

[Embargoed for: 5 March 2003]

Im. Flh.sekt. 2002 J.nr. 7/511-11

- 1 APR 2003

Antal bilag

Aktnr. 15

Public

163

amnesty international

Bosnia-Herzegovina

3/4-03

Honouring the ghosts: confronting impunity for "disappearances"

March 2003

Summary

AI Index: EUR 63/004/2003

"Srebrenica is also a name for a post-traumatic syndrome, the syndrome displayed by the women, children and old people who did not die and who, ever since July 1995, six years now, still have no news of their husbands and sons, fathers, brothers, uncles, grandfathers. Thousands of amputated lives six years later, robbed of the affection and love of their kin now reduced to ghosts who return to haunt them day after day, night after night."

(ICTY Judge Almiro Rodrigues, announcing the verdict in the trial of Bosnian Serb General Radislav Krstić, 2 August 2001)

Conservative estimates put the number of persons remaining unaccounted for after the end of the war in Bosnia-Herzegovina at over 17,000. Many of these people "disappeared" after having last been seen in the hands of armed forces of one of the opposing sides. Most are now believed dead, after having been extrajudicially executed and buried in mass graves, or otherwise disposed of. The gradual progress which has been achieved over the years in the exhumation and identification of bodily remains recovered from mass graves indicates that the true number of missing persons in the end will be much higher.

However, "disappearances" should not just be seen in terms of a huge humanitarian problem. They also constitute one of the most serious human rights violations, recognized by international standards and case law of international and regional human rights bodies as being a continuing violation, as long as the fate of the victim is not ascertained and the perpetrator brought to justice. In Bosnia-Herzegovina, the vast outstanding number of "disappearances" represent perhaps the most serious ongoing human rights violation in the country.

Paradoxically this violation has been increasingly written off as an inevitable by-product of war, and not as deliberate and grave crimes, committed and ordered by individuals who continue to enjoy impunity for their acts. In many cases, the victims of this human rights violation in Bosnia-Herzegovina were deliberately targeted on account of their ethnic origin, or their social or political status in the local community, and as such their "disappearance" formed part of a larger pattern of persecution. Many of the victims were known to have been

the efforts of the police and judicial bodies, other state and entity officials, the relatives, organizations and individuals working on their behalf, and dedicated and qualified human rights experts in the international community.

This report summarizes a 63-page document (20856 words): *Bosnia-Herzegovina, Honouring the ghosts: confronting impunity for "disappearances"*, (AI Index: EUR 63/004/2003) issued by Amnesty International in March 2003. Anyone wishing further details or to take action on this issue should consult the full document. An extensive range of our materials on this and other subjects is available at <http://www.amnesty.org> and Amnesty International news releases can be received by email:

<http://web.amnesty.org/ai.nsf/news>

INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 0DW, UNITED KINGDOM

amnesty international

Bosnia-Herzegovina

Honouring the ghosts: confronting impunity for "disappearances"



Amnesty International members commemorating the fifth anniversary of Srebrenica, in Paris, France. July 2000. © AI

March 2003
AI Index: EUR 63/004/2003

INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 0DW, UNITED KINGDOM

TABLE OF CONTENTS

INTRODUCTION – HISTORICAL CONTEXT	1
I. “DISAPPEARANCES” AS CRIMES UNDER INTERNATIONAL AND NATIONAL LAW	5
A. INTERNATIONAL LEGAL FRAMEWORK	5
<i>A complex and continuing crime</i>	8
B. NATIONAL LEGAL FRAMEWORK AND CASE LAW	9
II. TOWARDS RESOLVING CASES (1): THE HUMANITARIAN SOLUTION - EXHUMING AND IDENTIFYING MORTAL REMAINS	12
III. TOWARDS RESOLVING CASES (2): ACHIEVING JUSTICE	16
A. INVESTIGATIONS	17
B. PROSECUTIONS	20
C. THE NEED FOR LEGAL REFORM	23
<i>A question of retrospectivity</i>	25
IV. ENDING IMPUNITY FOR THE PERPETRATORS – ATTEMPTS SO FAR	26
A. THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (TRIBUNAL)	26
B. PROSECUTIONS BEFORE THE LOCAL COURTS	29
(i) <i>Partial justice</i>	29
(ii) <i>Non-Cooperation</i>	31
Non-cooperation by the military	32
Non-cooperation between and within entities	35
Non-cooperation between states of the former Yugoslavia	37
(iii) <i>The need for supervision and assistance – the role of the international community</i>	41
V. REPARATION, INCLUDING COMPENSATION, FOR VICTIMS AND THEIR FAMILIES	45
A. COMPENSATION	48
VI. RESPECTING THE RIGHTS OF THE RELATIVES	49
A. THE RIGHT TO KNOW	51
B. ACCESS TO SOCIAL AND ECONOMIC RIGHTS AND BENEFITS	53
VII. NON-JUDICIAL MECHANISMS	56
ICRC WORKING GROUP	56
MISSING PERSONS INSTITUTE	57
TRUTH AND RECONCILIATION COMMISSION	58
CONCLUSIONS AND RECOMMENDATIONS	59
RECOMMENDATIONS	60
<i>Legislative reform</i>	60
<i>Implementation and practice</i>	61
<i>Exhumations and identifications</i>	62
<i>Rights of the relatives</i>	63

Bosnia-Herzegovina

Honouring the ghosts – challenging impunity for “disappearances”

“ Forced disappearance ... is the ultimate form of corruption, an abuse of power which allows the authorities to transform law and order into something derisory and to commit infamous crimes. ”

Niall Mac Dermot (†), Secretary General of the International Commission of Jurists, speaking at the first international colloquium on forced disappearances, 1981.¹

Introduction – historical context

“Disappearances” represent perhaps the largest unresolved human rights issue in Bosnia-Herzegovina.² The number of victims and their relatives is huge. Virtually no cases have resulted in those responsible having been brought to justice and the trauma of relatives and dependants left behind has not healed. It seems that this violation, in spite of recognition of its continuing nature in international standards and case law, risks becoming an all-but-forgotten issue in the country. As is the case with other human rights violations of the recent past, the plight of the victims risks being written off as an inevitable and intractable by-product of the war, and as such no longer a priority issue in the context of the rapid result-driven stabilization and normalization process the country has been undergoing. Certainly outside Bosnia-Herzegovina, the problem is by and large ignored when the human rights situation in the country is subjected to review and discussion.³

¹ As quoted by Federico Andreu-Guzman in *The draft international convention on the protection of all persons from forced disappearances*, International Commission of Jurists Review, No. 62-63/ 2001, page 73.

² Amnesty International considers that a “disappearance” has occurred whenever there are reasonable grounds to believe that a person has been taken into custody by the authorities or their agents, and the authorities deny that the victim is in custody, or refuse to disclose any other information on his or her whereabouts and fate. Since 17 July 1998, when the Rome Statute of the International Criminal Code was adopted, it has been recognized that enforced disappearances can amount to a crime against humanity when committed by individuals who are not connected with any government, and who are acting pursuant to or in furtherance of an organizational policy.

Although during the armed conflict in Bosnia-Herzegovina strictly speaking only the (Bosniak majority) Bosnian Government was the internationally recognized state government, both the *de facto* Republika Srpska (Bosnian Serb) as well as the Bosnian Croat leadership of the self-proclaimed republic of Herzeg-Bosna exclusively controlled large parts of the country through their mono-ethnic armed forces and administrative bodies. In addition the Federal Yugoslav government and army as well as their counterparts in Croatia extensively directed, financed and reinforced the armed forces of their respective ethnic kin in Bosnia-Herzegovina.

³ For example the list of 91 requirements which the Council of Europe requested Bosnia-Herzegovina to meet when inviting the country to join in January 2002, makes no mention of the issue of the “disappeared”. Amnesty International has lobbied the Parliamentary Assembly of the Council of Europe (PACE) to address this issue in the wider context of the Balkans (see “Persons unaccounted for as a result of armed conflict or internal violence in the Balkans”, Doc. 9589, 14 October 2002, Motion for a recommendation, presented by Mrs Zwerver and others). Other intergovernmental and international organizations in Bosnia-Herzegovina have taken a piecemeal approach

waves of “disappearances” to the larger “ethnic cleansing” operations that were conducted during the war and which were accompanied by large scale human rights violations.⁷ Apart from this, Amnesty International has found that also in individual cases, “disappearances” were clearly linked to forcible expulsion practices, often targeting locally well known people who had political or economical influence, and sending a clear message to their families as well as other remaining members of their ethnicity to leave.⁸ Many of the missing persons were last sighted in detention camps or in some other form of custody, that is, under the control of regular or paramilitary armed forces.

Furthermore, prosecutions of persons suspected of serious violations of international humanitarian law before the International Criminal Tribunal for the former Yugoslavia (Tribunal), have additionally demonstrated, albeit indirectly, that “disappearances” were a distinct element in attacks upon the civilian population, and as such their occurrence was intentional rather than an accidental by-product of war (see also below under Chapter IV).

In October 1995, just before a final peace settlement was reached in Bosnia-Herzegovina, Amnesty International launched a worldwide campaign on “disappearances” in former Yugoslavia to increase and mobilize international awareness of the massive occurrence of this human rights violation and to urge government authorities in the countries of former Yugoslavia to provide information on the fate and whereabouts of the tens of thousands of people who had “disappeared” during the wars.⁹ Another objective of the campaign was to bolster support for the institution of the so-called Special Process for Missing Persons set up by the United Nations (UN) Commission for Human Rights in 1994.

Regrettably, the Special Process turned out to be a short-lived mechanism, insufficiently funded and resourced from the very beginning. The UN Expert leading the

⁷ Thus, the first wave of “disappearances” occurred in eastern Bosnia-Herzegovina (in the so-called Podrinje region) between April and September 1992, closely followed by another one in northwest Bosnia (primarily in and around Prijedor town) from May-August 1992; in the summers of 1992 and 1993 there were several larger incidents of “disappearances” in the Herzegovina region and the last massive occurrence was marked by the “disappearance” of over 8,000 Bosniak men and boys after the fall of Srebrenica in July 1995.

⁸ For example the case of Nura Berbić and her mother Hasnija Demirović, Bosniak women who “disappeared” in Banja Luka in September 1995, appears to be directly linked to the persistent harassment of the Berbić family, who owned and operated a successful business in the town, in a clear attempt to force them to leave. Mr Berbić fled Banja Luka shortly afterwards (See also AI Index : EUR 63/017/2001, 3 December 2001).

⁹ The 1995 Framework Agreement for Peace in Bosnia-Herzegovina (Dayton Peace Agreement) did not assign a specific international or national institution to facilitate the resolution of outstanding cases of “disappearances”. The Commission for Human Rights issued two Resolutions in 1994 (respectively 1994/39 and 1994/72) in which it welcomed the creation of a special procedure to resolve “disappearances”, which was to be jointly undertaken by the Office of the High Commissioner for Human Rights (OHCHR) and one member of the Working Group on Enforced and Involuntary Disappearances. In 1995, the Commission entrusted the entire mandate of the Special Process Dealing with the Problem of Missing Persons in the Territory of the Former Yugoslavia to the Expert on Missing Persons, by Resolution 1995/35.

