



UDRUŽENJE «ŽENA – ŽRTVA RATA» SARAJEVO
The Association «Women Victims of War» Sarajevo



Follow-Up Report on the Implementation of the Recommendations Issued by the Special Rapporteur on Violence against Women, its Causes and Consequences after her Mission to Bosnia and Herzegovina

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The Associations Submitting the Follow-up Report

1. Background

1. With a view to highlight the obstacles faced by women victims of rape and other forms of sexual violence during the war in Bosnia and Herzegovina (BiH) in the fulfilment of their fundamental human rights, in May 2011 TRIAL and 12 local associations submitted a general allegation to the Special Rapporteur on Violence against Women, its Causes and Consequences.¹
2. From 28 October to 6 November 2012 the Special Rapporteur on Violence against Women, its Causes and Consequences conducted a visit to BiH with the objective to examine the situation of violence against women in the country. The findings of the Special Rapporteur, as well as her recommendations, are contained in a report that has been published in April 2013 (hereinafter “**the 2013 Special Rapporteur’s Report**”).²
3. Given that two years have now passed since the Special Rapporteur’s visit to the country, the subscribing associations considered that it is time to **assess the progress made in the implementation of her recommendations and to inform her about newly emerged challenges**. For the purposes of the present follow-up report, the subscribing associations decided to focus only on the recommendations concerning women victims of rape or other forms of sexual violence during the war. The fact that other subjects are not covered, should not be interpreted by any means in the sense that the subscribing associations consider that other recommendations have duly been implemented by BiH.

2. The Lack of a Unified Database on Women Victims of Rape or Other Forms of Sexual Violence during the War

Recommendation 105 (c) – Statistics and Data Collection

Set up a **unified and accurate database of women victims of rape or other forms of sexual violence during the war, including former camp detainees and victims living abroad**. The database should be set up through a transparent and participative process, yet ensuring the adequate protection of security and privacy rights of the victims.

4. To the knowledge of the subscribing associations, two years after the Special Rapporteur conducted her mission to BiH, **no unified database of women victims of rape or other forms of sexual violence during the war has been set up**. The lack of such database represents a further obstacle in the adoption and implementation of a comprehensive State’s strategy to address the various problems related to the subject of victims of rape or other forms of sexual violence. The fact that over the past two years there has not even been an attempt to launch an initiative aiming at registering victims of rape or other forms of sexual violence during the war is perceived by the latter as a further sign of official indifference in the face of their acute suffering.

¹ The integral text of the general allegation (hereinafter “May 2011 General Allegation”) can be found here: http://www.trial-ch.org/fileadmin/user_upload/documents/CAJ/BH/GeneralAllegationSRViolenceAgainstWomen - May 2011.pdf.

² Special Rapporteur on Violence against Women, its Causes and Consequences, *Report on the Mission to Bosnia and Herzegovina*, doc. A/HRC/23/49/Add.3 of 29 April 2013 (hereinafter “the 2013 Special Rapporteur’s Report”).

3. The Status of Draft Legislation Relevant for Women Victims of Rape or Other Forms of Sexual Violence during the War

Recommendations 105 (b), (c), (d), (j) and (k) – Law and Policy Reform

(b) Expedite the enactment of the **Law on Civilian War Victims and Victims of Torture**.

(c) **Amend the Criminal Code of Bosnia and Herzegovina to ensure it includes a definition of sexual violence** that is in accordance with international standards and jurisprudence related to the prosecution of war crimes of sexual violence.

(d) **Remove from all criminal codes any conditions of force or threat of immediate attack, to recognize a sexual act as non-consensual [...]**.

(j) Finalize and launch the **Programme for Victims of Wartime Rape, Sexual Abuse and Torture, and their Families 2013-2016** and ensure allocation of necessary financial and human resources for its implementation. The programme should be implemented with the full participation of relevant entity-level authorities and in consultation with civil society and victims' organizations.

(k) Finalize the launch of a nation-wide **Transitional Justice Programme [...]**.

5. Over the past years a number of legislative initiatives were launched in order to bring BiH legal framework in line with international standards. Some of these initiatives have now been ongoing for more than eight years, fostering first the illusions of victims of gross human rights violations during the war, including victims of sexual violence, and then their frustration. Despite pledges and assurances given by BiH in this sense, to the great disappointment of the associations subscribing the present follow-up report, none of those initiatives has seen the light of the day. **Time passes, BiH authorities fail to take any positive measure, while in the meantime victims of gross human rights violations continue claiming for their rights and some are dying without having ever obtained justice and redress for the harm suffered.** Reference will be here made to four major and long due legislative measures, namely the **draft Law on the Rights of Victims of Torture; the Programme for Improvement of the Status of Survivors of Conflict related Sexual Violence; the Transitional Justice Strategy; and the amendment of criminal legislation concerning sexual violence.**

3.1 The Law on the Rights of Victims of Torture

6. Since 2006 BiH has been pledging before international mechanisms that the adoption of a Law on the Rights of Victims of Torture was “imminent”, without undertaking concrete measures to fulfil this commitment.
7. In this sense, in its recent concluding observations on BiH, the Human Rights Committee expressed its concern because “a draft law on the rights of victims of torture and civilian victims of war that aims at ensuring that all civilian victims of war in the State party have equal access to social benefits has not been adopted”.³ Along the same lines, the Committee on the Elimination of All Forms of

³ Human Rights Committee (HRC), *Concluding Observations on BiH*, doc. CCPR/C/BIH/CO/2 of 2 November 2012, para. 8.

Discrimination against Women recommended BiH to “expedite the adoption of pending draft laws and programmes designed to ensure effective access to justice for all women victims of wartime sexual violence, including adequate reparation, such as the draft law on the rights of victims of torture and civilian war victims”.⁴

8. In 2012 the BiH Ministry of Human Rights and Refugees re-launched the initiative to draft a law on the rights of victims of torture and submitted a draft for comments to Entities. In December 2013 both the Constitutional-Legal Commission of the House of Representatives of the Parliamentary Assembly of BiH and the Constitutional-Legal Commission of the House of Peoples accepted the draft, deeming it in compliance with the Constitutional and legal system of BiH. The Joint Commission for Human Rights, the Rights of the Child, Young People, Immigration, Refugees, Asylum Seekers and Ethics of the BiH Parliamentary Assembly rejected the draft twice, giving a negative opinion on its principles. During its 63rd session held on 25 February 2014, the House of Representatives did not accept the negative opinion of the mentioned Commission and the law was not approved, nor was a proposal from a member of Parliament to assign to the BiH Council of Ministers the task to prepare and send to parliamentary procedure within 90 days a new version of the law. **The adoption and enforcement of the Law on Victims of Torture unfortunately seems all but imminent.**
9. The above-described situation is a mockery in the face of the acute suffering of thousands of victims of torture from the war, including victims of rape or other forms of sexual violence, across the country, who have not obtained redress for the harm endured.⁵

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

10. At the end of 2010, the process of drafting and adoption of the “**Programme for Improvement of the Status of Survivors of Conflict related Sexual Violence**”, coordinated by the United Nations Population Fund (UNPFA) and the BiH Ministry of Human Rights and Refugees, was launched. The finalization of the draft programme was initially expected by the end of 2011 and was then repeatedly postponed.
11. In its recent concluding observations on BiH, the Committee on the Elimination of All Forms of Discrimination against Women recommended the State party to “expedite the adoption of pending draft laws and programmes designed to ensure effective access to justice for all women victims of wartime sexual violence, including adequate reparation, such as the [...] the programme for victims of sexual violence in conflict and torture (2013-2016)”.⁶
12. At November 2014, **the draft programme has not yet been submitted to the Council of Ministers of BiH for approval and it remains at the Entities’ level.** The programme was submitted for

⁴ Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), *Concluding Observations on BiH*, doc. CEDAW/C/BIH/CO/4-5 of 26 July 2013, para. 10 (c).

⁵ On the failure to provide adequate compensation and integral reparation to victims of rape or other forms of sexual violence during the war, see *infra* paras. 52-67.

⁶ CEDAW, *Concluding Observations on BiH*, *supra* note 4, para. 10 (c).

feedback opinions to Entity governments, but the government of Republika Srpska failed to formulate its opinion, thus paralyzing the whole process. This situation casts serious doubts on the level of priority attributed by BiH authorities to this legislative initiative and discloses a discrepancy between the expectations of women victims of rape or other forms of sexual violence during the war and the attitude demonstrated towards them by the State. It would now seem that BiH is planning a “modular implementation” of the Programme, but this would largely depend on the financial support of external donors and it is not clear how it could be put in place without the support of one of the Entity governments and without formal approval.

3.3 The Transitional Justice Strategy

13. The process of drafting and adopting a Transitional Justice Strategy, supported by the United Nations Development Programme (UNDP), started in 2010. The working document containing the draft Transitional Justice Strategy was expected to be presented for adoption to the Parliamentary Assembly during the summer of 2012.
14. Both the Human Rights Committee and the Committee on the Elimination of All Forms of Discrimination against Women urged BiH to adopt and implement the transitional justice strategy without delay.⁷
15. At November 2014, **the draft transitional justice strategy has not yet been presented for adoption to the Parliamentary Assembly and this does not seem any imminent.** Victims of gross human rights violations, including rape and other forms of sexual violence, during the war, feel highly defrauded by the overall process in which they had deposited high hopes and expectations.

