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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Working Group on Enforced or Involuntary Disappearances

Addendum

Follow-up report to the recommendations made by the Working Group

Missions to Argentina and Bosnia and Herzegovina*

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Contents

Introduction

1. This document contains information supplied by Governments, civil society and other stakeholders, relating to the follow-up measures to the recommendations made by the Working Group on Enforced or Involuntary Disappearances, following its country visits. In paragraph 7 a) of its Resolution 7/12, the Human Rights Council requested Governments that have accepted visits "to give all necessary attention to the Working Group's recommendations" and invited them to inform the Working Group of "any action they take on those recommendations". The Human Rights council reiterates this request in paragraph 16 a) of its Resolution 21/4. Resolution 16/16 renews the mandate of the Working Group in conformity with the terms set forth in Human Rights Council resolution 7/12.

2. The Working Group decided in 2010 to adopt the present format to its follow-up reports with the aim of rendering it reader-friendly and of facilitating the identification of concrete steps taken in response to the specific recommendations and to reflect the opinions of the different actors involved in the process. For this reason, follow-up tables have been created. The tables contain the recommendations of the Working Group, a brief description of the situation when the country visit was undertaken, and an overview of the steps taken on the basis of the information gathered by the Working Group both from governmental and non-governmental sources.

3. The Working Group continues to offer its assistance to the Governments that have received a visit to comply with the recommendations made and stands ready to assist them in their efforts to prevent and combat the heinous crime of enforced disappearance.

I. Argentina

Seguimiento a las recomendaciones del Grupo de Trabajo sobre desapariciones forzadas o involuntarias en su informe relativo a su visita a Argentina del 21 al 24 de julio de 2008 (A/HRC/10/9/Add.1, párrafos 82-94)

4. El 2 de enero de 2014, el Grupo de Trabajo sobre las desapariciones forzadas o involuntarias envió al Gobierno de Argentina la solicitud de proporcionar información sobre las medidas adoptadas para aplicar las recomendaciones que fueron formuladas en el informe A/HRC/10/9/Add.1, tras su visita al país en julio de 2008. El 31 de enero y el 6 de febrero de 2014, el Gobierno de Argentina presentó la solicitada información. El 23 de mayo de 2014, el Grupo de Trabajo envió al Gobierno de Argentina el cuadro que figura a continuación invitándolo a proporcionar comentarios y/o información adicional. No se recibió información adicional a la presentada en enero y febrero de 2014.

5. El Grupo de Trabajo constata que el Estado ha realizado numerosos avances en materia de desaparición forzada, en la implementación de las recomendaciones hechas luego de la visita a Argentina del 21 al 24 de julio de 2008 (A/HRC/10/9/Add.1).

6. El Grupo de Trabajo observa que varias apropiadas medidas legislativas y de otra índole han sido adoptadas en relación con las desapariciones forzadas. Entre otras: la adopción de la Ley N° 26.548 que reglamenta el funcionamiento del Banco Nacional de Datos Genéticos; la incorporación en abril de 2011 del delito de desaparición forzada como delito autónomo mediante la Ley 26.679; la creación de la Procuraduría de Crímenes contra la Humanidad; las acordadas y resoluciones de la Cámara Federal de Casación Penal que establecen lograr la optimización de los procesos, evitar la re-victimización de testigos y

familiares y agilizar los trámites judiciales; y la creación del Centro de Asistencia a Víctimas de Violaciones de Derechos Humanos, “Dr. Fernando Ulloa”, por Decreto 141/11.

7. El Grupo de Trabajo observa que en particular se ha prestado atención a la creación de mecanismos institucionales gubernamentales para hacer frente a cuestiones relativas a las desapariciones forzadas. La estructura orgánica del Ministerio de Justicia, Seguridad y Derechos Humanos se modificó de manera que la Dirección Nacional de Desarrollo Normativo de los Derechos Humanos fue creada y el funcionamiento del Archivo Nacional de la Memoria (ANM) y la Comisión Nacional por el Derecho a Identidad (CONADI) se determinaron de forma explícita. El funcionamiento del ANM también se modificó con la creación del Centro Cultural de la Memoria "Haroldo Conti". El Grupo de Trabajo reconoce la importancia de proporcionar un presupuesto suficiente a la Comisión Inter-Poderes.

8. El Grupo de Trabajo nota que el Banco Nacional de Datos Genéticos ha sido establecido como un órgano autónomo e independiente, bajo los auspicios del Ministerio de Ciencia, Tecnología e Innovación Productiva con la responsabilidad de almacenar información genética, y facilitar la identificación y esclarecimiento de disputas relativas a la filiación. La protección y confidencialidad de los datos genéticos como datos personales sensibles está completamente garantizada.

9. El Grupo de Trabajo toma nota con satisfacción del establecimiento de la Unidad Especializada para casos de apropiación de niños durante el terrorismo de Estado en la Procuraduría de Crímenes contra la Humanidad, con el mandato principal de proporcionar un trato especial y dedicado a los casos de sustracción de menores, habiendo desarrollado para ello varios protocolos de procedimiento. El Grupo de Trabajo también celebra el encuentro de Estela de Carlotto, presidenta de la organización argentina de derechos humanos Abuelas de Plaza de Mayo, con su nieto, luego de 36 años de búsqueda. Este reencuentro demuestra que, con el compromiso, la cooperación y el apoyo a los familiares de los desaparecidos, es posible obtener resultados incluso muchos años después de que una desaparición tiene lugar. El Grupo de Trabajo nota con satisfacción que, desde la publicación de su informe de visita, se han encontrado varios niñas y niños cuya identidad fue sustituida durante la última dictadura militar, incluido un último caso el 22 de agosto pasado.

10. Además, el Grupo de Trabajo observa que todos los organismos gubernamentales que se ocupan de cuestiones de derechos humanos y el poder judicial han demostrado un alto nivel de compromiso y profesionalismo para conocer el destino y el paradero de las personas desaparecidas.

11. El Grupo de Trabajo da la bienvenida al proyecto que otorgaría jerarquía constitucional a la Convención Internacional para la Protección de Todas las Personas contra las Desapariciones Forzadas. El Grupo de Trabajo acoge con satisfacción que la Convención haya sido aplicada por los tribunales nacionales, aunque en la legislación nacional no se haya establecido claramente la aplicabilidad directa de este tratado internacional. El Grupo de Trabajo espera que el proceso legislativo para otorgar jerarquía constitucional a la Convención se concluya a la brevedad y que se reconozca también la aplicabilidad directa de sus disposiciones en el ordenamiento interno de Argentina.

12. El Grupo de Trabajo toma nota de la reforma al Código Penal Nacional (CPN) y el Código Nacional de Procedimiento Penal (CPPN) del 13 de abril de 2011 con la sanción de la Ley N.º 26679, la cual incorporó al derecho positivo argentino disposiciones referidas al delito de desaparición forzada de personas. El CPN define el acto de desaparición forzada como un delito autónomo y como un delito continuo mientras sus autores continúen ocultando la suerte y el paradero de la persona desaparecida y mientras no se aclaren los

hechos. El Grupo de Trabajo recomienda al Gobierno que prosiga sus esfuerzos para mejorar aún más la legislación penal, con especial atención en su aplicación efectiva.

13. El Grupo de Trabajo señala que el enjuiciamiento de los delitos relacionados con las desapariciones forzadas ha mejorado significativamente, en particular mediante el fortalecimiento de las capacidades institucionales, la creación de un enfoque sistemático de casos de desapariciones forzadas, y la provisión de protección de testigos que evita que testifiquen en forma reiterada. El Grupo de Trabajo reconoce que el proceso de juzgamiento de los crímenes contra la humanidad en Argentina ha tenido un desarrollo cuantitativo y cualitativo, siendo un ejemplo mundial en la lucha contra la impunidad, por eso resulta importante continuar con el desarrollo del sistema establecido. El Grupo de Trabajo también reconoce que se han tomado algunas medidas para la reforma del sistema judicial con el fin de eliminar los retrasos en los juicios. Un procedimiento de vacantes transparente y abierto para seleccionar a los funcionarios de la Oficina del Ministerio Público y las instituciones judiciales ha sido establecido. El Grupo de Trabajo recomienda que el proceso de reforma continúe para hacer que todo el sistema judicial sea más eficaz. En cuanto al problema de los retrasos en los juicios señalado en el informe, se deberían solucionar también las dificultades causadas por la demora en la confirmación de las sentencias, aunque se haya producido una reactivación en 2012; así como la fuga de imputados por crímenes de lesa humanidad, lo que requiere un fortalecimiento del monitoreo de los imputados.

14. El Grupo de Trabajo toma nota del establecimiento de un marco legislativo e institucional para asegurar que el Archivo Nacional de la Memoria mantenga y fortalezca sus actividades de recolección, actualización, preservación y digitalización de los registros y la información relativa a la violación de los derechos humanos durante el terrorismo de Estado. El Grupo de Trabajo subraya la importancia de poder acceder de manera transparente y sistemática a toda la información incluida en los archivos institucionales. El Grupo de Trabajo toma nota de las dificultadas enfrentadas por el Instituto Espacio para la Memoria e invita al Estado a proporcionar más información al respecto.

15. El Grupo de Trabajo reitera su satisfacción por el establecimiento del Programa de Verdad y Justicia que mostró claramente el compromiso del Gobierno para hacer frente a las cuestiones de las desapariciones forzadas de forma estratégica. Las acciones definidas en este programa de Gobierno han sido la base a través de las cuales todas las agencias gubernamentales han establecido medidas con el objetivo de, entre otras cosas, trabajar con testigos de casos, hacer seguimiento de los casos bajo investigación, y elaborar un registro con información relacionada con la verdad y la justicia, y colaborar directamente con las autoridades para investigar casos de desaparición forzada. El Grupo de Trabajo recuerda la importancia de reconocer el papel histórico de las organizaciones de derechos humanos, que exige que en las actividades del Programa de Verdad y Justicia sea necesario incluir la participación de las víctimas y de los activistas. Con el objetivo de seguir avanzando en el ámbito de la desaparición forzada, el Grupo de Trabajo hace hincapié en la importancia de establecer consultas permanentes con todas las organizaciones de derechos humanos.

16. El Grupo de Trabajo reconoce los importantes esfuerzos realizados con el objetivo de garantizar la reparación a las víctimas de violaciones de derechos humanos ocurridas durante la dictadura militar. El Grupo de Trabajo observa que, sin embargo, el marco legislativo en materia de reparación abarca sólo a las víctimas de los hechos que ocurrieron previo al 10 de diciembre de 1983 y que no existe una legislación análoga para las víctimas de desaparición forzada posterior a esa fecha. Además, el sistema establecido de reparación no prevé la creación de un órgano - a través de un acto legislativo - que incluya a las organizaciones de la sociedad civil, y en particular, a las familias de los desaparecidos, en la aplicación de un Plan de Reparación Integral, como previamente recomendado por el Grupo. El Grupo de Trabajo insta al Gobierno de Argentina a que tome medidas con el

objetivo de mejorar el sistema de reparación para que todas las víctimas de desaparición forzada, independientemente de cuando ocurrió la desaparición, tengan igual derecho a la reparación.

17. El Grupo de Trabajo aprecia positivamente la regulación del régimen de ausencia por desaparición forzada previsto en la Ley 24.231. Sin embargo, reitera su preocupación expresada en el informe de visita respecto a que la declaración de ausencia sólo puede aplicarse en relación con las desapariciones ocurridas hasta el 10 de diciembre de 1983 y no para las ocurridas posteriormente. Al respecto, se insta al Gobierno a introducir medidas para que los familiares de personas que pudieran ser víctimas de desapariciones forzadas con posterioridad al 10 de diciembre 1983 tengan la posibilidad de solicitar la declaración de ausencia por desaparición forzada, como también lo ha recomendado recientemente el Comité contra la Desaparición Forzada en sus observaciones finales relativas al informe presentado por Argentina sobre la implementación de la Convención Internacional para la protección de todas las personas contra las desapariciones forzadas, en virtud del artículo 29, párrafo 1, de la misma (CED/C/ARG/CO/1, párrafo 39).

18. El Grupo de Trabajo observa que se han logrado avances significativos en la protección de las víctimas y los testigos, incluyendo el establecimiento del Programa Nacional de Protección a Testigos e Imputados. El Grupo de Trabajo celebra el establecimiento de medidas que permiten el uso de ayudas tecnológicas, como las videoconferencias o grabaciones de vídeo, durante las audiencias judiciales con el objetivo de mantener confidencial la identidad de los testigos. Esto también evita que los testigos deban viajar a donde se lleva a cabo el juicio, y además el testigo no es observado directamente por el acusado mientras declara. Sin embargo, como también ha señalado el Comité contra la Desaparición Forzada (CED/C/ARG/CO/1, párrafo 20), el Programa Nacional de Protección a Testigos e Imputados no contempla expresamente los casos de desapariciones forzadas y el hecho de ser testigo en un caso de desaparición forzada no parece conllevar automáticamente la posibilidad de servirse de apoyos tecnológicos como videoconferencias o videograbaciones para mantener la confidencialidad y garantizar protección. El Grupo de Trabajo hace hincapié en la importancia de garantizar que el sistema de protección establecido sea aplicable a todas las víctimas y testigos, incluidas las víctimas de desapariciones forzadas. El Grupo de Trabajo reitera su preocupación por la desaparición de Jorge Julio López en 2006, testigo clave en un juicio por crímenes de Lesa Humanidad, cuyo caso aún no ha sido esclarecido.

19. El Grupo de Trabajo observa el progreso logrado en el ámbito de la protección de la integridad física de las víctimas y testigos mediante el fortalecimiento de las fuerzas del orden, fundamentalmente en la desmilitarización y la despolitización de las mismas. El Grupo de Trabajo recomienda la adopción de medidas adicionales para mejorar el funcionamiento de la policía con el foco en la eliminación de todas las conductas ilegales en sus intervenciones de rutina y la organización de cursos de formación en materia de derechos humanos.

20. En conclusión, el Grupo de Trabajo felicita al Estado argentino por los avances alcanzados para brindar verdad, justicia y reparación a las víctimas de los graves crímenes cometidos en el pasado, incluyendo las desapariciones forzadas. Sin embargo, como fue señalado en los párrafos precedentes, el Grupo de Trabajo nota que persisten algunos desafíos, por ello reitera sus recomendaciones, insta a seguir avanzando en su implementación e invita al Estado a proveer información actualizada sobre las mismas.

Seguimiento a las recomendaciones del Grupo de Trabajo sobre desapariciones forzadas o involuntarias en su informe relativo a su visita a Argentina del 21 al 24 de julio de 2008 (A/HRC/10/9/Add.1, párrafos 82-94)

Recomendaciones (A/HRC/10/9/Add.1)	*Situación durante la visita (A/HRC/10/9/Add.1)*	*Observaciones: medidas adoptadas/situación actual*
82. Los esfuerzos de búsqueda de los desaparecidos tendrían que ser garantizados mediante medidas legislativas de largo aliento, con el fin de que las políticas gubernamentales se conviertan en políticas de Estado. Lo anterior puede lograrse mediante el establecimiento por el poder legislativo de un organismo público, que goce de autonomía de gestión y financiera, en el que tenga participación tanto el estado como los particulares interesados, y que cumpla con los requisitos previstos en los Principios Relativos al Estatuto y Funcionamiento de las Instituciones Nacionales de Protección y Promoción de los	27. [...] En cuanto a las medidas legislativas relacionadas con la desaparición y apropiación de menores, con la orientación de lograr su identificación y recuperación de su identidad, y en su caso, lograr la reintegración familiar, el Grupo de Trabajo conoció el contenido de la Ley Nº 23511 de 1987, mediante la cual se creó el Banco Nacional de Datos Genéticos, que hace referencia recurrente a la situación de menores desaparecidos, presuntamente nacidos en cautiverio, como consecuencia de la desaparición forzada de la madre.	**Sociedad Civil** **CODESEDH** En la actualidad no existe en el país un organismo público creado por el Poder Legislativo que goce de autonomía de gestión y financiera, en el que tenga participación tanto el Estado como los particulares interesados, dedicado a la búsqueda de los desaparecidos durante la dictadura. II) Más allá de la existencia del Archivo Nacional de la Memoria (ANM) y la Comisión Nacional por el Derecho a la Identidad (CONADI) mencionados por Grupo de Trabajo en sus observaciones al país, lo cierto es que con posterioridad a la visita presencial, la Procuración General de la Nación, a través del Ministerio Público Fiscal creó la Procuraduría de Crímenes contra la Humanidad, dentro de la cual existe la Unidad Especializada para casos de apropiación de niños durante el terrorismo de Estado, la cual entre sus principales funciones contempla brindar un tratamiento especial y dedicado a los casos de apropiación de menores, habiendo para ello desarrollado varios protocolos procedimentales. http://www.mpf.gob.ar/lesa/unidad-especializada-para-casos-de-apropiacion-de-ninosdurante-el-terrorismo-de-estado/ III) Ello no obstante, todos los organismos públicos relacionados con la temática de los derechos humanos, como así también el Poder Judicial de la Nación y el mismo Ministerio Público Fiscal, emprenden con el mayor de los profesionalismos el desarrollo de investigaciones entre las que uno de los principales objetivos, es el hallazgo de las personas desaparecidas. **APDH** En el sentido señalado la Comisión Inter-Poderes constituida por el Poder Ejecutivo, Legislativo, Judicial y Consejo Nacional de la Magistratura, cuenta con un presupuesto magro y el cual no invitó a los organismos de Derechos Humanos a integrarla, razón por la cual su accionar se ve notablemente empobrecido y con frecuencia carente de contenido. La creación de la Fiscalía Especial para el seguimiento de los Juicios de Lesa Humanidad ha sido un notable acierto. Su actuación especializada es muy eficaz. Recientemente se ha modificado el funcionamiento del Instituto Espacio para la Memoria, de lo cual todavía no se tiene información definitiva, lo cual que implica un retroceso. **Gobierno** Con fecha 22 de enero de 2013 se aprobó la reglamentación de la Ley N° 26.548, ley que definió el ámbito funcional, el objeto y las funciones del Banco Nacional de Datos Genéticos y la reserva de la información del

Recomendaciones (A/HRC/10/9/Add.1)	*Situación durante la visita (A/HRC/10/9/Add.1)*	*Observaciones: medidas adoptadas/situación actual*
Derechos Humanos, conocidos como los "Principios de París".	33. Después de su visita a la Argentina, el Grupo de Trabajo fue informado por el Gobierno argentino que el 23 de octubre de 2008, la Presidenta de la Nación firmó el Decreto Nº 1755/08 por medio del cual modifica la estructura organizativa del Ministerio de Justicia, Seguridad y Derechos Humanos. A través de dicho decreto se crea la Dirección Nacional de Desarrollo Normativo de los Derechos Humanos, y se determina expresamente la ubicación funcional del Archivo Nacional de la Memoria (ANM) y de la Comisión Nacional por el Derecho a la Identidad (CONADI). Según dicho informe, tal modificación tiene como objetivo	Archivo Nacional de Datos Genéticos. Entre los considerandos de la reglamentación se destaca el hecho de que el Banco Nacional de Datos Genéticos funcionará como organismo autónomo y autárquico bajo la órbita del Ministerio de Ciencia, Tecnología e Innovación Productiva, lo que implica la jerarquización de su labor, especificando que ha sido creado para “almacenar información genética que facilite la determinación y esclarecimiento de conflictos relativos a la filiación”. En relación con el almacenamiento y la privacidad de los datos, el artículo 3 de la reglamentación hace una expresa remisión a la Convención al decir que: “Los datos genéticos son datos personales sensibles y su obtención, procesamiento y divulgación estarán sujetos a lo prescripto en el artículo 19 de la Convención Internacional para la Protección de todas las Personas contra las Desapariciones Forzadas, aprobada por la Ley N° 26.298”. Asimismo, el artículo 5 establece que en el Banco Nacional de Datos Genéticos se procederá al archivo y almacenamiento de todas las muestras ingresadas, ya sean: 1) muestras hemáticas; 2) hisopados bucales; 3) material cadavérico; 4) evidencias obtenidas a partir de los allanamientos, requisas u otros actos celebrados por orden judicial, ya sea material orgánico u objetos; 5) ADN extraído. Situación normativa actual: El Decreto N° 1755/08 fue parcialmente modificado por el Decreto 1982/2010, que incorporó al ámbito del Archivo Nacional de la Memoria el Centro Cultural de la Memoria "Haroldo Conti". El Decreto Nº 1982/10 aprobó la estructura organizativa del Archivo Nacional de la Memoria, organismo desconcentrado dependiente de la Secretaria de Derechos Humanos del Ministerio de Justicia y Derechos Humanos. Asimismo el Decreto 1486/2011 aprobó la estructura organizativa de primer nivel operativo del Ministerio de Justicia y Derechos Humanos.

Recomendaciones (A/HRC/10/9/Add.1)	*Situación durante la visita (A/HRC/10/9/Add.1)*	*Observaciones: medidas adoptadas/situación actual*
	fortalecer la labor de esclarecimiento de los casos de desaparición forzada de las víctimas del terrorismo de estado y determinar su paradero e identidad.	
83. Sería recomendable que el poder legislativo introdujera reformas a la Ley sobre declaración de ausencia por desaparición forzada, con el fin de superar las debilidades que se describen en el cuerpo del presente informe.	29. Se nos informó, asimismo, que para aquellos casos en los que el hallazgo y la identificación no ha resultado posible, se cuenta desde 1994 con ordenamientos normativos orientados a la declaración de ausencia por desaparición forzada. Esto permite el ejercicio de derechos civiles, por ejemplo en materia familiar y sucesoria, pero deja abierta la posibilidad de investigación y enjuiciamiento de los responsables. Prevé incluso la posibilidad y los efectos respectivos de la reaparición con vida de la víctima declarada ausente.	**<u>Sociedad civil</u>** **CODESEDH** I) Desde la visita del Grupo de Trabajo, el Poder Legislativo no ha realizado modificaciones de fondo a la ley 24.321. II) Más allá de ello, debe ser mencionado en primer lugar que en la mayoría de la legislación reparatoria se establece la fecha del 10 de diciembre de 1983 como última sobre la que se puede denunciar una desaparición forzada, porque es ésa en la cual se recuperó formalmente el sistema republicano de gobierno democrático, con lo cual a partir de allí se auguraba como sociedad y país, que no hubieran más desapariciones. Fue una norma dictada en un contexto de renaciente democracia, con lo cual no se preveía la sucesión de hechos similares en el futuro. III) En relación con la enumerada reducción de posibilidades de acceder al beneficio en caso de no conocer con exactitud la fecha de desaparición, o no poseer una presentación ante la Comisión Nacional sobre la Desaparición de Personas (CONADEP) o la ex Subsecretaría de Derechos Humanos y Sociales del Ministerio del Interior, o la ex Dirección Nacional de Derechos Humanos, lo cierto es que de acuerdo a nuestra experiencia en el acompañamiento de víctimas directas o familiares de desapariciones y privaciones ilegales de la libertad, esa dificultad no es tan absoluta. Es posible acreditar ese hecho a través de cualquier otra medida de prueba jurídicamente válida, como ser por ejemplo, la declaración de testigos que ubique mínimamente el suceso en forma temporal. **APDH** Naturalmente la reparación a las violaciones a los Derechos Humanos no debe tener límites temporales. Esas dificultades existen, por vía de ejemplo, en los casos de las leyes 24043 y 24411 anteriores a 1955 y posteriores al 10 de diciembre de 1983. Sin embargo, el órgano de aplicación de violaciones a los Derechos Humanos tales como desapariciones forzadas, no debe ser el mismo que el relativo a desapariciones simples que no constituyen violaciones a los derechos humanos. APDH considera que la actual reforma al Código Civil ha mejorado el tratamiento de la Ausencia con Presunción de Fallecimiento, constituyendo dos institutos diferentes.

Recomendaciones (A/HRC/10/9/Add.1)	*Situación durante la visita (A/HRC/10/9/Add.1)*	*Observaciones: medidas adoptadas/situación actual*
	La Ley Nº 24321, sin embargo, se refiere únicamente a personas que hubieren sido desaparecidas hasta el 10 de diciembre de 1983. Además, la ley establece que se fijará "como fecha presuntiva de la misma el día que constaba en la denuncia originaria ante el organismo oficial competente o en su caso el de la última noticia fehaciente -si la hubiere- sobre el desaparecido". 30. Aunque la ley mencionada, sin duda, representa un paso en la dirección correcta, el hecho de que para poder obtener la declaración de ausencia por desaparición forzada resulte necesario haber presentado una denuncia ante la autoridad judicial competente, la ex Comisión Nacional	**Gobierno** El artículo 1 de la Ley N° 24.321 es preciso en cuanto al período de tiempo en el que debió acaecer la desaparición de una persona para declararla ausente por desaparición forzada. La sanción de esta ley respondió a un contexto histórico particular, lo que se ve reflejado en su artículo 2, que prescribe el procedimiento a seguir para efectuar una denuncia, refiriéndose a la forma de justificar la privación ilegítima de la libertad mediante la denuncia por ante las autoridades competentes allí enumeradas. Lo dicho no impide que para otros casos se haya mantenido la vigencia de la Ley N° 14.394, ley de antigua data que ha sido varias veces reformada en pos de su adecuación normativa, y que es de aplicación ordinaria en situaciones de desapariciones tardías o extemporáneas. Esta ley regula en su capítulo III los procedimientos para los casos de presentarse los extremos legales que configuran la ausencia con presunción de fallecimiento. Por otra parte, la Ley N° 24.321 en su artículo 7 remite precisamente a la Ley N° 14.394, con el fin de adjudicarle a la declaración de ausencia por desaparición forzada los mismos efectos civiles prescriptos para la ausencia con presunción de fallecimiento. Teniendo en cuenta estos antecedentes los efectos legales del certificado emitido por la Secretaría de Derechos Humanos se circunscriben a los de un instrumento jurídico de carácter público que habilita la prosecución de la instancia en sede civil. Del contenido del certificado se desprende el archivo de radicación de la denuncia, los datos de la víctima, la fecha y el lugar del hecho denunciado, la última fecha y lugar donde fuera vista la persona y, en el caso, el centro clandestino de detención. Recibida la solicitud de ausencia por desaparición forzada, el juez requerirá al organismo oficial ante el cual se formuló la denuncia de la desaparición, o en su defecto, al juez donde se presentó habeas corpus, información sobre la veracidad formal del acto.