The UN Declaration on the Protection of All Persons from Enforced Disappearance (hereafter: UN Declaration on Disappearances) holds that enforced disappearances occur whenever:

“... persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, thereby placing such persons outside the protection of the law.”

I. “Disappearances” as crimes under international and national law

A. International legal framework

“Effective and enduring intimidation can only be achieved either by capital punishment or by measures by which the relatives of the criminal and the population do not know the fate of the criminal”,

Adolf Hitler¹²

Over and above the fact that they pose an overwhelming humanitarian problem, “disappearances” are clear and flagrant violations of fundamental human rights, enshrined in a number of international human rights instruments. It has been recognized that, generally, “disappearances” violate or threaten the right to life, the right to liberty and security of a person, and the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment. Furthermore “disappearances” can deprive the “disappeared” person (and their family) of the right to respect for family life, and violate the victim’s right to a fair trial, to recognition as a person before the law and to be afforded equal protection by the law.¹³ As “disappearances” can violate several human rights simultaneously, they have been referred to as “multiple” or “cumulative” human rights violations.¹⁴

¹² *Judgment of the International Military Tribunal for the Trial of German Major War Criminals – Nuremberg* 30 September and 1 October 1949, convicting Field Marshal Wilhelm Keitel *inter alia* for implementing Hitler’s 1 December 1941 Night and Fog Decree (*Nacht und Nebel Erlass*), which invented this crime.

¹³ International Covenant on Civil and Political Rights (ICCPR), Articles 6, 7, 9, 10, 14, 17 and 26; European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Articles 2, 4, 5, 6, 8 and 13 and the Convention on the Rights of the Child, Article 9.

¹⁴ *Civil and Political Rights, Including Questions of: Disappearances and Summary Executions*, Report submitted by Mr. Manfred Nowak, independent expert charged with examining the existing international criminal and human rights framework for the protection of persons from enforced or involuntary disappearances, pursuant to paragraph 11 of Commission resolution 2001/46, E/CN.4/2002/71, 8 January 2002, at Paragraph 44.

criminal and human rights framework for the protection of persons from enforced or involuntary disappearance” with a view to identifying gaps which precluded full protection of persons against this violation.¹⁹ The independent expert suggested three possible ways to introduce a legally binding normative instrument on “disappearances”: the creation of a separate treaty such as the draft International Convention on the Protection of All Persons from Forced Disappearance, or the creation of an optional protocol to existing international treaties namely the ICCPR or the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.²⁰

In situations of armed conflict, “disappearances” would breach provisions of international humanitarian law, relating to international and internal conflict, and laid down in the Four Geneva Conventions of 12 August 1949, and their two Additional Protocols.²¹ Thus, the “disappearance” of a prisoner of war would in particular violate the prisoner’s right to be treated humanely, to be protected against acts of violence and not to be subjected to physical and mental torture or other forms of coercion (Articles 13 and 17). Furthermore, it violates their right to notify their family and the Central Prisoners of War Agency (the International Committee of the Red Cross, ICRC) upon capture or transfer to another camp (Article 70 of the Third Geneva Convention), the right to correspondence (Article 71) and the requirement that prisoners of war must be released at the end of hostilities (Article 118).

In many cases, prisoners of war have “disappeared” after they were removed from detention or holding facilities, which were under the control of the regular military, by unknown perpetrators, usually members of paramilitary formations. Government authorities have often exploited such circumstances in order to escape responsibility for these “disappearances”. However, the Geneva Conventions require that any transfer of prisoners of war should be carried out in a humane way and while ensuring their safety, that the detaining party (usually the military authorities) must draw up a list of all transferred prisoners before their departure, and imply that the prisoners themselves should have the opportunity to inform their next of kin of their transfer (Articles 47 and 48).²²

¹⁹ Commission on Human Rights, Question on Enforced or Involuntary Disappearances, E/CN.4/RES/2001/46, adopted without a vote on 23 April 2001.

²⁰ *Civil and Political Rights, Including Questions of: Disappearances and Summary Executions*, as above, at Paragraph 97.

²¹ All four Conventions relate to situations of international armed conflict, though Common Article 3 applies both in international and internal armed conflicts. The conflict in Bosnia-Herzegovina had both an internal and international character, as has been recognized in jurisprudence by the Tribunal for the purposes of finding that provisions contained in Geneva Conventions III and IV applied (see the cases of Tadić, Case No.: IT-94-1-T, Appeal Judgment of 15 July 1999; Blaškić, Case No.: IT-95-14-T, Judgment of 3 March 2000; and the Celebići Camp, Case No. IT-96-21, Trial Judgment of 16 November 1998).

²² The ICRC Commentary on Article 46 states that : “... the Detaining power is obliged to take every possible precaution when transferring prisoners of war. The preparation of lists is an elementary to be taken by the

In this context both the Declaration on Disappearances, the Inter-American Convention on Forced Disappearances of Persons, the draft Convention on Disappearances, and the Rome Statute underline the necessity to define “disappearances” as a separate criminal offence. Such a step could also solve the problems connected to the complex nature of this violation and the fact that each individual case may represent a number of offences, in which various actors may have been involved at various stages, carrying criminal responsibility for various elements of the crime in total (see below under Chapter III).²⁵

B. National legal framework and case law

Bosnia-Herzegovina was provided with one of the most sophisticated and comprehensive human rights protection systems in the world by the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Peace Agreement), which was signed by the former warring parties and the governments of Croatia and the Federal Republic of Yugoslavia on 14 December 1995 in Paris. The emphasis placed on human rights protection and promotion was largely a result of the recognition of the massive and serious human rights abuses that were committed during the war. The Dayton Peace Agreement in particular states that the rights and freedoms set out in the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) shall apply directly in the country and take precedence over all other law, so that people can rely directly on these rights.²⁶ The Agreement provided for the establishment of a Human Rights Commission, consisting of the Human Rights Ombudsperson and the Human Rights Chamber, both of which can examine individual complaints alleging violations of the rights of the ECHR. The Human Rights Chamber - which has a mixed composition of judges comprising both domestic and international jurists - has jurisdiction analogous to the European Court of Human Rights in Strasbourg, and can issue interim injunctions and final decisions, binding upon the entities as well as on the state government.²⁷

Both the Ombudsperson and the Human Rights Chamber have dealt with only a very small number of applications brought on behalf of victims of “disappearances” and/or their families. The Chamber has held in various cases that the fact that the

²⁵ The Inter-American Court of Human Rights, which has dealt with numerous cases of “disappearances”, noted in the Velásquez-Rodríguez case : “The phenomenon of disappearances is a complex form of human rights violation that must be understood and confronted in an integral fashion.” (Inter-American Court of Human Rights, Series C, Decisions and judgments, No. 4, Judgment of 19 July 1988, Secretariat of the Court, San José, Costa Rica, 1988, at Paragraph 50.

²⁶ Article II. Paragraph 2 of Annex 4, the Constitution of Bosnia and Herzegovina.

²⁷ The Human Rights Chamber can also apply the provisions contained in a number of other international human rights instruments, such as the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in as far as applicants can prove that they cannot access the rights safeguarded by these treaties on grounds of discrimination.

that there had been a violation of Mrs Palić's right to respect for family and private life (Article 8 of the ECHR).

The Chamber subsequently found that the Federation as the respondent party also violated Article 3 of the ECHR in a case of a "disappearance" which was eventually resolved. This concerned the murder of four members of the Bosnian Serb Golubović family in Konjic in 1992, of which three Bosniak former police officers were convicted by the Mostar Cantonal Court in July 2000.³² The father of Vlasta Golubović, Dordjo Unković, who was living in Sarajevo, had lost contact with his daughter and her family early on in the war, and did not find out their fate until 1999 when he read in the press about the arrest of some of the defendants. Upon learning this, Mr Unković applied to be present at trial proceedings in the capacity of injured party, and he started doing so from May 1999. In this case, the Chamber had found that the fact that Mr Unković "lived for approximately six and one half years.... without information, official or unofficial, on the fate of his daughter and her family ..." coupled with the "lengthy delay and repeated procedural obstacles" in the criminal proceedings constituted a violation of the applicant's right not to be subjected to inhuman or degrading treatment. The Federation was ordered to pay Mr Unković non-pecuniary compensation for his mental suffering.

The very small number of cases which were found admissible by the Chamber eloquently demonstrates the lack of an adequate legal remedy for victims of "disappearances" and their families under Bosnian domestic law. Officially and legally, "disappearances" do not exist as a crime in the country and are therefore not prosecuted as such, which remains exceptionally hard to bear for those left behind in the long-term wake of this violation in Bosnia-Herzegovina. Families of larger groups of victims have repeatedly joined forces in order to call attention to this problem but their attempts have by and large failed.³³

inhuman and degrading treatment caused by the authorities' complacency and stated that he had "been left in the most complete doubt and apprehension. His anguish and distress have been aggravated by the intimidation and harassment the applicant has been subjected to on account of his persistence in trying to find out his wife's and mother-in-law's whereabouts" (Report of the Ombudsperson in Application No. 7/96, adopted on 30 September 1998, page 9).

³² See Case No. CH/99/2150, *Dordjo Unković against the Federation of Bosnia and Herzegovina* (Decision on admissibility and merits, 9 November 2001).

³³ For examples, the relatives of some 417 Bosniak men who were last seen in Foča prison attempted to bring a private prosecution against the RS in 1999, in conjunction with an application to the Human Rights Chamber ("Fočaci tuže Republiku Srpsku" *Oslobodjenje*, 24 June 1999) which reportedly failed. Currently, a collective application for damages is being prepared by an estimated 10,000 relatives of Bosniak men and boys, who are both still unaccounted for or already found in mass graves. This initiative, organized by several local organizations representing the families of the Srebrenica "disappeared" – the majority of them women in dire economic circumstances – is apparently also directed towards the Chamber. ("Srebreničanke pišu 10 hiljada tužbi", *Oslobodjenje*, 28/29 September 2002).

commissions of missing persons, held intensive negotiations which led to a cross-entity exhumation process, also known as the joint exhumation process.