3.4 The Amendment of the Definition of Sexual Violence in Criminal Legislation

16. The Criminal Code of BiH does not include rape or sexual violence as separate offences. Article 172 of the BiH Criminal Code refers to rape or other forms of sexual violence only when committed as part of a widespread or systematic attack against any civilian population, with the knowledge of the attack, thus failing to cover isolated instances of this crime and leaving an evident gap in the legal framework. Article 172 (g) reads as follows “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 sterilisation or any other form of sexual violence of comparable gravity”. Article 173 of the BiH Criminal Code (war crimes against civilians) defines rape or other forms of sexual violence in a similar way, except that such acts do not have to be a part of a widespread or systematic attack. These definitions are not consistent with international standards and jurisprudence of international courts, in particular as long as the use of force or the threat of force are considered the only means available to establish that the rape or

⁷ HRC, *Concluding Observations on BiH*, *supra* note 3, para. 8; and CEDAW, *Concluding Observations on BiH*, *supra* note 4, para. 10 (c).

other sexual acts were not consensual.⁸ The current legal framework is therefore not in line with international standards and jurisprudence.

17. At the entity level rape is codified as a separate offence and it is sanctioned even when committed as an isolated act.⁹ All existing definitions require that the offence is committed “by force or threat of immediate attack upon life and limb, or life or limb of a close person”. This does not meet international standards on the subject. The Criminal Code of the Federation of BiH does not contain a definition of crimes against humanity and of crimes of war. Rape or other forms of sexual violence committed in these specific circumstances are therefore not covered by the existing legal framework in the Federation of BiH. The criminal codes of Republika Srpska and of the District of Brčko regulate “war crimes against civilians”,¹⁰ sanctioning, among others “whoever in violation of rules of international law effective at the time of war, armed conflict or occupation, orders an attack against civilian population, settlement, individual civilians or persons unable to fight, which results in [...] rape”. These definitions do not seem to cover rape or other forms of sexual violence as crimes against humanity or war crimes according to international standards.
18. In its recent concluding observations on BiH, the Committee on the Elimination of All Forms of Discrimination against Women recommended to BiH to “amend all relevant criminal codes to include a definition of wartime sexual violence in line with international standards, including a specific definition of rape as a war crime and a crime against humanity, in order to adequately reflect the gravity of the crimes committed”.¹¹
19. On 22 October 2013 a draft law on changes of the Criminal Code of BiH was submitted to the approval procedure. Such draft included amendments that introduced in domestic criminal legislation a definition of torture in line with Art. 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as a definition of the crime of sexual violence as a crime against humanity and as a war crime in line with international standards.
20. However, in November 2013 the House of Representatives of the BiH Parliamentary Assembly **did not approve the said amendments**. The latter were submitted anew to the approval procedure by the BiH Council of Ministers on 23 May 2014. On 28 May 2014 the Constitutional-Legal Commission of the House of Representatives of the Parliamentary Assembly of BiH accepted the draft, deeming it in compliance with the constitutional and legal system of BiH. The same was done on 9 June 2014 by the Constitutional-Legal Commission of the House of Peoples.

⁸ For a thorough analysis of the existing loopholes in BiH legal framework concerning rape or other forms of sexual violence, see Amnesty International, *Whose Justice? The Women of Bosnia and Herzegovina are Still Waiting*, London, 2009, pp. 9-10 and 21-22. On this subject see also the recommendations addressed to BiH from the Working Group on Universal Periodic Review (1st cycle), doc. A/HRC/14/16 of 17 March 2010, No. 7 and 72.

⁹ See Article 183 of the Criminal Code of the RS; Article 203 of the Criminal Code of the FBiH; and Article 206 of the Criminal Code of the District of Brčko. Notably, the three criminal codes regulate also the offences of sexual violence against a helpless person; sexual intercourse with a child; and sexual intercourse by abuse of position.

¹⁰ Article 148 of the Criminal Code of the District of Brčko; and Article 433 of the Criminal Code of the RS.

¹¹ CEDAW, *Concluding Observations on BiH*, *supra* note 4, para. 10 (b).

21. On 10 July 2014 the amendments have been subjected to vote in the House of Peoples of the BiH Parliamentary Assembly, but they have not received the necessary support of the Entities. Accordingly, the draft has been sent to a three-member collegium of the House of Peoples for further amendments and adjustments. It is unknown whether the collegium has reached any agreement on the draft that, nonetheless, is not on the agenda of the House of Representatives for the forthcoming sessions.
22. Finally, to the knowledge of the subscribing associations, **no initiative has been launched to amend the definitions of sexual violence contained in the different Entities' Criminal Codes.**
4. **The Delay in the Implementation of the National Strategy on War Crimes Processing in Cases of Rape or other Forms of Sexual Violence**

Recommendation 105 (i) – Law and Policy Reforms

Expedite the implementation of the National Strategy for War Crimes Processing and ensure that any crimes of sexual violence are prioritized and prosecuted.

23. Besides the recommendations issued by the Special Rapporteur after her visit to BiH, in its recent concluding observations, the Human Rights Committee declared that “the State party should expedite the prosecution of war crime cases. [...] Furthermore, the State party should ensure that the judiciary in all entities strongly pursues efforts aimed at harmonizing jurisprudence on war crimes and that charges for war crimes are not brought under the archaic Criminal Code of the former Socialist Federal Republic of Yugoslavia, which does not recognize certain offences as crimes against humanity”.¹²
24. Along the same lines, the Committee on the Elimination of All Forms of Discrimination against Women recommended BiH to “speed up the implementation of the national war crimes strategy and increase the number of prosecutions of war crimes cases by allocating more financial resources and investigative capacities to address the large backlog of cases”.¹³
25. Although moderate progress has been made in the implementation of the **National War Crimes Prosecution Strategy**, more than 1,000 war crimes related investigations are still ongoing across the country. In order to be effective and sustainable, this requires additional human resources (esteemed by the High Judicial Prosecutorial Council in the number of 28 new prosecutors). In November 2013 and March 2014 respectively, the Prosecutor’s Office of BiH appointed a total of 18 new prosecutors to work on war crimes cases.
26. According to the National War Crimes Processing Strategy, adopted in 2008, most complex and highest priority war crimes cases would have been completed within seven years (i.e. by the end of

¹² HRC, *Concluding Observations on BiH*, supra note 3, para. 7.

¹³ CEDAW, *Concluding Observations on BiH*, supra note 4, para. 10 (a).

2015), and other war crimes cases within 15 years (i.e. by the end of 2023).

27. Unless more resources are employed in the implementation of the strategy without further delay, **it is unlikely that the deadlines set will be respected and that the most complex cases will be completed by the end of 2015.**¹⁴
28. In its recent report the Special Rapporteur on Truth, Justice, Reparations and Guarantees of Non-recurrence highlighted that prioritising the prosecution of most serious crimes “is not unproblematic as the strategy’s organizing criterion [...] organizing a prioritization strategy only around the ‘most serious crimes’ risks providing weak incentives to pursue connected crimes that may not quite cross the threshold of gravity, but which with the application of a different strategy would be prosecutable (for example, sexual or gender-related offences and even some economic crimes), or other dimensions of atrocities, such as corporate or judicial complicity”.¹⁵ Accordingly, “a sustainable prioritization strategy requires a prosecutorial focus on patterns of violations, helping to discover chains of command, links between armed actors and other groups, as well as financial and other support. The strategy’s objective is to undo the structures or networks that enabled the various actors jointly to make horrific violations happen”.¹⁶
29. With regard to **trials concerning people accused of rape or other forms of sexual violence** committed during the war, the **results remain alarmingly poor**. From 2005 until present, courts across the country prosecuted around **76 cases** which had elements of sexual violence (54 of which were prosecuted before the Court of BiH).¹⁷ The mentioned numbers, compared with the figures of victims of rape during the war (between 20,000 and 50,000), suggests that **impunity remains rampant**.
30. When trials for the crimes concerned actually took place, the few perpetrators eventually sentenced for sexual violence committed during the war obtained **extremely low sentences**. Moreover, although criminal courts have the option to award total or part of a claim for compensation to the injured parties or to refer them to civil actions, victims are always **referred to civil actions**. This practice **hampers the access to compensation of the majority of victims**, given that to launch a civil action they would need a lawyer to represent them, and, in almost the totality of cases, they cannot afford it, while **free legal aid is not granted by the State**.¹⁸ This problem will be dealt with in greater detail below, in the section concerning the failure to provide adequate compensation and integral reparation to victims of rape or other forms of sexual violence during the war.¹⁹

¹⁴ For a recent public appeal to speed up the process see, Balkans Investigative Report, *Bosnia Asked to Speed Up and Improve War Crime Processing*, 3 October 2014, available at: <http://www.justice-report.com/en/articles/bosnia-asked-to-speed-up-and-improve-war-crime-processing>.