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	sobre la Desaparición de Personas (Decreto Nº 158/83), la Subsecretaría de Derechos Humanos y Sociales del Ministerio del Interior o la ex Dirección Nacional de Derechos Humanos, o en su defecto resulte necesario tener "la última noticia fehaciente" sobre el desaparecido, reduce las posibilidades de obtener el beneficio a los familiares que no hubieren realizado la denuncia o presentado hábeas corpus y, como sucede en muchísimos casos de desaparición forzada, no se tenga una noticia "fehaciente" de la última vez que la víctima hubiere sido vista con vida. Por otro lado, la definición de desaparición forzada no corresponde con	

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	la provista por el Derecho Internacional de los Derechos Humanos, particularmente la contenida en la Declaración. Finalmente, parece inadecuado que se indique que el beneficio provisto por la ley en comento se restrinja a desapariciones que hubieren comenzado a darse hasta el 10 de diciembre de 1983. Esta ley debería ser aplicable a cualquier desaparición forzada, incluso a aquellas que pudieran darse en el futuro.	
84. Sería recomendable también que el Congreso argentino adoptara las medidas legislativas conducentes a otorgar a la Convención Internacional sobre la Protección de Todas las Personas contra las	35. […] la Constitución de 1994 establece que los tratados internacionales sobre derechos humanos de los que la Argentina es parte tienen rango constitucional. La Ley Nº 24820 le otorgó dicha jerarquía a la	**<u>Sociedad Civil</u>** **CODESEDH** Hasta el día de la fecha el Poder Legislativo no ha otorgado jerarquía constitucional a la Convención Internacional sobre la Protección de todas las Personas contra las Desapariciones Forzadas. **<u>Gobierno</u>** En relación al otorgamiento de jerarquía constitucional a la Convención Internacional para la Protección de Todas las Personas contra las Desapariciones Forzadas, puede informarse que en la actualidad, luego de que el Poder Ejecutivo elevase un mensaje y proyecto de ley al Congreso de la Nación, el proyecto que otorga jerarquía constitucional a la Convención tiene estado parlamentario, habiendo pasado ya por la Comisión de Asuntos Constitucionales del Senado, con fecha 19 de octubre de 2012, y encontrándose en la Cámara de Diputados para la prosecución del trámite de aprobación.

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Desapariciones Forzadas rango constitucional.	Convención Interamericana sobre Desaparición Forzada de Personas, en los términos del último párrafo del inciso 22 del artículo 75 constitucional, que establece que "[l]os demás tratados y convenciones sobre derechos humanos, luego de ser aprobados por el Congreso, requerirán el voto de las dos terceras partes de la totalidad de los miembros de cada Cámara para gozar de la jerarquía constitucional". 36. El Grupo de Trabajo se complace en saber que la Argentina ha ratificado la Convención Internacional para la protección de todas las personas contra las desapariciones forzadas mediante la Ley Nº 26298, y que ha depositado el instrumento en virtud del cual	El estado parlamentario puede seguirse a través de la página web de la Cámara de Diputados en el siguiente link: http://www.diputados.gov.ar/frames.jsp?mActivo=proyectos&p=http://www1.hcdn.gov.ar/proyectos_search/bp.asp

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	reconoce la competencia del comité previsto en dicha Convención para recibir quejas individuales en los términos previstos en dicho tratado. Es importante mencionar que aunque la Ley Nº 26298, no establece que se le haya otorgado a la mencionada Convención el rango constitucional del que sí goza la Convención Interamericana sobre la misma materia, el Grupo de Trabajo fue informado sobre la existencia de un proyecto de ley para otorgar dicha jerarquía constitucional a la Convención, conforme al mecanismo previsto en el artículo 75, inciso 22, de la Constitución nacional. Dicho proyecto de ley estaría siendo	

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	debatido en la Honorable Cámara de Senadores del Congreso Nacional en el momento en el que se elaboró este informe. Lo ideal sería, por supuesto, que la Convención Internacional para la protección de todas las personas contra las desapariciones forzadas tuviera jerarquía constitucional, por lo que sería recomendable que el Congreso argentino adoptara las medidas legislativas conducentes al logro de dicho fin.	
85. Se insta respetuosamente al Senado a que concluya exitosamente la reforma al Código Penal Federal mediante la cual se tipificaría el delito de desaparición forzada de personas, tomando en cuenta que "[t]odo acto de desaparición forzada	37. La Argentina también es Parte en el Estatuto de Roma en virtud del cual se creó la Corte Penal Internacional. Dicho tratado internacional tipifica el delito de desaparición forzada para los efectos del derecho penal internacional y es perseguible conforme a dicho	**<u>Sociedad Civil</u>** **CODESEDH** El día 13 de abril de 2011 el Poder Legislativo sancionó, y el 5 de mayo del mismo año el Poder Ejecutivo promulgó la ley 26.679 que contemplaba la incorporación al código penal de la Nación de la figura de la desaparición forzada como delito autónomo. Igualmente, establecía mecanismos procesales de impedimento de archivo de las actuaciones hasta tanto se pueda dar con el paradero de las personas víctimas, los cuales se incorporaron como modificación al código procesal penal de la Nación. http://www.infoleg.gob.ar/infolegInternet/anexos/180000-184999/181888/norma.htm **Gobierno** El 13 de abril de 2011 se sancionó la Ley N.º 26679 que modificó tanto el CPN como el Código de Procedimiento Penal de la Nación (CPPN) e incorporó al derecho positivo argentino disposiciones referidas al delito de desaparición forzada de personas.

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será considerado delito permanente mientras sus autores continúen ocultando la suerte y el paradero de la persona desaparecida y mientras no se hayan esclarecido los hechos".	tratado cuando constituya un crimen de lesa humanidad, tal y como lo señala el artículo 7 del mismo Estatuto. Mediante la Ley Nº 23390 se aprobó dicho Estatuto, aunque no con rango constitucional, y en virtud de la Ley Nº 26200 se implementaron sus disposiciones. En la Ley Nº 26200 se incorpora, por referencia del artículo 2 de la mencionada ley, la tipificación del delito de desaparición forzada tal y como se encuentra tipificado en el artículo 7 del Estatuto, y se le establece, también por referencia en los términos del artículo 9 de la Ley Nº 26200, una pena de 3 a 25 años de prisión, aunque si ocurre la muerte, la pena prevista es de prisión perpetua.	A partir de dicha reforma legislativa la desaparición forzada de personas se encuentra tipificada en el Código Penal de la Nación, en el Capítulo I del Título V, Delitos contra la Libertad. En efecto, el artículo 1 de la Ley N.º 26679, incorpora el artículo 142 ter al Código Penal de la Nación, el que ha quedado redactado de la siguiente forma: "Se impondrá prisión de diez a veinticinco años e inhabilitación absoluta y perpetua para el ejercicio de cualquier función pública y para tareas de seguridad privada, al funcionario público o a la persona o miembro de un grupo de personas que, actuando con la autorización, el apoyo o la aquiescencia del Estado, de cualquier forma, privare de la libertad a una o más personas, cuando este accionar fuera seguido de la falta de información o de la negativa a reconocer dicha privación de libertad o de informar sobre el paradero de la persona". Tal como se desprende del texto citado, puede notarse que el derecho interno argentino cuenta con una definición de desaparición forzada que está en plena conformidad con la definición brindada por el artículo 2 de la Convención. El tipo penal describe la acción como la de privar la libertad de una o más personas, sin importar el modo, y siendo la acción desarrollada por agentes del Estado, personas o grupos de personas que actúen con la autorización, el apoyo o la aquiescencia del Estado. Seguida a la privación de la libertad debe ocurrir la falta de información o de la negativa a reconocer dicha privación de libertad o de informar sobre el paradero de la persona, con lo cual se impide el ejercicio de los recursos legales y de las garantías procesales pertinentes. El delito se configura con una acción seguida de una omisión. Actualmente, la desaparición forzada constituye un delito independiente dentro del ordenamiento jurídico argentino que se distingue de otros delitos relacionados con la desaparición forzada pero que poseen distinta naturaleza, como el secuestro, la detención arbitraria, la privación de libertad, la tortura y la privación de la vida o delitos similares que también se encuentran tipificados en el Código Penal. El bien jurídico protegido es un bien de ofensa múltiple (protege varios bienes jurídicos); sin embargo, la protección de la libertad en su faz locomotiva es lo que se tutela de manera preponderante. El artículo 142 ter del CPN prohíbe las conductas definidas en el artículo 2 de la Convención realizadas por personas o grupos de personas que actúen sin la autorización, el apoyo o la aquiescencia del Estado. Dichas conductas son investigadas y sancionadas por los operadores judiciales (ministerio público fiscal y magistrados). En cuanto al Código Procesal de la Nación, la Ley Nº 26.679 establece en sus artículos 2, 3 y 4: Artículo 2°.- Modificase el inciso 1, apartado e) del artículo 33 del Código Procesal Penal de la Nación, el que quedará redactado de la siguiente manera: e) Los delitos previstos por los artículos 142 bis, 142 ter, 149 ter, 170, 189 bis (l), (3) y (5), 212 y 213 bis del Código Penal. Artículo 3°.- Incorpórase como artículo 194 bis del Código Procesal Penal de la Nación el siguiente texto: Artículo 194 bis: El juez, de oficio o a pedido de parte, deberá apartar a las fuerzas de seguridad que intervengan en la investigación cuando de las circunstancias de la causa surja que miembros de las mismas pudieran estar involucrados como autores o partícipes de los hechos que se investigan, aunque la situación sea de mera sospecha. Artículo 4°.- Incorpórase como artículo 215 bis del Código Procesal Penal de la Nación el siguiente texto:

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	38. El Grupo de Trabajo recibió información en el sentido de que, desde el mes de noviembre de 2007, la Cámara de Diputados aprobó una iniciativa de ley mediante la cual se reformaría el Código Penal y se incorporaría a dicho ordenamiento jurídico la figura delictiva de desaparición forzada para efectos del derecho penal general, sin perjuicio de la incorporación realizada para efectos del derecho penal internacional, según se mencionó en el párrafo anterior de este informe. Sin embargo, el Grupo de Trabajo fue informado que dicha reforma aún no había sido aprobada por el Senado de la República.	Artículo 215 bis: El juez no podrá disponer el archivo de las causas en que se investigue el delito previsto en el artículo 142 ter del Código Penal de la Nación, hasta tanto la persona no sea hallada o restituida su identidad. Igual impedimento rige para el Ministerio Público Fiscal. Es decir que el derecho a no ser sometido a una desaparición forzada continúa vigente aún en cualquier situación de emergencia pública o inestabilidad política. Como puede notarse, existen mecanismos específicos, de raigambre constitucional, para la protección en casos de desaparición forzada que no están sujetos a excepción alguna. Se informa asimismo que se estima que el existente Anteproyecto de Reforma del Código Penal será tratado en el corriente año de sesiones parlamentarias.
86. Con el fin de acelerar los procesos judiciales que	59. Sin embargo, el Grupo de Trabajo recibió frecuentes	**<u>Sociedad Civil</u>** **CODESEDH** I) Como parte de las nuevas políticas instrumentadas por la nueva Procuradora General de la Nación, el Ministerio

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involucren casos de desaparición forzada, se recomienda i) mejorar los recursos materiales y de personal de la Unidad Fiscal de Coordinación y Seguimiento de las Causas por Violaciones a los Derechos Humanos cometidas durante el Terrorismo de Estado; y ii) la acumulación de las causas, en razón de centros de detención, región o subregión, con el fin de facilitar la comparecencia de testigos y evitar que los mismos testigos tengan que rendir el mismo testimonio en repetidas ocasiones.	señales de preocupación e incluso frustración a causa de la lentitud en los procesos judiciales. Asimismo, detectó con preocupación las carencias materiales y de personal que enfrenta la Unidad Fiscal de Coordinación y Seguimiento de las Causas por Violaciones a los Derechos Humanos cometidas durante el Terrorismo de Estado para el desarrollo de su labor propia. Escuchó propuestas de diversa índole para solucionar este problema, como el fortalecimiento de los recursos materiales y de personal de la Unidad Fiscal antes mencionada, la acumulación de las causas en razón de centros de detención, región o subregión, con el fin de facilitar	Público Fiscal ha ido modificando en el último tiempo su estructura orgánica y adoptando mecanismos de mejoramiento en materia de recursos materiales y humanos. Todo ello ha repercutido de manera positiva en un Ministerio Público mucho más ágil, dinámico, y especializado. http://www.mpf.gob.ar/lesa/ II) La metodología de concentración de investigaciones de acuerdo a centros clandestinos de detención en lugar de por imputado fue lograda entre muchos otros factores, gracias a la intervención de distintos actores de la sociedad civil que actúan como querellantes en este tipo de investigaciones. A raíz de ésas se ha logrado modificar el paradigma clásico de investigación nucleada sobre la persona imputada en un delito, para dar lugar al contrario, a la centralización de todos los hechos ilícitos cometidos en vinculación con el mismo centro clandestino de detención, bajo el mismo expediente judicial. Un ejemplo de esta nueva posición es la sentencia adoptada el día 28 de mayo de 2009 en la causa Nº 83 del Juzgado Federal Nº 3 de la Ciudad de La Plata, en la cual se decidió investigar todo aquello relacionado con el CCD “Brigada de San Justo”; previamente, existían tres investigaciones distintas en las que se pesquisaban hechos similares, pero desde la óptica de sus imputados. Por su parte la Cámara Federal de Casación Penal, también a instancia de distintos actores de la sociedad civil, dictó la Acordada 1/12 en la cual estableció un mecanismo de aplicación de reglas básicas de procedimiento para lograr la optimización de los procesos y la evitación de revictimización de testigos y familiares. http://www.pjn.gov.ar/02_Central/ViewDoc.Asp?Doc=67148&CI=INDEX100 **APDH** La Unidad Fiscal especial tiene una actuación eficaz y funcionarios competentes. Observamos que la Cámara de Casación Penal ha dictado acordadas y resoluciones que agilizan los trámites. Las enormes dificultades han sido creadas por la corporación judicial. Al caer la última dictadura cívico-militar, el único poder del Estado que continuó sin modificaciones es el judicial. Este poder se constituye por medio de alianzas ya que esos jueces nombraron a los funcionarios inferiores que luego llegaban, con esos méritos, a la magistratura. El 80 por ciento del poder judicial entorpece el desarrollo de los juicios. Consideramos que los pedidos de juicio político han sido numerosos pero no han prosperado, salvo casos excepcionales. El Consejo Nacional de la Magistratura, creado a partir de la reforma de 1994 ha mejorado el sistema pero sus integrantes responden a la lógica corporativa, lo que constituye el problema real más trascendentes en el desarrollo de los juicios de Lesa Humanidad. Los organismos de derechos humanos reiteradamente han afirmado que, ni el Código Penal, ni el Código de Procedimientos en lo Penal, han sido diseñados para sancionar y juzgar Crímenes de Delitos de Lesa Humanidad. Sin embargo, la verdadera causa de impunidad la constituye la complicidad del poder Judicial durante el terrorismo de Estado y reñida con los principios del derecho internacional punitivo. Consideramos correcto el criterio de acumular las causas por sub-zonas, pero como señalaron los organismos de

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	la comparecencia de testigos y evitar que los mismos testigos tengan que rendir el mismo testimonio en repetidas ocasiones.	Derechos Humanos, esta unificación de los procesos sería más adecuada si son realizados en los sitios en que los hechos fueron producidos, ya que el criterio ha sido la reparación de cada sociedad. El principio esgrimido ha sido "Unificar los juicios en cada lugar, pero en cada lugar un juicio". Además el concepto de división militar se contrapone con el criterio de juzgamiento a los co-autores civiles que fueron los ideólogos y beneficiarios del accionar militar. El accionar civil (fundamentalmente empresarios y funcionarios) tiene una organización distinta de la organización militar. El lugar de ocurrencia del hecho encuentra unidos a instigadores, autores directos e indirectos.
	60. El Grupo de Trabajo recibió información de fuentes oficiales, en el sentido de que recientemente se habían promulgado reformas al Código Federal de Procedimientos Penales con el fin de dar celeridad a dichos procesos, particularmente en la etapa del recurso de apelación, mediante su sustanciación oral, en lugar de escrita. El Grupo de Trabajo confía en que dicha reforma tenga el resultado buscado, aunque el Grupo de Trabajo no deja de atender las inquietudes e incluso críticas expresadas por sectores oficiales respecto de los problemas que dicha	**<u>Gobierno</u>** Situación y marco regulatorio actuales: En el marco de los Juicios por Delitos de Lesa Humanidad, desde el comienzo se articuló el trabajo con el Programa Nacional de Protección a Testigos e Imputados del Ministerio de Justicia y Derechos Humanos de la Nación, y con el Programa Verdad y Justicia perteneciente al mismo Ministerio. Se trabaja en articulación constante con el Ministerio Público Fiscal, el Poder Judicial y los Organismos de Derechos Humanos, para la asistencia, acompañamiento y protección de las víctimas testigo. Durante estos años se ha ido articulando una red de profesionales de asistencia a las víctimas del terrorismo de Estado, incluyendo el acompañamiento a testigos en los juicios por crímenes de Lesa Humanidad. La continuación y profundización de esta tarea se amplía ahora con el abordaje de la asistencia a víctimas de graves violaciones actuales a los Derechos Humanos, imputables a agentes del Estado. Con la creación del Centro de Asistencia a Víctimas de Violaciones de Derechos Humanos, "Dr. Fernando Ulloa", por Decreto 141/11, se concreta la respuesta que el Estado adeudaba desde hace años a las víctimas de violaciones de derechos humanos, en lo referido a la asistencia integral en tanto política pública reparatoria. El centro Ulloa tiene entre sus objetivos principales el de garantizar "una asistencia integral, contención, orientación, y un abordaje clínico a todas las víctimas del Estado Terrorista y a las víctimas de las violaciones actuales a los derechos humanos producidas por abuso de poder de agentes del Estado". El punto 1 de las acciones establecidas según el Decreto 141/11establece que el Centro Ulloa deberá: "Dirigir acciones de asistencia integral a víctimas del Terrorismo de Estado y a víctimas del abuso de poder que hayan sufrido graves situaciones traumáticas que puedan ocasionar menoscabo de sus derechos fundamentales, y/o a sus familiares, entendiéndose por tal la contención psicológica, orientación y derivación de los afectados y/o sus familiares en función de las demandas que se detecten." Respecto a la asistencia integral, y como parte de ésta, se incluye el acompañamiento a querellantes y testigos víctimas de violaciones de derechos humanos. Las marcas producidas por el Terror de Estado y la situación de las víctimas, como testigos y participantes de los juicios por delitos de Lesa Humanidad, ameritan una acción de presencia y acompañamiento en tal complejo proceso. Para evitar que la búsqueda de justicia sea revictimizante, se continúa trabajando en la implementación del "Plan Nacional de Acompañamiento y Asistencia a Querellantes y Testigos Víctimas del Terrorismo de Estado". El punto 3 del Decreto 141/11 establece, entre las competencias del Centro Ulloa: "Articular acciones para la

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	reforma puede enfrentar en cuanto entre en vigencia, como la falta de recursos materiales y de personal profesional y administrativo que permitan su cabal implementación. […]	asistencia de víctimas, testigos y querellantes que deban comparecer en juicio, en particular aquellos que se celebran por delitos de lesa humanidad, para lo cual el Centro proveerá asistencia y contención psicológica en las audiencias en los casos que así lo requieran." A partir de la experiencia de asistencia y acompañamiento a víctimas testigos en juicios por delitos de Lesa Humanidad, y de la interacción con otros actores, fundamentalmente los operadores jurídicos encargados de la marcha de los procesos, se elaboró un "Protocolo de intervención para el tratamiento de víctimas-testigos en el marco de procesos judiciales". El mismo se realizó en conjunto con el Juzgado Nacional en lo Criminal y Correccional N°12. Dicho protocolo ha sido presentado formalmente el día 6 de octubre de 2011 en la Corte Suprema de Justicia, contando con la presencia del Presidente de la CSJN, el Dr. Lorenzetti. El día 7 de enero de 2014, el Boletín Oficial publicó la Acordada 49/2013 por la que la Corte Suprema de Justicia de la Nación, Expediente Nº 4802/2013, llama a concurso para la cobertura de cargos en el Poder Judicial. Dicha Acordada, fija los cargos de ingreso, a los efectos establecidos en la ley 26.861, que serán los establecidos en el escalafón aprobado por la acordada 9/2005, a saber: de ayudante para personal llamado de "maestranza y oficios" en la ley (art.19), de auxiliar para el personal denominado "empleados" (art.20) y de secretarios y prosecretarios que requieren título de abogado para los funcionarios "letrados" (art. 28).
87. Se recomienda la adopción de medidas orientadas a solucionar el problema del retraso en los juicios a causa de las subrogaciones de jueces derivadas de excusas o recusaciones.	60. […] Esta reforma, sin embargo, no está destinada a solucionar el problema del retraso en los juicios a causa de las subrogaciones de jueces derivadas de excusas o recusaciones, en cuyos casos se recurre a la subrogación con abogados de la matrícula y no con jueces, lo que parece inapropiado y no recomendable, además de la lentitud	**<u>Sociedad Civil</u>** **CODESEDH** El Consejo de la Magistratura es el organismo encargado del proceso de selección de magistrados de la Nación. A partir de allí se eleva una terna de candidatos al Poder Ejecutivo y luego el pliego de la persona elegida se gira a la Honorable Cámara de Senadores para lograr su aprobación. El estado actual de los nombramientos, de acuerdo a una actualización oficial del mes de septiembre de 2013, surge de la página web siguiente: http://www.pjn.gov.ar/02_Central/ViewDoc.Asp?Doc=67589&CI=INDEX100 **APDH** El principal retraso reside en la inactividad del Consejo de la Magistratura que, como ya se expresara conlleva un elevado grado de complicidad de la corporación judicial. El Ejecutivo a su vez también es moroso en la elevación de las ternas. **<u>Gobierno</u>** Entre las medidas que es importante mencionar a este respecto se encuentra un importante conjunto de leyes sancionadas en el año 2013, cuyo objetivo es tender a la reforma y/o democratización del sistema judicial. Entre ellas, con fecha 31 de mayo de 2013 se promulgó la Ley 26.861 que regula el ingreso democrático e igualitario de personal al Poder Judicial de la Nación y al Ministerio Público de la Nación. Esta ley se ocupa de establecer los mecanismos de ingreso al Poder Judicial de la Nación y al Ministerio Público de

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	en el trámite para la designación del juez sustituto.	la Nación, mediante el procedimiento de concurso público y se aplica a los concursos que se realicen para acceder a los cargos letrados, de empleados y personal de maestranza y oficios del Poder Judicial de la Nación y del Ministerio Público de la Nación, estableciendo entre otros aspectos, lo concerniente a los requisitos, cupos para discapacitados y autoridad de aplicación, que es la Corte Suprema. Cabe señalar que la cobertura de vacantes en el Poder Judicial por parte de jueces subrogantes no ha alterado el normal desarrollo de los juicios en trámite-dado que quienes subrogan asumen íntegramente las funciones de la judicatura-. Sin perjuicio de eso, cabe destacar que en 2013 el Poder Ejecutivo ha elevado a consideración de la Comisión de Acuerdos del Honorable Senado de la Nación 22 listados de conjueces de acuerdo con los términos previstos por la ley 26.376, que fija el orden de prelación para la cobertura de cargos en el ámbito de la justicia nacional y federal de todo el país.
88. Resulta de la mayor importancia que el Archivo Nacional de la Memoria mantenga y fortalezca sus actividades de recolección, actualización, preservación y digitalización de los archivos e informaciones vinculados a la vulneración de los derechos humanos por el terrorismo de Estado.	65. Asimismo, como medida no solamente reparatoria, sino preventiva, la preservación de los sitios que fueran utilizados durante la represión política como centros clandestinos de detención, y su conversión en lugares abiertos al público, como es el caso de la ESMA en Buenos Aires, y la D2 y muy pronto La Perla en Córdoba, contribuyen a la preservación de la memoria. Durante la visita a dichos centros, el Grupo de Trabajo fue	**<u>Sociedad civil</u>** **CODESEDH** El Archivo Nacional de la Memoria dependiente de la Secretaría de Derechos Humanos del Ministerio de Justicia y Derechos Humanos de la Nación posee dentro de su organigrama la Dirección Nacional de Fondos Documentales, creada en el año 2010, cuya responsabilidad primaria finca en obtener, analizar, clasificar y archivar informaciones, testimonios y documentos sobre el quebrantamiento de los derechos humanos y las libertades fundamentales en que esté comprometida la responsabilidad del Estado Argentino, y sobre la respuesta social e institucional ante esas violaciones. http://anm.derhuman.jus.gov.ar/fondos_doc.html **APDH** APDH reconoce, sin lugar a duda, los avances que ha realizado el Estado Argentino, sin embargo, volvemos a señalar las dificultades por las que atraviesa actualmente el Instituto Espacio para la Memoria. **<u>Gobierno</u>** El Archivo Nacional de la Memoria es el responsable de la preservación y estudio de la documentación referente a las violaciones de los derechos humanos en la Argentina, que incluye la custodia y análisis de los testimonios que integran el archivo de la Comisión Nacional sobre Desaparición de Personas (CONADEP), tal como lo dispone el Decreto Nº 3090 de fecha 20 de septiembre de 1984; de los testimonios recibidos en la Secretaría de Derechos Humanos con posterioridad al trabajo de la CONADEP histórica y que siguen recibiéndose hasta la actualidad; y de numerosas causas judiciales en las que se investiga el accionar del terrorismo de Estado, entre otros documentos. Además es responsable de la obtención, análisis, clasificación, duplicación, digitalización y archivo de informaciones, testimonios y documentos sobre el quebrantamiento de los derechos humanos y las libertades fundamentales en que esté comprometida la responsabilidad del Estado Argentino y sobre la respuesta social e institucional ante esas violaciones. El Archivo Nacional de la Memoria procura recuperar la información dispersa en las diversas esferas de la

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	acompañado por víctimas de desaparición forzada detenidos en los mencionados centros, quienes explicaron y describieron las violaciones de derechos humanos sufridas durante sus desapariciones. Es importante mencionar que jóvenes activistas y defensores de derechos humanos están directamente involucrados en la preservación de los sitios para la memoria histórica. […]	Administración Pública (incluidas las Fuerzas Armadas y de Seguridad) en la convicción de que el análisis de ese material constituye una valiosa herramienta para esclarecer multitud de situaciones producidas por la represión ilegal y descubrir los mecanismos utilizados por el Estado para frenar la resistencia y disciplinar la sociedad. Con el fin de lograr la recuperación, se ha prohibido la destrucción, modificación, alteración o rectificación de la documentación contenida en dependencias estatales y se han implementado medidas para que se la resguarde hasta su remisión al Archivo. Más allá de la gestión de fondos documentales y audiovisuales, que se realiza desde la órbita del ANM, se fueron consolidando en todo el país diversas experiencias de recuperación y marcación de aquellos lugares donde funcionaron centros clandestinos de detención durante la última dictadura militar (1976-1983). Mediante Decreto 1982/2010, modificatorio de la estructura del Archivo Nacional de la Memoria, se creó la Dirección Nacional de Gestión de Fondos Documentales cuya responsabilidad primaria es: -Obtener, analizar, clasificar y archivar informaciones, testimonios y documentos sobre el quebrantamiento de los derechos humanos y las libertades fundamentales en que esté comprometida la responsabilidad del Estado Argentino, y sobre la respuesta social e institucional ante esas violaciones. Asimismo, las principales acciones del Archivo Nacional de la Memoria se centran en: 1. Obtener, analizar y preservar informaciones, testimonios y documentos requeridos para estudiar el terrorismo de Estado y toda otra forma de represión ilegal en la República Argentina, y sus consecuencias. 2. Centralizar los archivos existentes en la temática de su competencia, incluidos los Archivos de la CONADEP, los de la Secretaria de Derechos Humanos del Ministerio de Justicia y Derechos Humanos (Archivos SDH), y el Archivo de Prensa de la Presidencia de la Nación, obrante en el Archivo Nacional de la Memoria; los alcanzados por las Leyes Reparatorias 24.043, 24.411, 25.192 y 25.914, también custodiados en la Secretaria de Derechos Humanos, y los demás existentes en el ámbito nacional; y ofrecer a los Estados Provinciales, Municipales y a la Ciudad Autónoma de Buenos Aires la coordinación de sus archivos locales en la temática. 3. Proponer las respuestas a los Oficios y toda otra información que le sea requerida por el Poder Judicial de la Nación y otros organismos del Estado acerca de la información obrante en sus archivos y elevarlo al Presidente del Archivo Nacional de la Memoria. 4. Elaborar y aplicar el reglamento para el acceso a la información por parte de investigadores en la temática relativa a su competencia, como asimismo el acceso a la información a víctimas o familiares de víctimas de la represión ilegal. La Red Federal de Sitios de Memoria, creada por Resolución SDH N°14/07, tiene la misión de articular las políticas y promover el intercambio de experiencias, metodologías y recursos entre el Archivo Nacional de la Memoria y las áreas estatales de derechos humanos de las provincias y municipios que gestionan políticas públicas de investigación y memoria sobre el accionar del terrorismo de Estado, sobre sus causas y públicas de investigación y memoria sobre el accionar del terrorismo de Estado, sobre sus causas y consecuencias y sobre la respuesta social frente a la violación sistemática de derechos por parte del Estado.

