared.”

203. Since this article is not in accordance with Article 27, paragraph 1 of the Law on Missing Persons (Bosnia and Herzegovina Official Gazette No. 50/04) which provides: Three years after the effective date of the Law, persons registered as missing in the period from 30 April 1991 to 14 February 1996 whose disappearance has been verified within BiHCCEN, shall be considered dead and this fact shall be officially entered in the Register of Deaths.

204. So far, on several occasions, it has been suggested that the Federation Ministry of Labour and Social Policy should take an initiative to amend this article. However, the Ministry has already prepared a separate Law on the Protection of Civilian Victims of War, which does not have the contentious provisions because the issue has been already regulated in the Law on Missing Persons, and sent it to the Government of the Federation of Bosnia and Herzegovina to forward it to the Parliament for deliberation.

205. When the text of the law will be deliberated depends on the Federation Government and the Federation Parliament.

**Article 78 – Filing an application for recognition of the rights**

206. The rights under Article 58, paragraph 1, point 1), 2), 3) and 4) of this Law shall be granted by the social welfare centres or competent municipal administrative services as the authorities of first instance, according to the place of permanent or temporary residence of the applicant while appeals against the decisions made are decided by appropriate cantonal administrative body.

**Article 80a**

207. The decision rendered by the authority of first instance, which recognizes the right under this Law, is subject to review. An *ex officio* review shall be performed by the competent cantonal administrative authority.

208. We certainly should mention Article 33 of the Law (a new article) which provides the following: “Upon returning to their former places of residence in the Republika Srpska or Brcko District of Bosnia and Herzegovina, civilian victims of war with temporary

residence in the territory of the Federation shall be provided with the rights that they had in place of temporary places of residence.”

209. This provision resolves the issue of rights of returnees in the Republika Srpska and Brcko District, who have the status of civilian victims of war, because, until this amendment, leaving the Federation of Bosnia and Herzegovina meant losing the right and the right could not be exercised in places of pre-war residence due to various reasons.

210. While an application for the status of civilian victim of war cannot be filed in the Republika Srpska anymore because the deadline for submission of applications has expired, all potential beneficiaries may do it in the Federation of Bosnia and Herzegovina as the deadline for submission of applications is not set in this Law.

## **Article 25 – Protection of children**

211. The criminal legislation of Bosnia and Herzegovina has no provisions concerning “the wrongful removal of children who are subjected to enforced disappearance, children whose father, mother or legal guardian is subjected to enforced disappearance or children born during the captivity of a mother subjected to enforced disappearance”.

212. With regard to the need to protect the best interests of children and their right to preserve or re-establishing the identity, the authorities of Bosnia and Herzegovina are obliged to ensure the right to preserve or re-establish their identity, including nationality, name and family ties recognized by law. Further, article 25 of the Convention provides that a system of adoption or other form of placement of children shall have legal procedures in place to review the adoption or placement procedure, and, where appropriate, to annul any adoption or placement of children that originated in an enforced disappearance.

213. Family Laws of Entities and Brcko District of Bosnia and Herzegovina do not contain legal procedures of reviewing adoption or other form of placement of children and thereby there is no annulment of any adoption or placement of children that originated in an enforced disappearance.

214. The criminal legislation of Bosnia and Herzegovina has no provisions to criminalize and punish the wrongful removal of children who are subjected to enforced disappearance, as a separate criminal offence.

215. The Law on Social Protection (“Republika Srpska Official Gazette” 37/12) prescribes that the beneficiaries of social protection are children in need such as children without parental custody, children whose development is hindered due to family circumstances, victims of violence and trafficking in children and children who require social protection due to special circumstances. The latter are children who find themselves in need due to poverty, natural disasters, calamities of war, exile, migration, repatriation, death of one or more family members, long-term medical treatment, discharge from the institution or other unforeseen circumstances (Article 18, paragraph 1, point a), sub-point 8) of the Law on Social Protection). The rights to social protection under the Law are: financial assistance, attendance allowance, support in the equalization of opportunities for children and youth with disabilities, placement in an institution, foster family care, help and care at home, day care, one-off payment support and counselling. Children without parental care enjoy guardianship and, depending on the assessment of the guardianship authority, they can be taken care of in a foster family, social welfare institution or may be adopted.