¹⁵ Special Rapporteur on Truth, Justice, Reparations and Guarantees of Non-recurrence, *Report*, doc. A/HRC/27/56 of 27 August 2014, para. 57 (c).

¹⁶ *Ibid.*, para. 109.

¹⁷ Available at: http://www.oscebih.org/documents/osce_bih_doc_2014040217332026eng.pdf.

¹⁸ See *infra* paras. 69-71.

¹⁹ See *infra* paras. 55-59.

31. In at least three cases concerning rape perpetrated during the war and tried before district courts in Republika Srpska, the Criminal Code of the Social Federal Republic of Yugoslavia (SFRY)²⁰ was applied and the defendants were sentenced to three years of imprisonment.²¹ It would seem that this kind of low sentences, that do not adequately take into account the gravity of the crime at stake has become an “unwritten standard rule” in proceedings for sexual violence. **Women victims of rape or other forms of sexual violence during the war feel highly frustrated vis-à-vis this kind of low sentences as they perceive this as another form of humiliation and they see their suffering being undervalued.**
32. In general, there are still many cases where the victim **reported the identity of the perpetrators of rape or other forms of sexual violence during the war to competent authorities**, but to date investigations have not been conducted and those allegedly responsible are still free or where the opening of an investigation actually requires huge efforts for the victims and their representatives, although complaints had been lodged long time ago before BiH authorities.
33. An instance that can be quoted is that of a family from Donja Bioča near Ilijaš. On 28 December 1992, the members of the then Second Battalion of the Seventh Muslim Brigade entered in the village and set it on fire. Afterwards, they broke into the family’s house, where Ms. R. D.²² lived with her aunt and children. Ms. R.D.’s daughter, aged 9, was raped and slaughtered, while the mother was wounded, but survived. In 2005 a report concerning these events and containing the names of 11 alleged perpetrators was submitted by the Centre of Public Security of East Sarajevo to the competent authorities. However, to date no one has been prosecuted for the crimes concerned.
34. Another example is that of the so-called “Liplje case”. In May 1992, in Liplje (a little village in the municipality of Zvornik) around 400 people – mainly children, women and elderly – were captured. During the captivity around 120 women were tortured and raped. Forty did not survive. In many cases the identity of the perpetrators is well-known to victims, as they were neighbours. Survivors of the mentioned events have been reporting the crimes to different bodies, including the police, the State Agency for Investigation and Protection (SIPA), media, and investigators of the International Criminal Tribunal for the former Yugoslavia. Despite all this, until 2014 no investigation on this case had been launched and all perpetrators were free. In October 2013 the representatives of some of the victims tried to contact the Head Prosecutor of the Prosecutor’s Office of BiH to obtain information on the status of the case. The latter did not provide any reply. Accordingly, the victims’ representatives contacted the Ombudspersons’ Institution and met a representative to present the details of the case. The Ombudspersons’ Institution therefore requested information to the Prosecutor’s Office of BiH, and the latter eventually contacted and met the victims in February 2014. However, at the time of writing, it **would not seem that any formal investigation on the Liplje case has been launched so far**. No more formal information on the case has been received from

²⁰ On the use of the SFRY Criminal Code instead of the 2003 Criminal Code see also *infra* paras. 72-91.

²¹ See, among others, <http://oksud-doboj.pravosudje.ba/vstv/faces/vijesti.jsp?id=49342>.

²² For privacy and security reasons the names of some of the women will not be here disclosed.

the Prosecutor's Office of BiH and victims feel highly frustrated and disillusioned. They are now considering of filing a complaint to the Constitutional Court of BiH.

35. Reference can also be made to the case of N.G., a Bosnian Croat woman residing in the area of Prijedor, who in 1995 was raped by a Serb soldier. N.G. reported the crime to the local police station in Ljubija since 1995 and, given that nothing happened, again to the Prosecutor's Office of BiH in 2009. However, at the time of writing no investigation has been officially opened into the case. The representatives of N.G. have been trying to establish contacts with the competent authorities since 2012 and, in the absence of any meaningful response, on 4 June 2014 a complaint has been filed on N.G.'s behalf before the Constitutional Court of BiH.
36. In the case of E. K., who was raped in 1992 when she was 15 and was kept in detention in the Sase-Srebrenica area, she reported the crime and all related details, including the identity of the perpetrators since 1992. She informed the police, the prosecutor's office, the media, and she also gave a statement before the ICTY, explicitly mentioning the identity of perpetrators. Nevertheless, 22 years after the events took place, no investigation has been launched and no one has been prosecuted and sanctioned for the crimes concerned. Also in this case the attempts of the victim's representatives to establish contacts with authorities and to obtain information on the status of the case have often been frustrated. On 25 May 2014 a complaint on E.K.'s behalf was submitted to the Constitutional Court of BiH.
37. From the above-mentioned examples it can be drawn that, with some notable exceptions,²³ **associations of women victims of rape or other forms of sexual violence during the war and their representatives continue facing many obstacles in having access to information concerning their cases and the status of the investigation from competent prosecutors' offices.** This is an additional source of stress as women feel further marginalized and are unsure as to whether a trial in their case may be forthcoming.

5. The Failure to Adequately Protect and Support Witnesses in Proceedings in Cases of Rape or other Forms of Sexual Violence during the War

Recommendation 105 (i) – Law and Policy Reforms

Courts and prosecutors at the State, entity and cantonal levels should be provided with political and financial support to undertake these proceedings while ensuring **witness support and protection measures and programmes for victims.**

38. With regard to the legal framework applicable to victims and witness protection and support, on 29 April 2014 the **Law on Witness Protection Programme in BiH has been adopted.** However, this

²³ The Association Women-Victims of War, which subscribes the present follow-up reports, declares that their relationship with the Prosecutor's Office of BiH in particular is good and they have regular access to information.

law applies only to witnesses testifying before the Court of BiH and not to district courts in Republika Srpska, cantonal courts in the Federation of BiH, or courts in the Brčko District.

39. The Human Rights Committee recommended that “[...] the State party should also continue to provide adequate psychological support to victims of sexual violence, particularly during the conduct of trials”.²⁴ It further affirmed that “the State party should take practical measures to increase the effectiveness of the witness protection programme to ensure the full protection of witnesses. The State party should also ensure that witnesses continue to receive adequate psychological support in entities where war crimes have been transferred. The State party should further ensure that authorities fully investigate cases of suspected intimidation of witnesses to put an end to the climate of fear that stifles efforts to prosecute war crimes at the entity level in the State party”.²⁵
40. On its part, the Committee on the Elimination of All Forms of Discrimination against Women recommended BiH to “ensure the effective implementation of the new law on the witness protection programme and establish sustainable and operational witness protection measures at the district and cantonal levels”.²⁶
41. **The psychological support provided to witnesses and victims before, during and after war crimes trials remains insufficient.** The situation is particularly critical in Republika Srpska and before district prosecutors’ offices, where **the government suspended the relevant budget line, thus worsening an already precarious situation.** After this decision, in some areas this task has been entrusted to **local Centres for Social Work that do not have the necessary training to do so.**
42. Although new departments to offer support to witnesses during war crimes trials have been set up in different cities, this was done with the support of the UNDP.²⁷ **If BiH authorities do not provide for adequate and sufficient financial and human resources to ensure future activities, the sustainability of these new departments may be at risk.** As a matter of fact, in three cases, once UNDP terminated its financial support to the Witness Support Office, the governments concerned did not undertake any measure to ensure the continuation of the support programmes.
43. The provision of psychological support before the competent authorities across the country is far from homogenous. In Banja Luka there is one person to provide psychological support during trials at the Court, but no one offers support within the Prosecutor’s Office. In East Sarajevo there is only one psychologist working at the district Prosecutor’s Office and none at the Court.
44. Associations of women victims of rape or other forms of sexual violence during the war reported that measures of witness support remain inadequate: courts do not have the necessary technical

²⁴ HRC, *Concluding Observations on BiH*, *supra* note 3, para. 7.

²⁵ *Ibid.*, para. 13.

²⁶ CEDAW, *Concluding Observations on BiH*, *supra* note 4, para. 10 (d).

²⁷ According to data provided by UNDP, to date ten Witness Support Offices have been established at the cantonal and district levels and four more are being set up.

equipment, not all victims of sexual violence obtain support and this hampers their willingness to testify, and there is a general lack of a gender sensitive approach, as well as several instances of provocative behaviour and the use of offensive language by defence counsels.