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		La Red Federal de Sitios de Memoria es un organismo estatal interjurisdiccional que, con la coordinación del Archivo Nacional de la Memoria, articula las políticas nacionales, provinciales y municipales de memoria e investigación que se llevan adelante en los ex centros clandestinos de detención y otros espacios vinculados con el terrorismo de Estado en todo el país. Desde mayo de 2003 y a partir de la decisión del Estado Nacional de impulsar una activa política pública de derechos humanos basada en los pilares de memoria, verdad y justicia, surgieron y se consolidaron en todo el país diversas experiencias de recuperación y marcación de aquellos lugares donde funcionaron centros clandestinos de detención durante la última dictadura militar (1976/1983). A octubre de 2013 las cifras indican que son 68 las señalizaciones y 22 los Sitios de Memoria identificados.
89. Es recomendable que las políticas gubernamentales iniciadas en mayo de 2007 por el Presidente de la Nación, mediante las que se creó el Programa de Verdad y Justicia en la órbita de la Jefatura de Gabinete de Ministros, que se encuentra bajo la dirección del Ministerio de Justicia, Seguridad y Derechos Humanos, se consolidaran a través de medidas legislativas, que las conviertan en políticas de Estado que trasciendan a los cambios de gobierno.		**Sociedad civil** **CODESEDH** I) Las acciones definidas en el programa de gobierno presentado por la Presidente de la Nación ante la Asamblea Legislativa, como asimismo las normas y reglamentos dictados en el ámbito del Poder Judicial de la Nación y del Ministerio Público Fiscal, conforman un plexo político-institucional de alcance trascendente y que supera los límites de una administración gubernamental. No obstante, la norma legal que sostiene dicho marco fue dada por la ley 25.779 que anuló las leyes de Obediencia Debida y Punto Final. II) Por lo señalado, queda demostrado que todos los poderes del Estado han sido muy claros en expresar que las cuestiones relacionadas con las investigaciones de los crímenes de lesa humanidad cometidos durante la dictadura, son política de Estado. Así lo expresó, por ejemplo el Presidente de la Corte Suprema de Justicia de la Nación, Dr. Ricardo Lorenzetti, en su discurso de apertura del año judicial 2011 cuando dijo concretamente que "...los juicios de lesa humanidad que se están desarrollando en nuestro país, son una experiencia prácticamente única y ejemplar en todo el mundo y no son obra de una sola persona, salieron de las luchas sociales, del crecimiento de la conciencia de nuestro pueblo sobre cuáles son sus derechos y han sido sustentados por los tres poderes del Estado. Finalmente es un proceso que hoy estamos llevando adelante gracias a una Comisión Interpoderes, donde participan el Poder Judicial, el Legislativo y el Ejecutivo. Esto significa que hay una política de Estado, que los tres poderes se han reunido reflejando cuál es la aspiración y el consenso básico de una sociedad. Y tenemos así una política que no tiene marcha atrás. Por lo tanto, estos juicios no tienen marcha atrás. Cambie lo que cambie en las dirigencias de nuestro país, estos juicios seguirán adelante, porque forman parte del contrato social de los argentinos y son decisiones institucionales irrevocables." **APDH** Resulta necesario que estas leyes reconozcan el rol de los organismos históricos de Derechos Humanos. En los programas de Verdad y de Protección de Derechos Humanos es necesario incorporar la participación de las víctimas y militantes, especialmente de los últimos a fin de hacer posible la medición entre los testigos amenazados y los agentes policiales que les deben proteger.

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		Gobierno El Decreto 1486/2011 aprobó la estructura organizativa de primer nivel operativo del entonces Ministerio de Justicia, Seguridad y Derechos Humanos, actual Ministerio de Justicia y Derechos Humanos, contribuyendo así a consolidar las políticas públicas. El Programa VERDAD y JUSTICIA tiene como responsabilidad primaria asistir al Coordinador en el procesamiento y estudio de la información recabada en el marco de los objetivos encomendados al Programa y en el diseño de un estado de situación de su problemática, llevando adelante las siguientes acciones: 1. Planificar, elaborar y actualizar permanentemente un cuadro de situación referido a los incidentes o hechos de amedrentamiento sufridos por personas vinculadas a las denuncias o causas judiciales en trámite inherentes al Programa. 2. Asistir en la coordinación de las actividades relacionadas con la elaboración de un estado de situación de las causas en trámite. 3. Asistir en el fortalecimiento de la capacidad estatal de obtener información confiable y de brindar apoyo concreto para la investigación de los delitos de lesa humanidad, a fin de agilizar y proteger los procesos judiciales. 4. Elaborar un registro único de información que contenga los datos existentes en archivos nacionales, provinciales, de organismos nacionales e internacionales de derechos humanos, así como de toda otra información de relevancia para el desarrollo efectivo del proceso institucional de verdad y justicia. 5. Elaborar informes de resultado de las tareas de selección, calificación, estudio e interpretación de la información obtenida. 6. Organizar y administrar archivos y antecedentes relativos a la actividad del Programa. 7. Colaborar en forma directa con las autoridades judiciales y del Ministerio Público en procesos judiciales por delitos perpetrados por el terrorismo de Estado, brindando la información que le fuere requerida.
90. Sería recomendable que se decretara e instrumentara un Plan de Reparación Integral a los familiares de las víctimas de desaparición forzada, que estuviere confiado a un órgano, creado por un acto	66. El derecho a una reparación integral incluye, de acuerdo con el artículo 19 de la Declaración, el derecho a la verdad, la justicia, la reparación moral y la rehabilitación psicológica y social, así como el derecho a una indemnización económica	**Sociedad civil** **CODESEDH** I) En la actualidad nuestro país no cuenta con un órgano creado por un acto legislativo, que incluya a la sociedad civil organizada, y que gestione un Plan de Reparación Integral para los familiares de víctimas de desaparición forzada. Todas las reparaciones a las que los familiares (no víctimas) pueden tener acceso son a través del ejercicio de sus derechos hereditarios. II) Debe ponerse de resalto sin embargo, como bien notara el Grupo de Trabajo, la existencia de la ley 24.411 que otorga una reparación no a la víctima directa, sino justamente a sus derechohabientes en función de la desaparición de aquella. **APDH** Consideramos que sería prudente poder construir otras leyes tales como las de pensión a víctimas.

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legislativo, y que incluyera la participación de la sociedad civil organizada, particularmente de los familiares y seres queridos de las personas desaparecidas.	apropiada. El presente informe ya ha resaltado los encomiables esfuerzos que en material de verdad y justicia está realizando el Estado argentino. Asimismo, el Grupo de Trabajo tiene conocimiento de diversas leyes que tienen como objetivo indemnizar pecuniariamente a las víctimas de las violaciones de derechos humanos cometidas durante la dictadura militar y que son implementadas por la Secretaría de Derechos Humanos. Éstas incluyen la Ley Nº 24043 que provee de un beneficio extraordinario para las personas que estuvieron detenidas entre el 6 de noviembre de 1974 y el 10 de diciembre de 1983; y muy especialmente la Ley	**<u>Gobierno</u>** A los fines de completar la información en poder del Grupo de Trabajo, se transcribe a continuación la parte pertinente de la información suministrada por el Estado Nacional en virtud del artículo 29, párrafo 1 de la Convención, que fuera presentada en diciembre de 2012. Conforme la legislación penal vigente el concepto de víctima, o sujeto pasivo de un delito, es aquél que sufre las consecuencias directas descriptas en la norma. Se trata de la víctima material, esto es, aquella que resulta privada de su libertad y que con frecuencia sufre además la violación de su integridad personal, derecho a la vida y otros derechos humanos fundamentales. Sin perjuicio de ello, debe tenerse presente que el artículo 1079 del Código Civil de la Nación, establece la obligación de reparar el daño causado por un delito, respecto de aquel que ha resultado directa e indirectamente damnificado. Es decir que los familiares de la víctima material de la desaparición forzada que hubieren padecido un estado de angustia y sufrimiento psicológico causados por la incertidumbre en cuanto a la suerte o paradero de sus seres queridos pueden realizar un reclamo civil ante las autoridades judiciales competentes. Por otra parte y en cuanto a los mecanismos que garantizan el derecho a conocer la verdad sobre las circunstancias de la desaparición forzada y la suerte de la persona desaparecida, cabe tener presente que todo proceso judicial es público, por lo que las sentencias son de libre acceso. Toda víctima en un proceso de investigación judicial tiene amplio derecho a conocer las circunstancias y avances del expediente. Toda víctima tiene la facultad de ser parte en el proceso que se investiga el hecho que padeció. Dicha facultad se encuentra regulada en el artículo 82 del CPPN al disponer : ―Toda persona con capacidad civil particularmente ofendida por un delito de acción pública tendrá derecho a constituirse en parte querellante y como tal impulsar el proceso, proporcionar elementos de convicción, argumentar sobre ellos y recurrir con los alcances que en este Código se establezcan. Cuando se trate de un incapaz, actuará por él su representante legal. Cuando se trate de un delito cuyo resultado sea la muerte del ofendido, podrán ejercer este derecho el cónyuge supérstite, sus padres, sus hijos o su último representante legal. Si el querellante particular se constituyera a la vez en actor civil, podrá así hacerlo en un solo acto, observando los requisitos para ambos institutos. A su vez, el artículo 82 bis del CPPN establece que "las asociaciones o fundaciones, registradas conforme a la ley, podrán constituirse en parte querellante en procesos en los que se investiguen crímenes de lesa humanidad o graves violaciones a los derechos humanos siempre que su objeto estatutario se vincule directamente con la defensa de los derechos que se consideren lesionados. En lo que se refiere al Marco de políticas reparatorias a las víctimas de desaparición forzada durante el terrorismo de Estado, la Argentina ha informado en el documento citado que: La situación singular que vive la Argentina en la lucha contra la impunidad es el fruto de la confluencia entre la determinación política, jurídica y ética de los tres poderes del Estado y las inclaudicables exigencias de memoria, verdad y justicia mantenidas por el movimiento de derechos humanos a lo largo de las últimas décadas.

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	Nº 24411, que proporciona un beneficio extraordinario para los casos de desaparición forzada de personas en el marco de la represión de la disidencia, con anterioridad al 10 de diciembre de 1983, y la Ley Nº 25914, llamada "Ley de hijos", que suministra beneficios para las personas que hubieren nacido durante la privación de la libertad de sus madres.[…]	Los tres poderes del Estado han avanzado notablemente en la investigación, juicio y sanción de los responsables de los graves crímenes cometidos durante la última dictadura militar. Este compromiso por la Memoria, la Verdad y la Justicia, cuenta con la participación esencial de esta Secretaría de DDHH, como política central de gobierno. En este sentido: a) Querellas: La Secretaría de Derechos Humanos se ha presentado como parte querellante en 155 causas judiciales. b) Leyes Reparatorias La Dirección de Gestión de Políticas Reparatorias es la encargada de coordinar las acciones vinculadas a planes y programas reparatorios de las consecuencias de las violaciones de los derechos humanos causadas por el Estado. Entre ellos, ejecuta las leyes reparatorias Nº 24043, 24.411, 25192 y 25914, y toda otra normativa que en la materia pudiera llegar a dictarse. Ley 24411: permite gestionar una indemnización a los causahabientes o herederos de personas que se encuentren en situación de desaparición forzada o que hubiesen fallecido como consecuencia del accionar de las fuerzas armadas, de seguridad o de cualquier grupo paramilitar, con anterioridad al 10 de diciembre de 1983. Ley 24321: crea la figura de ―ausente por desaparición forzada Ley 24043: otorga beneficios a las personas que hubieran sido puestas a disposición del PEN durante la vigencia del estado de sitio entre el 6/11/74 y el 19/12/83, o siendo civiles hubiesen sufrido detención en virtud de actos emanados de autoridades militares. Ley 25914: otorga beneficios a las personas que hubieren nacido durante la privación de la libertad de su madre, o que, siendo menores, hubiesen permanecido detenidos en relación a sus padres, siempre que cualquiera de éstos hubiese estado detenido y/o detenido y/o desaparecido por razones políticas, ya sea a disposición del Poder Ejecutivo Nacional y/o tribunales militares y/o áreas militares, con independencia de su situación judicial; y a aquellas personas que hayan sido víctimas de sustitución de identidad. 189. Ley 26564: prevé una reparación patrimonial ampliando los beneficios que otorgan las leyes Nº 24043 y 24411, sus ampliatorias y complementarias a los siguientes beneficiarios: • Aquellas personas que, entre el 16 de junio de 1955 y el 9 de diciembre de 1983, hayan estado detenidas, hayan sido víctimas de desaparición forzada, o hayan sido muertas en alguna de las condiciones y circunstancias establecidas en las mismas. • Las víctimas del accionar de los rebeldes en los acontecimientos de los levantamientos del 16 de junio de 1955 y del 16 de septiembre de 1955, sea que los actos fueran realizados por integrantes de las Fuerzas Armadas, de seguridad o policiales, o por grupos paramilitares o civiles incorporados de hecho a alguna de las fuerzas. • Los militares en actividad que por no aceptar incorporarse a la rebelión contra el gobierno constitucional fueron víctimas de difamación, marginación y/o baja de la fuerza. • Quienes hubieran estado en dicho período, detenidos, procesados, condenados y/o a disposición de la Justicia o por los Consejos de Guerra, conforme lo establecido por el Decreto 4161/55, o el Plan Conintes (Conmoción Interna del Estado), y/o las Leyes Nº 20840, 21322, 21323, 21325, 21264, 21463, 21459 y 21886. • Quienes hubieran sido detenidos por razones políticas a disposición de juzgados federales o provinciales y/o

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		sometidos a regímenes de detención previstos por cualquier normativa que conforme a lo establecido por la doctrina y los tratados internacionales, pueda ser definida como detención de carácter político. 190. En caso de fallecimiento de las personas detenidas, desaparecidas o muertas, la ley prevé que los beneficios sean percibidos por sus causahabientes conforme a los términos de las leyes Nº 24043 y 24411.
91. Se recomienda la instalación de un programa de protección de testigos que abarque a los testigos y familiares de los mismos, en casos relacionados con violaciones de derechos humanos, incluyendo la desaparición forzada, mismo que debería ser coordinado por una institución de Estado, pero en la que participen, colegiadamente, representantes de las víctimas, representantes de agrupaciones gremiales de profesionistas como abogados y científicos forenses, el Defensor del Pueblo de la Nación, representantes del poder judicial y de	67. En cuanto a la seguridad de testigos, el Grupo de Trabajo recibió múltiples señalamientos respecto de la necesidad de instrumentar un programa integral de protección. Aunque el Grupo reconoce la vigencia de la Ley Nº 25764, que crea el sistema de protección de testigos e imputados, sancionada en julio de 2003, el Grupo de Trabajo también se percata que dicha ley se refiere específicamente a los casos de secuestros extorsivos, terrorismo y estupefacientes, y además prevé la posibilidad de ampliarla a delitos vinculados con la	**<u>Sociedad civil</u>** **CODESEDH** I) De acuerdo a la información oficial recogida del Ministerio de Justicia y Derechos Humanos de la Nación, se toma cuenta de que ya incluso al momento de la visita del Grupo de Trabajo, si bien a nivel legal no se contemplaba la protección de testigos víctimas de violaciones a los derechos humanos (la ley 25764 que establecía la creación del Programa Nacional de Protección a Testigos e Imputados no los incluía dentro de su ámbito de competencia), lo cierto es que desde el año 2005 y mediante una disposición ministerial de plena validez legal, se procedió a realizar la incorporación de ese grupo dentro del programa como consecuencia de una jerarquización del organismo encargado de la dirección del Programa. http://www.jus.gob.ar/la-justicia-argentina/proteccion-de-testigos.aspx II) No existe sin embargo al día de la fecha una institución del Estado en la que participen, colegiadamente, representantes de las víctimas, de agrupaciones gremiales de profesionales como abogados y científicos forenses, el Defensor del Pueblo de la Nación, representantes del Poder Judicial y del Ministerio Público Fiscal. **APDH** Como se indica anteriormente, resulta relevante la intervención del militante o defensor de Derechos Humanos en su rol de mediador con la policía debido a la resistencia y desconfianza que produce en muchos testigos la intervención policial, por el hecho de haber sido víctimas de la misma. En este sentido la ley de protección de testigos de la Provincia de Santa Fé constituye una acción oportuna. **<u>Gobierno</u>** Respecto de los mecanismos de protección existentes para la protección contra todo tipo de intimidación o maltrato, existe en el ámbito de la Secretaría de Justicia del Ministerio de Justicia y Derechos Humanos de la Nación, el Programa de Protección a Testigos e Imputados, cuyo objetivo es la protección de testigos e imputados que se encontraren en una situación de peligro para su vida o integridad física, que hubieran colaborado de modo trascendente y eficiente en una investigación judicial de competencia federal. Debe tenerse en cuenta que si bien cuando se creó el Programa se trataba de una oficina que se encargaba de atender los casos relacionados con investigaciones judiciales por delitos vinculados al narcotráfico, con los años ha ido ampliando su área de acción. Muestra de ello es que desde el año 2005 se jerarquizó el organismo encargado de la dirección del Programa, otorgándole la categoría de Dirección Nacional, en el ámbito del Ministerio de Justicia y Derechos Humanos. En la actualidad el sistema se encuentra dirigido a testigos e imputados (colaboradores de justicia o arrepentidos)

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las agencias encargadas de la investigación de los casos. Este programa podría hacerse extensivo, en caso necesario, a abogados defensores y fiscales.	delincuencia organizada o de violencia institucional, siempre que así lo requiera algún juez o fiscal. Dicha ley aborda varios de los aspectos descritos en los párrafos subsiguientes. El Grupo de Trabajo también reconoce la existencia del Programa de Vigilancia y Atención de Testigos en Grado de Exposición aplicable en el ámbito de la provincia de Buenos Aires, emitido en el año 2006 por el gobernador Felipe Solá y que tiene como finalidad específica la protección de testigos en juicios relacionados con violaciones de derechos humanos ocurridas durante la dictadura militar. El Grupo de Trabajo tiene entendido que dicho programa se	que hubieren realizado un aporte trascendente a una investigación judicial de competencia federal (narcotráfico, secuestro extorsivo y terrorismo, delitos de lesa humanidad cometidos en el período 1976/1983, trata de personas) y que, como consecuencia de él, se encuentren en una situación de riesgo. Las víctimas tienen para su atención una oficina específica en la que no se distingue el tipo de delito y que depende de la Procuración General de la Nación. Este programa es el último recurso y el que tiene la potestad de relocalizar (provisoria o definitivamente) al testigo y su familia y entre las funciones que cumple se cuentan: 1) Los traslados de todos los testigos de lesa humanidad, desde el exterior del país o de un punto a otro del país, a cuyo efecto existen convenios con Aerolíneas Argentinas y Austral Líneas Aéreas; 2) La creación de una base de comunicaciones con testigos, por medio de la entrega de equipos de telefonía celular geolocalizables a testigos; 3) La coordinación de sus acciones con el Centro de Asistencia a Víctimas de Violaciones de Derechos Humanos Dr. Fernando Ulloa, dependiente del Ministerio de Justicia y Derechos Humanos, complementando su trabajo con el de asistencia y acompañamiento de dicho Centro; 4) La promoción de la firma de convenios con los gobiernos provinciales para formar cuerpos de custodia de testigos (15 convenios firmados a octubre 2012); 5) La coordinación con el Programa Verdad y Justicia, del Ministerio de Justicia y Derechos Humanos, para la seguridad de los testigos, víctimas, funcionarios judiciales y querellantes, el resguardo de los recintos en los que se desarrollan los juicios orales y públicos, entre otras. Ya se ha dicho más arriba, en las observaciones a la recomendación número 86, que a partir de la experiencia de asistencia y acompañamiento a víctimas testigos en juicios por delitos de Lesa Humanidad y de la interacción con otros actores, fundamentalmente los operadores jurídicos encargados de la marcha de los procesos, se elaboró un “Protocolo de intervención para el tratamiento de víctimas-testigos en el marco de procesos judiciales”. En la Provincia de Buenos Aires, efectivamente, se ha creado el Programa de Vigilancia y Atención de Testigos en grado de Exposición - Decreto 2.475 del 21 de setiembre de 2006-, que complementa el Programa Nacional. Este Programa ofrece medidas de seguridad a los ciudadanos de la provincia de Buenos Aires que intervengan como testigos en causas federales, tales como un dispositivo de seguimiento informático que suministre información continua sobre su geo-referencia y con alerta de pánico, la entrega de un teléfono celular que permita la comunicación las 24 horas con un Centro de Monitoreo y asesoramiento y mejoramiento de las condiciones de seguridad del lugar de residencia permanente del testigo.

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	limita a proporcionar a los testigos un aparato de seguimiento por computadora que identifica la ubicación exacta y en forma permanente, con un mecanismo de señales de alerta en caso de pánico y un aparato telefónico celular que le permita la comunicación las 24 horas con la autoridad competente encargada de suministrar la protección. Asimismo, el Grupo de Trabajo fue informado que el 22 de mayo de 2007, y por Decreto Nº 606/07, se creó el "Programa de Verdad y Justicia" que actualmente funciona en la órbita del Ministerio de Justicia, Seguridad y Derechos Humanos de la Nación.	

