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Promoción y protección de todos los derechos humanos, civiles, políticos, económicos, sociales y culturales, incluido el derecho al desarrollo

Información presentada por el Mediador para los Derechos Humanos de Bosnia y Herzegovina*

Nota de la Secretaría

La Secretaría del Consejo de Derechos Humanos transmite adjunta la comunicación presentada por el Mediador para los Derechos Humanos de Bosnia y Herzegovina**, que se reproduce a continuación de conformidad con el artículo 7 b) del reglamento que figura en el anexo de la resolución 5/1 del Consejo, según el cual la participación de las instituciones nacionales de derechos humanos se basará en las disposiciones y prácticas convenidas por la Comisión de Derechos Humanos, incluida la resolución 2005/74, de 20 de abril de 2005.

* La institución nacional de derechos humanos tiene la acreditación de la categoría "A" ante el Comité Internacional de Coordinación de Instituciones Nacionales para la Promoción y la Protección de los Derechos Humanos.

** Se reproduce en el anexo como se recibió, en el idioma en que se presentó únicamente.

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Anexo

Statement on the report of the Working Group on Enforced or Involuntary Disappearances

The Institution of Human Rights Ombudsman of Bosnia and Herzegovina (hereinafter: the Institution), is accredited in full compliance with the Paris Principles with "A" status by the International Coordination Committee of National Human Rights Institutions (the ICC). The Institution is mandated to follow up and to ensure protection of human rights in Bosnia and Herzegovina (BiH), also including the rights of missing persons and their relatives.

The Institution supports the **Report of the Working Group on Enforced or Involuntary Disappearances (**hereinafter**: WGEID) and its conclusions and recommendations.**

1. Even though the WGEID notices the immense progress made by Bosnia and Herzegovina in the search and identification of the disappeared, as well as in providing reparations for victims and prosecuting the crimes, the Ombudsmen agree with the WGEID's statement that there is still much to be done. Hence, the support of different institutions is still required in order for victims to achieve the right to justice, the right to reparation and the right to truth.

2. Taking into consideration *that there is no State-level law on war victims* that would define status and rights of this category of citizens, and *there are no basic principles that should regulate these issues*, the enactment on the *Law on Missing Persons of Bosnia and Herzegovina* in 2004, establishment of *the Central Records on Missing Persons (CEN)*, provided in this Law, establishment of *the Missing Persons Institut (MPI)*, and maintenance of the active role of *the International Commission on Missing Persons (ICMP)* are great steps forward. This actually has resulted in a significant number of exhumations and identifications carried out so far.

- The establishment of CEN has not yet been completed, and this arises concerns among the victims.
- On the other hand, ***the rights to reparation*** of relatives of missing people, meaning the right to social benefits (and/or other measures such as compensation, *restitutio in integrum*, rehabilitation, different means of satisfaction and the guarantee of non repetition), have not yet been protected. ***The Fund for Support to the Families of Missing Persons*** envisaged by the Law has not yet been established. Moreover, the Ombudsmen completely understand the process of establishing the Fund as a priority, so that all relatives of disappeared people enjoy these rights without discrimination based on any ground, especially not on the ground of place of residence, while one must bear in mind that BiH adopted the Law on the Elimination of Discrimination[1] and ratified the Protocol 12 of the European Convention on Human Rights and Fundamental Freedoms.
- Ombudsmen agree that the **MPI**, as the institution which plays a major role in dealing with missing persons still needs more resources and support (financial and political support, including all available technology that would detect graves and foster the exhumation), which would allow its effective and efficient work in the field.

[1] "Official Gazette of Bosnia and Herzegovina", No: 59/09.

3. Although the Criminal Code of 2003 in its Article 172, paragraph 1, contains the enforced disappearance as crime against humanity, this piece of legislation is still to be improved, in the sense that the crime of enforced disappearances is set up as an autonomous crime in order to be punishable when the crime occurs but is not qualified as the crime against humanity. On the other hand, the harmonization of the criminal codes between the entity and Brčko Distrikt level must be done. All of this is necessary in order to **establish a comprehensive regime of individual responsibility, including superior responsibility**, as recommended by the WGEID. From the legal point of view, the absence of an autonomous crime in the legislation does not excuse any state from non-investigating crimes of enforced disappearances, or non-prosecuting and non-punishing perpetrators whenever it occurs.

4. What worries is the fact that ***the number of the prosecutors working on the exhumations and war crimes prosecution is not satisfactory***. Therefore, the Ombudsmen agree with the WGEID's to recommend (appointing additional staff, especially forensic pathologists, as well as to providing them the required assistance and equipment) in order to complete these tasks.

5. ***Plea agreements*** (which itself is innovation in domestic legal system) could serve as the source of information in finding out the graves, especially when a suspect bargaining with prosecutors hold these information, the information must be a part of the plea agreement. However, regarding the plea agreement, the worrying fact is that the promises from the agreement are duly fulfilled.

To conclude, Ombudsmen of Bosnia and Herzegovina support the WGEID's conclusions and recommendations, and understand that dealing with the disappeared persons fosters BiH's integration to the EU.

The Human Rights Ombudsmen
of Bosnia and Herzegovina