45. The Republic Research Centre of War, War Crimes and the Search for Missing Persons of Republika Srpska received support through the Fund for the implementation of the Gender Action Plan of BiH, and from 1 July 2014 it launched a project called "The power is in us" that aims at helping women survivors of sexual violence during the war. Within this project, 63 women victims of war attended a workshop of psycho-social empowerment in Laktaši.
46. In 2013, in partnership with the NGO Medica Zenica, the Foundation "United Women" Banja Luka conducted activities aimed at creating a network of support for victims and witnesses in war crimes cases, sexual abuse and other crimes of gender-based violence. In Republika Srpska a working group composed of representatives of the ministries, institutions, agencies and NGOs was sent up with the goal to draft a Protocol that would establish responsibilities and obligations of all parties in providing assistance and support. Eventually, a Protocol for Victims and witnesses support in Banja Luka was signed.²⁸
47. Moreover, since December 2013 the Foundation of Local Democracy, together with partner organizations (Vive Žene - Tuzla, Medica - Zenica, Association of Women Victims of War - Sarajevo, the Croatian Association of Detainees - Vareš, Sumejja Gerc- Mostar and Section of Women Victims of War of Republika Srpska) began with the implementation of the project "Improving the status of women victims of war in BiH". The project aims to improve the status of women victims of rape and torture during their testimony before the courts, in addition to provide legal and psychological support before, during, and after trials, as well as strengthen the capacity of civil society organizations that gather and provide assistance to victims with the intention of establishing mutual partnership, and partnerships with State institutions. With the aim of setting up a coordinated system of support and assistance to women victims of war and witnesses at war crimes trials, the Foundation of Local Democracy initiated the establishment of a network of witness support, which has adopted the Principles of joint work and activities that is basis for joint action to improve the status of women victims of war. The network brings together 19 NGOs from all over BiH that provide legal and psychological assistance to witnesses in war crimes cases before, during and after the trial. Legal and psychological assistance is provided for potential witnesses who still do not know when they will be called to testify.
48. While the above-mentioned initiatives are certainly positive and welcome, it must nonetheless be stressed that they come from and are supported by, civil society, and not the State. The latter

²⁸ On 19 December 2011, Medica Zenica in partnership with the Ministry of Justice of Zenica-Doboj Canton and Administration of Zenica-Doboj Canton (within a project supported by UN Women and Medica Mondiale), formally signed the so-called "Protocol on Mutual Cooperation of Institutions and NGOs in Providing Support to Victims/Witnesses in War Crimes Cases, Sexual Violence and other Forms of Crime". This led to the establishment of the Network to support victims/witnesses in the Zenica-Doboj Canton. The Network provides support to victims and witnesses before, during and after their testimony. Since June 2012 a similar Protocol was signed and network launched in Central Bosnia Canton.

maintains the primary responsibility to set up an effective system of victims and witnesses support, protection and assistance. Accordingly, it is essential that BiH adopts without delay the necessary measures to secure the sustainability of the mentioned initiatives and to launch similar ones across the country.

49. Despite the adoption of the new legal framework,²⁹ **some instances of harassment against victims of crimes during the war and witnesses have been reported, while it does not seem that effective investigations have been carried out to ensure that those responsible have been duly identified, prosecuted and sanctioned.**
50. The case of Ms. M. X. can be quoted. She was subjected to rape in 1992 in Odžak. Some of the perpetrators were arrested in April 2014. Ms. M. X. was threatened by one of the perpetrators immediately before the arrest. Immediately afterwards, her health worsened, she was hospitalized and she eventually died.³⁰
51. A further issue of concern that has been identified is that in some cases, during the preparation of victims and witnesses in view of forthcoming trials, acting prosecutors hint at the preferrability of giving up protection measures in order to have better credibility during the trial. Some victims and witnesses feel highly influenced from the attitude exercised by acting prosecutors and are unable to contradict them. An illustrative example of bad consequences of testifying without protection measures for some vulnerable witnesses has been reported before the Bijeljina District Court, where a survivor who was a girl when she had been raped renounced to the special protection measures following the advice of the acting prosecutor. Once in the presence of the perpetrator, she collapsed and was hospitalized.

²⁹ *Supra* para. 38.

³⁰ This information was referred by the Foundation United Women that is one of the associations subscribing this follow-up report.

6. **The Failure to Provide Adequate Compensation and Integral Reparation to Victims of Rape or other Forms of Sexual Violence during the War**

Recommendations 104 and 105 (i, k, iii and iv)

Courts should also ensure the right of women to make any **financial compensation claims during criminal proceedings**.

It is crucial for government authorities at all levels to **recognize the existence of civilian women victims of rape and torture**, regardless of their ethnic or religious backgrounds, and to ensure that they have **equal access to remedies and services, regardless of their physical location within the country**.

Reparation programmes that target the rehabilitation and de-victimization of survivors, as well as the improvement of their psycho-social and physical health, including by better coordinating the existing services provided by both State and civil society organizations. A clear differentiation should also be made between any reparations programmes and the social welfare provisions to which women are entitled.

Compensations schemes that avoid the differentiated treatment currently being received by civilian victims of war throughout the country. Such schemes should broadly include employment, housing and financial incentives for women survivors of war-time violence.

52. Besides the recommendations formulated on this subject by the Special Rapporteur, the Human Rights Committee added that “the State party should take practical measures to ensure that survivors of sexual violence and torture have access to justice and reparations. Furthermore, the Committee reiterates its previous recommendation and urges the State party to harmonize disability benefits among entities and cantons so that personal disability benefits received by civilian victims are adjusted to ensure they are in line with the personal disability benefits received by war veterans”.³¹
53. Also the Committee on the Elimination of All Forms of Discrimination against Women urged BiH to “develop a comprehensive approach to improve the status and position of all women victims of the war, including by combating the stigma attached to sexual violence; and expand the provision of compensation, support and rehabilitation measures and benefits, and ensure equal access to such services for all women victims, irrespective of their place of residence”.³²
54. In general, an ongoing problem in BiH is that **the notions of reparations and social assistance continue being unduly overlapped**. While measures of social assistance for women victims of rape or other forms of sexual violence can complement reparations, they certainly cannot replace the latter. In any case, also access to social welfare measures, such as monthly pensions, is not guaranteed to all women victims of rape or other forms of sexual violence. Legislation, criteria, and

³¹ HRC, *Concluding Observations on BiH*, *supra* note 3, para. 8 (emphasis added).

³² CEDAW, *Concluding Observations on BiH*, *supra* note 4, para. 10 (e).

practice to enable the reception of monthly pensions vary across the country, as well as the statute of limitations applied and civilian victims have a worst treatment compared to veterans.

6.1 The Impossibility to Obtain Financial Compensation during Criminal Proceedings

55. As already referred above,³³ even in those cases where criminal proceedings against persons accused of rape or other forms of sexual violence during the war eventually take place, **victims are referred to civil actions to obtain compensation.**
56. Article 195 of the Code of Criminal Procedure BiH establishes that “1) A petition to pursue a claim under property law in criminal proceedings shall be filed with the Court. 2) The petition may be submitted no later than the end of the main trial or sentencing hearing before the Court. 3) The person authorized to submit the petition must state his claim specifically and must submit evidence. 4) If the authorized person has not filed the petition to pursue his claim under property law in criminal proceedings before the indictment is confirmed, he shall be informed that he may file that petition by the end of the main trial or sentencing hearing. If a criminal offence has caused damage to the property of the State of Bosnia and Herzegovina, and no petition has been filed, the Court shall so inform the body referred to in Article 194, Paragraph 2 of this Code. 5) If the authorized person does not file the claim under property law until the end of the main trial or if he requests a transfer to civil action, and the data concerning the criminal proceedings provide a reliable grounds for a complete or partial resolution of the claim under property law, the Court shall decide in the convicting verdict to pronounce on the accused the measure of forfeiture of property gain”. Article 198, para. 2, adds that: “in a verdict pronouncing the accused guilty, the Court may award the injured party the entire claim under property law or may award part of the claim under property law and refer him to a civil action for the remainder. If the data of criminal proceedings do not provide a reliable basis for either a complete or partial award, the Court shall instruct the injured party that he may take civil action to pursue his entire claim under property law”.
57. Accordingly, the court has the option to award part of a claim to the injured parties or to refer them to civil actions. In almost the totality of criminal cases related to rape or other forms of sexual violence during the war, victims have not been awarded compensation directly by the court or on the initiative of the competent prosecutor, and they have instead been instructed to take civil action to pursue their entire claims.³⁴
58. The problems related to this subject are manifold. While the Code of Criminal Procedure of BiH poses the burden to submit a petition for compensation and the related evidence on the injured parties, **the latter are often unaware of this and do not know how to formally activate the procedure to obtain compensation. For this, as well as for filing civil claims, victims would need a lawyer, but they are often unable to pay the fees for legal representation and the State**

³³ *Supra* para. 30.

³⁴ Articles 193 and 194 of the Code of Criminal Procedure of BiH regulate respectively the “subject of the claim under property law” and “petition to satisfy a claim under property law”.

does not offer a system of free legal aid.³⁵ As a consequence, almost no woman victim of rape or other forms of sexual violence during the war has obtained compensation for the harm suffered. Moreover, even in those cases where victims actually claim for compensation during criminal proceedings, prosecutors fail to provide the required evidence to substantiate such claims, with the result that the Court refers automatically to separate civil action.

59. An additional problem related to the **referral to civil proceedings for compensation concerns victims who, during criminal proceedings, enjoyed the status of protected witnesses. In these cases, if they decide to start civil proceedings, they have to give up the protected status and disclose their identity, thus becoming exposed to possible threats and harassment.** This situation concretely discourages many victims from claiming compensation.