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92. Sería recomendable también que el testimonio de un testigo sobre determinados hechos que son materia de distintos juicios pueda servir para todas las causas involucradas.	76. Uno de los factores que favorecen la intimidación de testigos es el retraso o lentitud en los juicios, y el hecho que los testigos tengan que rendir testimonio repetidamente en diversas causas. […]	**Sociedad civil** **CODESEDH** Ante la persistencia de las presentaciones de distintos actores involucrados en la protección, representación y asesoramiento de testigos y víctimas de violaciones de Derechos Humanos, la Cámara Federal de Casación Penal dictó su Acordada 1/12 en la que se contemplan específicamente una serie de mecanismos para evitar la multiplicidad de declaraciones de la misma persona, en distintos procesos, sobre el mismo hecho investigado. http://www.pjn.gov.ar/02_Central/ViewDoc.Asp?Doc=67148&CI=INDEX100 **APDH** La Jurisprudencia ha aceptado como prueba estos testimonios cuando el testigo manifiesta que no se siente en condiciones de declarar nuevamente, o en caso de enfermedad grave o fallecimiento del testigo. Se trata de una jurisprudencia específica vinculada a los crímenes de lesa humanidad ya que el código procesal sólo recepta los casos de muerte o enfermedad grave en caso de delitos comunes. **Gobierno** En el mes de febrero de 2012 los jueces de la Cámara de Casación Penal suscribieron en sesión plenaria la Acordada 1/12. En los considerando de la misma indican que, ante el incremento de procesos complejos y para facilitar el cumplimiento de las funciones jurisdiccionales, resuelven dictar las Reglas Prácticas que se establecen en un anexo. Dichas reglas son seis y se refieren a: 1) Los límites a la remisión de los autos principales; 2) Los plazos procesales; 3) La citación a juicio, el ofrecimiento y la producción de la prueba; 4) La audiencia preliminar; 5) El tratamiento de los testigos y 6) La discusión final. Puntualmente en lo que concierne a este punto, de la lectura de la regla número 5, surge la manifiesta preocupación por los testigos que movió al Tribunal, en pos del resguardo de una eficiente incorporación de los testimonios de otras instancias. Así, la regla práctica número cinco expresa textualmente que se “podrá admitir la incorporación del registro fílmico o grabado y de las actas correspondientes a testimonios producidos en otras instancias, de ese proceso o de otras actuaciones, de conformidad con lo dispuesto en el artículo 391 del Código Procesal según el caso”. La regla práctica también contempla el supuesto de oposición de incorporación de testimonios por lectura o registro de medios electrónicos y efectúa recomendaciones para el caso de testimonio de víctimas-testigos, familiares o menores de edad, ante situaciones que puedan poner en peligro la integridad personal, o afectar las emociones, o la posibilidad de padecer represalias o intimidaciones, con el propósito de evitar la exposición reiterada y la re-victimización. En el link que se indica a continuación se encuentra el texto completo de las Reglas referidas: http://www.espaciomemoria.ar/megacausa/documentacion/ReglasCasacion.pdf

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93. Se sugiere la utilización de apoyos tecnológicos como videoconferencias o videograbaciones, para mantener en confidencialidad la identidad de los testigos, así como para no hacer que los testigos tengan que desplazarse al lugar en donde se está llevando a cabo el juicio.		**Sociedad civil** **CODESEDH** Como parte de la implementación de herramientas de mejoramiento de la gestión judicial, el Poder Judicial de la Nación ha permitido y alentado la utilización de mecanismos técnicos adecuados que faciliten la realización de actos procesales aún cuando sus partes no estén presentes en la sala de audiencias. http://www.cij.gov.ar/nota-10188-La-C-mara-de-Casaci-n-Penal-promueve-el-uso-dereglas-pr-cticas-para-agilizar-causas-complejas-en-todo-el-pa-s.html **APDH** Se aplica actualmente la Video-Conferencia, no para mantener la confidencialidad sino para preservar la seguridad y la serenidad del testigo; también el testigo puede solicitar que no sea observado en forma directa por el victimario mientras declara. Ello no afecta el derecho de defensa ya que el abogado defensor tiene el derecho a repreguntar en el juicio oral. **Gobierno** La posibilidad de que el testigo no esté presente en la sala de audiencia y que declare por medios audiovisuales está prevista en algunas legislaciones para determinados casos, en particular para intervenir en los delitos sexuales y para víctimas menores. En el ordenamiento procesal penal argentino esta modalidad está receptada en el artículo 250 bis para la recepción del testimonio de los menores de dieciséis años que hayan sido víctimas de los delitos de lesiones o contra la integridad sexual. Se dispone expresamente que el testimonio se debe receptar en Cámara Gessel y se lo debe resguardar por medios audiovisuales para reproducirlo y evitar la reiteración. En los supuestos de situaciones de intimidación de testigos que, no obstante, no autorizan al tribunal a excluir al acusado, porque la amenaza no tuvo lugar durante la audiencia sino antes de ésta o por medio de otras personas, el testigo puede solicitar al tribunal que el acusado sea retirado de la sala de audiencia para declarar y el ejercicio del derecho de defensa y la facultad de preguntar al testigo la ejerce el defensor sin que se vea disminuido por ese motivo, ya que esta facultad no necesariamente la debe ejercer en forma directa el mismo acusado. Con excepción de la posibilidad de que el acusado sea retirado de la sala de audiencia para que el testigo declare y la video filmación del testimonio de niños víctimas de delitos sexuales o de lesiones, las situaciones planteadas no están contempladas en la legislación en forma expresa y cada tribunal debe resolverlas de la manera más ecuánime para los derecho de las partes. En este sentido, la Oficina de Protección Testigos de la Provincia de Córdoba, que prevé la reserva de los datos de identidad del testigo o el resguardo de su testimonio por medios audiovisuales para que pueda ser reproducido sin necesidad de que deba concurrir a la sala de audiencia, encuentra una solución bastante conveniente. Para estos casos la ley dispone que estas medidas se adopten siguiendo el procedimiento del artículo 308 y 309 del ordenamiento procesal de Córdoba, de modo que se garantice el derecho de defensa al adelantarse el

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		contradictorio. Se transcribe a continuación el citado artículo 250 bis del Código Procesal Penal: -Art. 250 Bis. - Cuando se trate de víctimas de los delitos tipificados en el Código Penal, libro II, título I, capítulo II, y título III, que a la fecha en que se requiriera su comparecencia no hayan cumplido los 16 años de edad se seguirá el siguiente procedimiento: a) Los menores aludidos sólo serán entrevistados por un psicólogo especialista en niños y/o adolescentes designado por el tribunal que ordene la medida, no pudiendo en ningún caso ser interrogados en forma directa por dicho tribunal o las partes; b) El acto se llevará a cabo en un gabinete acondicionado con los implementos adecuados a la edad y etapa evolutiva del menor; c) En el plazo que el tribunal disponga, el profesional actuante elevará un informe detallado con las conclusiones a las que arriban; d) A pedido de parte o si el tribunal lo dispusiera de oficio, las alternativas del acto podrán ser seguidas desde el exterior del recinto a través de vidrio espejado, micrófono, equipo de video o cualquier otro medio técnico con que se cuente. En ese caso, previo a la iniciación del acto el tribunal hará saber al profesional a cargo de la entrevista las inquietudes propuestas por las partes, así como las que surgieren durante el transcurso del acto, las que serán canalizadas teniendo en cuenta las características del hecho y el estado emocional del menor. Cuando se trate de actos de reconocimiento de lugares y/o cosas, el menor será acompañado por el profesional que designe el tribunal no pudiendo en ningún caso estar presente el imputado. (Artículo incorporado por art. 1° de la Ley N° 25.852 B.O. 8/1/2004)
94. Por lo que se refiere a la protección de la integridad física de los testigos, resulta de mayor importancia que los agentes designados para brindar dicha protección, de preferencia no se encuentren adscritos a las fuerzas del orden que pudieran haber estado involucradas en los	75. Resulta particularmente preocupante, en cualquier mecanismo de protección de testigos, que los agentes que supuestamente brindan la protección, pertenezcan a las fuerzas del orden contra las cuales el testigo va a rendir testimonio. […]	**<u>Sociedad civil</u>** **CODESEDH** I) De acuerdo a nuestra experiencia en el ámbito de asistencia a víctimas de violaciones de los derechos humanos, como así también como querellantes en diversos procesos judiciales a lo largo de todo el país, hemos podido corroborar que uno de los organismos mejor preparados para la tarea de protección es la Policía de Seguridad Aeroportuaria, dependiente del Ministerio de Seguridad de la Nación. Esta fuerza fue creada en el año 2005, en plena democracia, y se basa en la desmilitarización doctrinal, orgánica y funcional, y en la despolitización, con miras a lograr un cuerpo absolutamente agnóstico políticamente, con miembros respetuosos de la vida democrática. En esta línea de acción, ha resultado elegida en varias oportunidades como fuerza de protección, con resultados absolutamente satisfactorios. http://www.psa.gov.ar/ II) Independientemente de ello, y en razón de la modificación del código procesal penal de la Nación como consecuencia del dictado de la ley 26679, los jueces disponen de un mecanismo legal que los habilita a separar de la investigación (aún en casos de mera sospecha) a la fuerza de seguridad que a través de ese expediente se encuentra siendo investigada. http://www.infoleg.gob.ar/infolegInternet/anexos/180000-184999/181888/norma.htm

Recomendaciones (A/HRC/10/9/Add.1)	*Situación durante la visita (A/HRC/10/9/Add.1)*	*Observaciones: medidas adoptadas/situación actual*
delitos que sean materia de la investigación.		**APDH** Los cuerpos policiales argentinos han ido mejorando progresivamente, salvo la Policía de Seguridad Aeroportuaria que aun tienen frecuentes comportamientos ilegales y reñidos con los derechos humanos en sus intervenciones de rutina. De allí la importancia de crear grupos de defensores de derechos humanos, naturalmente no-policiales, que colaboren y monitoreen la actuación policial, como también ampliar la formación en derechos humanos no militarizada. **Gobierno** El Estado argentino ha creado la Dirección Nacional del Programa Nacional de Protección a Testigos e Imputados, dependiente de la Secretaria de Justicia del Ministerio de Justicia y Derechos Humanos, en miras de la protección de las víctimas, y los testigos, de violaciones de los Derechos Humanos. La responsabilidad de esta Dirección es dirigir el Programa Nacional de Protección a Testigos e Imputados creado por el artículo 1º de la Ley Nº 25.764, ejecutando las medidas tendientes a preservar la seguridad de testigos e imputados que se encontraren en una situación de peligro para su vida o integridad física, que hubieren colaborado de modo trascendente y eficiente en una investigación judicial de competencia federal relativa a los delitos previstos por los artículos 142 bis y 170 del Código Penal de la Nación y los previstos por las Leyes Nº 23.737 y Nº 25.241, como así también de aquellos testigos e imputados que se incluyan en el Programa de conformidad con lo previsto en el segundo párrafo del artículo 1º de la Ley Nº 25.764 (Decreto Nº 1486/2011, anexo B). A la fecha, habiendo declarado más de 2000 testigos en causas de lesa humanidad, ninguno ha desistido de dar testimonio, y han confiado en las medidas de asistencia y protección brindadas por el Estado. Asimismo, se impulsó la firma de Convenios con los gobiernos provinciales para formar CUERPOS DE CUSTODIA DE TESTIGOS. Se realizan capacitaciones para la especialización y profesionalización de las fuerzas de seguridad provinciales que lo llevarán adelante. Cabe señalar, que en el Programa intervienen las distintas fuerzas federales de seguridad. Por ello, cuando un testigo tiene que declarar respecto de alguna fuerza en particular la protección al mismo es brindada por una fuerza no involucrada en la declaración.

II. Bosnia and Herzegovina

Follow-up to the recommendations made by the Working Group on Enforced or Involuntary Disappearances in the report of its visit to Bosnia and Herzegovina from 14 to 21 June 2010 (A/HRC/16/48/Add.1, paragraphs 71-90)

21. On 30 December 2013, the Working Group on Enforced or Involuntary Disappearances requested the Government of Bosnia and Herzegovina to provide information on measures taken to implement the recommendations that were made in the report A/HRC/16/48/Add.1 after its visit to the country in June 2010. On 14 April 2014, the Government of Bosnia and Herzegovina presented the requested information. On 14 April 2014, the Working Group forwarded to the Government of Bosnia and Herzegovina the table below inviting them to provide comments and / or additional information. The Government of Bosnia and Herzegovina provided additional information on 20 May 2014.

22. The Working Group notes that progresses have been made in the implementation of its recommendations. It also notes however that a number of recommendations have only been recently implemented and that others still need to be addressed. It welcomes the continuing efforts made by the international community to assist Bosnia and Herzegovina in dealing with the issues related to enforced disappearances and encourages States, international organizations and international NGOs to continue to provide assistance to Bosnia and Herzegovina in the years to come. The Working Group recognizes in particular the important role played by the International Commission on Missing Persons (ICMP) in Bosnia and Herzegovina. It welcomes the role played by the European Union (EU) in the framework of the accession process and encourages the EU to set the tracing of the disappeared and the fight against impunity of perpetrators as priorities in its dialogue with Bosnia and Herzegovina.

23. The Working Group welcomes the adoption of a Law on Prohibition of Discrimination in 2009, as it identified discrimination based on ethnic origins as one of the main obstacles to the resolution of the issue of enforced disappearances. It encourages Bosnia and Herzegovina to take additional measures to fully implement the law in practice and in particular to give the necessary funding to the central institution for the enforcement of the prohibition of discrimination created under article 7 of the said Law.

24. The Working Group had identified the establishment of the Central Records of Missing Persons as an essential step in the search of the disappeared and regrets that this could not be completed, 10 years after the entry into force of the Law on Missing Persons. The Working Group welcomes the work done by the Missing Persons Institute (MPI) and the assistance provided by the ICMP and hopes that the verification process can be completed as soon as possible, as the absence of verified data is a constant source of distress and anguish for the families.

25. The Working Group is concerned that the budget of the MPI has decreased. It reiterates its recommendation to strengthen the MPI as the central institution for the tracing of the disappeared persons. It also stresses the need for the MPI to remain open and transparent to families of victims and civil society and to keep on improving its structure and functioning, including by proposing amendments to the law.

26. The Working Group notes that the strengthening of the national capacities related to exhumations and identification of bodies has been long to come, causing the distress and the legitimate impatience of the families. It welcomes the assistance provided by the EU in

the framework of the accession process and the recent appointment of more staff at the State Prosecutor's Office. It notes that there is still a need for more forensic pathologists to be appointed and encourages the United Nations and the ICMP to propose solutions in order to establish sustainable forensic capacities at the national level. The Working Group also recalls that it is essential to expand the use of forensic expertise and DNA testing and make adequate use of all the available technological and scientific techniques.

27. The Working Group praises the organization by associations of families of a conference on plea bargaining and agrees with the participants that the terms "agreement on admission of guilt" should be adopted instead of "plea bargain". It reiterates its recommendation that when "agreement on admission of guilt" occurs with a person suspected of having information on missing persons, providing that information should be part of the agreement.

28. The Working Group deems that the issue of enforced disappearances in Bosnia and Herzegovina needs to be addressed at the national level but also through regional and international cooperation. In this regard, the Working Group would like to refer to its observations at the end of its visit in the Western Balkans in June 2014[1] and emphasizes the importance of bilateral and multi-lateral cooperation and of full and transparent exchange of information and data, which is essential not only to guarantee the right to truth and justice but also to build confidence among all parties involved. In this respect, the Working Group welcomes the signing by the Chairman of the Presidency of Bosnia and Herzegovina, and the Presidents of the Republic of Croatia, Montenegro and Serbia of the "*Declaration on the Role of the State in Addressing the Issue of Persons Missing as a Consequence of Armed Conflict and Human Rights Abuses*", which took place on 29 August 2014 in Mostar. This important step taken to renew their commitment to solve the issue of enforced disappearances should be followed by concrete and time-bound actions. The Working Group underscores that one concrete immediate step would be the establishment of a regional database of missing persons, which would serve as a basis for a common approach to move the issue forward.

29. The Working Group expresses deep regret that the Transitional Justice Strategy could not be adopted and encourages Bosnia and Herzegovina to speed up the process of its adoption. It underlines the fact that this strategy is regarded as a priority by victims of the war who have been waiting for justice and redress over the past 20 years.

30. The Working Group is gravely concerned that the Fund for Support to the Families of Missing Persons has not been established yet. The Fund was provided for by the Law on Missing Persons that entered into force in 2004. The non establishment of the fund has concretely deprived the victims of reparation and thus Bosnia and Herzegovina is not only in contradiction with its international obligations, but also with a number of decisions delivered by the Constitution Court of Bosnia and Herzegovina. The Working Group calls on Bosnia and Herzegovina to set up the Fund as a matter of priority.

31. The Working Group is also concerned by the fact that no State law on access to social benefits has been adopted. It is furthermore concerned that the notions of reparations and of social allowances for relatives of disappeared people continue to be unduly confused and that the lack of centralized system continues to cause numerous cases of discrimination at the level of the entities. Local legislation remains for the most not appropriate, as they do not correctly take into account the specific situation of the families of disappeared persons.

[1] See press release Enforced disappearances / Western Balkans: "A regional challenge requires new regional and national strategies" , available at: http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14854&LangID=E

32. The Working Group is concerned that no national programme on reparation has been set up. It underscores that reparations does not limit itself to compensation, but also includes restitution, rehabilitation, satisfaction and guarantees of non repetition. It reiterates its recommendation on the need to conceive an overall programme of reparation, with specific consideration to the situation of women, as most family relatives of missing persons are women.

33. The Working Group welcomes the organization of the Civil Society Forum for Joint Commemoration on Missing Persons. It regrets that Bosnia and Herzegovina has not yet declared the 30th of August as the state-wide day for commemorating the memory of all the missing persons in the country.

34. The Working Group is concerned that no law on the issue of memorials has been adopted at the level of the state. It considers that only a state-wide law can avoid controversies and discriminations relating to the issue memorials.

35. The Working Group is concerned that article 27 of the Law on Missing Persons has not been amended, as recommended by the Working Group. It reiterates that an enforced disappearance is a continuous crime until the person's fate or whereabouts is determined.

36. The Working Group is concerned that the draft law that criminalized enforced disappearances as an autonomous crime has not been approved by the House of Representatives. It urges the authorities to take the necessary measures to implement the Convention for the protection of all persons against enforced disappearances, including by introducing an autonomous crime of enforced disappearances, and by amending the definition of the crime of enforced disappearances as a crime against humanity. The Working Group welcomes the setting up of a ministerial working group to this regard. The Working Group is also concerned that no harmonization between the codes of the entities and the codes of the State took place, as it creates a legal uncertainty on the crimes, their definitions, and the penalties associated to it. It also underscores that enforced disappearance is a continuous crime that can thus be punished in the basis of an 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 (see General Comment of the Working Group on enforced disappearance as a continuous crime, A/HRC/16/48, para. 39).

37. The Working Group is seriously concerned by 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 judgement, 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 of victims from violence, re-victimization and intimidation.

38. The Working Group also expresses its serious concern with regard to the fact that the Criminal Code has not been amended to remove the possibility of granting amnesty for serious international crimes, despite the recommendation of the Working Group. It is also concerned that a draft law on pardon would allow pardon to be granted to persons convicted for crimes of genocide, war crimes and crimes against humanity after those persons have served three-fifths of their sentence.

39. The Working Group welcomes the measures taken in order to improve the protection of witnesses before State Courts and district courts, as well as other measures to improve the work of judges, prosecutors and lawyers in charge of war crime cases. It welcomes the assistance given by some states and international organisations to this regard,

and the work done by associations and NGOs, in particular after the completion of criminal proceedings, when the support given the courts has ended. The Working Group however regrets that the draft law on free legal aid was not adopted by the Parliamentary Assembly. It also expresses concerns over the suspension of the budget line concerning support to victims and witnesses during war crime trials in Republika Srpska.

Recommendations (A/HRC/16/48/Add.1)	*Situation during the visit* (A/HRC/16/48/Add.1)	*Observations: steps taken / current situation*
71. It is recommended that the right to non-discrimination be promoted and protected in any activities, and that all persons in Bosnia and Herzegovina should be treated equally, wherever they live and whatever their ethnic origin. Legislation and processes to promote equality and prevent discrimination should be a priority.	23. All groups allege discrimination in the way they and their communities are dealt with even on the question of missing persons. The right to non-discrimination should be promoted and protected in any activities in Bosnia and Herzegovina, and all persons should be treated equally, wherever they live and whatever their ethnic origin. Legislation and processes to promote equality and prevent discrimination should be a priority.	ICMP: In Bosnia and Herzegovina (BiH), approximately 70% of the persons reported missing as a consequence of the war have been accounted for, which is a success that no other post-conflict country has achieved. This very high rate of locating and identifying missing persons was achieved as a result of the authorities' willingness to build institutional and legal frameworks that have secured broad cooperation among relevant authorities and which have also sustained broad societal support. Locating and identifying the remaining number of the reported missing persons (over 9,000) requires continued efforts of BiH institutions including the Courts, law enforcement agencies and civil society. The primary challenge for BiH on the issue of the missing, therefore, is to ensure comprehensive ownership of the process to domestic stakeholders. According to ICMP's survey, out of the general population, 54.2% felt that the process was either somewhat or very biased toward one ethnic group or another. When analyzed by ethnicity, this figure included 46.8% of Bosniak respondents, 48.2% of Croat respondents and 67.5% of Serb respondents. Interestingly, this sentiment was lower among family members of the missing. Here, only 42% agreed with the statement. Overall, 37.7% of Bosniaks, 25.6% of Croats and just 16.2% of Serb respondents felt the process was not biased at all. It should be noted that there was a high number of "don't know" responses to this question, including 14.7% of Bosniaks, 26.1% of Croats and 15.2% of Serbs. The extent of perceived bias appears to depend in some measure on who asks about it. --- Civil society: (TRIAL (Track Impunity Always) and a coalition of local associations of relatives of disappeared persons): A Law on Prohibition of Discrimination was adopted in 2009 (BiH Official Gazette No. 59/09, published on 28 July 2009 and entered into force on 5 August 2009) was adopted. However, its implementation remains seriously flawed and instances of discrimination are widespread. With regard to missing persons, instances of discrimination have been registered in practices and legislation related to commemoration and memorialisation and persist in the domain of access to

Recommendations (A/HRC/16/48/Add.1)	*Situation during the visit (A/HRC/16/48/Add.1)*	*Observations: steps taken / current situation*
		measures of social support in the Entities. --- Other actors: With the entry into force of the Law on Prohibition of Discrimination in 2009, which is in line with European directives, the authorities in Bosnia and Herzegovina have made a significant step towards the elimination of discrimination in BiH. However, additional measures that should have been done to fully implement the law in practice are lacking or are not made in adequate way. Awareness campaign about protection against discrimination, and consequences caused by discrimination and measures available for protection from discrimination are lacking or are financed largely by international organizations. […] as the central institution for the enforcement of the prohibition of discrimination under Article 7 of said Law, has not yet been given the necessary funding, which brought […] in a position to immediately reduce its role primarily to act on complaints and open ex officio investigations, and therefore is not able to undertake promotional activities . There is a need for higher governmental involvement in forthcoming period in order to eliminate occurrences of discrimination.
72. It is recommended that the Human Rights Council should follow up on the implementation of the recommendations made by the Working Group in the present report, in particular on the occasion of the review of Bosnia and Herzegovina during the second cycle of the universal periodic review.		Other actors: […] welcomes the active role of international bodies and organizations in the field of human rights in Bosnia and Herzegovina that provide guidelines to local authorities, which makes a significant contribution in this field.
75. The Working Group however notes that there are also several shortcomings. In particular, while the Law on Missing Persons provides for the Central Records of	14. On 17 November 2004, the Law on Missing Persons entered into force. It deals with issues related to tracing missing persons from/in Bosnia and Herzegovina who disappeared between 30 April 1991	

Recommendations (A/HRC/16/48/Add.1)	*Situation during the visit* (A/HRC/16/48/Add.1)	*Observations: steps taken / current situation*
Missing Persons (CEN), this has not yet been completed. The Working Group recommends that this should be done as soon as possible and be made public with the listing of the ethnic origin of those classified as missing.	and 14 February 1996. It is aimed at, inter alia, improving the tracing process, defining what a missing person is, setting up central records and realizing social and other rights of family members of missing persons. The Law provides that State authorities are under a continuing obligation to trace and identify missing persons and that families have the right to know the fate, place of residence or, if dead, circumstances and cause of death, location of burial and to receive the mortal remains of the missing relatives. The process of tracing a missing person terminates when the person is identified. 16. In its article 21, the Law also provides for the establishment of the Central Records of Missing Persons in Bosnia and Herzegovina (CEN), to be set up and maintained by the MPI. The purpose of CEN is to unify all the information available on missing persons at local or entity levels kept by authorities, non-governmental organizations, families of missing persons, Tracing Offices of the organizations of the Red Cross in Bosnia and Herzegovina and international organizations. However, the delegation was informed by MPI that they are still working on its establishment. Article 15 of the Law provides for the	ICMP: The working version of the CEN list was created by combining 13 separate databases, including the following former institutions: Federation Commission on Missing Persons, the Republika Srpska Office for Missing and Detained, the State Commission on Missing Persons, as well as, the International Committee of the Red Cross and ICMP. The initial unique CEN list contained the names of 34,964 individuals that were subject to the verification by the Verification Commission. This number was subsequently reduced through verification process to 34,455 missing persons files. All data entered into CEN BiH is subject to verification that includes checking the validity of the request and cross-checking information with all official records that were or are kept in BiH. The verification process is carried out by the MPI's Verification Commission. The procedures of the Commission are governed by the Rulebook on CEN approved by the BiH Council of Ministers and ICMP. Although started in 2009, the CEN verification is still on-going. In order to assist the MPI with the acceleration of the CEN verification process, ICMP implemented a project during 2013 under which ICMP staff analysed 23 636 missing persons files (34,455 CEN files minus 10,819 verified files). Out of this number, after 11 months, 9,287 files were completed for verification in line with the MPI CEN verification rule book, while 14 349 were prepared but incomplete for verification due to missing documentation or data. In addition, ICMP provided the MPI with the breakdown of all CEN records per region, municipality and appropriate case status of each case (identified, active). The current records enabled MPI to carry out an in depth analysis of missing persons cases and decide on action necessary for their closure. ICMP also recommended to MPI appointment of additional members into the Verification commission in order to speed up the verification process. MPI will continue verification process in line with the MPI's Book of Rules on verification. According to MPI's data, number of verified missing persons in BiH as of February 2014 is 15 045 persons which represents 43.66%. ---------- Civil society: (TRIAL and a coalition of local associations of relatives of disappeared persons): According to the Law on Missing Persons, the process of verifying and entering data in the CEN should have been completed by 1 January 2009. Despite the

Recommendations (A/HRC/16/48/Add.1)	*Situation during the visit (A/HRC/16/48/Add.1)*	*Observations: steps taken / current situation*
	establishment of the Fund for Support to the Families of Missing Persons, which has not been set up yet.	repeated recommendations in this sense issued by various international human rights mechanisms, at February 2014 the CEN has not been completed yet. It currently contains data of almost 35,000 missing persons whose status needs to be additionally verified. Since November 2012, the status of more than 2,000 people has been verified. Despite the deadlines clearly set by the Law on Missing Persons, representatives of the MPI allege that "it is impossible to predict the date of finalization of the verification". This situation is clearly a source of deep distress for relatives of missing persons. The association Izvor is contrary to the manner in which data are being entered in the CEN, as it does not allow determining with certainly the number of missing persons whose mortal remains are to be discovered. --- Other actors: In 2010, the MPI put together the data on missing persons that had been collected in the past by the ICRC, ICMP, two former BiH entities commissions (so-called 4 primary sources of information). In order to create the 'verified CEN', the MPI engaged into the process of 'verifying' the data availed by those 4 primary sources, i.e. cross-checking the credibility/authenticity of the data availed, cross-checking duplications, taking new statements, cross-checking the identity of the missing persons against other official records available in BiH, etc. In 2010, the MPI started with the 'verification' of the data related to the 'cases closed – recovered and identified through DNA led identification' (i.e. cases of missing persons whose fate and whereabouts was clarified from 2001 to 2012 through DNA); this process is still on-going. In 2013, a positive development was noted with the MPI actively engaging into the 'verification' of the data related to the 'open cases' (i.e. cases of persons whose fate and whereabouts is still pending to be clarified); this process is still on-going. The next phase of the verification process, still pending to be kick-started, will focus on the data related to the 'cases closed - recovered and identified by traditional method of identification (i.e. prior to the introduction of a DNA analysis)'. The Fund for Financial Support to the Families of Missing Persons envisaged by