However, reliable and accurate information on mass grave sites appears increasingly difficult to come by. The Head of the Federation missing persons commission expressed concern in November 2002, stating that "... the commissions which are tracing missing persons have now reached the phase where they are no longer able to locate individual and mass graves without information provided by the responsible authorities [the police, the army and the judicial system]".³⁷ The ICRC similarly considers the lack of information on the location of mass graves to be a major problem, due to the failure of the authorities to cooperate with each other and exchange information.³⁸

International humanitarian law, in particular Articles 16 and 17 of the Convention (I) for the Amelioration of the Conditions of the Wounded and Sick in Armed Forces in the Field (Ist Geneva Convention), requires that the parties to a conflict ensure that details of wounded, sick or dead persons (members of the opponent's armed forces) which may assist in their identification are recorded and, alongside information on the exact location and markings of graves, and the personal details of the persons buried in them, are exchanged at the latest at the end of hostilities.³⁹ To this end, the parties were instructed to set up official information bureaux for prisoners of war.⁴⁰ While each of the opposing sides in Bosnia-Herzegovina during the war established commissions for the exchange of prisoners of war and missing persons - which were, after the conflict, subsumed in the missing persons commissions - they primarily recorded details of missing persons belonging to their own side in the conflict. It is unclear to what extent, if at all, the obligations contained in Articles 16 and 17 were implemented by other bodies, particularly the military authorities.

So far, the missing persons commissions appear to have obtained information on mass grave locations mainly from non-military sources. These often include returning minority refugees stumbling upon human remains once they start reconstructing their property or working their land.⁴¹ It is nevertheless clear that in many, if not most cases, the military (and civilian) authorities had detailed knowledge of grave sites, as was

³⁷ *Oslobodjenje*, "Trebaju nam informacije policije, vojske, pravosudja", 21 November 2002.

³⁸ See ICRC Special Report, "Unknown Fate, Untold Grief", page 24, August 2002.

³⁹ Article 16, Paragraph 1 and Article 17, paragraph 4, of the Ist Geneva Convention. The Commentary to Article 17 (Prescriptions regarding the dead graves registration service) states (under Paragraph 4 - Exchange of information), that "... The Graves Registration Service is concerned, not only with the graves of those fallen in battle, but also, under Article 120 of the Third Convention, with the graves of prisoners of war who die in captivity. (section A)."

⁴⁰ Article 122, Convention (III) relative to the Treatment of Prisoners of War.

⁴¹ For example, Bosniak returnees discovered human remains when repairing a septic tank in front of their house in Kamenica village in eastern RS, where so far seven large mass graves have been exhumed. (*Reuters*, "Mass grave horror unfolds in pretty Bosnia village", 23 October 2002).

Years of pioneering work, coupled with extensive international financial assistance, expert scientific support and political lobbying, ensured that Bosnia-Herzegovina (and indeed the overall region of former Yugoslavia) now hosts a forensic identification facility of unique technological sophistication and scope. A network of five forensic laboratories (three of which are located in Bosnia-Herzegovina), which were either newly created or renovated, and envisaged to complement each other's work, has been built and equipped by the International Commission for Missing Persons (ICMP). The laboratories' primary task is to achieve the accelerated identification of mortal remains, in particular by DNA (deoxyribonucleic acid) analyses, comparing blood samples of surviving relatives with bone extracts collected from remains found in mass graves.⁴⁵ The ICMP-led program currently covers a reported total of 40,000 individuals, for whose identification relatives have given blood samples.⁴⁶

As the DNA-identification process was gathering speed from late 2001 onwards, the number of identified cases has increased correspondingly and some 1,200 persons have now been identified. The first DNA match of a teenage victim from Srebrenica was completed in November 2001 and at the time of writing of this document,⁴⁷ over 580 victims from Srebrenica had been completely identified, the vast majority of them via the DNA-matching process, and were ready for burial.⁴⁸ However, without sustained aid from the international community, which has been decreasing the amount of international funding available for Bosnia-Herzegovina for several years now, the costly process may risk grinding to a halt very quickly.⁴⁹

Amnesty International, Bosnia-Herzegovina: Waiting on the doorstep: minority returns to eastern RS, page 16; AI Index: EUR 63/07/00, July 2000.). Similarly, a mass grave site in Nevesinje in southeastern Bosnia-Herzegovina, located in a deep pit, was subsequently used as a garbage dump. (See, AP, "New Mass Grave Discovered in Bosnia", 7 December 2000). Another mass grave discovered in Podvojanovići near Čajnice in eastern RS, was reportedly covered by a large pile of sawdust from a nearby sawmill owned by the local mayor's brother, who had also been one of the war-time authorities of the town (*Bosnia-Herzegovina Federation TV*, "Total of 31 bodies found so far in mass grave near wartime safe haven", 22 October 2002).

⁴⁵ The ICMP envisages that the former Yugoslav example will become a centre of international excellence and a world leader both in terms of quantity and quality of DNA-identification. Elements of the system as developed by ICMP have reportedly been used in order to identify victims of the 11 September 2001 attacks on the World Trade Centre in New York.

⁴⁶ These numbers include missing persons in Bosnia-Herzegovina (nearly 29,000), Croatia, the Federal Republic of Yugoslavia including Kosovo and the Former Yugoslav Republic of Macedonia.

⁴⁷ Mid-February 2003.

⁴⁸ In the years 1996-1999, according to ICMP, a total of 73 exhumed remains was identified through traditional methods, representing just 0.9 per cent of the total estimate of 7,500 missing from Srebrenica. Apart from identifying mortal remains the process has additionally been used to "match up" skeletal remains belonging to one person but found in more than one location so that they can be buried together.

⁴⁹ According to Gordon Bacon, ICMP chief of staff, the monthly cost of chemicals needed for the process alone is around \$100,000. (*New York Times*, "DNA Tests Help Some Families of Bosnia Victims, but Not Most", by Daniel Simpson, 23 December 2002)

those responsible are shielded from accountability and any traces of evidence or information which might lead to clarification of the person's fate and whereabouts are concealed or destroyed. As "disappearances" are usually carried out by a group of actors within the police or armed forces hierarchy operating according to a chain of command, an entire network of people, all of them bearing responsibility to some degree, needs to cover itself, making the process of documenting individual "disappearances" a challenging one for those who want to find out the truth.⁵⁴ The initial secrecy characterizing a "disappearance" is as a rule continued through the prolonged and persistent failure on the side of the authorities or those in control to disclose any information on the "disappeared" person to relatives, friends, human rights organizations and the public at large, or through the systematic denial of any involvement in the "disappearance", ascribing the acts to wayward or autonomous groups.

This pervading lack of authoritative and substantial information provides a fertile ground for rumours, usually concerning reported sightings of the victims, promises and offers by those claiming to be witnesses to reveal what happened to desperate relatives – often on condition of payment. In addition, what has been witnessed repeatedly in the former Yugoslavia is the "case bargaining" between authorities, suggesting they will solve one case if and when the other side has done the same; an approach which will eventually ensure that virtually no cases are solved at all.⁵⁵

A. Investigations

A crucial component in the battle against impunity for "disappearances" is the launching of investigations into cases of this human rights violation; the duty of states to investigate has been upheld time and again in international human rights law and by international bodies and conferences.⁵⁶ Amnesty International has recommended that governments, in all cases, ensure that reports of "disappearances" are investigated

⁵⁴ See Amnesty International: *Disappearances and political killings, Human rights crisis of the 1990, A manual for action*, ACT 31/01/94, February 1994, Chapter 7.

⁵⁵ This policy of reciprocity, which after the war gradually substituted negotiations over the exchange of prisoners of war with those over the exchange of mortal remains, still forms the basis for many of the processes related to exhumations and disclosure of information. While as a negotiating tool it has achieved results in, for example, ending the gridlock between the Federal Republic of Yugoslavia and Croatia for many years over the resolution of cases of persons who went missing during the early 1990s, the uneven ethnic distribution of the case load in Bosnia-Herzegovina (almost 98 per cent of all outstanding cases concern Bosniaks) means that even as a medium term solution few results will be forthcoming. In fact the policy, as employed during the Working Group discussions (see under Chapter VI), has been very unsuccessful in Bosnia.

⁵⁶ The UN Declaration on the Protection of All Persons from Enforced Disappearance provides that all complaints alleging an enforced disappearance shall be investigated promptly, thoroughly and impartially (Article 13.1). The Vienna Declaration and Programme of Action, adopted on 25 June 1993 by the World Conference on Human Rights, reaffirms that "... it is the duty of all States, under any circumstances, to make investigations whenever there is reason to believe that an enforced disappearance has taken place on a territory under their jurisdiction and, if allegations are confirmed, to prosecute its perpetrators".

“disappearances” in fact led to extrajudicial killings, both sets of guidelines would also apply directly to the investigation of “disappearances”.

What should be underlined is that an investigation into a “disappearance” is by no means concluded, and the human rights violation resolved, when the fate of the victim is “clarified”; in virtually all cases in Bosnia-Herzegovina this would be one of the findings in such investigations, confirming that the victim was killed (or discovering the mortal remains of the victims, bearing indications that they were murdered). If it is established that the victim has been killed, then the killing itself should be investigated with the aim of bringing those responsible to justice.

As will be discussed below, a very tentative start has been made with investigations and prosecutions of the suspected perpetrators in a few cases in Bosnia-Herzegovina. However those investigations failed to satisfy either the guidelines as laid down in the UN Manual or the four criteria recommended by Amnesty International. For this reason, Amnesty International believes that there is a compelling argument for the continuation of the monitoring and supervision of such investigations by international police experts as was done so far by the International Police Task Force of the United Nations Mission in Bosnia (UNMIBH/IPTF).⁶⁰ With this aim, the organization has lobbied policy makers at the European Union, involved in the organization of the European Union Police Mission (EUPM) which took over the supervision of the Bosnian police force from UNMIBH in January 2003. However, so far, this task as such is apparently not being prioritized by the EUPM, as its stated mission reportedly will focus on combating organized crime and corruption.⁶¹

⁶⁰ Letter by AI Secretary General Irene Khan to Javier Solana, Secretary General of the Council of the European Union (TG EUR 63/2002.11) accompanied by a Memorandum, setting out AI's recommendations on the European Union Police Mission (AI Index: EUR 63/018/2002), of 21 October 2002.

⁶¹ The Mission Statement for the EUPM, as outlined in Annex 1 to the EU Council of Ministers' Meeting on General Affairs, 6247/02 (presse 30-G), envisages that EU police monitors ensure that Bosnian police forces undertake criminal investigations into corruption cases and may be involved to an unspecified degree in efforts to investigate and counter “the full range of criminal activities, including organized crime and terrorism”. (Report of 2409th meeting of the General Affairs Council, Brussels 18/19 February 2002, 6247/02 (presse 30-G, page 19). Throughout this document, no mention is made of police investigations into past and present human rights violations, and the role played by the EUPM in supervising and monitoring these. Amnesty International delegates met with officials of the Civilian Crisis Management and Coordination Directorate in the General Secretariat of the Council of the European Union in November and December 2002, and raised the organization's serious concerns with regards to the lack of investigations into these past violations, many of which may amount to war crimes and crimes against humanity. Despite some indications by Council officials that a “benchmarking” process would be set up to monitor investigations into human rights abuses, the organization is not convinced that this work will be prioritized by the EUPM, nor that it will include investigations into past violations (Letter of Javier Solana to Dick Oosting, Director of the Amnesty International European Union office, 3 December 2002).

case.⁶⁴ The suspects - who during the war were the commander and members of the Third Battalion of the military police of the HVO - had been accused of war crimes against the Bosniak civilian population and prisoners of war, detained in the Engineering Faculty at the *Kemal Bjedić* University in West Mostar in 1993. Those detained in the Faculty building included 13 soldiers of the Bosnian Government Army (*Armija Bosne i Hercegovine*, ABiH), all but one of whom were of Bosniak origin, and who were last seen alive in the night of 10 to 11 May 1993.⁶⁵ Their families were represented at the trial as injured parties. The three defendants - one of whom had allegedly been the wartime commander of the military police in Mostar - refused to testify using their right to remain silent, as guaranteed in the Federation Code of Criminal Procedure. By January 2001, one of the suspects had been acquitted, and in May 2002, charges against the four other accused were dropped.⁶⁶



Fahir Penava moments after his capture by HVO forces in May 1993. Fahir Penava subsequently "disappeared" along with 12 other Bosnian Government soldiers captured with him.