6.2 The Pitfalls in Legislation and Practice concerning Social Assistance

60. The existing **legislation and practice concerning social benefits awarded to civilian victims of war are different across the country.** In Republika Srpska, the Law on Civilian Victims of War **does not recognise victims of rape as a separate category of civilian victims of war** and establishes a statute of limitations to apply for disability pensions that **expired in 2007.** Victims of rape or other forms of sexual violence during the war who were **recognized as “civilian victims of war” in the Federation of BiH and decide to move to Republika Srpska lose their status.** This prevents many women to return to their pre-war place of residence and concretely hampers their freedom of movement. Moreover, the amount of monthly disability pensions awarded to victims of rape or other forms of sexual violence during the war is different in the Entities and ranges between about BAM 100 (approximately 50 Euros) paid in Republika Srpska and BAM 500 (approximately 250 Euros) paid in the Federation of BiH.
61. In order to advocate for amendments in the legislation and practice concerning social benefits for women victims of rape or other forms of sexual violence in Republika Srpska and based on the recommendations issued on this subject by international human rights mechanisms, including the Special Rapporteur on Violence against Women, in August 2013 TRIAL, Amnesty International and 16 local NGOs³⁶ from BiH sent position papers to the competent ministries in Republika Srpska (Ministry of Labour, War Veterans and Disabled Persons’ Protection, Centre for Gender Equality, Ministry of Health and Social Welfare and the Ministry of Justice).
62. The organizations called on Republika Srpska’s competent institutions to give an equal access for women victims of rape or other forms of sexual violence to social benefits and to give priority in adoption and implementation of the Programme for Survivors of Sexual Violence. **No response was received from authorities in Republika Srpska.**

³⁵ *Infra* paras. 69-71.

³⁶ Amnesty International, Association of Women-Victims of War, Women’s Section of the Concentration Camp Torture Survivors Canton Sarajevo, Women’s Section of the Concentration Camp Torture Survivors of Republika Srpska, Sumejja Gerc, Foundation of Local Democracy, Izvor-Prijedor, Naš Glas, Medica Zenica, Snaga Žene, Society for Threatened Peoples, Vive Žene Tuzla, United Women Banja Luka, Lara Bijeljina, Forum Žena Bratunac and Budućnost Modriča.

63. In March 2014 TRIAL organized an event in Banja Luka to discuss these matters and invited representatives of competent authorities from Republika Srpska. However, apart from civil society and international agencies, only the Centre for Gender Equality and the Institute for Legislation sent representatives to the said event.
64. On 10 June 2014 a similar event was organized in Banja Luka and this time representatives of all relevant ministries from Republika Srpska participated. Although this is certainly an important sign and can be regarded as a progress, no amendment to legislation has been adopted so far.
65. Finally, **since August 2012, the situation deteriorated for victims residing in Brčko District, who are experiencing significant troubles in accessing measures of social support.** The applicable legislation contains a discriminatory provision for the realization of rights for persons who have suffered “subsequent bodily damage because of occurred or aggravated illness, a long period of incubation, loss of both extremities and eyesight, mental harm and other damage of at least 60% caused during the war, and who have not, until the entering into force of the decision (decision adopted on 8 August 2012 entered into force eight days after it was published in the Official Gazette) had established the status of civilian victims of war”. Accordingly, **in order to access disability pension victims need to, among other documents, prove that there is a final criminal judgment against a perpetrator in their cases.** This requirement is clearly not in line with international human rights law.

6.3 The Lack of Other Measures of Support to Victims, Their Families, and Representative Associations

66. Associations of women victims of rape or other forms of sexual violence during the war also reported that during the last year, due to financial constraints, they did not receive the expected support from State authorities, and in particular from cantonal government budgets. These associations consider that this is due to the fact that the government does not duly recognize the importance of their work. For instance, the Women’s Section of the Association of Concentration Camp Survivors in Canton Sarajevo was forced to close its premises that served as the only place for gathering of members of the association for their joint occupational activities. This situation must be seen in a general context, where also donor organizations have decreased their attention towards victims of torture during the war.
67. All associations of women victims of rape or other forms of sexual violence subscribing this follow-up report highlighted that their **members face ongoing troubles in having access to employment, housing, and health assistance.** This situation vests an especial importance for victims of sexual violence during the war. Many of them suffer from psychological traumas and several illnesses related to the harm suffered. If they do not receive adequate support in terms of health, employment, and housing, they are condemned to remain at the margins of BiH society, living in a permanent status of isolation that revives their trauma and worsens it day by day. Several women victims of rape or other forms of sexual violence also reported the **urgent need for support with regard to**

their children, to whom they are often unable to offer adequate schooling and decent living conditions. This **situation became even worst after severe floods hit the country in May 2014**. Notably, among those affected there were many women victims of rape or other forms of sexual violence during the conflict and they lost almost everything and afterwards were left alone to cope with these additional loss and trauma, with assistance coming only from civil society and international agencies.

7. Other Matters of Concern

68. In addition to the various issues of concern related to the recommendations issued by the Special Rapporteur after her visit to the country in 2012, there are other matters that the associations subscribing the present follow-up report would like to bring to the attention of the Special Rapporteur on Violence against Women, its Causes and Consequences.

7.1 The Draft Law on Free Legal Aid

69. As anticipated,³⁷ **BiH does not have a system of free legal aid provided by the State**. In this sense, the Committee on the Elimination of All Forms of Discrimination against Women urged the State to “expedite the adoption of the draft law on legal aid, aimed at unifying the provision of free legal aid in the State party in order to facilitate access to justice for all women, in particular those belonging to disadvantaged groups”.³⁸

70. In April 2012 a draft law on free legal aid was submitted to the BiH Council of Ministers, adopted by the latter as a proposal, and forwarded to undergo the parliamentary procedure. The draft was introduced into the BiH Parliamentary Assembly on 23 July 2012, but was eventually not approved. The deadline for the drafting of a new law was December 2013. However, no new draft has been presented, although according to the Ministry of Justice of BiH the work on the draft would be ongoing.

71. **The above-described situation is a source of concern because the great majority of victims of gross human rights violations during the war are in dire financial conditions and cannot pay for legal assistance and representation**. Thousands of victims of gross human rights violations during the war are left without access to free legal aid and see their right to access to justice daily hindered, while their trust towards institutions is seriously jeopardized. The adoption of a law on free legal aid is a priority that cannot be postponed anymore.

7.2 The Re-trial and Release of Persons Convicted for War Crimes and Genocide and the Lowering of Sentences

72. On 18 July 2013, the Grand Chamber of the European Court of Human Rights (ECtHR) issued a judgment in the case *Maktouf and Damjanović v. Bosnia and Herzegovina* (applications no. 2312/98 and 34179/08). The two applicants were convicted by the Court of BiH of war crimes committed

³⁷ *Supra* paras. 30 and 58.

³⁸ CEDAW, *Concluding Observations on BiH*, *supra* note 4, para. 16 (c).

against civilians during the 1992-1995 war. In particular, the first applicant (Mr. Maktouf) was convicted by the State Court in July 2005 of aiding and abetting the taking of two civilian hostages as a war crime against civilians and sentenced to five years' imprisonment under the 2003 Criminal Code of BiH. In April 2006, an appeals chamber of the court confirmed his conviction and the sentence after a fresh hearing with the participation of two international judges. The second applicant (Mr. Goran Damjanović), who had taken a prominent part in the beating of captured Bosniaks in Sarajevo in 1992, was convicted in June 2007 of torture as a war crime against civilians and sentenced to 11 years' imprisonment under the 2003 Criminal Code. After they were sentenced by the Court of BiH, they both appealed before the Constitutional Court alleging the violation of Art. 7 of the European Convention on Human Rights (ECHR). The Constitutional Court dismissed Maktouf's appeal.

73. On its part, the Grand Chamber of the ECtHR found a violation of Art. 7 of the ECHR and upheld the complaints by the two men, previously convicted by the Court of BiH of war crimes pursuant to the 2003 BiH Criminal Code. The ECtHR found that, given the type of offences of which the applicants had been convicted (war crimes as opposed to crimes against humanity) and the degree of seriousness (neither of the applicants had been held criminally liable for any loss of life), Mr. Maktouf and Mr. Damjanović could have received lower sentences had the Criminal Code of the Socialist Federal Republic of Yugoslavia (SFRY) been applied. The ECtHR found that since there was a real possibility that the retroactive application of the 2003 Criminal Code operated to the applicants' disadvantage, in the special circumstances of this case, they had not been afforded effective safeguards against the imposition of a heavier penalty.
74. On 27 September 2013 the Constitutional Court of BiH changed its jurisprudence on the matter, with a view to aligning it with the ECtHR's judgment. Mr. Damjanović obtained the reopening of the proceedings and in December 2013 the Court of BiH reduced his sentence. As a consequence, **appeals have been filed in over 50 war crimes cases already decided by the Court of BiH since 2003. Notably, the appeals concern also convictions for genocide.** This wave of appeals may actually paralyze the Court of BiH that is already coping with a considerable backlog of cases and is the **source of great concern for victims of crimes under international law during the war, who fear that their physical integrity may be at risk due to the release of convicted criminals and corresponding reprisals, and are deeply frustrated by a jurisprudence which seems to foster impunity and convey a dangerous message to society as a whole.**
75. Notably, the Committee of Ministers of the Council of Europe highlighted that in its judgment the ECtHR had made it clear it was not reviewing in abstracto whether the retroactive application of the 2003 Criminal Code in war crimes cases is, per se, incompatible with Art. 7 of the ECHR. Indeed, this matter must be assessed on a case-by-case basis, taking into consideration the specific circumstances of each case, duly taking into account the gravity of the crimes committed. **The findings of the ECtHR are not indiscriminately applicable to all persons convicted for war crimes in BiH and the recent wave of decisions issued by BiH tribunals and releases of**

convicted persons cannot be considered in line with international human rights law.