216. Adoption is a legal form of care for children placed in families, which is governed by the Family Law (“Republika Srpska Official Gazette” 54/02, 41/08). Full adoption establishes relations of kinship between the adopter and the adoptee and his relatives and his descendants, as if he/she is a blood relative. Incomplete adoption establishes between

the adopter and the adoptee and his descendants relations of kinship, as well as the rights and duties that exist between parents and children by law, unless otherwise specified. Incomplete adoption may be terminated based on the decision of the guardianship authority when it finds that the legitimate interests of the adoptee require it; full adoption may not be terminated. An appeal is allowed against a decision on adoption only in case of error, fraud or coercion and filing an appeal is not time barred.

217. In the procedure of deciding on the rights of a child under the Law on Social Protection of the Republika Srpska, the competent authority is obliged to allow the child to express his/her opinion in accordance with the age and abilities.

218. Article 166(3) of the Criminal Code of the Republika Srpska provides for a qualified form of the crime of unlawful deprivation of liberty if the victim is a child or a minor and provides for a penalty of 1 to 5 years in prison. In connection with the requirement of Article 25, sub-point b) of the Convention, note that Article 377 of RS CC criminalizes falsification of documents.

219. With a view to completing the Initial Report with all relevant information related to the application of the International Convention, the Missing Persons Institute of Bosnia and Herzegovina, the Office of the Agent of the Council of Ministers before the European Court of Human Rights, the Directorate for Coordination of Police Bodies of Bosnia and Herzegovina, the Ministry of Security of Bosnia and Herzegovina and the Constitutional Court of Bosnia and Herzegovina were requested to submit information available on the matter of disappearances and disappearances reported in Bosnia and Herzegovina to the present day.

220. The Federation Ministry of Justice, the Judicial and Prosecutorial Training Centres of the Federation and the Republika Srpska were requested to submit available information relating to the training of the judiciary and civil servants in accordance with Article 23, paragraph 1 of the Convention.

221. The Missing Persons Institute of Bosnia and Herzegovina sent an answer that Articles 21 to 24 of the Law on Missing Persons of Bosnia and Herzegovina ("Official Gazette of Bosnia and Herzegovina" 50/04) provide for the establishment of the Central Records on Missing Persons in Bosnia and Herzegovina (hereinafter: BIHCEN).

222. Immediately after the inception and commencement of operation of the Missing Persons Institute of Bosnia and Herzegovina, activities to establish BiHCEN started. One of the prerequisites for any activity related to the establishment of the BiHCEN and the start of verification was the adoption of the Rulebook on Central Records on Missing Persons (hereinafter: Rulebook). The Rulebook regulates the procedure of collecting and processing data, the method of filing a missing person report and, what is especially important, it governs the procedures of verification process. The Rulebook was published in the Official Gazette of Bosnia and Herzegovina, No. 80/09. The Rulebook was approved by both co-founders of the Institute (the Council of Ministers of Bosnia and Herzegovina and the International Commission on Missing Persons).

223. The Guidelines on safety and security of the information system of central registry of missing persons, which is an integral part of the Rulebook, specifically regulates the manner of access to the Department of the Central Records of Missing Persons. This document prescribes the manner of access to confidential information and the manner of safeguarding from unauthorized access to, deletion or modifying and downloading of data.

224. The verification of missing persons is carried out by the Verification Commission, whose work is defined in detail in the Rules of Procedure of the Verification Commission for Data in CEN of Bosnia and Herzegovina. The verification process is elaborated additionally in the consolidated text of the Guidelines to the Verification Commission for

Data in the Central Registry of Missing Persons of Bosnia and Herzegovina adopted on 25 July 2010 at the 56th meeting of the Board of Directors of the Missing Persons Institute of Bosnia and Herzegovina.

225. According to Articles 21 and 22 of the Law on Missing Persons, BiH CEN “is a collection of individual records of missing persons from/in BiH that includes relevant information concerning the identity of a missing person, place and circumstances of disappearance, and other information important for tracing and determining the identity of a missing person”.

226. Verification involves checking the authenticity of filed missing person reports or taking new statements or verifying the identity, i.e. checking the identity of a missing person against all known official records that were or are kept in Bosnia and Herzegovina.