© Private

During the trial, a number of prosecution witnesses, who had been detained as civilians or prisoners of war in the Engineering Faculty, described inhumane conditions of detention, and frequent and serious ill-treatment of the

⁶⁴ Three of the suspects had been arrested by local police; the two others were tried *in absentia*.

⁶⁵ Amnesty International is campaigning for the resolution of this case through its international membership, see *Bosnia-Herzegovina : The "Disappeared" - Fahir Penava and 12 other Bosnian Army soldiers captured in Mostar*. AI Index : EUR 63/014/2002, August 2002.

⁶⁶ Amnesty International understands that in mid-2002, the Federation Supreme Court quashed the Mostar Cantonal Court's verdict and has returned the case for retrial.

crimes.⁶⁹ The Cantonal Court's finding is also contrary to case law of the Tribunal, where several defendants were convicted solely on the basis of their command responsibility.⁷⁰

In addition, the court found that one of the accused was not the commander of the HVO Military Police at the time of the events, although substantial evidence indicating that he had indeed been carrying out this function was provided to the court by the Office of the Prosecutor at the International Criminal Tribunal for the former Yugoslavia (Tribunal).⁷¹ Instead, the court chose to rely upon two extremely brief official notes which had been submitted by the HVO-department of the Federal Defence Ministry in Mostar in 2001.

The *Džidić et al* case highlights the gaps in domestic criminal legislation which can result in perpetrators evading responsibility for their involvement in human rights violations in general, and for those which amount to war crimes (or crimes against humanity), including "disappearances" in particular.⁷² As has been argued before, the complex nature of "disappearances" both in terms of the multiple criminal acts that these violations can involve, as well as the different layers of criminal responsibility of those who participated in its perpetration in its various stages, necessitates the introduction of concrete provisions outlawing "disappearances" in criminal legislation.

C. The need for legal reform

One of the key provisions contained in the UN Declaration on Disappearances is the obligation of states to ensure that : "All acts of enforced disappearance shall be offences

⁶⁹ The Mostar Cantonal Court stated: "the criminal offence of war crimes against prisoners of war from Article 156 of the Penal Code of the Federation of Bosnia and Herzegovina (KZFBiH) (as well as the criminal offence of war crimes against the civilian population) is an "open" offence (*djelo blanketnog karaktera*), and the description of the accused's acts must be based upon rules and principles in international law which the perpetrator has violated and which are compatible with the essential elements of this criminal offence. Essential elements of the criminal offence of war crimes against the civilian population from Article 156 of the KZFBiH do not include the failure to act or responsibility for the acts of others, and the provisions of Article 86(2) and 87 of the Additional Protocol cannot be used as blanket principles in this case..." (emphasis added). Mostar Cantonal Court Judgment of 18 April 2001, page 20.

⁷⁰ See in particular *Prosecutor v. Anto Furundžija*, Case No. IT-95-17, Trial Chamber Judgment of 10 December 1998.

⁷¹ All files relating to prosecutions for war crimes in the Bosnian domestic courts have to be first referred to the Tribunal under the Rules of the Road Agreement. This agreement expands on provisions made for the prosecution of war crimes under the Dayton Peace Agreement. In the *Džidić et al* case the Tribunal Prosecutor's Office had apparently also forwarded more than 30 evidentiary documents gathered by its investigators on war crimes committed in the Engineering Faculty to the Mostar court. All these documents reportedly carried the official stamp of the State Archives of the Republic of Croatia.

⁷² It should be noted though, that the Federation Criminal Code provides for the prosecution on grounds of failure to prevent or punish abuses, by incriminating acts of negligence (Article 15) and allowing for the possibility that an offence may be committed by a failure to act when a duty to do so rested on the perpetrator (Article 30). Various other provisions further refer to acts of incitement, aiding and abetting (Articles 23-25), although these are less well defined.

perpetrators should never result in absolving them from criminal responsibility for their acts

A question of retrospectivity

A "disappearance" is considered to be a continuing crime under international law, regardless when the victim was abducted or arrested and last seen in the custody of lawful or *de facto* authorities. This is a determining feature of the crime of "disappearances". Amnesty International therefore considers that national criminal provisions introduced in future should not only be used in order to prosecute those who are suspected of responsibility for "disappearances" carried out after the legislation goes into force. Such a legislative interpretation would rubber stamp the continued impunity for the thousands of cases of "disappearance" which happened during the war in Bosnia-Herzegovina and contravene the aims and objectives of international standards and case law by international and regional human rights bodies.

The criminal law principle that legislation should not be retroactive is not relevant in the case of prosecutions for "disappearances". There is a fundamental difference between *retrospective* national legislation, which makes behaviour before the enactment of the legislation a crime under national law, which was considered criminal under international law at the time it occurred, and *retroactive* national legislation, which makes conduct before the date of enactment, that was lawful under both national and international law, a crime. The first type of legislation is consistent with the provisions of Article 15(2) of the International Covenant on Civil and Political Rights,⁷⁵ the second type is contrary to international law.

Amnesty International has followed this argument in cases of "disappearances" which were taken up elsewhere, notably in Mexico, which is among the few countries to have criminalized "disappearances" (in the Federal District - Mexico DF - Penal Code in 2000, and in the Federal Penal Code and Code of Penal Procedures in 2001).⁷⁶ However, when Mexico ratified the Inter-American Convention on Forced Disappearance of Persons in December 2001, the Mexico Government made an interpretative declaration concerning prescriptability, which limited the Convention's application to cases which were "ordered, executed or carried out after the coming into force of the Convention". A request to annul this declaration was presented to the Mexican Supreme Court by the Federal District governor as part of a constitutional challenge in April 2002, arguing that

⁷⁵ Article 15 states: " 1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. ... 2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations."

⁷⁶ See: Mexico: "Disappearances": an ongoing crime (AI Index: AMR 41/020/2002), May 2002

Serb population in Foča.⁷⁹ In this case, the presiding judge decided that the motion to open the indictment was filed too late in the trial (at the end of the defence case) and that, since there was not enough evidence to attribute responsibility for the "disappearances" to the accused, there was no need to reopen the prosecution case.⁸⁰

According to the head of the Bosnian State Commission on Missing Persons, when testifying at the Krnojelac trial, 266 Bosniaks were last seen in the Foča prison and had been missing since; the majority of them had "disappeared" in the period between April and late September 1992.⁸¹ Other organizations also reported cases of "disappearances" where people had last been seen in the Foča prison.⁸² The missing from this detention facility in fact constituted one of the "priority cases" which the ICRC intended to resolve through its Working Group process (see under Chapter VI below).

Ismeta Balić, the wife of Džemal Balić, who "disappeared" after having been removed from Foča prison on 18 September 1992, tried to bring an application before the Human Rights Chamber of Bosnia and Herzegovina.⁸³ She stated in her application that the Republika Srpska (RS) authorities were violating her husband's human rights, in particular Article 5 of the ECHR, and asked that they should find and release him or otherwise inform her of his fate. The Human Rights Chamber ruled that no evidence had been presented to it, substantiating that Džemal Balić had been detained by the RS after 14 December 1995 (the date of entry into force of the Dayton Peace Agreement) and that therefore her application was inadmissible *ratione temporis*. However, the Chamber noted that it had been informed by the Field Office of the Tribunal in Sarajevo that an investigative team of the Tribunal had established that Mr Balić had been detained in Foča prison and that he had "disappeared" from there sometime between July and September 1992, and that further information on his fate might come to light during the trial of Milorad Krnojelac.

Such expected further information did not materialize during the trial of Milorad Krnojelac⁸⁴ and prospects of discovering the fate and whereabouts of

⁷⁹ Ms Hildegard Uertz-Retzlaff, for the Prosecution, transcript of trial proceedings, 25 June 2001, page 7551.

⁸⁰ *Ibid.* page 7553.

⁸¹ Amor Masović, head of the State Commission for Missing Persons, testifying before the Tribunal on 20 March 2001.

⁸² For example the Sandžak Helsinki Committee published lists of missing persons in Naša Borba, a Belgrade daily. In one of these, published on 5 August 1997, 13 Bosniaks, who had fled to Montenegro at the beginning of the war or who were already living there, had been handed over by the Montenegrin authorities to Bosnian Serb armed forces after which they were allegedly taken to the Foča prison. In May 1992, the Montenegrin Interior Ministry publicly admitted that it had refouled 44 persons of Bosniak nationality to Serb-held territories in eastern Bosnia, and that 21 of them had been transferred to Foča prison. At least sixteen persons of this latter group are still listed as unaccounted for by the ICRC.

⁸³ Case No. CH/97/74, *Džemal Balić against the Republika Srpska* (Decision on the admissibility of 10 September 1998).

⁸⁴ Džemal Balić had been referred to frequently by prosecution witnesses, testifying during the trial, all of whom had been detained in the prison themselves. They described seeing him in May 1992 after interrogations, bearing

B. Prosecutions before the local courts

As has been discussed under sections I and III, a small number of cases of “disappearances”, which had happened in Bosnia-Herzegovina during the war, eventually resulted in the opening of a criminal investigation and subsequent trial proceedings. One such trial was in fact conducted outside the country, before a local court in Montenegro in the Federal Republic of Yugoslavia (see section ii of this Chapter). In a few other cases, official police and judicial investigations are continuing, although these remain in a very initial stage and have so far not led to any concrete findings beyond information on the cases that was already reported by the victims’ families.⁸⁸

Below a number of such cases will be discussed with the aim of highlighting different factors and circumstances which have delayed and obstructed criminal proceedings, and which will need to be tackled in order to bring perpetrators of “disappearances” to justice.