76. The above-mentioned situation has been reported as a source of concern also to the UN Special Rapporteur on Truth, Justice, Reparations and Guarantees of Non-recurrence and to the Working Group on Enforced or Involuntary Disappearances (WGEID).
77. On 1 April 2014 the WGEID and the Special Rapporteur on Truth, Justice, Reparations and Guarantees of Non-recurrence sent a joint communication to the government of BiH concerning the effect of the decision of the Constitutional Court in 2013 to order the quashing of the verdicts in the cases of 10 individuals convicted of war crimes against civilians and genocide as a result of an automatic application of an ECtHR decision.³⁹
78. In the communication sent from the Special Procedures to the government of BiH three major concerns were expressed, i.e.: 1) the apparent automatic application of the ECtHR judgment in at least a dozen cases in BiH in contravention of the actual ruling of the same judgment; 2) the release of the defendants, guilty of genocide and war crimes against civilians, without remand pending re-trial, and its impact on the protection of victims from violence, re-victimization and intimidation; and 3) the lack of a comprehensive transitional justice strategy to complement the criminal justice process in the country. At the time of writing, to the knowledge of the subscribing associations, **the government of BiH did not submit any formal reply to the WGEID and the Special Rapporteur.**⁴⁰
79. With respect to the above-mentioned general allegation, the WGEID observed that “[...] **enforced disappearance is a continuous crime, which can be punished on the basis of ex post legislation without violating the principle of non-retroactivity, for as long as the fate or the whereabouts of the disappeared person has not been clarified**”.⁴¹
80. Furthermore, the WGEID recently published its follow-up report on the mission to BiH and it expressed serious concern because of “[...] the series of decisions rendered by the Constitutional Court, following the judgement Maktouf and Damjanovic by the European Court of Human Rights of 18 July 2013. To this regard, the Working Group would like to refer Bosnia and Herzegovina to its joint communication dated 1 April 2014, together with the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence. **The Working Group would like to reiterate that it is concerned with what seems to be a misinterpretation of the ECtHR judgment, with serious consequences. It also reiterates its concern that the defendants have been released without remand pending trial, posing challenges with regard to the protection**

³⁹ Working Group on Enforced or Involuntary Disappearances (WGEID), *Intersessional Report*, doc. A/HRC/WGEID/103/1 of 25 July 2014, para. 43.

⁴⁰ In this sense see *Communications Report of Special Procedures to the Human Rights Council*, doc. A/HRC/27/72 of 20 August 2014 (Case BiH 2/2014).

⁴¹ WGEID, *Intersessional Report*, *supra* note 39, para. 44 (emphasis added). The same was affirmed also in WGEID, *Annual Report*, doc. A/HRC/24/49 of 4 August 2014, para. 66.

of victims from violence, re-victimization and intimidation”.⁴²

81. The automatic application of the criteria set by the ECtHR in the judgment on Maktouf and Damjanović had an impact also on a case related to a conviction for sexual violence. Notably, on 5 November 2013, the BiH Constitutional Court upheld the appeal of Mr. Zrinko Pinčić, convicted before the Court of BiH in 2009 for war crimes against civilians (sexual violence and rape) and sentenced to 9 years in prison. The BiH Constitutional Court considered that Mr. Pinčić was given a sentence below the minimum sentence of 10 years prescribed by the 2003 Criminal Code, and it concluded that the SFRY Criminal Code with its minimum sentence of 5 years was the more favourable to the applicant, thus finding a violation of Art. 7, para. 1, of the ECHR. The BiH Constitutional Court quashed the verdict and ordered the Court of BiH to issue under an urgent procedure a new decision in line with Art. 7, para. 1, of the ECHR. On 27 December 2013, in the reopened proceedings against Mr. Zrinko Pinčić, the Court of BiH handed down the verdict finding the defendant guilty of the criminal offence of war crimes against civilians in violation of Art. 142, para. 1, of the SFRY Criminal Code and reducing his sentence to six years in prison. The automatic reduction of sentence of persons convicted for war crimes is perceived by victims of rape or other forms of sexual violence as a mockery and a form of re-victimization.
82. The fact that **defendants, guilty of genocide and war crimes against civilians, are released without remand pending re-trial, has a terrible impact on the protection of victims from violence, and in terms of re-victimization and intimidation.** Moreover, as shown by the following example, **defendants may use this opportunity to flee the country and avoid being subjected to further punishment.**
83. Mr. Novak Đukić had been sentenced on 12 June 2009 to 25 years in prison for having committed war crimes against civilians in Tuzla on 25 May 1995. Mr. Đukić, former Commander of the Ozren Tactical Group of the Republika Srpska Army, was found guilty of having ordered an artillery squad to shell Tuzla from cannons on 25 May 1995. Several artillery projectiles hit the downtown area, known as Kapija, killing 71 people and injuring another 150.
84. On 23 January 2014, the Constitutional Court of BiH held that in the case of Mr. Novak Đukić the 2003 Criminal Code was wrongfully applied instead of the SFRY Criminal Code, thus finding a violation of Art. 7, para. 1, of the ECHR with respect to the applicant. The Constitutional Court of BiH annulled the verdict of 12 June 2009 and ordered the Court of BiH to issue under an urgent procedure a new decision in line with Art. 7, para. 1, of the ECHR.
85. Survivors and family members of victims of the shelling in Tuzla reacted with great frustration and disappointment vis-à-vis the justice system in BiH, publicly affirming that in the case of Mr. Novak Đukić, his release would be a form to escape from justice and there would have been **a serious and**

⁴² WGEID, *Follow-up Report on the Mission to Bosnia and Herzegovina*, doc. A/HRC/27/49/Add.2 of 8 September 2014, para. 37 (emphasis added).

imminent risk of flight.⁴³

86. On 14 February 2014 the Appeals Division of the Court of BiH suspended the prison sentence in relation to the defendant and ordered his immediate release. On 11 April 2014, in the reopened proceedings against Mr. Novak Đukić, the Appeals Chamber of the Court of BiH found the accused guilty of war crimes against civilians in violation of Art. 142, para. 1, of the SFRY Criminal Code and reduced his sentence from 25 to 20 years in prison.
87. According to information available at the official website of the Court of BiH, the accused has “duly responded and attended all hearings of the Appellate session, which is when he was particularly warned by the Panel that he was under the obligation to inform the court about any intended change of address”.⁴⁴
88. Since the delivery of the verdict, media have repeatedly been reporting about **Mr. Novak Đukić** having fled from BiH to Serbia. His lawyer has been answering through media to public allegations that he travelled to Serbia just for purposes of medical treatment.
89. At the beginning of September 2014, the media reported about the defence of Mr. Novak Đukić having staged a reconstruction of the attack in a bid to prove his innocence. According to Mr. Đukić’s defence, they planned to submit the results of the reconstruction to the Court of BiH along with a request for further retrial. But the Court of BiH has already rejected such request, and has ordered Mr. Đukić to go to Foča prison on 22 September in order to serve his sentence.⁴⁵
90. On 23 September 2014, a leading daily newspaper, *Oslobodjenje*, published an article about the fact that Mr. Novak Đukić’s lawyer, Mr. Duško Tomić, confirmed to *Oslobodjenje* that **Mr. Đukić does not intend to return to BiH to serve his prison sentence**. The lawyer further explained that, **in case BiH authorities request Mr. Đukić’s extradition, he will be shielded by his Serbian citizenship**. On the other hand, in case Serbia recognizes the verdict issued on 11 April 2014 by the Court of BiH, the lawyer announced that he intends to seek a retrial in Serbia, and not before the BiH judiciary bodies, as it had been announced earlier.⁴⁶
91. Moreover, on 26 September 2014, the media reported about the fact that Mr. Novak Đukić did not receive the call to appear to serve his sentence for crimes at Tuzlanska kapija on 22 September 2014, because of a mistake allegedly committed by the Basic Court in Banja Luka. As a consequence, a new order to serve his sentence should be issued by the Court’s police.⁴⁷ Such mistakes and lack of diligence in dealing with issues related to war crimes seriously hampers the rule of law concept in BiH and are perceived as a mockery in the face of the survivors and family

⁴³ See, among others, Radio Free Europe, 24 January 2014, <http://www.slobodnaevropa.org/content/obiteljji-djece-sa-kapije-ako-djukic-izadje-bice-to-izigrana-pravda/25241292.html>.

