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مجلس حقوق الإنسان
الدورة الثلاثون
البند ٣ من جدول الأعمال
تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

تقرير الفريق العامل المعني بحالات الاختفاء القسري أو غير الطوعي

إضافة

بعثة إلى كرواتيا* **

موجز

بدعوة من حكومة كرواتيا، زار الفريق العامل المعني بحالات الاختفاء القسري أو غير الطوعي البلد في الفترة من ١٥ إلى ١٨ حزيران/يونيه ٢٠١٤.

ويتوجّه الفريق العامل بشكره إلى حكومة كرواتيا لدعوتها إياه لزيارة البلد ولتعاونها معه قبل زيارته وفي أثنائها.

وقد أتت الزيارة إلى كرواتيا في إطار زيارة إقليمية رسمية، توجّه خلالها الفريق العامل أيضاً إلى الجبل الأسود وصربيا وشملت كوسوفو[(١)]. ونظراً لانقضاء وقت طويل على حدوث حالات الاختفاء القسري ولتقدُّم العديد من الشهود والأقارب والجناة في السن، بات من الملح أن يجعل جميع المعنيين بالبحث عن الأشخاص المفقودين في المنطقة معرفةَ الحقيقة على رأس أولوياتهم، ولا سيما تحديد مصير كلّ المختفين ومكان وجودهم.

* يُعمم موجز هذا التقرير بجميع اللغات الرسمية. أما التقرير ذاته، الوارد في مرفق الموجز، فيُعمم باللغة التي قُدم بها فقط.

** تأخر تقديم هذه الوثيقة.

(١) أيّ إشارة إلى كوسوفو في هذه الوثيقة يجب أن تُفهم وفقاً لما جاء في قرار مجلس الأمن ١٢٤٤(١٩٩٩).

الرجاء إعادة استعمال الورق

ويعرب الفريق العامل عن قلقه من أن يفسد انعدام الثقة المتبادل التعاونَ الإقليمي. وهو يدعو جميع المعنيين إلى المساهمة في تهيئة بيئة تسودها الثقة من أجل تعزيز التعاون الإقليمي والمصالحة بين الأعراق والتماسك الاجتماعي. ويشدد الفريق العامل على أن التعاون الناجح يتطلب التزاماً سياسياً واضحاً وقوياً على أعلى المستويات لدى جميع الأطراف المعنية.

ويدعو الفريق العامل حكومة كرواتيا إلى تصنيف الاختفاء القسري كجريمة منفصلة عن غيرها من الجرائم في التشريعات المحلية، وإلى مواصلة جهودها في البحث عن الأشخاص المفقودين والتعرف على الرفات البشري؛ وإلى ضمان المقاضاة الفعالة على جرائم الحرب بما يتماشى مع المعايير الدولية؛ وإلى اتخاذ جميع التدابير اللازمة لمكافحة الإفلات من العقاب؛ وإلى وضع برامج جبر شاملة.

Annex

[English only]

Report of the Working Group on Enforced or Involuntary Disappearances on its visit to Croatia (15-18 June 2014)

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I. Introduction

1. At the invitation of the Government of the Republic of Croatia, the United Nations Working Group on Enforced or Involuntary Disappearances visited the country from 15 to 18 June 2014. The delegation was composed of three members of the Working Group: Ariel Dulitzky, Jasminka Dzumhur and Osman El Hajjé.

2. The purpose of the visit was to examine matters related to enforced disappearances and missing persons in the Republic of Croatia, focusing in particular on truth, justice, reparation and memory for victims. While the mandate of the Working Group is to deal with issues related to enforced disappearance, the issues related to enforced disappearance and missing persons are clearly interlinked in this particular context. The Working Group makes reference in the present report to victims of enforced disappearance and missing persons, and remains aware of the legal and factual differences between them.

3. The Working Group wishes to thank the Government of Croatia for extending an invitation to the Working Group to visit the country and for its positive cooperation before and during the visit, as well as its openness to maintain a dialogue with the members of the Working Group. The delegation would particularly like to thank the Ministry of Foreign Affairs and the Ministry of Veterans' Affairs for their support in the preparation for and during the visit. The Working Group would also like to thank to United Nations country team in Croatia.