(i) Partial justice

As has been stated above, investigations and prosecutions for “disappearances” are generally a question of political will, both on the level of those working inside the criminal justice apparatus as well as on the level of government authorities and politicians. By and large this political will has been absent in Bosnia-Herzegovina. However, whenever criminal proceedings are launched, and indeed pursued beyond the initial stages (usually due to endless insistence by the international community to push the process along at every step of the way), an intricate web of impunity surrounding this human rights violation often emerges, which is exceptionally difficult to penetrate. Many individual cases of targeted “disappearances” represent a complex web of different actors with specific roles and responsibilities resulting in a number of acts. Superior responsibility – both in terms of those who gave the order to commit the violation as well as those who condoned or acquiesced – very often goes to the top of the local military or political structure of authority.

Case study: the Matanović family

The case of Father Matanović and his parents, which has already been referred to in Chapter I, represents one of the most high-profile national criminal

⁸⁸ According to information provided to Amnesty International by an official of the RS Ministry of the Interior in May 2002, these cases include the “disappearance” of Avdo Palić in the Žepa “safe area” in 1995, and the “disappeared” Nura Berbić and her mother Hasnija Demirović in Banja Luka in September 1995 – in both cases respectively the Human Rights Chamber and the Ombudsperson for Human Rights had ordered the RS to open investigations. In addition, Amnesty International is aware that an initial police investigation was opened into the case of Himzo Demir, the local head teacher in Višegrad who “disappeared” in May 1992.

liability of these new suspects were apparently not conducted promptly and thoroughly.⁹¹ Only in late August 2002 were new files on these additional suspects reportedly forwarded to the Rules of the Road department in the Office of the Prosecutor at the Tribunal.⁹² In early November 2002 the Tribunal Prosecutor's Office sent the investigation files on 18 of the above-mentioned additional suspects back to the RS authorities, clearing the way for a formal judicial investigation into their alleged involvement in war crimes.⁹³ In addition, on 13 December 2002, files on another six former police officers who had allegedly been involved in the abduction and illegal detention of the Matanović family were returned to the Banja Luka District Prosecutor, authorizing the judicial authorities to proceed with criminal investigations against them.⁹⁴ According to information, received by Amnesty International, on 29 January 2003 the District Prosecutor filed charges against 11 men for war crimes against the civilian population (illegal detention, Article 142 (1) of the RS Criminal Code).⁹⁵

Amnesty International remains concerned, based on the previous history of this case and, in the apparent absence of any sustained involvement in the case by the international community – notably the EUPM – that judicial proceedings will continue to be undermined by renewed obstruction and delays.

The Matanović case clearly demonstrates the difficulties associated with bringing to justice those responsible for *all aspects of the crime* of “disappearances”. As stated above, the eleven indicted suspects could only be connected with one element of the violation and only in as far as in the given circumstances this constituted a war crime (as the statute of limitations on the ordinary crime of illegal detention had run out). Again, this points clearly to the necessity of introducing a comprehensive criminal offence, capturing all aspects of “disappearances”, in order to achieve justice in full for the victims of this violation.

(ii) Non-Cooperation

"I know all the answers to my questions are here, right here in this country. But I know I will not get them here - instead I have to go via London, Washington and other places to get to the truth"

Esma Palić, wife of Colonel Avdo Palić, who “disappeared” in the Žepa “Safe Area”

⁹¹ This was apparently because some of the new suspects filed criminal complaints against the investigating police officers, alleging violations of procedures, which led to internal disciplinary procedures. The complaints were subsequently found to be without grounds.

⁹² Local media reports quoted Alun Roberts, UNMIBH spokesman, who stated that the police report had been forwarded to the Tribunal after a delay of eight weeks.

⁹³ These suspects are alleged to have looted and destroyed the parish presbytery in Prijedor, though there was reportedly no evidence pointing to their involvement in the “disappearance”.

⁹⁴ SRNA, “Hague Tribunal authorizes investigation into Bosnian Serb policemen”, 13 December 2002.

⁹⁵ At the time of writing of this document (mid-February 2003), the indictment had reportedly not yet been confirmed by the Banja Luka District Court.

Minister, suggested to Momčilo Krajišnik – then the Serb member of the Bosnian presidency – that the Bosnian Serb side release Col Palić in exchange for the Bosnian government's assistance in arranging the release of a VRS General who was in the custody of the Tribunal. Mr Muratović later testified in proceedings brought by Mrs Palić before the Human Rights Chamber, stating that Mr Krajišnik's demeanour⁹⁷ during their meeting suggested very much that Avdo Palić was still alive at that time and held in detention for the purpose of exchange.



Colonel Avdo Palić (right) shaking hands with General Zdravko Tolimir shortly before his "disappearance" in July 1995 © Private

Two Bosniak men who had been captured after they had escaped Srebrenica (which surrendered to the VRS just over a week before Žepa) and were trying to make their way to government-held territory, have claimed that they saw and heard Avdo Palić while they were imprisoned in an unofficial detention facility run by the VRS in a disused mill - known as *Vanekov mlin* - in Bijeljina. According to both, Avdo Palić was taken to this prison at some point on 10 August 1995 and he remained there after they were transferred to Batković detention camp on 1 September 1995.⁹⁸

The Human Rights Chamber found multiple violations of the ECHR in the Palić case in January 2001, and ordered the RS to "carry out immediately a full investigation capable of exploring all the facts regarding Colonel Palić's fate

⁹⁷ Decision on admissibility and merits in Case No. CH/99/3196, *Avdo and Esma Palić against the Republika Srpska*, 11 January 2001, at paragraphs 12-13.

⁹⁸ Statements of Sado Ramić and Abdurahman Malkić to the Ministry of the Interior of the Republic of Bosnia and Herzegovina in Srebrenik and Tuzla of resp. 12 and 14 February 1996. Both men also testified before the Human Rights Chamber in September 2000.

Non-cooperation between and within entities

Paradoxically, in light of the pervading impunity for the massive human rights violations committed in Bosnia-Herzegovina, police and judicial bodies of both entities have in fact conducted extensive investigations into war crimes allegedly committed against their own side or ethnic group. These activities included the gathering of forensic and other criminal evidence during cross-entity exhumations, where, as a rule police crime investigators and the investigative judge of the victims' ethnic group would attend, but not judicial officials of the local court – which under domestic criminal procedure would have primary jurisdiction over the crimes.¹⁰⁴ Thus both sides have amassed a large amount of evidence against many potential war crimes suspects, the majority of whom currently are not residing on territory under their control and are unlikely to come into the jurisdiction of their courts.¹⁰⁵

The deep rift in opinion between the two entities has particularly come to the fore since early 2002, when discussions on the future of domestic war crimes prosecutions – given the increasingly mentioned “end” date of the Tribunal in 2008 – have started to lead to concrete proposals for judicial mechanisms on the state level (see below under section iii).

In May 2002, the RS Justice Minister wrote to her counterpart in the Federation, proposing to set up an inter-entity mechanism for the exchange of information on war crimes.¹⁰⁶ In replying to this proposal, the Federation Justice Minister voiced the opinion that the Justice Ministries already had a duty to facilitate direct cooperation between the entity police and judicial bodies in relation to the gathering and exchange of information on war crimes. This duty appears to extend to both war crimes investigations and prosecutions ongoing before the Tribunal and those before the domestic courts. Moreover, the Federation minister objected to a formal judicial cooperation agreement as if the entities were two sovereign states, and argued that the matter was basically to be decided

¹⁰⁴ To Amnesty International's knowledge, the Matanović case is the only one so far where RS police investigators attended the exhumation and autopsy of the victims as part of the criminal investigation into the “disappearance”. In other cases, local police would only be present in order to guarantee the security of the forensic investigators, judges and other officials coming from the other entity.

¹⁰⁵ According to information received by AI from the Federation and RS public prosecutor's offices in May 2002, a total of around 7,000 investigation files have been opened against individuals suspected of war crimes. The Tribunal Prosecutor has reportedly received files on 4,045 of these suspects and examined the files on about 2,500 suspects (*Report on the Judicial Status of the International Criminal Tribunal for the former Yugoslavia and the Prospects for Referring Certain Cases to National Courts*, ICTY paper, June 2002).

¹⁰⁶ “Predlog sporazuma o saradnji izmedju entitetskih organa Federacije BiH i Republike Srpske u postupku prikupljanja i razmjene informacija i dokumentacionog materijala o ratnim zločinama učinjenim na području bivše SFRJ od 1991. do 1995 godine” sent by Biljana Marić, RS Justice Minister to Zvonko Marić, Federation Justice Minister, May 2002.

was aptly demonstrated in the *Dzidić* trial, where the Cantonal Prosecutor obtained key documentation from the Tribunal Prosecutor, including the periodic reports of the Third Battalion of the HVO military police, which confirmed the commanding position of one of the accused. However, it is currently not known whether and where the wartime archives of the HVO military police (and documentation of other bodies associated with the Bosnian Croat armed forces) are stored by the present military authorities in Mostar. Apparently, a large part of this documentation has been transferred to the state archives of neighbouring Croatia. It is therefore evident, also given the far reaching influence and involvement of the Croatian Army and political leadership during the armed conflict between the Bosniak and Croat sides in Herzegovina, that the assistance and cooperation of Croatia's authorities and judicial bodies will be necessary to ensure prompt and effective investigations and prosecutions for these violations.

Non-cooperation between states of the former Yugoslavia

On 9 September 2002, a court in Montenegro, in the neighbouring Federal Republic of Yugoslavia, convicted Nebojša Ranisavljević of war crimes against the civilian population for his involvement in the abduction and killing of 20 men in eastern Bosnia in 1993.¹¹⁰ The accused, who was a member of a wartime paramilitary group operating in the eastern RS, had been arrested in 1996 but his trial did not start until May 1998.¹¹¹ However, trial proceedings had been delayed on countless occasions primarily as a result of the failure of the RS authorities and judiciary to comply with requests for information and judicial cooperation. The mere fact that the court came to a verdict appears to be largely thanks to the persistence of the presiding judge and the tireless efforts of local organizations such as the Humanitarian Law Centre (HLC), and the Helsinki Committee for Human Rights in Sandžak, which have relentlessly pursued the case since 1993. Lawyers, engaged by the HLC, represented the families of the victims during the proceedings.

The victims "disappeared" after having been abducted on 27 February 1993 by Bosnian Serb and Serb members of a paramilitary group at Štrpci train station. They were travelling on a train from Belgrade to Bar (Montenegro) which for about 10 kilometres ran through Serb-held Bosnian territory. The paramilitary group is reported to have been affiliated with the police force in Višegrad – which had been taken over by local Serbs – and with VRS units. Its commander, a Višegrad Serb, Milan Lukić, was indicted by the

¹¹⁰ The men were: Esad Kapetanović, Ilijaz Ličina, Fehim Bakija, Šećo Softić, Rifat Husović, Halil Zupčević, Senad Dječević, Jusuf Rastoder, Ismet Babačić, Tomaz Buzov, Adem Alomerović, Muhedin Hanić, Safet Preljević, Džafer Topuzović, Hasim Ćorić, Fikret Memović, Fevzija Zahović, Nijazim Kajejić and Zvezdan Zuličić. According to some reports, the group included a 20th victim, allegedly a black man, whose identity is still unknown. Most of the men were Muslims living in the Sandžak region in the Federal Republic of Yugoslavia.