⁴⁴ See <http://www.sudbih.gov.ba/index.php?id=3314&jezik=e>.

⁴⁵ See <http://www.justice-report.com/en/articles/court-will-wait-for-djukic-until-september-22>.

⁴⁶ See *Oslobodjenje*, *Novak Đukić ne vraća se u BiH* (Novak Đukić is not coming back to BiH), 23 September 2014.

⁴⁷ <http://www.justice-report.com/en/articles/djukic-did-not-receive-call-for-court-s-mistake>.

members of victims of crimes committed by Mr. Novak Đukić. Other victims of gross human rights violations during the conflict, including victims of rape or other forms of sexual violence feel outraged by this kind of episodes and declare that they contribute to nourish a climate of fear and lack of trust towards institutions. On 9 October 2014 the Court of BiH announced⁴⁸ that it intends to issue an international arrest warrant against Mr. Novak Đukić, as well as to submit a plea for the execution of the sentence to Serbian authorities, while the legal representative of the latter confirms that his client does not intend to return to BiH.⁴⁹

8. Conclusions and Recommendations

92. From the above, it results that **the level of implementation of the recommendations issued by the Special Rapporteur on Violence against Women, its Causes and Consequences after her visit to BiH is alarmingly low.** This is a source of great dismay for victims of rape or other forms of sexual violence during the war, who felt that, if duly implemented, the recommendations of the Special Rapporteur could represent a solid roadmap for BiH authorities to eventually address in a comprehensive manner all the remaining obstacles concerning access to justice and redress for thousands of women across the country.
93. For the reasons explained above, the associations subscribing this follow-up report respectfully request the Special Rapporteur to reiterate her recommendations to BiH to:
- Elaborate a unified and accurate database concerning victims of rape or other forms of sexual violence during the war, duly considering also those currently living outside BiH. In the process, BiH authorities must guarantee transparency and certainty, as well as the security and privacy of the victims, duly taking into account the sensitivity of this subject.
 - Adopt without any further delay the Law on the Rights of Victims of Torture.
 - Adopt the Programme for Improvement of the Status of Survivors of Conflict related Sexual Violence, ensuring the adequate resources and funding for its implementation.
 - Adopt without any further delay the Transitional Justice Strategy and ensure its implementation.
 - Include in the criminal codes at all levels a definition of “rape” and “sexual violence” in accordance with international standards and jurisprudence and remove the condition of “force or threat of immediate attack” from the present definitions. Rape or other forms of sexual violence shall be codified as separate offences in the Criminal Code of BiH also when they are committed as isolated acts.
 - Ensure that criminal codes at all levels explicitly define that a person who acted pursuant to an order to commit rape or other forms of sexual violence shall not be relieved of criminal responsibility and that those who refuse to obey such an order will not be punished.

⁴⁸ <http://www.sudbih.gov.ba/?id=3465&jezik=e>.

⁴⁹ <http://www.justice-report.com/en/articles/bosnia-seeks-fugitive-tuzla-massacre-convict#sthash.Oi9AqJpf.dpuf>.

- Ensure that the National War Crimes Prosecution Strategy is duly implemented without any further delay and that adequate financial and human resources are allocated to guarantee that the pace of proceedings increases. Trials concerning persons accused of rape or other forms of sexual violence must be prioritized.
- Ensure that, in general, victims of rape or other forms of sexual violence are given information on a regular basis on the process of investigation carried out by the Prosecutor's Office, the results of those investigations and whether trials might be forthcoming. Courts at all levels shall have consistent rules in dealing with the public in general and with victims of rape or other forms of sexual violence in particular.
- Ensure that a comprehensive programme of victims and witness protection and psychological accompaniment is granted at all levels prior, during and after the trial takes place. The witness protection and support measures foreseen under the recently adopted Law on Witness Protection Programme must be granted also before lower courts in the different Entities. Instances of witness harassment shall be promptly and thoroughly investigated and those responsible shall be judged and sanctioned.
- Guarantee that prosecutors fulfill their obligation to provide adequate evidence to substantiate the compensation claims raised by victims and, in general, criminal courts avail themselves of their power to award compensation to victims of sexual violence, instead of systematically referring them to civil proceedings. Victims of rape or other forms of sexual violence must be adequately informed about their right to claim compensation from individual perpetrators and, where a judgment refers them to civil proceedings for this purpose, they must be automatically notified about the relevant decision. Free legal aid must be provided to victims throughout the whole proceedings to effectively fulfill their rights. Special measures must be adopted to protect victims willing to claim compensation through civil proceedings, when they enjoyed the status of protected witnesses during the criminal trial.
- Ensure that all victims of rape or other forms of sexual violence during the conflict, including those residing in Republika Srpska, are recognized as civilian victims of war and, as such, are entitled to social allowances, which shall not be subjected to any statute of limitations.
- Ensure that all victims of rape or other forms of sexual violence have access to social benefits and other measures of social support irrespective of where they live. Such legislation should be adopted on the State level in order to avoid the continuation of the current situation in which there exists discrimination in access to and levels of social benefits depending on the entity involved. In general, civilian victims of war shall not receive a worse treatment compared to that of war veterans.
- Adopt all necessary measures to make sure that legislation in the Brčko District is amended so that access to social benefits for women victims of rape or other forms of sexual violence during the war is not made conditional upon the existence of a judgment against the perpetrator.

- Undertake without delay all necessary measures to guarantee the reintegration in the labour market of victims of rape or other forms of sexual violence as well as access to vocational trainings. Both at the State and the entity level preferential treatment in employment shall be assured to victims of rape or other forms of sexual violence and the legal framework shall be amended accordingly.
- Guarantee to the children of victims of rape or other forms of sexual violence the access to education and, if they wish to continue with their studies, to the highest levels of instruction.
- Develop a system to provide victims of rape or other forms of sexual violence in BiH, including those who live in remote areas of the country, with access to psychological accompaniment and medical treatment free of charge. BiH shall remove existing barriers that unduly obstruct the access to medical and psychological treatment and medicines, including unaffordable travel expenses. Moreover the State shall support and provide resources to those organizations that already work in this field, making sure that they continue supplying good quality treatments to victims of rape or other forms of sexual violence. BiH shall ensure that programmes of health and psychological support are also put in place to adequately assist children born as a result of war-time rape.
- Ensure that associations of victims of rape or other forms of sexual violence during the war receive adequate support and resources to carry out their activities.
- Ensure that the Law on Free Legal Aid is adopted without any further delay and that adequate resources are allocated to guarantee its implementation.
- Ensure that those accused of crimes committed during the war, and in particular of genocide and the major instances of war crimes, are investigated, prosecuted and, if convicted, adequately punished in accordance with international standards and in a manner proportional to the gravity of their crimes.
- Ensure that the judgment issued by the ECtHR on the case Maktouf and Damjanović is not interpreted as meaning that all those convicted for war crimes or genocide pursuant the provisions of 2003 Criminal Code must be judged anew and, if re-trial actually takes place, the gravity of the crimes concerned is duly taken into account.
- Ensure that the sentencing regime for crimes under international law complies with the principles of justice, parity and fairness in punishment and that there is no extreme disparity between the sentences applicable to crimes against humanity and those applicable to war crimes and genocide.
- Take all necessary measures to secure, wherever required, the continued detention of the persons convicted for war crimes and genocide pending re-trial to be conducted by the Court of BiH in order to protect victims from violence, re-victimization and intimidation, ensure adequate protection against collusion or risk of absconding or committing further crimes or disturbance of public order in line with Arts. 126, 132, and 333 of the BiH Code of Criminal Procedure.

94. We remain at full disposal of the Special Rapporteur for any clarification or further information and we take this opportunity to acknowledge in advance the kind attention and to commend the Special Rapporteur and her Secretariat for their commitment and indispensable work in the struggle against the scourge of violence against women.

On behalf of:

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

Centre for Legal Assistance to Women Zenica

Association Forum žena

Foundation of Local Democracy

Association of Women from Prijedor - Izvor

Association of Women Sehara

Association of Women-Victims of War

Section of Women Victims of War in Republika Srpska

Medica Zenica

Naš Glas Association

Snaga Žene

Foundation United Women

Vive Žene Tuzla



Philip Grant

TRIAL Director

Information on the Associations Submitting the Follow-up Report

a) TRIAL (Track Impunity Always)

Founded in 2002 TRIAL is an association under Swiss law based in Geneva putting the law at the service of victims of international crimes (genocide, crimes against humanity, war crimes, torture, and enforced disappearance). TRIAL fights against the impunity of perpetrators and instigators of the most serious crimes under international law and their accomplices. The organization defends the interests of the victims before Swiss and foreign courts and various international human rights bodies. TRIAL also raises awareness among the authorities and the general public regarding the necessity of an efficient national and international justice system for the prosecution of crimes under international law. To date TRIAL has defended more than 350 victims in the course of 143 international proceedings, the first 25 of which have all been won by the organization. In addition, 40 reports were submitted to the United Nations and 15 criminal complaints filed in Switzerland, which have led to various investigations and a trial.