Recommendations (A/HRC/16/48/Add.1)	*Situation during the visit* (A/HRC/16/48/Add.1)	*Observations: steps taken / current situation*
		the 2004 Law on Missing Persons, to this date, has not been established due to a lack of national consensus on the manner of its funding, as well as the location of the Fund's seat. (see also Recommendation 84). --- With regard to the Central Registry of Missing Persons, it is underway to establish the same activities. […] considers that it should contain as much information about missing persons and to be accessible to as many persons for the purpose of reconciliation and the establishment of mutual trust in Bosnia and Herzegovina.
76. The Working Group notes that the role of ICMP in Bosnia and Herzegovina has been crucial. It has been a key part in the discovery and identification of the missing. ICMP should remain actively engaged with this work in Bosnia and Herzegovina in the future.	25. The Working Group notes that the major demand of family members is still for the truth about the fate of their missing loved ones. As far as finding missing persons, there have been major developments and advances. A great deal of effort has been made and a great deal of success has been achieved in the quest to determine the fate and the whereabouts of the missing persons. Steps taken include the actions of ICMP, the enactment of the Law on Missing Persons of 2004; the establishment of the Missing Persons Institute (MPI); and the significant number of exhumations and identifications carried out. 27. Besides its role in the establishment of the MPI, ICMP has played a huge role in finding and identifying those who were found during the exhumation process.[…]	ICMP: This should not abrogate from the development of domestic responsibility and capacity. Therefore, while ICMP should continue to provide support, it should also be given the means to reduce its overall role in managing the missing persons process in the country. ICMP's efforts to hand over its own governance functions in the MPI, as well as efforts by the government of the Netherlands to relocate ICMP's Headquarters from Sarajevo to The Hague should therefore receive wide support. --- Civil society: (TRIAL and a coalition of local associations of relatives of disappeared persons): Over the past two years there have been increasing rumours concerning a possible reduction of the presence in BiH of the ICMP, although discarded by the latter. However, this news has generated a climate of concern among associations of relatives of missing persons in the country. It would now seem that, after recent developments related to excavations of mass graves, the ICMP will run a 3-year project (until December 2016) to assist the Prosecutor's Office of BiH and the MPI (Missing Persons Institute) in the forensic matters related to excavations. While the provision of technical assistance will therefore be ensured over this period, in the next months the ICMP is considering a relocation of its headquarters in a Western European country. Moreover, ICMP intends to withdraw from the agreement as co-founder of the MPI and to leave the corresponding responsibilities with the Council of Ministers of BiH. With regard to the statement of the WGEID that "the major demand of family members is still for the truth about the fate of their missing loved ones", the association Izvor stresses that, in their experience, relatives are equally concerned with establishing the truth on their loved ones and in seeing those responsible for the crimes concerned duly prosecuted and sanctioned. ---

Recommendations (A/HRC/16/48/Add.1)	*Situation during the visit* (A/HRC/16/48/Add.1)	*Observations: steps taken / current situation*
		Other actors: […] welcomes and supports the work of ICMP, and appreciates the contribution of this organization in the past, as well as all other international organizations that contribute to addressing the issue of missing persons in Bosnia and Herzegovina.
77. Other institutions that have played a role include the United Nations, the Office of the High Representative, the Organization for Security and Cooperation in Europe, the International Committee of the Red Cross, the European Union and others. These organizations should continue to work on the problem of enforced disappearances and missing persons in Bosnia and Herzegovina. In this connection: (a) Other institutions should continue to assist Bosnia and Herzegovina and the families of the disappeared to realize the right to truth, the right to justice and the right to reparation; (b) In particular, clarifying most cases of missing persons should be a priority in the dialogue between Bosnia and Herzegovina and the European Union.	28. ICMP was not the only international institution involved in dealing with the question of missing persons. Others that have played a role include the United Nations, the Office of the High Representative, the Organization for Security and Cooperation in Europe, the International Committee of the Red Cross (ICRC), the European Union and others. These organizations should continue to work on the problem of enforced disappearances and missing persons in Bosnia and Herzegovina. Clarifying most cases of missing persons should be a part of the dialogue between Bosnia and Herzegovina and the European Union.	ICMP: Alongside ICMP, the ICRC continues to monitor the work of the MPI, and provides financial and technical support to the MPI's Advisory Board. UNDP and ICMP have identified the need for the establishment of an institute of legal medicine in the Federation. This would provide a "home" for pathologists and forensic archaeologists in the Federation. Such an institution is required since there is no overarching body to monitor or regulate the work of pathologists in the Federation who are currently very few what in the end result in a bottleneck in the process of closing missing persons cases. UNDP and ICMP will work with national partners to address this issue. Corresponding state level institution also does not exist. --- Civil society: (TRIAL and a coalition of local associations of relatives of disappeared persons): To the knowledge of the subscribing association the role of the mentioned institutions has neither increased nor decreased since 2010. The Association of Relatives of Missing Persons of the Sarajevo-Romanija Region, highlights that the mentioned institutions should play a pivotal role in guaranteeing the full implementation of the Law on Missing Persons and, in particular, of Arts. 4, 5 and 30, in order to speed up the tracing process of missing persons. --- Other actors: Over the past years, the ICRC continued to work with the authorities and the families on the clarification of the fate and whereabouts of missing persons (particularly with regard to the legal framework, the capacity building, the support to families and the sharing of information). --- […] also appreciates and supports the work of other international organizations and bodies that were in the previous period included in the resolution of the issue of missing persons in Bosnia and Herzegovina, and invites them to continue their engagement in the future period as much as possible.

Recommendations (A/HRC/16/48/Add.1)	*Situation during the visit (A/HRC/16/48/Add.1)*	*Observations: steps taken / current situation*
78. Domestically, the MPI plays a major role in the search of the disappeared. The Working Group recommends that: (a) The MPI be supported and strengthened. In particular, its independence should be guaranteed; (b) More resources be put at the disposal of the MPI to allow it do its work; (c) All available technology necessary to detect graves and to exhume them be provided to the institution; (d) The Council of Ministers also strengthen the independence and autonomy of MPI by detailing these issues in the law; (e) More independence and autonomy be given to the MPI by amending the relevant legislation; (f) The vacant posts of the management board of the MPI be filled; (g) The MPI be provided with	30. A split exists with regard to the structures that exist in the country to deal with missing persons, with a separate system in the Republika Srpska. The MPI looks for missing people all over Bosnia and Herzegovina. The Working Group was impressed by the Institute and its high level of commitment, its tripartite structure, the consensual atmosphere among its three directors, and the level of participation of families of the disappeared through an advisory board and direct contact. […]	ICMP: (a) BiH authorities should assume full responsibility for the missing persons process including the MPI management. ICMP feels that the time is appropriate to decrease its role in the MPI and to ensure that the State of BiH assumes full responsibility for managing the work of MPI. ICMP would like to limit its role to providing technical assistance to MPI. To that end, ICMP began an initiative to amend the MPI Co-Founders Agreement on the MPI in July 2012. In order to facilitate this process, in May 2013 ICMP submitted its proposal of the amendments to the MPI Co-founder Agreement to the relevant BiH authorities that would allow the BiH Council of Ministers to assume full responsibility for the management of the MPI as a priority, but also to streamline its management structures. (b) Instead of assigning more human and other resources to support the work of MPI, the BiH authorities have been reducing MPI's budget over the years. Below is the budget overview since 2008.

Year	Approved budget	MPI's actual costs	Cost of Excavations	Cost of Burials
2008	6.455.467,00 KM	4.004.050,00 KM	1.760.000,00 KM	612.046,00 KM
2009	6.069.000,00 KM	4.248.354,00 KM	1.650.000,00 KM	369.048,00 KM
2010	4.358.000,00 KM	3.863.620,00 KM	1.400.000,00 KM	315.278,00 KM
2011	3.156.030,00 KM	3.156.030,00 KM	1.050 082.60 KM	408.604,00 KM
2012	3.066.000,00 KM	2.021.000,00 KM	600.000,00 KM	445.000,00 KM
2013	3.217.000,00 KM	2.021.000,00 KM	600.000,00KM	596.000,00 KM

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more political and financial support;		2014	3.183.000, 00 KM	1.987.000,00 KM	600.000,00 KM	596.000.00 KM

(h) MPI be supported to a greater extent by the Republika Srpska authorities.

It is worth noting, for comparison purposes, that the budget of the Federal Entity Commission on Missing Persons in 2007, was 3.400.392,00 KM. Moreover, the Ministry of Finance instructed the MPI (and other state level institutions), to keep its budget at the level of 2014 in the budget planning period 2014 – 2017.

(c) The main assistance that can support MPI is:

- Assistance in collating suspected site information from MPI offices and records;
- Analysis of known site data to determine patterns which may provide data on new site locations;
- Promote coordination of information and witness statements on potential grave sites with other agencies State Prosecutor's Office, SIPA;
- Gain access to ICTY databases to search for additional information on suspected sites;
- Work to provide MPI with results of analysis of aerial imagery.

Civil society:

(TRIAL and a coalition of local associations of relatives of disappeared persons):

The MPI is experiencing troubles with regard to the appointment of members of its managing bodies.

On 30 June 2012 the mandate of the members of the Board of Directors expired and those currently holding the posts are doing so ad interim pursuant to a mandate of technical nature. A call for the election of new members was issued at the end of June 2012 and the process remains ongoing more than one year later.

With regard to the members of the Steering Board, they are also holding the posts pursuant to a mandate of technical nature. Moreover, since 2008 there are five members instead of the six prescribed by the Law on Missing Persons.

Furthermore, representatives of associations of relatives of missing persons also expressed concerns because of the alleged presence of people who have political affiliations within the managing bodies of the MPI and stressed that this undermines the overall credibility of the institution.

The association Izvor wishes to stress that, in their opinion, the elections of members of the Steering Board were not conducted in a transparent manner. Izvor filed a number of complaints, but allegedly never received any formal

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		reply. --- Other actors: The existence of different and mostly opposing views among officials at all levels on various issues related to the missing persons file is perceived as presenting a challenge for the MPI and affects its effective functioning. The ICMP submitted a proposal of amendments inrelation to the re-structuring of the MPI's governing and management bodies to the ICMP/CoM BiH Agreement on the establishment of the MPI (ICMP and CoM are co-founders of the MPI). On the BiH CoM side, a working group of six members (BiH Ministry of Justice, BiH Ministry of Foreign Affairs, BiH Ministry of Finances and Treasury, FBiH Government, RS Government and Brcko District Goverhment) was established in May 2013 to consider ICMP's proposal. In this frame, discussions are currently on-going between the two MPI's co-founders (ICMP and BiH Council of Ministers/CoM) on the re-structuring of the MPI's governing and management bodies. Due to the overall difficult economic situation in BiH, the MPI is faced, like any other institution that is benefiting from the BiH budget, with reduction of financial means for its work. --- [...] points out that the authorities in Bosnia and Herzegovina should take all measures to strengthen the position and support the work of the Institute for Missing Persons, starting with the question of legislation to technical and material support.
79. The number of prosecutors working on exhumations and war crimes prosecutions is extremely low. They also have few resources and staff. In this connection: (a) additional staff should be appointed to accelerate the process;	33. The number of prosecutors working on exhumations and war crimes prosecutions has been extremely low. They also have few resources and staff. Additional staff should be appointed to accelerate the process. 35. Those working on exhumations need more assistance and equipment. To speed up the process more	Government: Prosecutor's office of Brcko District of BiH : The Prosecutor's Office has formed the War Crimes Department with three assigned prosecutors who are dedicated almost exclusively to war crimes cases. In addition to the assigned optimal material and technical resources, this Department has capacities of the War Crimes Investigation Police of Brcko District at its disposal as well. In this connection, we deem that this Recommendation has been implemented properly. --- High Judicial and Prosecutorial Council of BiH: The Prosecutor's Office of Bosnia and Herzegovina sent the information that the

Recommendations (A/HRC/16/48/Add.1)	*Situation during the visit* (A/HRC/16/48/Add.1)	*Observations: steps taken / current situation*
(b) Those working on exhumations should be provided with needed assistance and equipment; (c) To speed up the process, needed additional forensic pathologists should be provided; (d) More resources should be given to the people working in this area to enable them to complete these gruelling tasks.	forensic pathologists are needed. Currently there are very few full-time pathologists; therefore some private pathologists are used, which is neither cost-effective nor the best way to get results. A forensic centre could be established. The conditions under which those who perform the exhumations work are often inadequate; more resources should be assigned for this work.	Special War Crimes Department of the Prosecutor's Office had been established and all the prosecutors of the Special War Crimes Department were in charge of matters related to the exhumation in war crimes cases from a particular geographical part of BiH in accordance with the division of regions by prosecutorial teams. Available prosecution and professional capacities of the Prosecutor's Office of Bosnia and Herzegovina consist of 32 prosecutors, 29 lawyers associates and 10 associates investigators and all are involved in cases of exhumation. The Prosecutor's Office considers that the existing prosecutorial and professional capacities can ensure effective exhumations of victims of war crimes and further increase the pace of exhumations. --- Ministry of Justice of Republika Srpska: Courts and prosecutor’s offices in Bosnia and Herzegovina in charge of war crimes prosecution did not meet the expectations and adequately prosecute the cases, so a need for the adoption of a National Strategy for War Crimes arose in this respect. The National Strategy was adopted on 29 December 2008 at the 71st session of the Council of Ministers of Bosnia and Herzegovina. The strategy sets objectives for the courts and prosecutor's offices and all other entities involved in war crimes prosecution and envisages that a supervisory body for monitoring the implementation of the National Strategy has a duty to supervise and direct the achievement of these objectives. The supervisory body consists of representatives of the institutions of Bosnia and Herzegovina and two representatives of the Government of the Republika Srpska, of which one representative of the Ministry of Justice of the Republika Srpska and the Ministry of Finance each. The supervisory body has decided that it is necessary to strengthen the personnel, financial and technical aspects of the entity judicial institutions dealing with war crimes prosecution so that the process of transferring cases from judicial institutions of Bosnia and Herzegovina to judicial institutions of the Entities and Brcko District of Bosnia and Herzegovina could be continued. Funding for the activities is provided under the Justice sub-sector of BiH, which is funded by the European Union IPA 2012/2013, which was agreed at the third meeting of the Structured Dialogue held in Mostar. Representatives of the supervisory body and the European Commission signed an operational memorandum, while the finance ministers of BiH and Entities signed a financial memorandum.

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		Accordingly, judges, prosecutors and other necessary administrative personnel to be working on war crimes cases will begin work in 2014. --- Civil society: (TRIAL and a coalition of local associations of relatives of disappeared persons): Since 1st January 2011, all exhumations and identifications of mortal remains fall under the jurisdiction of the State Prosecutor's Office. However, it is only until March 2012 that a prosecution team comprised of a prosecutor, a legal officer and an investigator started to operate in full capacity. Exhumations are taking place, but associations of relatives of missing persons complain that the pace is too slow. […]The newly appointed prosecution team received a total of 183 exhumation cases in 2012, in which the exhumation orders were not enforced. Out of this number, the Prosecutor's Office of BiH filed proposals for issuing exhumation orders in 94 cases, which were all accepted by the Court of BiH. From January to June 2012 there have been 85 exhumations. This number is somehow the source of concerns, given that the Prosecutor's Office of BiH declared that in 2012 it planned to "work on approximately 350 cases of exhumation. Between October 2012 and September 2013 the Prosecutor's Office of BiH coordinated the process of exhumation on 108 locations across the country.17 Most notably, in September 2013 a mass grave was discovered in Tomašica, near Prijedor.18 This mass grave is likely to contain the bodies of some of the estimated 1,200 civilians still registered as missing after being held at one of the area's notorious detention camps or after having been taken from their homes, arbitrarily killed there, and having their mortal remains transported to Tomašica. The discovery of this mass grave is the source of renewed hope for local associations of relatives of missing persons, who hope to finally be able to find the remains of their loved ones and to mourn, honour and bury them in accordance with their religious beliefs and customs. […] In cases where common graves have been located and exhumations commenced, relatives have been prevented from having access to the sites and this caused disappointment. In general, relatives of missing persons continue not receiving any form of adequate psychological support during and after exhumations, remaining subjected to ongoing stress and instances of retraumatization. The budget allocated for the Prosecutor's Office of BiH for exhumation operations for 2014 is clearly insufficient (approximately 250.000 Euros) and this is a source of deep concern for relatives of missing persons and their

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		representative organizations. Since the visit of the WGEID to BiH no additional forensic pathologists were appointed. Moreover, to date there is no Forensic Institute for BiH: there is one for Republika Srpska, but allegedly understaffed and without adequate professional training, and there is none for the Federation of BiH. Other actors: At the end of 2013, 13 prosecutors were appointed to the State Prosecutor's Office (with additional 15 at the beginning of 2014) to strengthen its capacities and accelerate war crimes prosecution and the process of exhumation of war victims. Based on an agreement signed between the BiH Council of Ministers and the EU delegation in BiH, additional funding for this process (including new human resources who would be involved in the courts at all levels of BiH) are planned to be provided through IPA (Instrument for Pre-Accession) funding project. The number of forensic pathologists involved in the recovery, analysis and identification of missing persons is still limited. Furthermore, there is an overall lack of local forensic capacity to address the missing issue in the long term. In the course of 2013, the Office of the UN resident Coordinator in BiH and ICMP jointly initiated consultations in addressing the development of sustainable forensic capacities and the strengthening of the national forensic services (including those that should deal with the issue of missing persons). --- […] welcomes the fact that the authorities in Bosnia and Herzegovina in 2013 made significant efforts to support the prosecution of war crimes in Bosnia and Herzegovina. Among other things, the Council of Ministers allocated funds from the budget reserve for the reception of prosecutors working on war crimes cases in the Prosecutor's Office of Bosnia and Herzegovina. Also, it is evident that there is a need for greater allocation of funds intended for the process of exhumation and forensic analysis, and it is necessary for these allocations to be increased in the forthcoming period.
80. Plea agreements may	36. Families are not going to be	Government:

Recommendations (A/HRC/16/48/Add.1)	*Situation during the visit* (A/HRC/16/48/Add.1)	*Observations: steps taken / current situation*
assist the discovery of truth recovery as information that is unknown may be revealed. When plea bargains occur with a person suspected of having information on missing persons, providing such information should be part of the agreement.	satisfied until they can bury their loved ones with dignity and proper religious rites. Nevertheless, the process to determine the location of mass graves is becoming more difficult with the passage of time. Between 8,000 and 10,000 people are still missing. It is now perpetrators who largely have the information on where graves can be found. Thus, it is important to bring perpetrators to justice to try to enhance the truth discovery process. To encourage more people to reveal information concerning grave sites, witness protection programmes should be strengthened. Witness support and protection should also be provided to families of missing persons who are at times threatened, intimidated and sometimes blackmailed. Plea agreements may assist the discovery of truth recovery as information that is unknown may be revealed. When plea bargains occurs with a person suspected of having information on missing persons, providing that information should be part of the agreement. But there is also in some places a lack of cooperation from the local authorities where there could be mass graves […]	Prosecutor’s Office of Brcko District of BiH: The Prosecutor's Office closes approximately 20% of prosecuted cases by concluding a plea agreement. If necessary, the agreement stipulates an obligation of the defendant to cooperate with the Prosecutor's Office with a view to clarifying other crimes and discovering other perpetrators of criminal offences. There are no obstacles to use the mechanism in war crimes cases and we have had such cases in practice. ---------- High Judicial and Prosecutorial Council of BiH: The Prosecutor's Office of Bosnia and Herzegovina sent the information that when plea agreements were concluded immunity was granted in exchange for required information on individual and mass graves. This practice had resulted in specific information from suspects and defendants that led to the discovery of the location of individual and mass graves in Bugojno and Korićanske stijene. ---------- Ministry of Justice of Republika Srpska: When it comes to information regarding the measures taken for implementation of the recommendation that are within competences of the courts and prosecutor's offices in the Republika Srpska, we note that the Republika Sepska Ministry of Justice has no competence to take measures in order to implement the recommendation pursuant to Article 3 of the Law on Courts of the Republika Srpska ("RS Official Gazette" No. 37/12) and Article 1 and Article 37d. paragraph 2 of the Law on Prosecutor’s Offices of the Republika Srpska ("RS Official Gazette" No. 55/02, 85/03, 115/04, 37/06, 68/07). ---------- ICMP: ICMP co-financed a conference organized by three associations of families of missing persons on plea-bargaining as a mechanism to get information on potential mass grave sites in April 2012. The conference was organized by the Association of the Families of Missing Soldiers and Civilian Victims from Semberija and Majevica – Bijeljina, Association of Women "Izvor" from Prijedor and Association of Croatian Victims Grabovica 93 – Mostar on 24th and 25th April, in Sarajevo. The purpose of the conference was to inform families of the missing about the plea barging as a mechanism to get information on potential mass grave-sites and to secure evidence on committed crimes. At the conference participants agreed: - That plea bargaining is an important mechanism and should be used;

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		- that instead of the legal term “nagodba” (plea bargain) participants proposed the use of the term “Sporazum o priznanju krivice” (agreement on admission of guilt); - To organize broader discussion in other cities and smaller communities on the same topic; - To have more smaller meetings with prosecutors and families of the missing; - That representatives of associations of families of missing persons must be better informed about the process which requires enhanced cooperation between associations and the courts; - It is important to find a systematic solution for the engagement of victims in the process of plea barging. Plea bargaining is an important mechanism by which clandestine gravesites can be located. Plea bargaining, for example, led to the discovery of mortal remains at Koricanske Stijene. --- Civil society: (TRIAL and a coalition of local associations of relatives of disappeared persons): There are no precise data accessible to the public on this matter. However, it remains a source of concern for associations of relatives of missing persons, as in the past plea agreements have not been used to obtain information on the location of mass graves and, in several instances, the information provided by the accused to enter into the plea agreement has not been duly checked to assess the credibility of the person concerned before granting him or her this privilege. --- Other actors: One of the main challenges currently faced for the Missing Persons file to progress is the lack of new information. Avenues such as plea agreements, mitigating circumstances as well as dialogue with stakeholders whose archives may potentially contribute to the clarification of the fate and whereabouts of missing persons, should be further explored.
81. Other countries could assist in the information gathering process to locate further grave sites. In this connection:	36. […] Other countries could also assist in the information gathering process. More could be done in countries in the region. More assistance could be rendered where prosecutions are occurring, for	Government: High Judicial and Prosecutorial Council of BiH: The Prosecutor's Office of Bosnia and Herzegovina sent the information that, within the framework of regional cooperation, the War Crimes Prosecutors of the Republic of Serbia and the State Attorney's Office of Croatia were requested all information about the location of the remains of war crimes victims. In this regard,

Recommendations (A/HRC/16/48/Add.1)	*Situation during the visit* (A/HRC/16/48/Add.1)	*Observations: steps taken / current situation*
(a) More could be done in other countries in the region to investigate cases perpetrated by people who now live on their territory; (b) More assistance could be rendered where prosecutions are occurring, for example by other countries ensuring the provision of evidence, etc.; (c) Such countries could also conduct their own trials, but not for political reasons.	example by other countries ensuring the provision of evidence, etc. These countries could also conduct their own trials but not for political reasons.	the Prosecutor's Office of Bosnia and Herzegovina conducts outreach activities in order to verify whether these sites contained the remains of victims. --- ICMP: The expedient adoption of the ICMP Declaration on the Role of the State in Addressing the Issue of Persons Missing as a Consequence of Armed Conflict and Human Rights Abuses should be recommended. --- Civil society: (TRIAL and a coalition of local associations of relatives of disappeared persons): In 2013 BiH signed bilateral Protocols related to war crimes with Serbia (February 2013) and Croatia (June 2013). On the basis of these Protocols the Prosecutor's Office of BiH is cooperating with authorities in neighbouring countries to facilitate the prosecution of alleged responsible of war crimes residing abroad and to gather information on potential grave sites. Other actors: Protocols on Cooperation in war crimes prosecution that the BiH Prosecutor's Office signed with the State Attorney's Office of Croatia and the War Crimes Prosecutor's Office of Serbia in 2013. These protocols could contribute to the information gathering process and clarification of the fate of the missing persons. --- […] welcomes all kinds of cooperation within Bosnia and Herzegovina, as well as with countries in the region that will contribute to finding missing persons, as well as prosecuting those responsible for war crimes.
82. Other processes to arrive at the truth should be explored. This could include a truth mechanism (possibly a national truth and reconciliation commission or other more localized bodies of inquiries), but not as a substitute for justice. In this connection:	37. Besides the processes to find those missing there have been various processes to determine the truth of what occurred in Bosnia and Herzegovina. None of these processes allowed victims to testify in public. 38. The idea of having one overarching truth discovery process has been debated for many years.	Government: Ministry of Justice of Republika Srpska: Pursuant to the 21 January 2010 Decision of the Council of Ministers of Bosnia and Herzegovina on the appointment of a working group for the development of a Transitional Justice Strategy of Bosnia and Herzegovina and the Action Plan for its implementation, the Minister of Justice of Bosnia and Herzegovina issued a decision on the appointment of the Expert Working Group for the development of the Transitional Justice Strategy of Bosnia and Herzegovina and the Action Plan for its implementation in BiH No. 10-34-14-13840/09 dated 26 Mart 2010. At a meeting of the Expert Working Group, members of the Expert Working Group from the Republika Srpska institutions drew attention that the draft matrix

Recommendations (A/HRC/16/48/Add.1)	*Situation during the visit* (A/HRC/16/48/Add.1)	*Observations: steps taken / current situation*
(a) The Bosnia and Herzegovina National Strategy for Transitional Justice should be fully supported and funded; (b) It is crucial that a transitional justice strategy should cover non-judicial mechanisms – truth-telling, reparations and institutional reforms.	According to a UNDP opinion poll in 2010, about two thirds of people interviewed did not know what a truth commission was. However, among those who knew about such a process, 90 per cent stressed the importance of having a truth commission in Bosnia and Herzegovina. Some fear that a truth commission process could undermine the process to hold perpetrators accountable. While the International Criminal Tribunal for the Former Yugoslavia has convicted a number of persons, it will close its doors shortly. It has been estimated that thousands of perpetrators have not been indicted. National justice will continue. Victims could benefit from a truth process, but not as a substitute for justice. This could include a truth mechanism (possibly a national truth and reconciliation commission). There could also be localized commissions of inquiry. International organizations should give their full support to such activities. The Bosnia and Herzegovina National Strategy for Transitional Justice should be fully supported and funded. It is crucial that a transitional justice strategy should cover non-judicial mechanisms – truth-telling, reparations and institutional reforms.	of future strategy cannot contain questions, suggestions and strategic objectives that would encroach into the constitutional reform, i.e. that are not in accordance with valid constitutional arrangements and the General Framework Peace Agreement, and that the representatives of the Republika Srpska institutions would not agree with any transfer of powers and responsibilities or with the establishment of new institutions in Bosnia and Herzegovina, as the Constitution clearly defines powers and responsibilities of the Entities. Accordingly and taking into account the matter that the Strategy should cover and difficulties encountered by members of the Expert Working Group from the Republika Srpska, the RS Minister of Justice sent letter no 08.030/055-205/11 dated 25 February 2011 to the Ministry for Human Rights and Refugees of Bosnia and Herzegovina, stating that the representative of the RS Ministry of Justice would not participate in meetings of the Expert Working Group until the Government of the Republika Srpska had reached some conclusions and guidelines on how the appointed representatives would participate in the Expert Working Group. --------- Civil society: (TRIAL and a coalition of local associations of relatives of disappeared persons): The process of drafting and adopting a Transitional Justice Strategy, supported by the 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. However, at February 2014 the draft has not yet been presented for adoption to the Parliamentary Assembly. The Ministry of Justice of BiH is coordinating new efforts into organizing further consultations at the local and other levels with a variety of actors to gather their comments to the draft document enter amendments and advocate for its adoption. While BiH indulges into lulls on the adoption of the draft, victims of the war that have been waiting for justice and redress over the past 20 years, consider this piece of legislation a top priority that cannot be eluded any further. ---------- Other actors: The adoption of the draft State Transitional Justice Strategy by the BiH Parliament is pending approval from the RS authorities, therefore its implementation is yet to be started. The implementation of such a transitional justice process could contribute to the overall progress on the Missing Persons file.