4. During the visit, the Working Group held meetings with representatives of the Ministry of Foreign Affairs, the Directorate for Detained and Missing Persons of the Ministry of Veterans' Affairs, the Ministry of the Interior, the Ministry of Justice, the Government Office for Human Rights and Rights of National Minorities, the Parliamentary Committee on Human and National Minority Rights, the Supreme Court, the Constitutional Court, the State Attorney's Office, the Section for War Crimes of the County Court of Zagreb, Osijek County Attorney's Office, the County Court of Osijek, Vukovarsko-Srijemska Police Directorate, Šibenik County Attorney's Office, Šibenik County Court, Šibensko-Kninska Police Directorate, the Office of the Ombudsperson, non-governmental organizations, associations of families of missing persons, relatives of missing persons, other members of civil society and the international community. The Working Group visited Zagreb, Vukovar, Slunj and Knin.

5. The Working Group visited facilities for the identification of remains, exhumation sites, former detention camps, the Institute of Forensic Medicine and Criminology and the DNA laboratory in Zagreb, and places of remembrance and memorials, including Vukovar Hospital museum, Ovčara Memorial Centre and the Memorial Cemetery of the victims of the Homeland War, Mirogoj Cemetery and the Voice of the Croatian Victim monument. In Knin, the Working Group met with local authorities and attended an exhumation in Slunj. It also visited Knin Hospital, an old hospital which was a detention camp during the Homeland War. All the meetings and visits helped the Working Group to understand better the measures taken and the policies implemented by the Government of Croatia.

6. The Working Group wishes to thank all its interlocutors for their cooperation and the valuable inputs they provided. The Working Group appreciates the fact that the Government of Croatia transmitted all the documents it requested, including copies of legislation and statistical data that were mentioned during the meetings with official authorities.

II. Regional context

7. The visit to Croatia took place in the context of an official 16-day regional visit during which the Working Group also visited Montenegro and Serbia, including Kosovo. While the present report addresses matters mainly related to Croatia, the issue of enforced disappearances and missing persons in the Western Balkans cannot be examined without taking into account the

general regional perspective.[2] The Working Group visited Bosnia and Herzegovina in 2010 (see A/HRC/16/48/Add.1). According to the International Committee of the Red Cross (ICRC), to date, the fate or whereabouts of over 23,000 persons missing as a result of the Balkan conflicts has been established. However, ICRC has indicated that over 11,000 persons are still missing in the region and that there are unidentified remains belonging to hundreds of bodies in the morgues throughout the region.[3] The Working Group identified some common issues and challenges relating to missing persons and disappearances in the region.

8. Despite impressive results in the past, progress in the search for missing persons in the region has slowed down significantly in recent years, and many families are extremely frustrated by that. It is becoming urgent to ensure that the process of identifying mass grave locations and burial places speeds up as soon as possible, primarily because memories are fading and individuals, places and events are more difficult to identify. Furthermore, some of the witnesses have died or are likely to die in the next few years. Additionally, and even more importantly, some relatives of missing persons are reaching the end of their lives and risk dying without ever knowing the truth about the fate or whereabouts of their loved ones.

9. The conflicts in the former Yugoslavia broke one country into several independent entities. That resulted in specific challenges, primarily obstacles to the prosecution of war crimes in the region, since the prosecution of war criminals may create tensions among States and entities.

10. In the absence of a legal framework for regional cooperation, searching for the disappeared and missing persons, conducting investigations and bringing those responsible for war crimes to justice become critically challenging, particularly because many victims, witnesses and perpetrators are living in the territories of different States and the scenes of the crimes are located in different countries. Often, the presence of an alleged perpetrator in another country where there is no willingness or legal grounds to prosecute leads to insurmountable obstacles to achieving accountability. Insufficient witness protection and the lack of incentives to encourage people to provide more information have also contributed to the slow progress of investigations.

11. Progress is also hampered by the fact that information and evidence that are available are often not shared across borders in the search and identification of the missing, as well as in the investigation, prosecution and conviction of war criminals. There is no centralized regional database of missing persons, not even a list of all missing persons in the region. Several representatives of organizations of families of the disappeared expressed frustration at the ongoing and slow-paced discussions on the creation of a common list of the disappeared. The Working Group notes in this respect that a meeting among governmental institutions in charge of the issue of missing persons in the Western Balkans was held in May 2015 to discuss the establishment of a joint list of missing persons in the territories of the former Yugoslavia.

12. Furthermore, some archives that may contain information on the fate and whereabouts of the missing are not fully accessible.

13. A common gap at the regional level is the absence in existing legal systems of an autonomous crime of enforced disappearance and the absence of an encompassing framework for compensation and reparation for victims and their relatives.