¹¹¹ See: *Federal Republic of Yugoslavia: Five years on – still no justice for victims of Štrpci abductions*, AI Index: EUR 70/09/98, 26 February 1998.

On 22 October 1996, Montenegrin police arrested Nebojša Ranisavljević, who on that same day reportedly confessed to them that he had participated in the abduction: he told the police that his approximately 25-strong unit stopped the train upon arrival in Štrpci station and, after checking their identify papers, removed several passengers of Muslim nationality, one Croat and one man of African origin. The paramilitaries, under the command of Milan Lukić, reportedly then took these people by truck to Preljevo hamlet just outside Višegrad where they searched them and took money and valuable possessions. After this the men were reportedly executed in groups of five or six by Milan Lukić and one of his men. Nebojša Ranisavljević himself shot and wounded one of the passengers who tried to escape. He claimed that the bodies of the dead were thrown into the Drina.

In March 1997, the Bijelo Polje Public Prosecutor charged Nebojša Ranisavljević with war crimes against the civilian population (Article 142 paragraph 1 of the Federal Yugoslav Criminal Code). He was finally convicted of these crimes on 10 September 2002 and sentenced to 15 years' imprisonment. His lawyer has appealed the verdict.

While it took already more than a year for Nebojša Ranisavljević's trial¹¹⁷ to start – reportedly as his lawyers contested the venue of the court, given that he was born in Serbia – the subsequent proceedings were adjourned so often and for such prolonged periods that they had to be re-opened three times.¹¹⁷ One of the main reasons for these delays appears to have been the lack of cooperation between the Montenegrin court and the RS judicial authorities, in spite of their geographical proximity, the fact that criminal procedures were (at this point in time) virtually identical and the absence of any linguistic barriers. When the Bijelo Polje court after the second court session in 1998, sought further information from the RS authorities, their requests were reportedly ignored on three occasions. Finally the Montenegrin Justice Minister, Dragan Šoć, intervened and the Srpsko Sarajevo District Court ordered the Višegrad Higher Court to conduct an investigation on behalf of the court in Bijelo Polje.¹¹⁸ In July 2000, the presiding judge decided to adjourn proceedings again, as further evidence had to be obtained from the RS authorities, who apparently only assisted the court after another lengthy delay. A reconstruction of the killings of the victims, requested by the court in July 2000 finally took place at the hydro-electric power plant in Višegrad on 13 May 2002 (in the presence of witness DP).

It is evident that justice remains to be done in the Štrpci case since only one of those responsible has been tried, and that the responsibility to do so extends to the

¹¹⁷ Under the Code of Criminal Procedure, after an adjournment of more than 30 days, proceedings have to be re-opened. See also the analysis by the Humanitarian Law Centre of the Ranisavljević trial of 27 September 2002 ("Ranisavljević Trial – A Judgment Based on the Evidence").

¹¹⁸ "Zakazan nastavak sudjenja za zločin u Štrpcima!", *Oslobodjenje*, 23 May 2000.

and judicial officials work closely together in order to investigate and prosecute all those involved for the violations of national and international humanitarian law committed in this case.¹²⁴

(iii) The need for supervision and assistance – the role of the international community

The Matanović case, which has been discussed above in section IV, demonstrates that the international community has a constructive and essential role to play in ensuring that investigations and prosecutions into wartime “disappearances” are carried out and that they are conducted in a professional, impartial and thorough manner. From the very beginning of the initial police investigation, the Matanović case was relentlessly supervised and monitored by UNMIBH/IPTF human rights monitors. Indeed, the fact that the investigation after almost two years resulted in the opening of judicial proceedings and the detention of some of the suspected perpetrators, represents one of the most successful achievements of the UNMIBH/IPTF Human Rights Office.

The challenges faced by the local police who were investigating their former or current colleagues, in a local political and social climate characterized by increased returns of the pre-war non-Serb population which exacerbated underlying ethnic tensions, will likely continue to have an important and detrimental impact on the proceedings. In this regard, the case poses a compelling argument for the continuation of close international supervision and support of the continuing police and judicial investigations. Such investigations run a substantial risk of being undermined or compromised if left to the local authorities.

At the same time, the Matanović case underlines the fact that proceedings against those suspected of involvement in “disappearances” are the exception rather than the rule. The woefully inadequate response of the local authorities in the many other cases of outstanding “disappearances” requires far more aggressive pressure by the international community, which needs to go beyond the purely humanitarian approach favoured so far. In particular the European Union Police Mission (EUPM) – which took over the supervision of the police forces from UNMIBH/IPTF in January 2003 – and the Office of the High Representative, which has taken the lead on judicial reform and domestic war crimes prosecutions, must address the pervading impunity for “disappearances”.

spoken to Oliver Krsmanović’s wife two days ago who confirmed he was in Višegrad. However a spokesperson for the RS Interior Minister stated that an official arrest warrant from the Serbian authorities had not yet been received. (*Nezavisne novine*, “Policija dobila nalog za provjeru”, 24 January 2003).

¹²⁴ The UN Principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity, adopted by the General Assembly in Resolution 3074 (XXVIII) of 3 December 1973, recognized an extensive list of obligations of all states to cooperate in the investigation and prosecution of war crimes. In particular, AI underscores the fundamental principle that states must not shield persons, suspected of crimes under international law, from justice, and that they are under the obligation to either investigate and prosecute such persons, or extradite them to states that are willing to exercise jurisdiction.

A group of consultants was commissioned by the High Representative in April 2002, to examine these issues and suggest possible ways forward, which resulted in a report issued in May.¹²⁶ The consultants' report reiterated the need to establish a suitable court which would be able and competent to process the substantial number of cases examined by the Tribunal Prosecutor under the Rules of the Road procedure, as well as an additional number of cases investigated by the Tribunal Prosecutor's office (concerning mid- and lower-level suspects).¹²⁷ Of particular concern in this regard was the poor record of the domestic criminal justice systems in prosecuting persons suspected of war crimes.

In light of these factors, the consultants' report favoured the option of establishing a special Division in the State Court of Bosnia and Herzegovina to prosecute violations of international humanitarian law (IHL).¹²⁸ It was proposed that judges of both the trial and appeal chambers in this division, as well as the prosecutorial staff and the staff in the investigations' unit, consist of both national and international professionals, in order to ensure non-biased, impartial and independent proceedings. However, it was envisaged that the involvement of international jurists and other staff would be eventually phased out as and when the process of legal reform would be completed and the domestic court system would be deemed mature and capable enough to carry forth these tasks.

In late May 2002, Amnesty International wrote to the newly appointed High Representative, Paddy Ashdown, presenting him with a number of the organization's concerns and recommendations on the proposed mechanism for war crimes prosecutions, taking into consideration the consultants' draft proposal. While Amnesty International welcomed the proposed IHL Division of the State Court as a first step to address the widespread impunity for the tens of thousands of war crimes, crimes against humanity and genocide committed in the country, the organization urged the adoption of a more comprehensive and inclusive approach. It proposed that the international community also attach international judges, prosecutors and investigators also to the entity-level courts prosecuting war crimes, crimes against humanity and genocide (Cantonal courts in the Federation and District Courts in the RS) in order to lay the foundation for a genuinely effective court system.¹²⁹

¹²⁶ The Future of Domestic War Crimes Prosecutions in Bosnia and Herzegovina, Consultants' report to the OHR, submitted by Peter Bach, Kjell Björnberg, John Ralston and Almiro Rodrigues (Consultants' report).

¹²⁷ At present a total of 17 cases, involving 50 suspects, investigated by the Office of the Prosecutor, could be already transferred to the local judiciary. In addition, it has been suggested that some suspects, who are currently in pre-trial detention in the Netherlands, could also have their cases transferred to a local court. (Consultants' report, Section 2.)

¹²⁸ The Law on the establishment of the State Court of Bosnia and Herzegovina was imposed by the then High Representative, Wolfgang Petritsch on 12 November 2000. The idea of using the State Court as the most appropriate institution in this regard had already been put forward during earlier discussions between the Tribunal Prosecutor, the Office of the High Representative, the United Nations Mission and the State Council of Ministers in late 2001.

¹²⁹ No formal response has been received to date from the Office of the High Representative to the points raised in this Memorandum.

Apart from these organizational issues, Amnesty International also underlined the need to incorporate the crimes of “disappearances”, extrajudicial executions, and torture, in the new State Criminal Code, in order for these grave human rights violations to be rendered eligible for criminal prosecutions when committed as individual acts (i.e. not as part of war crimes or crimes against humanity).¹³³

V. Reparation, including compensation, for victims and their families

“In the case of enforced disappearance, which is a particularly serious and continuing human rights violation committed with the very intention of evading responsibility, truth and legal remedies, reparation is of the utmost importance, not only as a matter of redress for the individual victims, but also as a pre-condition for establishing truth, justice and peace in the societies affected by such practices.”

Manfred Nowak, independent experts on enforced disappearances.¹³⁴

The majority of the civilian victims of the serious human rights violations committed in Bosnia-Herzegovina during the war have never received any form of reparation for their suffering, including material or monetary compensation for damages. By and large those who have benefited from compensation and social benefits for damages suffered in the armed conflict have been war veterans and their families.¹³⁵ While legislation in both entities allows for the possibility of bringing civil suits for damages against both public officials and non-state actors for violations of national law, international standards indicate that the state is also obliged to offer reparation, including compensation, to victims of serious crimes, including human rights violations. These obligations have been reiterated in the revised Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian

comprehensive and coordinated trial monitoring system, Amnesty International suggested in its memorandum to the High Representative for the setting up of an independent body with the task of monitoring and public reporting on trials conducted both by the IHL Chamber of the State Court and by Cantonal and District courts. This body would ideally follow the model of the Legal Systems Monitoring Section (LSMS) in the OSCE mission in Kosovo, which publicly reports on prosecutions for war crimes, crimes against humanity and genocide, and has access to individuals, lawyers, courts, facilities of detention and imprisonments as well as court records.

¹³³ The State Criminal Code includes enforced disappearances as a crime against humanity (Article 173(1) (i), as well as unlawful killings (Article 178) and torture and other cruel, inhuman or degrading treatment (Article 191).

¹³⁴ In : *Civil and Political Rights, Including Questions of : Disappearances and Summary Executions*, as above, at Paragraph 84.