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		[…] supports all processes aimed at mutual reconciliation and the establishment of trust in Bosnia and Herzegovina, as well as all segments of transitional justice with regard to the importance of overcoming the consequences of war and division in Bosnia and Herzegovina, and believes that they should be given greater emphasis in relation to these issues in future as well.
84. The Working Group recommends that: (a) The Fund for Support to the Families of Missing Persons provided for by the Law on Missing Persons be established as a matter of priority;	16. In its article 21, the Law also provides for the establishment of the Central Records of Missing Persons in Bosnia and Herzegovina (CEN), to be set up and maintained by theMPI. The purpose of CEN is to unify all the information available on missing persons at local or entity levels kept by authorities, non-governmental organizations, families of missing persons, Tracing Offices of the organizations of the Red Cross in Bosnia and Herzegovina and international organizations. However, the delegation was informed by MPI that they are still working on its establishment. Article 15 of the Law provides for the establishment of the Fund for Support to the Families of Missing Persons, which has not been set up yet.	ICMP: The provisions on the establishment of the Fund for Support to the Families of Missing Persons within the BiH Law on Missing Persons passed in 2004 has not been fully implemented. Bearing in mind that Bosnia and Herzegovina will eventually have to compensate families of the missing retroactively since 2004, the ICMP calls on the Council of Ministers that the relevant steps be undertaken for establishing the Fund as a matter of urgency. The on-going non-implementation of the Law, the relevant BiH Constitutional Court Decisions, recommendations of the Committee Against Torture and the United Nations Working Group on Enforced or Involuntary Disappearances relevant to the establishment of the Fund, will progressively increase BiH's financial debt towards the families of the missing and allow for continuous violation of the rights of families of the victims of enforced disappearances. Simple measures can be undertaken by the State, Entities and Brcko District authorities to determine number of the potential beneficiaries of the Fund and the budget for its functioning. This can be done by using the CEN records in combination with data provided by municipal authorities. The Parliamentary Assembly of BiH, should pass the amendments to the Law that would allow for its financing from the state budget thus avoiding dispute among entities and Brcko District on the method of financing the Fund. ---------- Civil society: (TRIAL and a coalition of local associations of relatives of disappeared persons): According to the Law on Missing Persons, the Fund should have been established by December 2004. At February 2014 the Fund does not exist yet. BiH authorities do not show any willingness to address this matter. It has to be stressed that, besides being an ongoing breach of BiH's international obligations, the non-establishment of the Fund causes serious damage to relatives

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		of missing people who are denied their right to obtain support and compensation. Many of them are actually dying without having ever realized the rights they are entitled to, and without having ever obtained any form of support from the Fund. Finally, the non-establishment of the Fund amounts also to non-implementation of a significant number of decisions delivered by the Constitutional Court of BiH on the subject of missing people, whereby the payment of compensation to relatives recognized as victims of grave human rights violations was associated to the establishment of the Fund, which was expressly ordered by the Constitutional Court of BiH. The fact that the decisions of the highest judicial authority of the country are not implemented concretely hinders the rule of law and trust towards authorities. The association Izvor wishes to state that, in their view, also the Ministry of Human Rights and Refugees must be held responsible for the nonestablishment of the Fund, because they did not foresee adequate mechanisms to set it up when the Law on Missing Persons was drafted. Izvor further stresses that there is no effective remedy that can be used to challenge the non-implementation of the provisions of the Law on Missing Persons concerning the establishment of the Fund. --- Other actors: In BiH, in the past 3 years attempts to give momentum to the process of harmonisation of entity and state legislation as a move towards full implementation of the Law on Missing Persons remained ineffective largely due to the paralysed general situation in the country and apparent lack of political will. Over the past years a significant number of the decisions issued by the Constitutional Court of BiH have not been implemented. A number of these non-implemented decisions are related to the rights of families of missing persons including the establishment of the Fund. --- […] points out that in the previous period the Fund for missing persons was not established, and that there is a need for the authorities in Bosnia and Herzegovina to take all measures to adequately solve the question of material, social, as well as any other support to families of missing persons.
84 (b) The State, in cooperation with entity	40. The State, in cooperation with entity authorities, should take steps,	ICMP: ICMP supported the initial meetings between the Ministry for Human Rights and

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authorities, take steps, including the amendment of legislation, to ensure that all relatives of disappeared people 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; 84 (c) More assistance be given to associations of families of disappeared persons at the State level, without any discrimination as to ethnic origin. Measures should be taken in order to ensure that members of families of disappeared persons are entitled to social benefits and other measures of social support irrespective of where they live, including health care, special education programmes and psychological assistance;	including the amendment of legislation, to ensure that all relatives of disappeared people 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. 41. More assistance should also be given to associations of families of disappeared at the State level, without any discrimination as to ethnic origin. Measures should be taken in order to ensure that members of families of disappeared persons are entitled to social benefits and other measures of social support irrespective of where they live, including health care, special education programmes and psychological assistance. 42. The only instrument related to compensation at the State level in Bosnia and Herzegovina is the Law on Missing Persons. The Law provides that family members of missing persons “who were supported by the missing person and who are in need of support, are entitled to monthly financial support”. A person is not entitled to	Refugees, the ICRC and representatives of associations of civil victims of war from all over BiH in 2009. The intention was to harmonise the entity laws on civil victims of war and ensure equal access to benefits and other measures of social support to all victims in BiH irrespective of their place of residence. Although since 2010, ICMP have not been actively involved in preparation of the state level law that would regulate rights of the civilian victims of war/victims of torture (families of missing persons have been excluded from some draft versions of the law), ICMP is informed by the MHRR that the state level law has not been passed yet by BiH authorities thus allowing entities to continuously discriminate against various groups of civil victims of war. --- Civil society: (TRIAL and a coalition of local associations of relatives of disappeared persons): No national programme on measures of reparations for relatives of victims of enforced disappearance has been adopted and, to the knowledge of the subscribing associations, there is no draft legislation in this sense. In this context, the notions of reparations and social allowances for relatives of disappeared people continue being unduly confused in BiH. […] No State law on access to social benefits has been adopted nor does it seem to be underway. This subject is regulated at the Entity level and numerous are the instances of discrimination. The situation is particularly prejudicial for returnees to Republika Srpska and, in general, the legislation in this Entity, as well as the practice of local authorities, is clearly less favourable for relatives of missing persons. Civilian victims of war obtain lower social allowances than veterans. […] Moreover, it must be pointed out that the Law on Protection of Civilian Victims of War in Republika Srpska poses strict deadlines for those wishing to apply (notably, the final deadline expired on 31 January 2007).70 This resulted in the exclusion of many victims from the possibility to obtain the benefits they would be entitled to. This is the case, in particular, of people living, also temporarily, outside BiH, who were not informed about the existence of this law and therefore failed to submit their claims in due time. […]A further problem is related to some provisions of the Law on Protection of Civilian Victims of War in Republika Srpska and their interpretation by local authorities. […]The provisions of the mentioned law and the practice of local authorities impose a disproportionate burden of proof on relatives of missing persons, who are often requested to demonstrate in which circumstances their loved ones perished, while, because of the nature of enforced disappearance, they are not in a position to do

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	support if they receive any other support such as rights based on social welfare, pension-disability insurance, veteran disability insurance, income from work, individual performance of economic or independent activity and other income that can be considered support in accordance with the Bosnia and Herzegovina legislation.	so. […] --- Other actors: The ICRC and other international organizations have been forthcoming towards the national authorities in proposing means and ways to address the needs of families of the missing without discrimination, however to date a country-wide legal framework has not been put in place. Given that ten years have passed since the Law on Missing Persons was adopted, and the Fund has not been established, there is a need to assess the number of potential beneficiaries of the Fund today. This is because some families of the missing persons, in the meantime, have managed to exercise their rights based on other legal grounds.
84 (d) A national programme on reparations for relatives of victims of enforced disappearance that includes compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition be established. Reparation programmes should take into account a gender perspective, considering that most family relatives of missing persons are women;	43. The Law on Missing Persons provides for reparation by the creation of a State-level fund called the Fund for Support to the Families of Missing Persons. This would allow reparation and assistance to associations of families. However, the fund has not been established, even though the Constitutional Court on a number of occasions ordered the establishment of the fund.5 Its establishment has been held up by two issues: the failure to agree on the location of the fund and the amount of money each entity should contribute to the fund. The entities have different views on which entity should pay a greater share. This stalemate has dire effects for victims and should be resolved as soon as possible. Establishing the fund should be a priority.	Civil society: (TRIAL and a coalition of local associations of relatives of disappeared persons): No national programme on reparations for relatives of victims of enforced disappearance has been adopted and there is no draft legislation on this subject currently pending. --- Other actors: The process of the adoption/implementation of the State legislation in favour of war victims including the families of the Missing is slow; the entity legislation has not been harmonized with the State legislation and limits, at entity level, the possibility for all the families to exercise their rights.

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84 (e) To commemorate the issue of missing persons, without choosing a day that is acceptable to one community only, 30 August (International Day of the Disappeared) be declared as the national day for commemorating the memory of all missing persons in Bosnia and Herzegovina;	47. To commemorate the issue of missing persons, without choosing a day that is acceptable to one community only, 30 August (International Day of the Disappeared) should be declared as the national day for commemorating the memory of all missing persons in Bosnia and Herzegovina. This would commemorate victims of enforced disappearance without ethnic distinction. This day is already commemorated by some in the country, including for example, the Parliament of Bosnia and Herzegovina. Other steps to promote reconciliation in the country also should occur. More apologies from more actors are necessary. Apologies must be part of a process to ensure reconciliation. In addition more should be done on the issues of preventing future cases of enforced disappearances.	ICMP: In late 2013 ICMP began facilitating the establishment of a Civil Society Forum for Joint Commemoration of Missing Persons in BiH that will include associations of families of missing persons representing Bosniaks, Bosnian Serbs and Bosnian Croats, as well as youth groups and other interested NGOs. The forum has the character of an informal network of interested civil society organizations gathered voluntarily on the basis of a shared commitment to the principle of joint memorialization of missing persons. The scope of work of the Forum is to facilitate a series of consultations within the Civil Society Forum for Joint Commemoration of Missing Persons in BiH on joint commemoration, and to organize an advocacy strategy/campaign aimed at mainstreaming the marking of the International Day of the Disappeared. At the first Forum meeting, there was unequivocal support for the development of a common symbol for the purposes of paying tribute to missing persons. The Forum will in addition campaign for the adoption of 30th August as the state-wide day of the disappeared in BiH. --- Civil society: (TRIAL and a coalition of local associations of relatives of disappeared persons): Although associations of relatives of victims of enforced disappearance in BiH regularly hold ceremonies or events on 30 August every year, BiH has not declared it as the national day for commemorating the memory of all missing persons in the country. --- Other actors: Although not being officially declared as the national day for commemorating the memory of all missing persons in BiH, 30 August is marked as the International Day of Disappeared by associations of families of missing persons. --- There is a need for the authorities in Bosnia and Herzegovina to f[ind] not only the date but also other forms of celebrating the memory of the missing persons in the same way that it will be increasingly accepted by the public and associations that bring together families of missing persons.
84 (f) More apologies from	48. At present the issue of	Government:

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more actors are needed. They must however be part of a process that is necessary to ensure reconciliation. In addition more should be done on the issue of preventing future cases of enforced disappearances; 84 (g) A national law on the issue of memorials be enacted. This law on memorials should set out the criteria and the process to establish such memorials.	memorials has caused much controversy and unhappiness. There are many problems associated with them. For example, at times relatives who wish to attend burial ceremonies or visit graves in other parts of the country are prevented from doing so or harassed when they do. The issue should be dealt with by the national authorities. Families of those killed should be allowed to visit the sites where their loved ones were killed, without being opposed, denied access or provoked by others. Obviously, this should not be done in a provocative way. Political leaders should be promoting tolerance and the security forces should provide access and security to places where families wish to visit on important dates. A national law on the issue of memorials should be enacted. Such a law should set out the criteria and the process for establishing memorials, as victims across the country complained that memorials they wished to erect were disallowed by local authorities controlled by those from other ethnic groups. It was also argued that some monuments and memorials were erected in places in order to intimidate victims from other ethnic groups. In some places memorials were erected by the municipality without any consultation. At the same time some municipalities	Republika Srpska / Ministry of Planning, Construction Industry and Environment: […] [R]ecommendation […] relates to adoption of a state law on monuments that would establish criteria and the process of establishing the site of monument. In the Republika Srpska, this matter falls under jurisdiction of the Ministry of Labour, Veterans and People with Disabilities, which was a drafter of the Law on Monuments and Memorials of Wars of Liberation („RS Official Gazette" No. 28/12). The Law governs the protection, maintenance, construction of monuments, memorials and military cemeteries from liberation wars in the territory of the Republika Srpska. That being said we inform you that the recommendation with enclosures was sent to the Ministry of Labour, Veterans and People with Disabilities for action. Further, with regard to the competences of the Ministry related to this matter we note that types, construction, use and management of cemeteries, funeral activities industry and other issues of importance for cemeteries and funeral activities industry as part of utility sector are defined in the Law on Cemeteries and Funeral Activities ("RS Official Gazette" no. 31/13, 6/14). The Law provides that units of local self-government enact ordinances to define in detail the issue of the construction of cemeteries, graves and tombstones and data engraved on them, management, layout and maintenance of cemeteries and the like. Furthermore, the Law provides that inscriptions on the tombs and graves should not offend anyone's ethnic, religious or moral feelings, nor should they in any way insult the memory of the deceased. The Law classifies cemeteries into public and special cemeteries according to their establishment and the purpose of burial and the special cemeteries include memorial cemeteries, military cemeteries, cemeteries of mass disasters, anonymous cemeteries, cemeteries of religious communities and other cemeteries for special purposes. Further, regarding the cemeteries declared cultural, historical and natural resources the Law provides that they are maintained and repaired in accordance with special regulations, while graves and tombs which are declared cultural monuments are maintained and repaired in accordance with regulations on the protection of cultural monuments. Therefore, it follows that the Republika Srpska governs the issue of construction and maintenance of cemeteries and tombstones in laws and delegated legislation, so defining this matter in legislation at the state level would be contrary to the constitutional jurisdiction of the Republika Srpska and would constitute a transfer of responsibilities from the entities to the state level. --- ICMP:

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	reportedly would not fund memorials for the other side and they would not even allow those groups to use their own money to erect a memorial. Therefore Bosnia and Herzegovina should adopt measures to achieve satisfaction, such as the setting up of memorial sites and monuments. It should adopt a comprehensive legal framework to regulate the subject with a view to avoiding re-victimization and further violations of the right to dignity.	In 2014, ICMP will provide support to the aforementioned Civil Society Forum for Joint Commemoration of Missing Persons in BiH, in terms of: 1) Financial provision for an analysis of the legal framework and practice of raising memorials at state, entity and municipal levels, which will include the identification of gaps in both legislation and in terms of implementation, and the proposal of recommendations to the authorities to address these gaps; 2) Establish linkages between the Civil Society Forum and relevant state authorities for the sustainable development of a process of joint memorialization of missing persons in BiH. --- OHR: [..]Report [..] it is stated that “A national law on the issue of memorials should be enacted. Such a law should set out the criteria and the process for establishing memorials ...” In this context we would like to draw your attention to the BiH Law on Missing Persons (BiH OG 50/04), which in Article 20 regulates the issue of and the procedure for marking the place of burial and exhumation of missing persons, as well as to the Book of Regulations on Marking Places of Burial and Exhumation of Missing Persons (8iH OG 83/06), which further elaborates this matter. The basic principle of these regulations is that any marking should be based on a respective certificate issued by the competent authority, i.e. Institute for Missing Persons (IMP). In that context, it would be necessary to explore possible links and/or conflicts between the envisioned national law on memorials and the existing legislation. In addition under the BiB Constitutional framework this is not an issue expressly falling with the constitutional responsibilities of the State and therefore there would be many difficulties to reach an agreement to have this at State level through a State level law. Additionally one should assess whether "memorialisation" as a mean to preserve the memory of the tragic and violent recent past of BiH and that should in turn affect social reconstruction is feasible or even advisable at this point on time absent truth-seeking initiatives and where there is no real historical record agreed upon. Indeed, the continuing political turmoil in BiH driven by ethnic tensions has blocked any attempt to deal adequately and comprehensively with the legacy of the conflict of the nineties. Efforts to establish the facts in the past have systematically failed, for example the attempts to establish a truth commission at State level were unsuccessful. Ethnic political leaders deliberately rewrite history and deny atrocities. ---

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		Civil society: (TRIAL and a coalition of local associations of relatives of disappeared persons): In November 2010 the Bosniak member of the Presidency (Mr. Bakir Izetbegović) [apologized] to victims of Serbian origin who suffered violations from members of the Army of BiH. No national law on the issue of memorials has been enacted. By contrast, in November 2011 a Law on Memorials was adopted in Republika Srpska, only fostering further controversies, because a number of provisions which have been perceived as discriminatory by members of the Bosniak and Croatian ethnic groups. The association Izvor is persuaded that the adoption of a law would not be enough. Other mechanisms should be studied and put in place. Such mechanisms should be designed by experts and not by victims or decision-makers. --- Other actors: Article 20 of the Law on Missing Persons stipulates that families of the missing or their associations may request that locations of burials and exhumations (individual or joint) are marked, regardless of the number of victims, i.e. missing persons. In 2006, the Council of Ministers adopted the Book of Rules on Marking Places of Burial and Exhumation of Missing Persons (BiH Official Gazette, Number 83/06, 16 October 2006), which regulates the design of the mark or memorial plaque, its funding and other issues. But to date, the Book of Rules has not been implemented/applied, as it is closely linked with the establishment of the Fund for financial support to the families of missing. --- After examining the reports from the media in recent years it is evident that the representatives of government in Bosnia and Herzegovina in the previous period together visited the place of suffering only in cases of visits of foreign dignitaries and delegations. Joint visits would contribute to greater extent to reconciliation. At the local level it was observed practice that all levels of public authorities in the local government units together visit places of casualties or graves, and such practices should be supported and stressed as a positive example. The law, which would in Bosnia and Herzegovina regulate memorials, would greatly facilitate, raising and maintaining the monuments, as well as marking the place of suffering.

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		There are currently no adequate regulations on memorials and it is on local governments to address these issues without higher instances which would be addressed in order to obtain advice and instructions. This, unfortunately, very often leads to a misunderstanding between the executive authorities of local governments and associations that bring together victims. Such events often lead to problems in communication and hamper the ongoing processes for the purpose of reconciliation. Adoption of legislation that would establish the grounds on which would be determined what monument could be declared memorial, as well as establishment of a body that could make such a decision, would largely reduce misunderstandings between the government and various associations that bring together victims and families of victims of war crimes. Especially taking into account the positive experience which recorded the establishment of the Commission to Preserve National Monuments, which was largely successful to protect monuments in Bosnia and whose actions enjoyed the support and recognition of the general public.
85. The Law on Missing Persons stipulates that all persons registered in the CEN Bosnia and Herzegovina shall be considered dead. While the CEN is not yet operating, when it is, this provision will be problematic, as it declares people dead possibly against the wishes of their loved ones. It must be remembered that an enforced disappearance is a continuous crime until the person's fate or whereabouts is determined. It should therefore be clarified what the impact of this provision	46. A problem raised by some is that in the past for a family to receive a State pension under the law, the missing person had to be declared dead. Many families have done this even though the fate or whereabouts of the person is unknown. This has been the cause of much emotional hardship. Receiving reparations should not be contingent on getting a death certificate. The Law on Missing Persons changes this and now obtaining such a certificate is not necessary. However, the Law states that "three years after the date of the coming into force of the Law, persons registered as missing in the period from 30 April 1991 to 14	OHR: […] of the report you mention the possibility for families to receive a "State pension". This seems to be unclear as the pension systems as well as other social benefits in BiH are not at State level but rather at Entity and Cantonal levels. It is unclear whether this refers rather to the right to the monthly financial support under article 11 of the State law on missing persons. --- Civil society: (TRIAL and a coalition of local associations of relatives of disappeared persons): In its views on the case Prutina et al. v. BiH (28 March 2013), the Human Rights Committee found that domestic legislation that makes social allowances conditional on obtaining a declaration of death of victims of enforced disappearance amounts to a violation of a number of provisions of the International Covenant on Civil and Political Rights. The Human Rights Committee recommended to BiH to amend existing legislation. Authorities of the Federation of BiH are currently considering the adoption of the recommended amendments. Art. 27 of the Law on Missing Persons has not been amended and, to the knowledge of the subscribing information, no assessment of the impact of this

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will be for families and for investigations and prosecutions.	February 1996 whose disappearance has been verified within the CEN Bosnia and Herzegovina, shall be considered dead and this fact shall be officially entered in the Register of Death". While the CEN is not yet operating, when it is this provision will be problematic as it declares people dead possibly against the wishes of their loved ones […]	provision on families, investigations and prosecutions has been carried out so far. --- Other actors: Article 27 of the Law on Missing Persons stating that a presumption of death applies to all those registered as missing in the period from 30 April 1991 to 13 February 1996 and whose disappearance has been verified by CEN should be discussed if the Law on Missing Persons is amended. --- […] had no complaints in the previous period, which would include the specified member of the Law on Missing Persons, however, we believe that it needs to be carefully reviewed from aspect of consequences that may arise from its implementation.
87. Domestic criminal legislation still needs to be improved. In particular, the Working Group recommends that: (a) The Court of Bosnia and Herzegovina interpret the definition of enforced disappearances as a crime against humanity, contained in article 172, paragraph 1-i of the Bosnia and Herzegovina Criminal Code, in line with the more adequate definition provided for in article 2 of the 2006 International Convention for the Protection of All Persons from Enforced Disappearance; or for the Bosnia and Herzegovina Parliament to amend the	12. Enforced disappearance is not yet integrated as an autonomous crime in the criminal legislation of Bosnia and Herzegovina. Enforced disappearance appears as a crime against humanity only in article 172 of the Criminal Code of Bosnia and Herzegovina, when committed "as part of a widespread or systematic attack directed against any civilian population". The Code provides that those found guilty shall face at least 10 years or longterm imprisonment. The Criminal Code specifies that "[e]nforced disappearance of persons means the arrest, detention or abduction of persons by, or with the authorisation, support or acquiescence of, a State or a political organisation, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those	Government: Ministry of Justice of BiH: [W]ith regard to Recommendation 87, point b), we want to emphasize that the September 2013 Draft Law on Amendments to the Criminal Code of Bosnia and Herzegovina criminalized "enforced disappearance"in the manner and in accordance with Article 4 of the International Convention for the Protection of All Persons from Forced Disappearances, which provides for an obligation to criminalize enforced disappearance as a separate criminal offense unrelated to the state of war. The Draft Law agreed by the Council of Ministers of Bosnia and Herzegovina was submitted to the Parliamentary Assembly of Bosnia and Herzegovina for adoption, but it did not receive parliamentary support. The 2014 Plan of the Ministry of Justice envisages sending of amendments to the Criminal Code to the Parliament for deliberation, so they will definitely be thoroughly reviewed and, if necessary, those provisions that have already been proposed will be improved and other initiatives that were submitted to the Ministry in the meanwhile will be considered in terms of feasibility. Thus, it is planned once again for the new draft law to criminalize enforced disappearance. Accordingly, Recommendation 87, point c) (that the possibility of granting amnesty for serious international crimes should be removed) which requires amending of Article 118, Paragraph 2 of the Criminal Code of Bosnia and Herzegovina will be considered.[…] [P]oint d) suggests criminalization of enforced disappearances in the criminal codes of the Entities and Brčko District.