TRIAL is present in BiH since early 2008 and is currently providing legal support to victims of gross human rights violations committed during the war.

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

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

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c) Centre for Legal Assistance to Women Zenica

The **Centre for Legal Assistance to Women Zenica** was founded in 1996. The Centre participates in activities in the country and the region. Programmes of the Center have no territorial restrictions due to the fact that provision of free legal aid, monitoring of judiciary, monitoring of regulations and level of exercising rights has no cantonal or entity framework. The association is composed of a team of activist and defenders of human rights of women and girls, and it advocates the concept of gender equality in all social relations. The centre acts independently and, in alliance with similar organizations, it enhances the integrated policy of gender equality and sensitizes professionals to act respecting the human rights of women and girls.

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d) Association Forum žena

Forum žena is a NGO which was established in 1999 in Bratunac. Since the foundation, the association is committed to advocate for the rights of women and girls in contact with institutions, media, and the public. The foundational values of the association are respect, trust, and solidarity in order to encourage the individual potential of female citizens. The association is voluntary, and democratic and it works in the eastern part of Republika of Srpska, and the Western Balkans with the aim of preserving, defining needs and helping to solve problems of women and girls in society, particularly in politics, in the areas of public life, law, social welfare and culture.

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Website: www.forumzena.org

e) Foundation of Local Democracy

The **Foundation of Local Democracy (FLD)** is a local NGO with a 14-year experience of work in the field. Its primary focus is on protection, promotion and advancement of human rights, especially the rights of victims of gender-based violence, community building, and creation of institutional capacity for networking and development. FLD carries out a number of activities, including promoting and protecting human rights at all levels of social and public life, and through organizing and implementing education, training, seminars, conferences and congresses; preparing and publishing brochures, books and other promotional materials, in accordance with applicable legal regulations in BiH; stimulating and supporting research projects and policies; supporting collective action of women's groups and NGOs to empower women in actively participating in the transformation of BiH society and promote their equal role in public and private spheres; fundraising and the creation of a fund to help the NGO sector in BiH and the institutions designed for their institutional and economic empowerment in accordance with applicable legal regulations in BiH; improving the social status of women through: prevention and protection from domestic violence by organizing shelters, centres and private treatment centres, but also training, retraining and assistance in the organization brought in particular by providing legal assistance; promoting and protecting of children's rights especially regarding domestic violence, manipulation of children and their exploitation in any form, and by organizing educational and cultural programmes dedicated to children and adults.

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f) Association of Women from Prijedor - Izvor

The **Association of Women from Prijedor - Izvor** was founded on 3 June 1996 with its headquarters in Prijedor, Bosanska Krajina region. The association represents the victims of the war in and around this region. Over the past years, Izvor has been working on the collection of data and the documenting of facts about the people from this region who were arbitrarily killed or were subjected to enforced disappearance. A concrete result from this effort is an established database and two editions of a book "Ni krivi ni dužni" where 3,227 disappeared persons from Prijedor municipality have been registered. In addition to this, Izvor gives advice and provides help to all the victims of gross human rights violations perpetrated during the war and their relatives to realize their rights and obtain justice and reparation before domestic institutions and judicial bodies. One of the most frequent activities of Izvor is the support given to witnesses in war crimes trials before the State and other courts in BiH. Since 2008 Izvor established cooperation with the TRIAL and the two organizations are filing applications to the European Court of Human Rights and to the Human Rights Committee, as well as to the Constitutional Court of BiH, on behalf of relatives of disappeared people from the Bosanska Krajina region.

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g) Association of Women Sehara

The **Association of Women Sehara** was established with the aim to help women who are victims of war to have their own space for gathering. The mission of the association is to empower and help women who survived one of the worst forms of torture in order to continue and improve the quality of their lives. The association provides women the opportunity for gathering and talking without embarrassment and shame related to what they suffered during the war. The members of the association are specialized in handcraft works, which is an aspect of working-occupational therapy.

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h) Association of Women-Victims of War

The **Association of Women-Victims of War** is a NGO founded in 2003 with the aim to gather women who have been subjected to rape or other forms of sexual violence during the war in order to help them in fulfilling their rights and in acceding the benefits they are entitled to under the law, also in terms of social and health protection. As a part of its mandate, the association is multiethnic and multinational. In 2006 also some men who were subjected to rape or other forms of sexual violence during the war joined the association. The main activities of the association are: 1) capacity building of its members; 2) helping its members to return to normal life after the grave violation they have suffered; and 3) enabling members to enjoy health protection, as well as to obtain a stable employment and to solve housing problems.

The Association of Women-Victims of War is one of the institutions designated in the Federation of BiH to issue certificates attesting the situation of victims of sexual violence which enable the holders to apply for the status as civilian victim of war.

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i) Section of Women Victims of War in Republika Srpska

The Section was established in March 2013, aiming to unite the female population inside of Union of camp detainees of Republika Srpska. The Section advocates for the improvement of the status of women victims of war in Republika Srpska, in regard to the current law or create new one who will give rights to this population. Beside this the Section closely works with its members in order to: protect them from the public while they give a statement to the competent authorities, ensure the privacy and personal security, speed up the prosecution of crimes and provide legal and psychological help during their testimony.

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j) Medica Zenica

Medica Zenica is professional women's NGO, which since April 1993 has continuously been providing psycho-social and medical support to women and children victims of war, and post-war violence, including victims of war rape and sexual violence in peacetime; victims of domestic violence and victims of human trafficking. Medica Zenica's approach to women and children victims of violence, is based on humanistic values and includes the provision of shelter and psychological counselling along with medical and psychological assistance to women, children and men within a family therapy programme (psychological counselling during recovery from trauma and violence, as well as occupational therapy and economic empowerment through retraining programmes, crafting trainings for people living in rural areas). In addition to the direct work with victims of trauma and violence, Medica Zenica also conducts educational, research, publishing and advocating projects aimed at the promotion and protection of human rights, prevention of sexual and domestic violence, and combating human trafficking.

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k) Naš Glas Association

Naš Glas' mission is to break the "conspiracy of silence" through adequate dealing with the past, with the improvement of the status of social inclusion of victims and survivors of sexual violence from the war, and to continue promotion of the values of a democratic civil society, such as humanism, non-violence and tolerance. The association works on strengthening the victims and survivors of sexual violence in war through the improvement of health, economic and social status, and improvement of quality of life, social inclusion of victims and survivors of sexual violence in war, partnership and networking with institutions and associations that have similar goals, including cross-border, support to the process of building peace and coexistence among the peoples of BiH through the contribution to the development of new model and violence prevention programmes and psychosocial care.

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l) Snaga Žene

The association **Snaga Žene** was established in 1999 upon the initiative of women from Tuzla and the German association Vive Žene e.V. from Dortmund. The association is active in the area of Tuzla Canton and Eastern Republika Srpska. It offers psychological, social, medical, pedagogical and legal support to women, children and adolescents (refugees, returnees and displaced persons) who suffered different traumatic experiences during and after the war in BiH. Snaga Žene supports these people in retrieving their psychological balance, strengthening their family relations and in their endeavours to fit into everyday life. Snaga Žene takes part to the activity of different networks and advocates for better social, educational, police, legislative, medical and social services in order to deal effectively with the impacts of trauma, domestic violence, trafficking and general violence against women and children's problems.

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m) Foundation United Women

The **Foundation United Women** is a non-profit foundation established on 16 August 1996 in Banja Luka. The principal goal of the foundation is to improve the social status of women, and their right to a life free of violence in the family and in public life. The foundation aims to foster women's participation in decision-making positions in government institutions at all levels in BiH. The foundation's vision is "a woman conscious of her power, equal, respected, employed and happy". The foundation runs two major programme areas, i.e. preventing and combating violence against women, and strengthening the role of women in decision-making positions in BiH.

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n) Vive Žene Tuzla

Vive Žene Tuzla (Centre for Therapy and Rehabilitation) is a NGO established in 1994 that focuses on psycho-social help and support, education, and promotional-editorial activities with a multi-disciplinary, democratic and participatory approach to the work with traumatized families and individuals. The primary goal of Vive Žene Tuzla is to improve the mental health of people who were subjected to torture during the conflict in BiH, minimizing the effects of trauma-related disorders in the lives of tortured, raped or abused victims and facilitating their emotional healing. Vive Žene Tuzla considers that the maintaining and protection of the mental health of citizens is a sound way to contribute to the reconstruction of a war-torn society. While respecting the basic principles of humanity and human rights, the organization implements basic values laid through the work with marginalized groups, civilian victims of war and the protection of the families with children. The work carried out by Vive Žene Tuzla aims at preventing torture through a multidisciplinary approach, including psychotherapy, psychosocial, social, medical and legal counselling. Accordingly, the team of Vive Žene Tuzla consists of psychologists, social workers, instructors, teachers, doctors, a nurse, a psychotherapist and a legal counsel. Besides working with individuals, the organization works also in the community, with a view to foster reconciliation, representation, rebuilding of trust and reconstruction of broken relationships and reduction of ethnic barriers.

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