¹³⁵ See, The International Center for Transitional Justice: *A casualty of politics: Overview of Acts and Projects of Reparation On the Territory of the Former Yugoslavia*, July 2002.

and restitution to people whose lives have been destroyed. And yet my office is having considerable success in tracing and freezing large amounts of money in the personal accounts of the accused. Money that could very properly be applied by the courts to the compensation of the citizens who deserve it. We should therefore give victims the right to express themselves, and allow their voice to be heard during the proceedings. In the event of a conviction, that would then create a legal basis for the Judge to decide upon the confiscation of monies sequestered from the accused. The money might also go towards defraying the cost of the prosecution. I would therefore respectfully suggest to the Council that [the] present system falls short of delivering justice to the people of Rwanda and the former Yugoslavia, and I would invite you to give serious and urgent consideration to any change that would remove this lacuna in our process. ..."¹³⁸

To Amnesty International's knowledge, no further research has been conducted, exploring the suggestions made by the Tribunal Prosecutor two years ago. Therefore, the organization considers it of the greatest importance that serious attention be given to the Prosecutor's statements and proposals. As a first step, the possibilities should be examined of establishing a Trust Fund for victims – along the lines of the Trust Fund provided under Article 79 of the Rome Statute of the International Criminal Court.¹³⁹ A working group, which has been asked by the Preparatory Commission of the ICC (the Working Group on Financial Regulations and Rules) to define further the Trust Fund and its work, in October 2001 sought the assistance of a number of non-governmental organizations working specifically on victims' issues. Subsequently some guiding principles were formulated by the so-called Victims Working Group, which continues to be involved in the Preparatory Commission.¹⁴⁰

Taking heed of these efforts, which are currently being further developed, it would be highly advantageous for those involved in the establishment of the State Court in Bosnia-Herzegovina, both at the national and the international level, to involve the expertise of local organizations and professionals with experience of assistance to victims of human rights violations and crimes under international law. The State Ministry for Human Rights and Refugees could be called upon to play a coordinating role in such

¹³⁸ Press Release, Office of the Prosecutor, The Hague, 24 November 2000, JL/P.I.S./542-e.

¹³⁹ Article 79 states that "1. A Trust Fund shall be established by decision of the Assembly of States Parties of the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims."

2. The Court may order money and other property collected through fines or forfeiture to be transferred, by order of the Court, to the Trust Fund.

3. The Trust Fund shall be managed according to criteria to be determined by the Assembly of States Parties."

¹⁴⁰ For example, the UK-based organization REDRESS, which seeks reparation for torture survivors, as part of this Working Group, issued a number of principles to ensure effective functioning of the ICC Trust Fund. These principles include the management and administration of the Trust Fund and the proposed beneficiaries of the Trust Fund (See NGO principles on the establishment of the Trust Fund for Victims, in: *Amnesty International: International Criminal Court: concerns at the tenth session of the Preparatory Commission (1-12 July 2002)*, AI Index: IOR 40/010/2002, June 2002)..

Under both entities' legislation, it is possible for individuals to claim compensation by launching a private criminal investigation against certain violations of the Criminal Code by both non-state actors and agents of the state.¹⁴³ However, such actions are obviously limited to those criminal offences incorporated in domestic criminal legislation. Once again this situation reinforces the necessity to introduce criminal provisions prohibiting all acts of "disappearances" in law, with the explicit possibility for the victims (and their relatives) to file actions in court in order to obtain compensation for the suffering caused by these crimes – including by holding the state liable for these damages.¹⁴⁴

Moreover, the scope of reparation under national legislation appears to be limited to compensation and does not extend to the other four principles of reparation: retribution, rehabilitation, satisfaction and guarantees of non-repetition.¹⁴⁵ Amnesty International urges the Bosnian authorities to take advantage of the opportunity presented by drafting implementing legislation for the Rome Statute to ensure that courts can award all five forms of reparation.

VI. Respecting the rights of the relatives

"Srebrenica is also a name for a post-traumatic syndrome, the syndrome displayed by the women, children and old people who did not die and who, ever since July 1995, six years now, still have no news of their husbands and sons, fathers, brothers, uncles, grandfathers. Thousands of amputated lives six years later, robbed of the affection and love of their kin now reduced to ghosts who return to haunt them day after day, night after night."

ICTY Judge Almiro Rodrigues, announcing the verdict in the trial of Bosnian Serb General Radislav Krstić, 2 August 2001

It has long been recognized internationally, as well as in Bosnia-Herzegovina, that "disappearances" in many (if not most) cases create more than one victim. Addressing the issue of unresolved "disappearances" must therefore be done by taking account of *all* victims of this violation, including the "disappeared" person as well as his or her relatives. All measures proposed above – in particular those relating to compensation –

¹⁴³ Federation Code of Criminal Procedure 48, SFRY Code of Criminal Procedure (in force in the RS), Articles 52 and 53.

¹⁴⁴ For example the Draft International Convention on the Protection of All Persons from Enforced Disappearance provides that : " ... the acts referred to in article 2 and 3 [ie "disappearances", acts constituting elements of "disappearances" and "disappearances" as crimes against humanity] of this Convention shall render the State liable under civil law, and the State may bring an action against those responsible in order to recover what it has had to pay, without prejudice to the international responsibility of the State concerned in accordance with the principles of international law." (Article 24 (4)).

¹⁴⁵ See the Final Report of the Special Rapporteur Mr. M. Cherif Bassiouni (UN Doc: E/CN.4/2000/62).

that this would result in the release of his wife and her mother.¹⁴⁷ Mr Berbić filed a criminal complaint with the local police on 15 September, following his own attempts to investigate the case during which he learnt that two of the abductors of his wife were allegedly serving police officers, and obtained further details on the car that was used for the abduction. Although some very preliminary investigative activities were undertaken by the Banja Luka police, no further information about the fate and whereabouts of Nura Berbić and Hasnija Demirović was ever revealed to Mr Berbić.¹⁴⁸ Instead, during one of his visits to the police station in September 1995 he was himself physically attacked by a police officer, who threatened to kill him if he were to come to the station again. Mr Berbić left Banja Luka soon afterwards. The Ombudsperson's decision, that the RS authorities conduct an immediate investigation into the case, remains to be implemented four years later.

It is disturbing that Mr Berbić's experiences in trying to find out what happened to his wife and her mother are in no way unique. Many other relatives of the "disappeared" braved similarly dangerous situations – including during direct fighting in or near their home towns or by crossing the front line – in order to approach the local police, military and political leadership in desperate attempts to find and save their loved ones. Such endeavours demonstrate that frequently heard subsequent claims by former and current authorities that they had no knowledge at the time that persons had "disappeared" and/or that the perpetrators were members of armed groups operating outside their control, are false.¹⁴⁹

A. The right to know

The right of relatives to be informed of the fate and whereabouts of their "disappeared" loved ones has been repeatedly recognized by international human rights standards and in case law. In 1981, the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities recommended that states:

¹⁴⁷ Prior to this, Mr Berbić had reportedly been subjected to a sustained campaign of harassment and intimidation to hand the firm (a shopping centre consisting of more than 60 shops with a monthly income from rent of over 35,000 DEM) he co-owned over to the Serb-controlled municipal authorities and leave Banja Luka.

¹⁴⁸ Mr Berbić believes that the investigation was subsequently closed. However, in May 2002 Amnesty International was informed by the RS Interior Ministry that the case was still being investigated by the local police but that no progress had been achieved primarily because of the alleged lack of resources.

¹⁴⁹ Among the efforts which have come to Amnesty International's attention are for example the attempts by the Roman Catholic Bishop of Banja Luka, Msgr. Franjo Komarica, to raise the "disappearance" of Father Matanović and his family, as well as other such cases, with the local police and the chief of military staff for the Banja Luka and Prijedor region, General Momir Talić. They also include the attempts of parents and spouses of Bosniak victims of "disappearances" in Višegrad, who were last seen alive in the infamous *Vilina vlas* hotel cum detention centre, to ask Bosnian Serb police and paramilitary commanders to find out what happened to these people.

and practically. While no authoritative nation-wide studies have been undertaken into the scope and implications of war-related traumatic stress - let alone the effects of "disappearances" on their relatives - it is estimated that for a significant percentage of the population these effects still have an enduring and significant impact on their mental and physical health.¹⁵³

B. Access to social and economic rights and benefits

Quite apart from the emotional impact of the "disappearance" of a family member, concerns have been repeatedly voiced by organizations involved in the issue that, given that the majority of those left behind in the wake of this violation are women and children,¹⁵⁴ there are severe and enduring adverse effects both on their economic and social circumstances as well as their personal security.¹⁵⁵ In particular, in cases where the dependants of the "disappeared" are still internally displaced - such as with the majority of the Bosniak female population from Srebrenica of non-Serb origin - they face mounting financial problems and social exclusion.

While this paper primarily focuses on the need for the Bosnian criminal justice system to address the impunity for crimes of "disappearances", Amnesty International recognizes the additional and overwhelming need to incorporate the issue into the overall process of enabling access to social and economic justice for relatives and victims of human rights violations committed during the armed conflict. The overarching need for reparation must be addressed by taking into consideration the particular situation of those directly affected by "disappearances", which will require a gender-sensitive and long-term approach. There is a current drive by the international community to close down

¹⁵³ A special report by UNHCR/UNHCHR on the situation of displaced women in Bosnia-Herzegovina stated that there was "consensus among researchers that the majority of the population has suffered some form of psychological disturbance, ranging from slight post-traumatic stress disorder to acute psychiatric illness". (see: *Daunting Prospects - Minority Women: Obstacles to their Return and Integration*. UNHCR/UNHCHR report, April 2000, page 16).

¹⁵⁴ According to the ICRC, out of 20,786 tracing requests for persons unaccounted for after the war in Bosnia-Herzegovina, on 30 June 2002, 17,087 cases were still pending. There are no current statistics for the gender breakdown for Bosnia-Herzegovina solely, however out of the total of 31,541 tracing requests still unresolved in former Yugoslavia (Croatia, Bosnia-Herzegovina and the Federal Republic of Yugoslavia including Kosovo) 27,776 cases or 88.1% concern missing men and boys. (from *Unknown Fate, Untold Grief*, ICRC Special Report, August 2002). The special report by UNHCR/UNHCHR estimated that 92% of the missing persons in Bosnia-Herzegovina are men (see: *Daunting Prospects - Minority Women: Obstacles to their Return and Integration*).

¹⁵⁵ See : UN Study on Women, Peace and Security, United Nations 2002, Paragraphs 109-110. The International Helsinki Federation for Human Rights (IHF), for example, has also noted that displaced women in Bosnia-Herzegovina "are particularly vulnerable to prostitution and organized prostitution, both of which involve a significant risk of health problems and violence that should not be underestimated." (IHF, *Women 2000: An investigation into the Status of Women's Rights in Central and South-Eastern Europe and the Newly Independent States*, page 97).