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Criminal Code to that effect; (b) In accordance with the Declaration and the Convention, the Code be amended to include enforced disappearances as an autonomous crime, so that it can be punished in situations where it cannot be qualified as a crime against humanity; (c) The Criminal Code be amended to remove the possibility of granting amnesty for serious international crimes; (d) The criminal codes at the entity and district levels be harmonized with the Criminal Code at the State level, so that they provide for the repression of enforced disappearances both as a crime against humanity and as an autonomous crime and sets the appropriate penalties. The penalties should correspond to the level of those applied for the most serious crimes; (e) The local courts change their position on the issue of the non-retroactivity of the new criminal codes, as far as	persons, with an aim of removing them from the protection of the law for a prolonged period of time". 13. The crime of enforced disappearance is not codified in the three criminal codes of the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District. The Working Group was informed that the Ministry of Justice has set up a team to harmonize the criminal legislation at State and entity levels. 55. In Bosnia and Herzegovina, article 118, para. 2 of the Criminal Code provides that "an amnesty for the criminal offences prescribed under this Code, may be granted by the Parliamentary Assembly of Bosnia and Herzegovina by virtue of a law". The Working Group notes that the Criminal Code does not set any exception to the power of the Parliament to grant amnesty. […]	The Federation of Bosnia and Herzegovina has not amended the Criminal Code in this regard; however please note that all amendments to the existing laws in the Federation are made as the vertical and horizontal harmonization of regulations, which means that the Criminal Code of the Federation must be brought in line with the Criminal Code of Bosnia and Herzegovina. --- Prosecutor's Office of Brcko District of BiH: [P]oint c) - The Criminal Code of Brcko District does not incorporate provisions on the prohibition of amnesty for serious criminal offences under international law. However, a specific law in this area – the Amnesty Law of Brcko District – precludes amnesty for crimes against humanity and international law under Chapter XVI of the SFRY Criminal Code or crimes defined in the Statute of the International Criminal Tribunal for Former Yugoslavia. [P]oints d) and e) - The Criminal Code of Brcko District is not in compliance with the Criminal Code of BiH, as it does not provide for enforced disappearance as a crime against humanity or as a separate criminal offense. However, the Code does not prescribe this type of crime at all, as the SFRY Criminal Code applies in this area, according to the temporal jurisdiction. Bearing in mind the retroactive application of the Criminal Code at the state has brought about human rights violations, which has been found in a number of cases before the Constitutional Court and the European Court of Human Rights, Recommendation 87, point e) is apparently not enforceable in domestic law. --- Court of BiH / Office of the President of the Court: (a) According to the Criminal Code, enforced disappearance is still punishable only as one of crimes against humanity under Article 172 of the Criminal Code of Bosnia and Herzegovina and for the time being there is no legal basis for the prosecution of enforced disappearance as a separate crime. Further, due to the fact that the definition of enforced disappearance under Article 2 of the International Convention on the Protection of All Persons from Enforced Disappearances has not been incorporated into the legislation yet, the Court gives the Court has no possibility to apply it as such and is obliged to interpret the concept of enforced disappearance is defined in Article 172 (2) (h) of the BiH CC. (b) With regard to the recommendations above, we believe that enforced disappearance as a separate offense should be criminalized only in the Criminal Code of Bosnia and Herzegovina, in Chapter XVII providing for other crimes against humanity and values protected by international law, including crimes such

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international crimes are concerned.		as trafficking in human beings, torture and other forms of cruel, inhuman and degrading treatment and terrorism, which are also subject-matter of the international conventions ratified by BiH. It is our opinion that criminalization of enforced disappearance as a separate crime in the Criminal Code would fully fulfil an obligation of the State under Article 4 of the International Convention on the Protection of All Persons from Enforced Disappearance. In this regard, we emphasize that as of 1 March 2003 the criminal offense defined as war crimes, as well as all other crimes against humanity and values protected by international law are criminalized only in the Criminal Code of BiH and that as of that date their prosecution is under exclusive jurisdiction of the Court and the Prosecutor's Office of BiH, while entity courts and courts of the Brcko District of BiH have jurisdiction only over those war crimes cases that were pending before them before entry into force of the new criminal legislation and those cases which the Court of BiH has transferred to the entity courts. So, given the current provisions on jurisdiction of courts in BiH, we believe that there is no need to criminalize enforced disappearance, either as one among crimes against humanity or as a separate crime, in the entity and Brcko District Criminal Codes. Moreover, we consider that its criminalization in the entity laws would created uncertainty about subject-matter jurisdiction in prosecution of these crimes and legal uncertainty due to competition of substantive law application. (e) With regard to the recommendation above, we point out that, in its decision in Simsic against Bosnia and Herzegovina, which was rendered on 10 April 2012, the European Court of Human Rights found that the fact that the applicant was convicted of crimes against humanity on the basis of the 2003 Criminal Code, which crimes were not prescribed by national laws that were in effect at the time of the commission of crimes, did not violate Article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (Simšič v. BiH, no. 51552/10, § 25). Given the decision of the ECtHR, there is no reason to believe that the Criminal Code should not apply before the entity courts, at least when it comes to crimes against humanity. --- Ministry of Justice of Republika Srpska: [R]ecommendation 87, subparagraph c) and subparagraph d), we note that there is no obligation to harmonize Criminal Code of Entities and District Brcko or entity laws and laws of Brcko District with the Criminal Code of Bosnia and Herzegovina.

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		While drafting the Law on Amendments to the Criminal Code of the Republika Srpska (RS Official Gazette, No. 67/13), the following documents were referred to by the Ministry of Justice of the Republika Srpska: - The Treaty on European Union, Title I Common Provisions, Article 2; - Treaty on the Functioning of the European Union (consolidated version), PART THREE - UNION POLICIES AND INTERNAL ACTIONS, TITLE V-AREA OF FREEDOM, SECURITY AND JUSTICE, Chapter 4 - Judicial cooperation in criminal matters, Articles 82 and 83 and - Charter of Fundamental Rights of the European Union, Articles 3, 4 and 48. The drafters brought the Law partially in line with the following secondary sources of EU law: - Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA Article 2 of the Directive, which sets forth definitions and provides for an obligation of member states to take measures to punish perpetrators of the crime of human trafficking, is transposed in Article 28 of the draft Law. Article 4 of the Directive, which prescribes penalties for various forms of the crime, is partially transposed in the same article. - Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA) Article 2 of the Decision, which provides that Member State shall ensure that victims who are particularly vulnerable can benefit from specific treatment best suited to their circumstances, is partially transposed in Article 16 of the draft Law. - Council Decision 2008/801/EC of 25 September 2008 on the conclusion, on behalf of the European Community, of the United Nations Convention against Corruption The drafters took the Convention in account in Articles 34, 37, 38 and 39 of the draft Law, which regulate the matter of prevention of corruption. In addition, the drafters took into account other sources of EU law, as follows: - COM(2006)174 Commission Green Paper of 26 April 2006 on the presumption of innocence; - European Parliament Resolution on Violence Against Women (1986); - Violence against women A4-0250/1997 Minutes of 16/09/1997 – Provisional Edition Resolution on the need to establish a European Union-wide campaign for zero tolerance of violence against women, The European Parliament (1997);

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		- Combating violence against women European Parliament Resolution on the current situation in combating violence against women and any future action (2006) and - European Parliament Resolution of 29 November 2009 on the elimination of violence against women. The following pieces of legislation of the Council of Europe were referred to by the drafters: - European Convention for the Protection of Human Rights and Fundamental Freedoms (1950); - Council of Europe Convention on preventing and combating violence against women and domestic violence CET5 No. 210, Istanbul 11/5/2011); - Council of Europe Recommendation No. R(85)4 of the Committee of Ministers to Member States on Violence in the Family (adopted by the Committee of Ministers on 26 March 1985 at the 382nd meeting of the Ministers' Deputies); - Council of Europe Recommendation no. R(85)11 of the Committee of Ministers to Member States on the Position of the Victim in Criminal Law and Procedure (adopted by the Committee of Ministers on 28 June 1985 at the 387th meeting of the Ministers' Deputies); - Council of Europe Recommendation no. R(87)21 of the Committee of Ministers to Member States on Assistance to Victims and the Prevention of Victimization (adopted by the Committee of Ministers on 17 September 1987 at the 410th meeting of the Ministers' Deputies); - Council of Europe Recommendation no. R(90)2 of the Committee of Ministers to Member States on Social Measures Concerning Violence within the Family (adopted by the Committee of Ministers on 15 January 1990 at the 432nd meeting of the Ministers' Deputies; - Council of Europe Recommendation 1450 (2000) on Violence against Women in Europe, Parliamentary Assembly debate on 3 April 2000 (9th sitting). - Council of Europe Recommendation no. Rec(2002)5 of the Committee of Ministers to member states on the protection of women against violence (adopted by the Committee of Ministers on 30 April 2002 at the 794th meeting of the Ministers' Deputies and - Council of Europe Recommendation no. 1847(2008) on combating violence against women, according to the Council of Europe Convention (Assembly debate on 3 October 2008 (36th sitting).

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		When it comes to information regarding the measures taken in order to implement recommendation 87, subparagraph e), we emphasize that this recommendation is of great importance, and accordingly we note that the generally accepted rule, when it comes to the applicability of the Criminal Code, is that the law that was in force at the time of commission is applicable. This implies the principle of "irretroactivity" or prevention of retroactive effect of the Criminal Code is applied. This is a principle of international law, which is enshrined in the Universal Declaration of Human Rights (1948), the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and the opinion of the Venice Commission of 18 June 2012. After having reviewed the situation of the judiciary in Bosnia and Herzegovina, including criminal justice and the enjoyment of human rights, the Venice Commission noted that the legal instruments did not apply retroactively in the criminal law. This rule may be waived only in exceptional circumstances (criminal cases when the new law provides for a more lenient sentence than the old one). Applying the rule above, it is obvious that the Criminal Code of former Yugoslavia is more lenient than the Criminal Code of Bosnia and Herzegovina because the Criminal Code of former Yugoslavia provides for a minimum prison sentence of five years and a maximum prison sentence of 15 years for war crimes while, for the same crimes, the Criminal Code of BiH provides for a minimum prison sentence of ten years and a maximum sentence of 45 years in prison. The issue of ex-temporary application is especially important in Bosnia and Herzegovina because courts in Bosnia and Herzegovina do not apply the same principle on this issue. It is particularly important to emphasize the fact that the courts of the Entities and Brcko District of BiH (total of 17) invariably apply the Criminal Code of former Yugoslavia in war crimes cases, as it was the law in force at the time of crimes. The Court of Bosnia and Herzegovina retroactively applies the 2003 Criminal Code of Bosnia and Herzegovina, discriminating citizens of Bosnia and Herzegovina. Decisions of the Court of Bosnia and Herzegovina have a special significance because courts are to protect human rights while, on the contrary, the Court of Bosnia and Herzegovina discriminates citizens of Bosnia and Herzegovina. Those defendants who have the "privilege" to be tried at Entity courts are subject to the Criminal Code of former Yugoslavia and they may receive a maximum prison sentence of 15 years while for the same crime, those tried at the Court of Bosnia and Herzegovina can receive long-term sentences of imprisonment of up to 45 years.

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		When we talk about the retroactive application of the Criminal Code we cannot be satisfied with the results achieved on this issue, which was discussed at almost every session of the Structured Dialogue. The Court of Bosnia and Herzegovina strongly defends its views on their supposedly "correct" application of the Criminal Code, while other participants in Structured Dialogue are waiting for a decision of ECtHR in Maktouf - Damjanovic. Surprisingly, even after the Opinion of Venice Commission of 18 June 2012, the Court continued the practice of retroactive application of the Criminal Code, and the recent decisions of this Court indicate that this Court has no intention of changing his position, even after the decision of ECtHR in Maktouf - Damjanovic. The decision of the Court of Human Rights in the Maktouf - Damjanovic concerns not only the Court of Bosnia and Herzegovina, but also other entities and Bosnia and Herzegovina has to deal with this issue, because it is a systemic issue that concerns not only Maktouf - Damjanovic but all those who have been sentenced in accordance with the law that could not be applied. The judgment of the Court of Human Rights in Maktouf – Damjanovic finds that in one case an entity court found the defendant guilty of cruel treatment of prisoners and sentenced him to one year and eight months in prison, while the Court of Bosnia and Herzegovina sentenced another defendant, who was convicted of a similar offense, to imprisonment of ten and a half years. Therefore, the observation of the Court of Human Rights that the sentence is not influenced by "what you did, but by who is trying you." --- “(l) The first among them is the issue of legal interpretation, which means jurisprudence created by the BiH Constitutional Court following the Decision of the European Court of Human Rights (ECtHR) in Maktouf and Damjanovic v BiH dated 18 July 2013, and then also the subsequent implementation of those decisions in the case law of the Court of BiH. […...] the BiH Constitutional Court's decisions listed below, which were issued after the ECtHR decisions, rescinded final judgments of the Court of BiH in relation to the named applicants and the Constitutional Court found violations of Article 7 of the ECHR in the following cases […]. It is visible from the foregoing decision of the BiH Constitutional Court that they practically mandate an automatic application of the Criminal Code of the former Yugoslavia (SFRY CC) in all cases involving the criminal offenses of war crimes that were covered by the SFRY CC, which includes War Crimes against Civilians and Genocide, irrespective of the gravity of

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		committed crimes. However, bearing in mind that the criminal offense of Crimes against Humanity was not codified in the SFR Y CC, the new BiH Criminal Code passed in 2003 (the BiH CC) (see position of the ECtHR in Simsic v. BiH before the ECtHR and the position of the BiH Constitutional Court) is to be applied in such cases. Although such a position evidently does not follow from either the letter or the spirit of the ECtHR's Decision[…], still the Court of BiH has the obligation to comply with final and binding decisions issued by the BiH Constitutional Court and act upon them. Non-compliance with the decisions issued by the BiH Constitutional Court constitutes a criminal offense under the laws in effect in BiH. In that regard, the Court of BiH was obligated to act in pursuance of the decisions of the BiH Constitutional Court, which will be referred to below. However, and above all, we would like to take this opportunity to inform you that the opinions expressed in the letter by the UN Special Representative and the Working Group Chair, concerning the proper interpretation of the ECtHR judgment, fully reflect the understanding of the issue of retroactive application of law in war crimes cases before the Court of BiH; in accordance with which it had developed its previous case law. In war crimes cases adjudicated since 2009, the Court of BiH has started the practice of applying the SFRY CC in certain cases, specifically those pertaining to lesser crimes or low-ranking perpetrators, which is to say always when the punishment that needs to be imposed on a specific perpetrator falls within the limits of statutory minimum, being mindful of the fact that the previous law provided a lower sentencing threshold (5 years for war crimes) in relation to the new law (a minimum of 10 years of imprisonment for war crimes). However, when it comes to serious types of war crimes, the Court of BiH applied the new 2003 BiH CC, infer alia, bearing in mind that in such cases the punishment that needs to be imposed on the perpetrator falls within the statutory maximum, so given that the old SFRY CC provided death penalty as the maximum punishment for war crimes, and that the new law provides for a long-term imprisonment as the heaviest penalty (ranging between 21 and 45 years) instead, the Court has found that in such cases the new law was more lenient to the perpetrator. It can be deduced from the Decision in Maktouf and Damjanovic v. BiH dated 18 July 2013 that the ECtHR upheld the most recent position and case law of the Court of BiH, deciding that the old SFR Y CC should be applied in the specific case at hand in which there was no loss of human lives (meaning a less serious crime). The Decision implies that in case of different circumstances, where the crime has resulted in the loss of human lives, as is the criminal offense of

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		Genocide with dozens or hundreds of killed persons, decisions on the more lenient law would not be the same, nor could the same legal arguments apply, but the court should compare the maximum penalties as prescribed by law. From the joint letter by the UN Special Rapporteur and the Working Group Chair follows an identical understanding of the ECtHR's judgment (commenting on the BiH Constitutional Court verdicts, page 5 of the letter states: "In this light, the Constitutional Court should have compared the maximum penalty for war crimes and genocide under the 2003 code of 45 years imprisonment with the maximum penalty under the 1976 criminal code which was the death penaltv". Unfortunately, bearing in mind that the ECtHR did not in more detail elaborate on such a hypothetical case, and that it limited its analysis to the circumstances of the specific case, the subsequent jurisprudence of the BiH Constitutional Court erred in interpreting the mentioned judgment, so that the BiH Constitutional Court found violations of Article 7 of the ECHR in all cases decided after 18 July 2013, which pertained to war crimes covered by both the SFRY CC and the BiH Cc. In addition, the BiH Constitutional Court issued decisions to rescind final verdicts of the Court of BiH that applied the BiH CC (unlike the ECtHR which in .Maktouf and Damjanovic did not rescind the verdict of the Court of BiH). By its decisions, the BiH Constitutional Court effectively imposed an obligation on the Court of BiH to apply the SFRY CC in the reopened proceedings with regard to sentencing. That has not only brought about a misinterpretation of the spirit of the ECtHR's Decision, but it has also prevented the practical application of one of the most important aspects of that Decision, laid down in Paragraph 65, which pertains to the judges' obligation to assess the issue of the more favourable law in concreto not in abstracto. Deciding matters in concreto has been rendered impossible, for it became clear based on all the foregoing decisions of the BiH Constitutional Court that that court does not allow the application of the new BiH CC to any act of war crimes that at the time when it was perpetrated was covered by the SFRY CC, regardless of its gravity and consequences -which is in contravention of the letter and spirit ofthe ECtHR's decision. […] (2) When it comes to the concrete enforcement of the decisions of the Constitutional Court, we have to inform you that, following the aforementioned Constitutional Court's Decisions, revoking the convictions rendered by the Court of BiH, all persons who had been serving their respective prison sentences were released on the basis of those judgments. [….]. We note, however, that, even though the decisions of the Constitutional Court have not called into question

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		these persons' guilt, the legal basis pursuant to which they were committed to serve their respective prison sentences ceased to exist as a result of the revocation of the convicting verdicts rendered against them. In parallel, there was no possibility for the Court of BiH to order the referenced persons into custody in a way which would be compliant with the principles of the European Convention, as well as with the provisions of the Criminal Procedure Code of BiH. The referenced cases were reverted to the stage of the proceedings which preceded the issuance of the appeal verdicts (which were revoked by the Constitutional Court of BiH), and the Court of BiH continued the proceedings from this stage onwards. We also note that the domestic law, or the Criminal Procedure Code of BiH, does not provide for procedural rules for such a legal situation, where final and binding decisions of the criminal court are revoked by the Constitutional Court, which has created certain dilemmas for the Court of BiH. In all the above referenced cases, the Appellate Panels have instructed the parties and their defence counsel (referring to the decisions of the Constitutional Court of BiH) that in the reopened proceedings the revoked decisions would only be reviewed in the part concerning the application of substantive law with regard to sentencing. In other words, there was no need to present again the evidentiary materials, or to reopen the proceedings in whole. […] (3) The third issue raised in the letter of the UN Special Representative and the Working Group Chair is the issue of consequences of all the referenced events for the process of transitional justice in BiH. These events have undoubtedly diminished the victims' trust into the judiciary as one of the fundamental mechanisms of transitional justice in BiH. Also mentioned along this line was the Draft National Strategy on Transitional Justice, still not adopted in BiH, and the National War Crimes Prosecution Strategy, which has been in force since 2008. Considering that the Court of BiH is one of the main subjects defined under the 2008 National War Crimes Prosecution Strategy, we note that one of the main objectives and the expected results defined under the Strategy is the harmonization of the case law in the ·application of criminal codes in war crimes cases between the Entity-level judiciaries (which apply in practice the 1976 SFRY CC), and the state-level judiciary (which in practice for the most part applies the 2003 BiH CC). […] It can be inferred from the foregoing that the development of the case law of the Constitutional Court of BiH, following the decision of the ECHR in Maktouf and Damjanovic is in violation of the referenced Strategy. Finally, we want to underline a very important issue, that is, the obligation of the State of BiH concerning the efficient

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		sentencing or imposing adequate sanctions for the gravest violations of international humanitarian law. The State of BiH has undertaken this obligation not only by ratifying the relevant international conventions strictly providing for this obligation, but also by the guarantees it has offered in taking over the cases transferred to BiH by The Hague Tribunal from its jurisdiction. […] --- In Maktouf case, the Court of Bosnia and Herzegovina found that the legislative framework for sentencing under the 2003 Criminal Code of Bosnia and Herzegovina was more favourable to the defendant than the SFRY Criminal Code, which prescribed a death penalty for the same crime. This verdict by the Court of Bosnia and Herzegovina was appealed against at the Constitutional Court by the defendant alleging a violation of Article 7 of the European Convention through the application of the 2003 Criminal Code of BiH. The Constitutional Court rejected the appeal and upheld the verdict of the Court of BiH. In Damjanovic case the Court of BiH handed down a guilty verdict, following the procedure of the previous cases, Maktouf, and applied the 2003 Criminal Code of BiH. This verdict was appealed at the Constitutional Court of BiH by the defendants alleging a violation of Article 7 of the European Convention through the application of the 2003 Criminal Code of BiH. The Constitutional Court rejected the appeal, referring to his earlier decision in the Maktouf. In both cases applications were filed with the ECtHR, alleging violations of Article 7 of the European Convention. After 5 years the ECtHR ruled on these two applications and found a violation of Article 7 of the European Convention. ECtHR's reasoning for its decision noted that the both cases involved less serious criminal offenses that had not resulted in fatal consequences the defendants had been convicted of, so a more favourable code for them was the SFRY Criminal Code because it prescribed a lower minimum prison sentence for the type of criminal offence. In its decisions the ECtHR did not examine cases involving the most serious crimes against humanity and, given the specific applications, it did not examine the issue of death penalty and did not rule on what code should be applied to the most serious crimes against humanity. The ECtHR emphasized that the decision should not be taken in the way that the application of the 2003 Criminal Code was in violation of the European Convention in all war crimes cases. Moreover, the ECtHR stressed that its decision should not be taken in the way that the defendants should have received lower punishments but that the application of the 2003 Criminal Code in these two particular cases could not provide sufficient guarantees to protect them from the possibility of getting

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		harsher sentences. It stated that a decision on the code which should be applied should be made in each case individually, depending on the seriousness of the crime. […] The decisions of the ECtHR in Maktouf and Damjanovic are of declaratory nature and as such they did not quash the verdicts of the Court of BiH but provided grounds for a retrial. The applicants filed petitions for retrial with the Court of BiH in both cases and the Court of BiH repeated the proceedings to determine the guilt and sentencing proceedings based on the evidence presented. After 5 years of holding the appeal "in the drawer", at the meeting held on 22 October 2013, the Constitutional Court ruled on appeals of five appellants convicted of war crimes ' and six appellants convicted of genocide. Unlike Maktouf and Damjanovic, these cases involved some of the most serious crimes prosecuted at the state level. The Constitutional Court found a violation of Article 7 of the European Convention and quashed the final verdicts of the Court of BiH in all the cases. […] In its decisions, completely opposing the views expressed in the decisions of the ECtHR in Maktouf and Damjanovic, the Constitutional Court held that regardless of the severity and consequences of the crime against humanity, including genocide, the application of the Criminal Code of BiH, which is in contrast with the European Convention, is not an option. This accepted principle prevents making a decision on the most favourable code depending on circumstances of each case individually, including the gravity of the crime, which circumstance ECtHR decisions find one of the criteria in decision-making. […] Although the death penalty has been abolished in the meantime (the entry into force of the Constitution of Bosnia and Herzegovina), one cannot entirely ignore its existence or an intention of the legislature in respect of offenses to which it applies. In this particular case, it is a very serious crime with immensely serious consequences and it is reasonable to ask the question which crime, if not this crime, would justify the imposition of maximum sentence. […] After the decisions of the Constitutional Court were sent to the Court of BiH, the Court of BiH decided without delay to release all the defendants from prison, not specifying any measures to ensure their appearance before court, excluding any order for detention, so that all the defendants could be released. […] The Prosecutor's Office considers that the release of the defendants caused a clear and real danger to further smooth and lawful conduct of criminal proceedings. However, given the provisions of Article 131, paragraph 2 of the BiH CPC, which states: "detention shall be determined or extended in a decision of the Court on

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		prosecutor's motion ... ", the Prosecutor's Office of Bosnia and Herzegovina has moved for detention of all defendants on grounds under Article 132, paragraph 1, subparagraphs a) and d) of the BiH CPC, which fulfils the basic prerequisite for detention. […] All of the specific circumstances of the crime of genocide, as one of the most serious violations of the values protected by both domestic and international law, make the Prosecutor's Office believe that mass criminal acts were committed in these particular cases. Taking into account the great suffering and pain that was caused to the victims and their families, the Prosecutor's Office believes that it is right to establish the existence of extraordinary circumstances and a result, which is reflected in the disruption of public order if the defendants remain at large. That legitimate fear that victims confronted with the defendants in their places be retraumatized is justified is confirmed by the fact that owing to the latest events, i.e. termination of prison sentence of the defendants, one of the protected witnesses suffered initial shock, anger, fear for himself and his family and the only recourse in this situation for him and his family is to move out of their property, to leave their place of residence and look for a safer place for himself and his family. This information was obtained directly in a conversation an investigator of the Prosecutor's Office had with the protected witness. […] In this case, it has clearly proved that, after the decision of the Constitutional Court, which was based on jurisprudence of the European Court of Human Rights in Maklouf and Damjanovic v. Bosnia and Herzegovina, there is a legal gap that would have resolved the emerging problem if it had been filled in. It is very important to note that the reason for the reversal of this judgment was not a violation of the right to a fair trial (compare, for example, the Constitutional Court's Decision No. AP 4129 I 09), including the question of finding of guilt for the commission of the most serious crimes, but only the question of the application of more lenient law and the possibility of redefining the sentence for an elimination of violations of Article 7 of the European Convention, which is determined by the Constitutional Court. However, formal and technical consequences of the decision of the Constitutional Court in the present case affect inevitable elements of the criminal proceedings that, however, have not been disputed by the Constitutional Court. Consequently, the interest of the state is to protect part of the criminal proceedings that is not disputable from the point of view of human rights and freedoms. Consequently, and according to the interpretation of the Prosecutor's Office, the decision of the Constitutional Court of BiH was not aimed to challenge the execution of the sentence as such in principle.