227. The Institute stores electronic databases of various institutions that were engaged in seeking and keeping records of missing persons. Records with the number of missing person reports can be seen below:

- ICMP database (25,015);
- ICRC database – active cases (11,119);
- ICRC database – closed cases (11,403);
- Federation Commission for Missing Persons database-identified (13,262);
- Federation Commission for Missing Persons database – missing persons (13,534);
- RS Office for Missing and Detained Persons database (5,242);
- Federation Commission for Missing Persons – additional database, identified from HVO (632+35);
- BiH Institute of Missing Persons database – identified (1,009+1207);
- BiH Institute of Missing Persons database – newly-reported (39);
- Federation Commission for Missing Persons, Mostar Office and Independent Enforcer of Orašje database – unidentified (1,142);
- Federation Commission for Missing Persons, Mostar Office and Independent Enforcer of Orašje database – unidentified (1,549);
- National Commission for the Exchange of Prisoners of War and Bodies of the Killed database – identified from HVO (189);
- National Commission for the Exchange of Prisoners of War and Bodies of the Killed database – identified from VRS (915).

228. The databases were the starting point for checking the reliability of each missing person report during the verification process. If one adds up all the figures above, the sum is 172.584 starting units that had to be unified into BiH CEN by applying certain criteria. After unification where identical names, surnames, father’s names, date and place of birth were deleted, the total of different names and surnames was 34,964 and they made the unverified BiH CEN. So, by consolidating and cleansing the databases, BiH CEN with unverified 34,364 different names and surnames that had to be verified was established. As of today (4 March 2014) the Verification Commission has verified 15,245 missing persons.

229. In the reply by the Office of Agent of the Council of Ministers before the European Court of Human Rights, we can see that since April 2012 the Office of the Agent has received 19 applications regarding enforced disappearance. These are cases: *Zuban and 17*



*others against Bosnia and Herzegovina*, application 7175/06, and *Renad Šeremet against Bosnia and Herzegovina, Montenegro and Serbia*, application 2960/05.

230. In both cases the applicants claim violations of Articles 2 (right to life), 3 (prohibition of torture), 5 (right to liberty and security), 8 (right to respect for private and family life), 13 (right to an effective remedy) and 14 (prohibition of discrimination) of the Convention, the European Court has not issued a supplement in these cases. The only judgment that the Court rendered regarding enforced disappearance in Bosnia and Herzegovina is the judgement in *Palic against Bosnia and Herzegovina*, application 4704/04 dated 15 December 2011.

231. According to the reply of the Directorate for Coordination of Police Bodies of Bosnia and Herzegovina and the Ministry of Security of Bosnia and Herzegovina, since 1 April 2012, at the request of local police authorities, the NCB Interpol Sarajevo Department for International Police Cooperation of the Directorate for Coordination of Police Bodies of Bosnia and Herzegovina has processed a total of 51 missing person cases. They have verified and exchanged information about missing persons with other members countries of Interpol and published notices of missing persons internationally. In addition, a request for data on the number of persons whose disappearance was reported in their areas of responsibility in the specified period was sent to the Ministry of the Interior of the Federation of Bosnia and Herzegovina, the Ministry of the Interior of the Republika Srpska and the Police of Brcko District.

232. Considering the short notice, the Ministry of the Interior of the Federation of Bosnia and Herzegovina was unable to provide statistics. Namely, data on missing persons is entered in the electronic search-for-missing-person database by the competent cantonal Ministries of the Interior/the Police Administration Departments and respective police stations according to the place of disappearance of each particular person. As far as the Federation Police Administration concerned, in the reporting period only one missing person report was filed and the person was found. The electronic search-for-missing-person database currently has a lot of duplicate entries by Cantonal MoIs, i.e. more missing person notices were published for one person and more searches were discontinued for the same person and therefore we are not able to give a precise answer by simply viewing the database. The current figures in the database show that in the reporting period, 115 (one hundred and fifteen) persons were missing and searched for, while 345 (three hundred and forty-five) searches were discontinued, i.e. the persons were found.

233. The Ministry of the Interior of the Republika Srpska: “In the period from 1 January 2012 to 24 February 2014, 168 missing person reports were filed in the territory of the Republika Srpska. Of this number 153 persons were found and 15 people are still unaccounted for and the search is still going on.”