1991 and to be compensated for any property that cannot be restored to them.” (Chapter 1, Article 1).¹⁵⁸ However no functioning compensation mechanism was ever set up. Reconstruction of destroyed housing was funded by and large through donations and investments by the international community, which has drastically decreased this funding over the past years. In the case of the displaced population – which numbered over two million at the end of the war – the argument could have been made that this category of people should have in fact been made the primary beneficiaries of the privatization process.¹⁵⁹ This process as such, however, has been of concern to human rights monitors in the international community, as it reinforced discriminatory practices and undermined ethnic reintegration and minority returns.¹⁶⁰

Furthermore, many of these women continue to have little trust in the unbiased functioning of the police, the judiciary, health services and the education system – most of which remain to a large degree mono-ethnic despite attempts by the international community to increase the recruitment of minority returnees to the public sector.¹⁶¹

A major factor in the decision not to return is the expectation of many women that they will face a drastic cut in income as they will lose the benefits associated with having missing family members, as the systems and criteria for such benefits (*invalidnine*) are tied to the ethnicity of the victim and benefits do not appear to be easily or at all transferable across entity borders. For some displaced women with missing relatives this assistance is in fact their only source of income.¹⁶² In addition, even though the

¹⁵⁸ The reportedly highly increased implementation of property laws – currently at over 60 % - throughout Bosnia-Herzegovina has led to many people repossessing their pre-war accommodation which was not destroyed.

¹⁵⁹ The privatization process in Bosnia-Herzegovina was started in 1998, as part of the transition from a centrally-managed and socialist to a market-led economy, through the sale of state-run companies. Both entities adopted their own legislation and established implementation agencies. So far, it is estimated that less than half of state-owned companies throughout the country have been privatized.

¹⁶⁰ See for example the sections on Economic and Social Rights in the *Human Rights Coordination Centre quarterly reports*, of May and October 2000. In addition to human rights issues, there was also concern that in many cases, legal ownership of companies had not been properly established.

¹⁶¹ See also: *Daunting Prospects*, as above, at Chapter III. With regards to achieving a more representative and inclusive public sector, it is envisaged that the continued implementation of the 2000 Constitutional Court's decision (which affirmed the equal status and rights of all ethnic groups throughout the country) will deploy the parity system to ensure that minority returnees have access to positions in local government and parts of the public sector. Other targeted efforts to achieve parity include the recruitment of minority police officers fostered by UNMIBH/IPTF, and the (re)employment of minority judges and other judicial officials in a project carried out by the International Organization of Migration (IOM).

¹⁶² For example, this is the case for displaced women from Srebrenica still living in collective accommodation or in pre-fab housing units constructed in 1993-5, in Tuzla Canton, and for whom the loss of such benefits (at around a monthly 400KM) presented insurmountable difficulties, given their already dire economic situation (Amnesty International interviews with displaced women in the Jezevo and Grab potok settlements, Banovići municipality, August 2002). Feedback from organizations working with displaced women implies that in practice they encounter difficulties in transferring these benefits from the location of displacement to their pre-war municipality. Given the current differences in legislation and claims procedures in the Federation (where each Canton has its own

the Working Group on Missing Persons (Working Group), chaired by the ICRC, which started work in early 1996. The ICRC convened regular meetings of the Working Group between the entity commissions on missing persons, attended also by relatives of the missing and representatives of the international organizations. The Working Group primarily worked on the resolution of cases which needed inter-entity cooperation and the disclosure of the location of mass graves. It focused its efforts initially on resolving three priority cases (such as the above-mentioned Foča KP Dom case) which had been documented by the ICRC during the war, and which were envisaged to be easily resolvable.

However, as a result of the slow progress made (largely because of political obstruction by all sides, such as the refusal to disclose information unless a reciprocal amount of information was disclosed by the other side) the ICRC decided to suspend the Working Group until the authorities provided some answers. In 2000 the ICRC attempted to revitalize the process and initially successfully lobbied for the appointment of senior officials within all the key entity ministries - Justice, Defence and Interior - in order to assist investigations into "disappearances". Amnesty International understands that subsequently these efforts were again put on hold, and that renewed approaches were made to the authorities in the course of 2002.¹⁶⁶

Missing Persons Institute

The Missing Persons' Institute (MPI) was established by the ICMP and inaugurated in August 2000. It is a registered national - rather than an international - institution, though currently still governed by a Steering Committee of ICMP international commissioners.¹⁶⁷ It is envisaged that eventually the organization will be entirely run by local actors. The activities of the Missing Persons' Institute are currently focused on the exhumation and identification process which was discussed in Chapter II, and support for the families of the missing through a program of outreach and support. In addition, the Missing Persons Institute is envisaged to take over the lobbying efforts carried out so far by the ICMP in putting pressure on the authorities in Bosnia-Herzegovina as well as in the wider region to disclose information on cases of missing persons and cooperate with and contribute to the MPI's work on the exhumation and identification projects. Ultimately the MPI would take over the work of the two entity commissions on missing persons, which would be merged into one state commission, creating a country-wide body. Amnesty International understands that efforts are currently under way to appoint the national members of the Supervisory Board, which would operate under the Steering Committee and oversee the work of a Scientific Advisory Board, an Ethics Committee and an Executive Director.

¹⁶⁶ *Unknown Fate, Untold Grief*, as above, at Chapter 3, b.

¹⁶⁷ At present these are: James V. Kimsey from the US (Chair), Queen Noor from Jordan, Uffe Elleman-Jensen from Denmark, Michael Portillo from the UK, Sahabzada Yakub-Khan from Pakistan, and Willem Kok from the Netherlands.

The Truth and Reconciliation Commission could, given its stated objectives, be an effective mechanism to obtain further information on cases of “disappearances” and abductions which were committed during the war, in particular with a view to confirming allegations on suspected mass grave sites. In this context, and in the spirit of fostering more local involvement in resolving cases, it may well be the most appropriate forum in which witnesses could come forward and offer information on such issues, which could lead to relatives being finally able to retrieve the remains of their “disappeared” family members.¹⁷¹ However, Amnesty International concurs with the recommendations made by the Tribunal representatives that such information should not be given in exchange for immunity from prosecution.

Conclusions and recommendations

Amnesty International believes that in order to tackle impunity for “disappearances” in Bosnia-Herzegovina immediate measures must be taken both on a legal and a practical level. Those who perpetrated this serious and continuing crime against humanity until now have escaped justice by exploiting the absence of legislation criminalizing “disappearances” and by the authorities’ feeble and inadequate, or non-existent, efforts to investigate and prosecute suspected perpetrators or no such efforts at all. It is up to the authorities on all levels in Bosnia-Herzegovina to undertake the necessary legislative changes and ensure that they will be implemented in practice. It is up to the international community to support and oversee both the legislative and the operative process.

Unearthing the evidence connecting the “disappearances” of so many individuals will take a lot of political will. It will also require political and moral courage to undo the legacy of impunity, which has rested for far too long on the assumption that “disappearances” as well as other human rights violations are the inescapable by-products of war. It will take sustained efforts to unravel the chronology of events that occurred in every single case, to establish the facts constituting every wilful act of a “disappearance” and to reveal the chain of command underlying both the crime and its cover-up. Unless these steps are taken, the ghosts of the “disappeared” will continue to hover over Bosnia’s past, present and future and thousands of relatives’ lives will remain “amputated” - in the words of Judge Rodrigues. True reconciliation will never be attainable without confronting the ghosts of the past.

As with any crime, but particularly those committed during armed conflict, with time it will become harder to piece together information and evidence which can be used in court: physical evidence will be more difficult to locate, may become contaminated or

¹⁷¹ For example in the above mentioned cases of the 13 “disappeared” ABiH soldiers, many allegations were made, including in the local media, that their bodies were deposited in a nearby disused mine site, which covers a vast area, and has never been examined by the local (Bosnian Croat) authorities of West Mostar who have reportedly dismissed such claims.

- Draft legislation on the establishment of a Truth and Reconciliation Commission in Bosnia-Herzegovina should reflect as one aim of the TRC the resolution of outstanding cases of “disappearances”.

Implementation and practice

- Effective police and judicial investigations must be launched into all cases of outstanding “disappearances”, as a matter of urgency, in an independent, impartial and thorough manner, and through unconditional and effective cooperation between the entity and state criminal justice institutions, including police investigators and the judiciary;
- The Federation and Republika Srpska Armies, as well as the HVO component of the Federation Army must provide unconditional cooperation in investigations for “disappearances”, including full details of events relating to “disappearances” in detention facilities operated by the armed forces during the war, the whereabouts of military officers, whether in active service or retired, who are suspects of involvement in “disappearances” or who may possess information on individual cases. Should this cooperation not be forthcoming, then those responsible should be investigated and prosecuted under the negligence provisions available in the entities’ criminal codes;
- NATO-led Stability Forces (SFOR) should use their authority and influence, in view of their efforts to restructure the armies of the Federation and the RS, to ensure that the military authorities disclose information in cases of “disappearances” and cooperate unconditionally and effectively in cases where investigations have been launched by police and judicial investigators – such considerations should be part of the entry process of the Bosnian armed forces in the NATO Partnership for Peace coalition;
- In accordance with international law and standards,¹⁷² the armed forces of the Federal Republic of Yugoslavia and of the Republic of Croatia must provide unconditional cooperation in investigations for “disappearances” which happened in Bosnia-Herzegovina during the war, including information on the whereabouts of military officers, whether in active service or retired, who are suspected of involvement in acts of “disappearances”; the authorities of both countries should immediately hand over any official documentation in their possession which contains information on the activities of their own armed forces or those affiliated with them which may be relevant to investigations and prosecutions for crimes under international law. In this regard, Amnesty International recommends that the HVO archive is returned to the custody of the Federation defence ministry;

¹⁷² For example UN General Assembly Resolution 3074/1973, paragraphs 3,4 and 5.

individual and mass graves immediately as required by international humanitarian law;

- The international community, in particular EU countries and the US, must continue to provide money, expertise and support for the DNA identification program and in order to facilitate the establishment of the Missing Persons Institute;
- The Bosnian authorities must provide unconditional access to pre-war health and dental records that may be used in order to identify mortal remains in more traditional ways.

Rights of the relatives

- The Bosnian authorities on all levels must immediately provide families of the “disappeared” with information as to their fate and whereabouts, in line with international standards, in particular the ICCPR, the Convention on the Rights of the Child, the ECHR, and international humanitarian law;
- The Bosnian authorities on all levels must ensure that benefits granted to people, who are dependents of persons who “disappeared” during the war, can be transferred across the entity boundaries, thus enabling the relatives of the “disappeared” to return to their pre-war homes without substantial loss of earnings;
- The Bosnian authorities on all levels, as well as the international community involved in the process of minority returns should devote more attention to the problems encountered by the wives of missing persons in reclaiming property and land, and/or in gaining access to funding to rebuild destroyed property;
- The Bosnian authorities on all levels should create conditions for the dignified burial of mortal remains exhumed from mass graves in the pre-war communities where these people lived, should this be the wish of the relatives, and wherever possible, commemorate those who fell victim to “disappearances” and extra-judicial killings in appropriate ways, as part of the overall process of reparation. Such grave sites must be respected by everyone and protected against vandalism and sacrilege of all kinds.