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		Unfortunately, starting from the previous explanation, the Criminal Procedure Code does not regulate the situation in which BiH found itself after the quashing of decision on appeal against original verdict by the Constitutional Court. Obviously, it is a legal limbo. Article 138, paragraph 3 of the CPC clearly determines the maximum length of detention after the first instance verdict. On the other hand, the CPC does not provide for the quashing of verdicts and retrial. Consequently, the CPC does not provide for a possibility to remand criminal proceedings to a certain stage and, therefore, consequences for the accused defendant in terms of detention or confinement in such situations are not provided for. That is because Article 333 in conjunction with Article 327, paragraph l.t) provides for the possibility of a new trial because of, inter alia, a decision of the Constitutional Court which has identified violations of human rights and freedoms. However, according to the above-cited provisions, quashing of the judgment is not provided for in such cases. Of course, according to the autonomy of the Constitutional Court in determining ways of eliminating violations of human rights and freedoms (Article 74, paragraph 4 of the Constitution of Bosnia and Herzegovina, Official Gazette No. 60/05, 64/08, 51/09), the Constitutional Court can work out a mode, which is not necessarily in agreement with CPC. However, in such a situation, as in this case, if the Court of BiH cannot apply the interpretation to fill the legal gap it can be found in a legal limbo. [...] The Constitutional Court of BiH would have to alter its position in relation to the most serious offenses and crimes in all applications, 40 of them having been filed, to properly apply the principles of the ECtHR judgment in "Maktouf' and "Damjanovic". The new interpretation of the Constitutional Court must be based on guarantees that the European Convention provides for victims' rights, the right to life, the right to personal liberty, family life, privacy, etc , bearing in mind that all of these rights were violated with these crimes. The right arising from Article 7 of the European Convention does not have supremacy over other individual rights or any other right enshrined in the Convention. Practically, the Constitutional Court could continue finding a violation of Article 7 of the European Convention without quashing the verdict, which would provide a ground not to terminate serving of prison term by offenders but to, thus, give to the Court of BiH clear instructions for retrial only insofar as it relates to the determination of sentence."[2]

[2] These are excerpts from a reply from the Government of Bosnia and Herzegovina dated 20.6.2014 to the joint letter of the UN Special Rapporteur

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		OHR: The Report states that the crime of enforced disappearance is not codified in the three criminal codes of the Federation of Bosnia and Herzegovina (FBiH), the Republika Srpska (RS) and the Brcko District (BD) and that the Ministry of Justice has set up a team to harmonize the criminal legislation at State and entity levels. As far as the comment concerns crimes against humanity already prescribed by the state level Criminal Code of 2003, or the suggested introduction of an autonomous crime of enforced disappearance, please note that it would be against the current constitutional division of responsibilities if all four criminal codes in the country would prescribe exactly the same crimes. Crimes against humanity, as other crimes against the values protected by international law, fall under the exclusive criminal jurisdiction of the State of Bosnia and Herzegovina and as such are prescribed by the state code exclusively. The state Code applies in the entire territory of Bosnia and Herzegovina, unlike the entities' and Brcko District's codes, and thus there is no need for these codes to prescribe the same crimes. In addition, such an approach would make it unclear as to which level would have the primary responsibility for processing such crimes and would in turn lead to a conflict ofjurisdiction. Please note in this regard that entity and BD Courts can apply the State level Criminal Code where cases are transferred from the State Court to lower level court. The working group recommends that local courts are to change their position on the issue of the nonretroactivity of the new criminal code as far as international crimes are concerned. Tn this regard, we need to draw your attention to the judgment of the Grand Chamber of the European Court of Human Rights of July 2013 in the case Maktouf and Damjanovic v. Bosnia and Herzegovina, where such an approach was found to violate human rights. Following the European Court judgment local courts have interpreted such jurisprudence as requiring all genocide and war crimes cases already adjudicated under the 2003 Criminal Code to be revised . Recommendation 87 also states that the BiH Criminal Code needs to be amended to include enforced disappearances as an autonomous crime. It should be noted that unless applied in futuro this could also contravene the

on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence and the Chair of the Working Group on Enforced and Involuntary Disappearances, dated 1 April 2014.

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		principle of legality as interpreted by the European Court of Human Rights. --- Civil society: (TRIAL and a coalition of local associations of relatives of disappeared persons): BiH criminal legal framework on enforced disappearance both at the national and the Entity level is inadequate. Enforced disappearance is not codified at Entity level and ad the State level provisions do not meet international standards. On the one hand, this situation fosters impunity over past crimes and, on the other hand, it jeopardizes the prevention of future violations. In fact, ending impunity for the perpetrators of past crimes, including enforced disappearance is a circumstance pivotal, not only to the pursuit of justice, but to effective prevention. Entity Criminal Codes have not been amended in any way to meet the WGEID's recommendations. On 22 October 2013 the draft law on changes of the Criminal Code of BiH was approved by the Constitutional-Legal Committee of the House of Representatives of the BiH Parliamentary Assembly and contained some remarkable proposals, including the introduction of Art. 190a, with the aim of codifying enforced disappearance as a separate criminal offence also when it is not committed as part of a widespread or systematic attack against any civilian population. This inclusion would certainly be welcomed. However, in November 2013 the proposed amendments to the Criminal Code of BiH were not approved by the House of Representatives. This makes it impossible to forecast when and if such amendments will eventually be approved. Finally, while the Criminal Code of BiH has not been amended to remove the possibility of granting amnesty for serious international crimes, at the end of November 2013 the BiH Ministry of Justice proposed legislative changes that would allow pardon for convicted of war crimes after serving of three-fifths of their punishment. The current Law on Pardon of BiH does not allow pardon for persons accused of genocide, crimes against humanity and other war crimes. However, the new proposed law in its Art. 3 would set forth "the crimes of genocide, war crimes and crimes against humanity, pardon may be granted after serving three-fifths of the sentence". Associations of victims of gross human rights violations during the war are persuaded that the adoption of these amendments would have a disruptive effect on the BiH society and they would perceive it as a form of perverse revictimization. Not only local courts have not changed their position on the issue of the non-retroactivity of the new criminal codes as far as international crimes are concerned, but also tribunals at the State level are applying the archaic provisions

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		of the Criminal Code of the SFRY. In this sense, on 27 September 2013 the Constitutional Court of BiH changed its jurisprudence on the matter, with a view to aligning it with the European Court of Human Rights' judgment on the case Damjanović and Maktouf. […]While in 2007 the Constitutional Court of BiH issued a decision – in line with the recommendations issued by a number of international institutions – on the leading case Maktouf (AP/1785/06 of 30 March 2007) affirming that the 2003 BiH Criminal Code must be applied, on 18 July 2013 the Grand Chamber of the European Court of Human Rights rendered a judgment on the case Maktouf and Damjanović finding a violation of Art. 7 of the European Convention on Human Rights (no punishment without law). The European Court 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 European Court 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 SFRY Criminal Code been applied. The Court 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.[…] […]In a press release issued on 18 July 2013 regarding the judgment of the European Court of Human Rights, the Court of BiH stated that "it ensues from the Court's decision that when it comes to more serious forms of war crimes, the application of the 2003 Criminal Code is not in contravention of the Convention".43 It further noted that it "[...] will in future cases, on the case-to-case basis, consider which law is more lenient to the perpetrator, bearing in mind the circumstances of each case", as it has been doing in its previous case-law, resulting in the application of the SFRY Criminal Code in eight war crimes cases in total.[…] Mr. Damjanović obtained the reopening of the proceedings and in December 2013 the Court of BiH reduced his sentence. Mr. Maktouf is still to be retried. Between September and December 2013 appeals have been filed in over 50 war crimes cases, including enforced disappearance, 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

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		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. In cases, including of genocide, where the retrial already took place, sentences were dramatically decreased, thus conveying an unacceptable message to BiH society at large. As a matter of fact, the Court of BiH is granting retrial to all those who appeal under the previously mentioned grounds and, in the meantime, it is systematically ordering the release of those concerned, contrary to what is prescribed under the BiH Code of Criminal Procedure. --- Other actors: In 2012, BiH ratified the Convention for the Protection of All Persons from Enforced Disappearance refraining from formulating any reservation that may result incompatible with the object and purpose of the treaty. BiH also recognized the competence of the Committee on Enforced Disappearances to receive and examine individual and inter-State communications pursuant to Articles 31 and 32 of the Convention. Criminal Codes of the entities still do not include enforced disappearance neither as a crime against humanity or as a separate criminal offence. Entities rely on provisions of criminal codes outlawing offences that are related but not equal to enforced disappearance, such as abduction, torture, illegal deprivation of liberty, etc. At the national level, enforced disappearance still is not codified as an autonomous offence. Article 172 of BiH Criminal Code refers only to enforced disappearances committed as part of a widespread or systematic attack against any civilian population, with the knowledge of the attack. In June 2013, the BiH Ministry for Human Rights and Refugees (MHRR) set up a working group, composed of ten members (MHRR, State and entities' Ministries of Justice and a Department for Judicial Affairs of the Brcko District of BiH, the BiH Prosecutor's Office, State Investigation and Protection Agency - SIPA, entities' Ministries for Labour and Social Affairs, Missing Persons Institute of BiH) to work on an Initial Report on the implementation of the Convention on

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		Enforced Disappearance - due in 2014. Over the past years, no amendments to article 118, para. 2, have been made.
88. On the institutional side, the Working Group heard from different stakeholders that the presence of international judges was considered an important asset in the functioning of the Court. The Working Group therefore recommends that this component be kept for as long as necessary to ensure that justice is delivered and is seen to be delivered in an impartial manner.	60. The Court of Bosnia and Herzegovina and the Bosnia and Herzegovina Office of the Prosecutor were created as "hybrid" institutions composed partly of international judges and international prosecutors. However, the plan is that the international component should come to an end in the near future. The Working Group heard from different stakeholders that the presence of international judges was considered an important asset in the functioning of the Court and recommends that this component be kept for as long as necessary to ensure that justice is delivered and is seen to be delivered in an impartial manner.	Government: Court of BiH / Office of the President of the Court: With regard to the recommendation, first of all we want to point out that the presence of international judges was of immeasurable importance to the work of the Court, especially in the first years after its inception. The international judges, with their knowledge and experience, contributed to the strengthening of the rule of law, the introduction of international norms and standards in war crimes trials and their involvement certainly helped the build public confidence in the Court and that it is perceived with public eyes as impartial and independent. However, the 26 December 2006 Agreement with the Registrar's Office stipulates transfer of responsibilities from the Registrar's Office onto national institutions, including gradual appointments of local judges, prosecutors and other professionals in positions that are vacant after their international counterparts left. The process that began in 2006 was successfully completed in late 2012, since when international judges have not been sitting on the Court. --- OHR: Regarding the mandate of international judges please note that all mandates of international judicial officials ended at the end of 2012, since the legislature of Bosnia and Herzegovina failed to adopt the necessary legislative changes to prolong such international presence. --- Civil society: (TRIAL and a coalition of local associations of relatives of disappeared persons): There are no international judges sitting in the BiH Court anymore. This has slightly undermined the trust towards the Court of associations of relatives of victims, in particular those of Bosniaks and Croats.
89. The capacities of cantonal and districts courts to try war criminals should be strengthened so as to enable them to try most of the cases	61. Most of the local courts are not well prepared to prosecute and try perpetrators of international crimes. For instance, entity and district courts have no adequate courtrooms	Government: High Judicial and Prosecutorial Council of BiH: /see also comments under Recommendation 79/ As a consequence of the increasing number of war crimes at the cantonal and district courts and prosecutor's offices, as a result of the transfer of war crimes

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in the future in appropriate conditions.	or technological equipment that would allow an efficient protection of witnesses during trial. There are no special prosecutors at the local level in charge of “war crimes”. The capacities of cantonal and districts courts to try war criminals should be strengthened so as to enable them to try most of the cases in the future in appropriate conditions.	cases from the state judiciary onto the entity judiciary, a need has arisen to establish programs for the protection and support to witnesses under threat and vulnerable witnesses. For this purpose, activities, which will contribute to the securing of adequate physical and technical capacity of cantonal and district courts and the Basic Court of Brcko District have been initiated for more efficient administration of justice and the application of witness protection measures. In 2010 HJPC adopted standards for the application of measures for the protection of witnesses in the courts in Bosnia and Herzegovina. Apart from the protection of witnesses, this document establishes standards for the size of courtrooms and related facilities and technical standards for equipment to ensure efficient operation of the courts in the war crimes prosecution. In accordance with these standards, after the completion of the procedure of public procurement HJPC hired an architectural company to design necessary technical documentation - architectural drawings for preliminary design for the construction of courtrooms and related facilities in 10 cantonal / district courts, as well as in the Basic Court of Brcko District. The HJPC's ICT Department developed technical specifications in-house and outsourced consultants to develop technical specifications of the audio / video system and videoconferencing system equipment that will be used to support legal proceedings, including cases of application of witness protection measures of witness examining in separated rooms in court or through video -conference link from another court. European Union provided necessary funds through the "Support to the BiH judiciary - IPA 2009" project and selected a contractor after completion of the tender procedure under its auspices. In 2013 works and installation of audio-visual systems in 11 of the above locations were completed. The completion of these activities created adequate physical and technical conditions in the 10 cantonal / district courts, as well as in the Basic Court of Brcko District, for the implementation of measures to protect witnesses in war crimes cases. They also created technical conditions for the improvement of quality performance of the courts and prosecutors' offices and, at the same time, for the achievement of greater efficiency in their work when it comes to war crimes and in other types of cases whose nature and complexity require special technical conditions for better processing. Further, thanks to funding of the Delegation of the European Union, a video conferencing system that connected 19 courts, eight prosecutor's offices and HJPC was installed. The use of video conference system by the judiciary in Bosnia and

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		Herzegovina will lead to saving time that is spent on travel of witnesses and experts, reducing travel and other expenses of witnesses and expert witnesses, then to increasing efficiency and better communication. The video-conferencing system will be used for the implementation of witness protection measures in the cantonal / district courts, where it is not possible to arrange separate rooms for protected witnesses. Protected witnesses who will testify before these courts will be able to testify via video link and will be located in a different cantonal / district court. --------- Other actors: In the previous period continued the process of strengthening the capacity of cantonal and county courts, and with the help of international donors their capacity was greatly strengthened, gaining new and more sophisticated equipment. However, this process should be continued, especially taking into account increasing number of war crimes processed before cantonal and county courts.
90. The Working Group met with several victims who expressed various concerns and who sometimes felt left aside by the official institutions. The Working Group deems that the justice system in Bosnia and Herzegovina should give more attention to the victims. In this connection: (a) An effective public system of free legal aid should be established to enable relatives of disappeared persons to receive legal support if they cannot afford it; (b) Offices of the prosecutors	64. The justice system in Bosnia and Herzegovina should give more attention to the victims. An effective public system of free legal aid should be established to enable relatives of disappeared persons to receive legal support if they cannot afford it. Offices of the prosecutors and courts at all levels should have consistent rules in dealing with the public in general and with families of the disappeared in particular. In particular, families of victims should be more regularly given information on the process of investigation, the results of those investigations and whether trials might be forthcoming. […] 65. There were also concerns that the witnesses and victims were not	Government: Ministry of Justice of BiH: Recommendation 90 refers to a need for the adoption of the Framework Law on Free Legal Aid. We point out that the Ministry of Justice of Bosnia and Herzegovina has prepared and offered to resolve this important issue on several occasions, but the proposed legislation have not got parliamentary support. This issue is discussed during the Structural Dialogue between the EU and Bosnia and Herzegovina. The Ministry of Justice has prepared a new working version of this legislation and at this stage some consultations have already been held, so the activities will continue and the Draft Law will be submitted for adoption. ---------- Prosecutor’s Office of Brcko District of BiH: Point b) - Prosecution has established an outreach system through strategic documents (the 2011-2014 Strategic Plan and the 2011-2015 Public Relations Strategy), the Rulebook on Internal Structure and Operations and other by-laws. In this sense, an officer is designated for public relations, who is in charge of regular proactive reporting on matters of public concern, singling out the importance of war crimes cases. Further, the officer also acts upon requests for access to information that may be submitted by any interested person. Point c) - In addition to the modes of communication under paragraph 3 above, the Instruction on Communication of the Prosecutor's Office with Clients determines

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and courts at all levels should have consistent rules in dealing with the public in general and with families of the disappeared in particular. In particular, families of victims should be more regularly given information on the process of investigation, the results of those investigations and whether trials might be forthcoming; (c) Special personnel should be appointed to meet with families and inform them, on a regular basis, of progress made in their cases; (d) Greater training for all public servants working on issues related to enforced disappearance should be held to allow them to be better informed on the issues and to provide the victims with a better service; (e) More should be done to protect and offer assistance to victims and witnesses, in particular women. In particular, the programme for the protection of witnesses should be improved and expanded at the State level,	well protected against reprisals or intimidations and that the psycho-sociological assistance provided to them was insufficient. A person with whom the Working Group met told about his experience as a witness: he complained that he was threatened on the telephone before his appearance before the Court. According to this person, witness protection is almost non-existent: "It is reduced to a single phone call to the witness prior to the court proceeding … During and after trial, witnesses never hear back from the programme." Witnesses under Threat and Vulnerable Witnesses, adopted at the level of Bosnia and Herzegovina, the entities and Brčko District, and the Law on Witness Protection Programmes, adopted at the State level only. […] 67. The Working Group was informed that programmes of support, including psychological support, have been initiated at the State level and in some places at the local level, very often in cooperation with local NGOs. However, such programmes need to be strengthened and systematized. 68. More should be done to protect and offer assistance to victims and witnesses, in particular women. In	procedures of obtaining direct information on a daily basis about the case from the acting prosecutor by parties concerned, including families of missing victims. In the event case of dissatisfaction with the information received from the acting prosecutor party has the right to be heard and listened to by the Chief Prosecutor. Point e) - Recognising the need to provide witnesses, particularly witnesses - victims, witnesses under threat and vulnerable witnesses, with assistance, the Prosecutor's Office has established a mechanism of psychological support for witnesses in investigations. The existing support mechanism implies the availability of psychological support to witnesses in order to provide expert help to these people and prevent deterioration of their health due to their role of witness in the proceedings. Institutional support established in a Protocol on Cooperation between the Prosecutor's Office and the Police in this area can be extended after an indictment is filed, although such support is provided by the Basic Court of Brčko District at this stage of criminal proceedings. ---------- High Judicial and Prosecutorial Council of BiH: Point d) – In 2012 and 2013 the Entity Judicial and Prosecutorial Training Centres held several seminars on various issues in the area of war crimes. However, none of the seminars explicitly addressed the issue of forced disappearance of persons in the context of war crimes. Point e) - In 2011 the HJPC, with the financial support from the British Embassy, implemented the "Support to the BiH Judiciary in the War Crimes Prosecution" Project, within which the Rules of Procedure of Protection Measure Application to Eye Witnesses and accompanying manual with the Rules of Procedure were developed. The Rules of Procedure allow courts to use all witness protection capacities in the best possible way. In 2012, as a follow-up to previously completed projects, HJPC launched the "Improving the System of Protection Measure Application to Eye Witnesses" which was funded by the British Embassy, too. This project developed the "Procedural Witness Protection Measures" training module that enabled the creation of a sustainable system of training in the field of protection measure application to eye witnesses in the courts and prosecutors' offices. It held specialized training for judges and prosecutors and other relevant stakeholders who worked in the field of application of witness protection measures. The courses of training included the judicial police, staff of Social Welfare Centres and non-governmental organizations working in this field. In 2014 HJPC has continued its cooperation with the Embassy of Great Britain and

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and similar programmes should be created at the local level; (f) Programmes of psychological assistance should be generalized and strengthened where they already exist. Such programmes should also include a gender perspective and give special attention to the specific trauma suffered by members of the family of a disappeared person; (g) Measures of vetting should be improved and/or systematized. Whereas such measures have been taken in the past, it is not clear whether those identified as perpetrators have been dismissed from public offices, including police forces. Similar vetting procedures should be organized to bar perpetrators from holding high-level offices in public companies.	particular, the programme for the protection of witnesses should be improved and expanded at the State level, and similar programmes should be created at the local level. In the same spirit, programmes of psychological assistance should be generalized and strengthened where they already exist. Psychological support to victims and witnesses should not be restricted to a short period of time before the person appears before the court. It is well known that such support is crucial prior to the testimony, during the trial, but also for a certain period of time after the trial. Such programmes should also include a gender perspective and give special attention to the specific trauma suffered by members of the family of a disappeared person. 69. In many cases perpetrators continue to hold office, often in the same communities where victims and their families live. At times the perpetrators still hold high-level offices. This constitutes a permanent threat and intimidation for the victims. Measures of vetting should be improved and/or systematized. When such measures have been taken in the past, it is not clear whether those identified as perpetrators have been dismissed from public offices, including the	the five-month „Improvement of Judicial Capacities to Adequately Apply Measures of Support and Protection of Witnesses". This project will develop a guide to the witness protection measure application as practical guidance to judges and prosecutors who apply these measures. Moreover, in cooperation with JPTCs of RS and FBiH training of judges and prosecutors in transfer of knowledge from the state-level judiciary to the judiciary at the cantonal, district and Brcko District levels will be held. One of the activities of this project is informing and raising awareness among potential witnesses on measures of their protection and create an environment in which witnesses feel safe and secure in situations where it is needed. --- Court of BiH / Office of the President of the Court: There is the Witness Support Department in the Court which is inter alia responsible for the provision of psychological support to witnesses before, during and after their testimony. Accordingly, the Department contacts witnesses immediately after the confirmation of indictment in order to inform the witness of the beginning of the trial and to assess their psychological and health conditions and other needs of the witnesses. From that moment until the final verdict in the case, the Department has a number of contacts with the witnesses. Further, from that moment on the staff of the Department is available 24 hours a day to witnesses for any questions, changes or anything else that they need in relation to the testimony. Should a witness report being intimidated to the Department, the past practice was to immediately notify the penal of judges and the Prosecutor in charge of the case in order to undertake all necessary measures to protect the witness. When it comes to the establishment of the Witness Support Department at the entity level, the UNDP "Support to the Prosecution of War Crimes Cases in BiH" project has established several new departments in the entity courts. In accordance with the obligations under the National War Crimes Strategy, the Witness Support Department of the Court of BiH assists in establishing these departments through education, training and exchange of experiences with newly employed staff. At the entity level, currently there is a total of 11 departments for support to witnesses in the courts and prosecutor's offices and three new departments are in the process of establishing. All departments have the same mission, which is to provide support to witnesses whenever necessary. To ensure that support to witnesses is as professional and of high quality as possible, staff of the Witness Support Department have meetings on a regular basis where they discuss their experiences,

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	police force and public companies.	challenges and risks in their daily work. However, given that the "mandate" of the Witness Support Department is limited and ends with the completion of criminal proceedings, each department sets up in its local community a network of governmental and non-governmental organizations providing psychosocial support, legal aid and related issues, which in its work can serve as a referral system where the witnesses who need it are referred to after their testimony. An example is the NGO "Vive women" from Tuzla, which has been for many years active in providing not only psychosocial support to victims, but also professional psychological support to witnesses and which are involved in direct work with witnesses / victims. Apart from them, we can mention "Medica" NGO, which has a network of support to witnesses in three cantons and which is used by the existing Witness Support Departments in their local communities as a referral system. --- Ministry of Justice of Republika Srpska: [R]ecommendation 90, subparagraph e) and subparagraph f), we note that district courts and district prosecutor's offices in the Republika Srpska established the Witness Support Departments, which were initially funded from funds provided by UNDP project and future funds will be provided under the Justice sub-sector of BiH, which is funded by the European Union IPA 2012/2013, which was agreed at the third meeting of the Structured Dialogue held in Mostar. Representatives of the supervisory body and the European Commission signed an operational memorandum, while the finance ministers of BiH and Entities signed a financial memorandum. Accordingly, administrative personnel and psychologists to be working on war crimes cases will begin work in 2014. When it comes to the portion of the recommendation relating to the witness protection programme, we note that the Republika Srpska has the Law on Protection of Witnesses in Criminal Proceedings (RS Official Gazette No. 48/03), which provides for measures to protect witnesses in criminal proceedings before courts of the Republika Srpska, including war crimes cases. Further, pursuant to Article 25 of the Law and the Criminal Procedure Code of the Republika Srpska (RS Official Gazette of the Republika Srpska No. 53/12), the President of the RS Supreme Court enacted the Rulebook on the implementation of measures to protect witnesses in the courts of the Republika Srpska (RS Official Gazette, No. 64/13), which prescribes and ensures in more detail proper implementation of measures for the protection of witnesses in criminal

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		proceedings before the courts of the Republika Srpska, as prescribed by law. --- Civil society: (TRIAL and a coalition of local associations of relatives of disappeared persons): 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. This 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. No regular system of information for relatives of disappeared persons has been established by prosecutors and courts. By contrast, further obstacles have been introduced. In particular, in March 2012 the State Court of BiH amended its rulebook on public access to information under the Court's Control and Community Outreach. Currently, documents issued by the Court are censored and the Prosecutor's Office of BiH does not provide complete information on the indictments of war crimes. Arts. 41 to 46 of the amended rulebook of the Court set forth the "anonymization of Court decisions and other documents distributed to the public", thereby disposing that certain data (including names and surnames of those accused, suspected of, or convicted for war crimes, their representatives, the places where the crime has happened, as well as the names of private companies, institutions and the like) are substituted or removed from Court's decisions and other forms of information (case summaries, audio-video materials and the like). This situation has been the subject of harsh criticism and is a source of further anguish for victims of crimes committed during the war, who fear that their access to investigations related to their cases or to ongoing proceedings, if any, as well as their right to know the truth may be further hampered. The anonymization policy does not seem to be in line with international standards and, in particular, with Art. 14, para. 1, of the International Covenant on Civil and

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		Political Rights which establishes that “any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children”. Notably, on 18 July 2013, the HJPC issued a recommendation to all tribunals and prosecutors’ offices across the country, declaring that they are not under an obligation to anonymize their legal acts, but they have to balance between private and public interests. Associations of relatives of missing persons report the insufficiency of the psychological support provided to witnesses and victims during trials. The situation is particularly critical in Republika Srpska and before district prosecutors’ offices. In Republika Srpska, the government suspended the budget line concerning support of victims and witnesses during war crimes trials, thus worsening an already precarious situation where local Centres for Social Work were in charge of this task without having the necessary training to do so. UNDP recently obtained some funding to fill the gap, but this does not ensure sustainability on the mid and long term. Over the past years, UNDP also funded the establishment of new departments to offer support to witnesses during war crime trials at the local level. However, sustainability on the long term is not ensured and several courts across the country remain inadequately equipped. Furthermore, the relevant legal framework for victims’ and witnesses’ protection remains inadequate. To the knowledge of the subscribing associations, no new comprehensive programme of vetting has been carried out since 2010. --- Other actors: In the previous period there were observed improvements in this field and with the assistance of UNDP in several prosecutors' offices and courts are included psychologists who provide assistance to victims and witnesses. In BiH, at different levels, there are established institutions (centers and institutes) that provide free legal aid to the different categories for the purpose of resolution of their status issues. There is a need to improve the level of communication between victims of war crimes and their families with the courts and prosecutors' offices, and it is a long process that requires continuous work.

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		Similarly, the process of providing psychological support is largely uncoordinated and fragmented, and in certain places different NGO's and clinics have achieved an enviable level of work, however, this also only applies to larger urban places. In smaller cities the victims are often faced with a reduced capacity of the institutions that they should be supported by. It is necessary that the work should continue to ensure to all citizens an equal level of support in the entire territory of Bosnia and Herzegovina.