234. Police of Brcko District:

(1) In 2012 (starting from April) the Police of the Brcko District of Bosnia and Herzegovina received 12 (twelve) missing person reports of which 11 (eleven) searches were discontinued, while 1 (one) search is still going on;

(2) In 2013, the Police of the Brcko District of Bosnia and Herzegovina received 8 (eight) missing persons report and all searches were discontinued, i.e. they are not going on;

(3) In 2014, the Police of the Brcko District of Bosnia and Herzegovina received 1 (one) missing person report and the search was discontinued, i.e. it is not going on.

235. Accordingly, disappearance of a total of 21 (twenty-one) persons was reported to the police of Brcko District of Bosnia and Herzegovina in the period from April 2012 to 20 February 2014.

236. In the period from 2012 to 2014 the Constitutional Court of Bosnia and Herzegovina received a total of 50 applications involving missing persons. Decisions on Admissibility and Merits No. AP 2101/11 and AP 3783/09 disposed of 48 applications received in this period, so that only two cases involving missing persons (received last year in April and May) are still pending. The decisions, AP 2101/11 and AP 3783/09, found a violation of the prohibition of inhuman treatment under Article II / 3b) of the Constitution of Bosnia and Herzegovina and Article II/3 f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention.

237. The High Judicial and Prosecutorial Council of Bosnia and Herzegovina has provided the information relating to the number of received war crimes cases, including forced disappearances, and the number of indictments received and the number of decisions made.

238. A total of 15 communications against Bosnia and Herzegovina involving the search for missing persons, prosecution of perpetrators and compensation for damage caused by emotional distress was filed with the Human Rights Committee, which communicates with the Ministry of Human Rights and Refugees of Bosnia and Herzegovina on the communications.

239. *Note:* The communications against Bosnia and Herzegovina pending before the Human Rights Committee were filed on behalf of 27 people – nationals of Bosnia and Herzegovina.

240. The Human Rights Committee has adopted views in four cases against Bosnia and Herzegovina.

241. One communication involving illegal aliens stay (deportation) was filed with the Human Rights Committee and the Human Rights Committee has adopted views in this case.

Table

**Statistics of war crimes cases disposed of in the period from 2011 to 2013 involving a crime of enforced disappearance under Article 172, paragraph 1, point i) of BiH CC and Articles 141, 142, 143, 144, 145 and 146 of SFRY CC**

	<i>Investigations</i>																							
	<i>Number of decision on conducting investigation</i>				<i>Number of decision on termination of investigation</i>				<i>Number of indictments</i>				<i>Number of convictions</i>				<i>Number of acquittals</i>				<i>Number of other judicial decisions*</i>			
	'11	'12	'13	Total	'11	'12	'13	Total	'11	'12	'13	Total	'11	'12	'13	Total	'11	'12	'13	Total	'11	'12	'13	Total
<i>Prosecutor's Office</i>																								
Cantonal Prosecutor's Office of Una-Sana Canton	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Cantonal Prosecutor's Office of Canton 10	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Cantonal Prosecutor's Office of Western Herzegovina Canton	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Cantonal Prosecutor's Office of HN Canton	0	0	0	0	1	0	0	1	0	0	0	0	0	1	0	1	0	0	0	0	0	0	0	0
Cantonal Prosecutor's Office of Sarajevo Canton	1	0	0	1	1	2	1	4	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Cantonal Prosecutor's Office of Middle Bosnia Canton	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Cantonal Prosecutor's Office of Zenica-Doboj Canton	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Cantonal Prosecutor's Office of Tuzla Canton	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Cantonal Prosecutor's Office of Posavina Canton	0	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Cantonal Prosecutor's Office of Bosnia-Drina Canton	0	0	2	2	0	0	1	1	0	0	1	1	0	0	0	0	0	0	0	0	0	0	0	0
<b>Federation of BiH Total</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>4</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>6</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
District Prosecutor's Office of B. Luka	0	1	2	3	0	1	1	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
District Prosecutor's Office of Bijeljina	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

	<i>Investigations</i>																							
	<i>Number of decision on conducting investigation</i>				<i>Number of decision on termination of investigation</i>				<i>Number of indictments</i>				<i>Number of convictions</i>				<i>Number of acquittals</i>				<i>Number of other judicial decisions*</i>			
	'11	'12	'13	Total	'11	'12	'13	Total	'11	'12	'13	Total	'11	'12	'13	Total	'11	'12	'13	Total	'11	'12	'13	Total
<i>Prosecutor's Office</i>																								
District Prosecutor's Office of Doboj	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
District Prosecutor's Office of Istočno Sarajevo	6	3	0	9	6	3	1	10	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
District Prosecutor's Office of Trebinje	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Republika Srpska Total</b>	<b>6</b>	<b>4</b>	<b>2</b>	<b>12</b>	<b>6</b>	<b>4</b>	<b>2</b>	<b>12</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Prosecutor's Office of Brčko District of Bosnia and Herzegovina	1	0	0	1	0	0	1	1	0	0	0	0	0	0	0	0	0	0	1	1	0	0	0	0
Prosecutor's Office of Bosnia and Herzegovina	0	2	3	5	0	0	2	2	1	1	0	2	2	0	0	2	1	1	0	2	0	2	1	3
<b>Grand Total</b>	<b>8</b>	<b>7</b>	<b>7</b>	<b>22</b>	<b>8</b>	<b>6</b>	<b>7</b>	<b>21</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>3</b>	<b>2</b>	<b>1</b>	<b>0</b>	<b>3</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>3</b>	<b>0</b>	<b>2</b>	<b>1</b>	<b>3</b>

\* *Note:* Column "Other judicial decisions" contains data on war crimes cases under jurisdiction of the Court of BiH which were transferred to entity judiciary in accordance with Article 27a of BiH CPC. Further, this column contains information about war crimes cases under jurisdiction of the entity judiciary which were transferred to the Court of BiH in accordance with Article 449 of BiH CPC.

### **III A list of the most important human rights instruments which Bosnia and Herzegovina is a party to**

- (a) Convention on the Prevention and Punishment of the Crime of Genocide, (RBiH Official Gazette 25/93), by succession as of 29 December 1992;
- (b) Convention on the Non-Applicability of Statutory Limitations to War Crimes, (RBiH Official Gazette 25/93, by succession as of 1 September 1993;
- (c) International Convention on the Suppression and Punishment of the Crime of Apartheid, (RBiH Official Gazette 25/93, by succession as of 1 September 1993;
- (d) International Convention against Apartheid in Sports (RBiH Official Gazette 25/93), by succession as of 1 September 1993;
- (e) International Covenant on Economic, Social and Cultural Rights (ICESCR) – (RBiH Official Gazette 25/93, by succession as of 1 September 1993;
- (f) International Covenant on Civil and Political Rights (CCPR) – (RBiH Official Gazette 25/93), by succession as of 1 September 1993;
- (g) Optional Protocol to the International Covenant on Civil and Political Rights (CCPR-OP1) – ratified on 1 March 1995;
- (h) Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (CCPR-OP2-DP) – signed on 7 September 2000, ratified on 16 March 2001;
- (i) International Convention on the Elimination of All Forms of Racial Discrimination (CERD) – (RBiH Official Gazette 25/93), by succession as of 16 July 1993;
- (j) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) – (RBiH Official Gazette 25/93), by succession as of 1 September 1993;
- (k) Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW-OP) – signed on 7 September 2000, ratified on 4 September 2002;
- (l) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) – (RBiH Official Gazette), by succession as of 1 September 1993;
- (m) Convention on the Rights of the Child (CRC) – (RBiH Official Gazette 25/93), by succession as of 1 September 1993;
- (n) Optional Protocol to the Convention on the Rights of the Child (CRC-OP-C) on the involvement of children in armed conflict, signed on 7 September 2000, BiH has not deposited its instrument of ratification yet;
- (o) Optional Protocol to the Convention on the Rights of the Child (CRC-OP-SC) on the sale of children, child prostitution and child pornography – signed on 7 September 2000, ratified on 4 September 2002;
- (p) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC) – acceded to on 13 December 1996;
- (q) 1951 Convention relating to the Status of Refugees – by succession as of 1 September 1993;

- (r) 1967 Protocol relating to the Status of Refugees – by succession as of 1 September 1993;
  - (s) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;
  - (t) Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, BiH Official Gazette 3/02, ratified on 27 March 2002;
  - (u) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, (BiH Official Gazette 3/02), ratified on 27 March 2002;
  - (v) International Convention for the Protection of All Persons from Enforced Disappearance, ratified (ICPED), (RBIH Official Gazette, Treaties 3/12 dated 15 March 2012);
  - (z) Convention on the Rights of Persons with Disabilities, and its Optional Protocol (CRPD), ratified on 12 March 2010, effective date: 11 April 2010.
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