14. Another challenge in the Western Balkans is that between 3,000 and 5,000 of the bodies that have been exhumed have not yet been identified. Even after DNA analysis and cross-checking with the DNA database, which contains blood samples from over 97 per cent of the relatives of the victims, no match has been found in those cases. There are several possible

[2] For reports on the work of the Working Group in the region during the conflict, see E/CN.4/1994/26/Add.1; E/CN.4/1995/37; E/CN.4/1996/36; and E/CN.4/1997/55.

[3] See www.icrc.org/eng/resources/documents/interview/2013/08-28-disappeared-missing-western-balkans-milner.htm.

explanations for that. It may be that, owing to the traditional methods that were used until the year 2000, there were misidentifications. Some estimates suggest that up to 30 per cent of identifications made using traditional methods may be erroneous. In order to verify the identifications that were made using traditional methods, all the bodies identified using those methods would have to be exhumed and bone samples taken for DNA testing. However, that would be an extremely difficult and painful process for the family members. It is also possible that some of the exhumed bodies are those of persons whose deaths were unrelated to the conflict. That could be the case if, for example, the bodies of victims of the conflict were buried in graveyards and their bones intermingled with those of other bodies over time. In addition, there is the possibility that the DNA samples match the blood samples from relatives of missing persons from other countries in the region, given the above-mentioned lack of a joint regional DNA database.

15. The International Commission on Missing Persons has actively promoted the signing of a declaration on missing persons. The Working Group was pleased to learn that, on 29 August 2014, Bosnia and Herzegovina, Croatia, Montenegro and Serbia, signed the Declaration on the Role of the State in Addressing the Issue of Persons Missing as a Consequence of Armed Conflict and Human Rights Abuses.[4] The Working Group welcomes this initiative, which highlights the primary responsibility of States in addressing the issue of missing persons, with the aim of guaranteeing the rights of victims. The Declaration also stresses the need for cooperation between Governments and with international and other organizations in the process of establishing the whereabouts of the missing persons. The authorities in Kosovo informed the Working Group that they had expressed their willingness to become a signatory to the Declaration, to no avail. The Working Group recognizes the importance of involving the authorities in Kosovo, through appropriate means, in regional cooperation activities to address the issue of missing persons.

16. The Working Group recognizes the important work that ICRC has carried out in the Balkans in the past 20 years, including facilitating negotiations and cooperation between concerned parties. Binational initiatives, many of which were facilitated, promoted and led by ICRC, are welcome developments that should be strengthened and expanded.

17. The International Commission on Missing Persons and ICRC have carried out important work in helping States to establish the whereabouts and identity of those who went missing during armed conflicts in the region, and in coordinating joint exhumations. They also played an essential role in the process of DNA analysis and collection of blood samples from family members of missing persons, which is a key precursor to the identification of the bodies that were recovered during the exhumation processes. Moreover, the Commission has facilitated cooperation between associations of families of disappeared persons from the region and is providing permanent support to the Regional Coordination of Missing Persons' Family Associations from the former Yugoslavia, which is an umbrella group of associations of families of disappeared persons from countries in the region.

18. The Working Group notes that some initiatives have been taken for regional cooperation in the search for the disappeared and in the area of transitional justice, including the planned establishment of a regional truth commission (known as RECOM), as a non-political regional network of civil society organizations and individuals.

III. General situation concerning enforced disappearances and missing persons in Croatia

19. From 1945 to 1991, Croatia was a federal constituent of the former Socialist Federal Republic of Yugoslavia. On 8 October 1991, Croatia declared independence, which was

[4] See www.ic-mp.org/wp-content/uploads/2014/08/signed-declaration-2.pdf.

opposed by the ethnic Serb minority in Croatia. An armed conflict ensued, including a violent campaign of ethnic cleansing.[5]

20. The war in Croatia effectively ended in autumn 1995. Croatia eventually reasserted its authority over the entire territory, with Eastern Slavonia reverting to its rule in January 1998 following a peaceful transition under United Nations administration.[6] In April 2009, Croatia joined the North Atlantic Treaty Organization and in 2013, it became a member of the European Union.

21. The Government of Croatia established the Commission on Detainees and Missing Persons[7] as an advisory and expert interdepartmental body of the Croatian Government to give opinions, proposals and expert explanations on issues relating to missing persons. Members of the Commission are representatives of the Ministries and institutions directly involved in the process of searching for missing persons: the Ministry of the Interior, the Ministry of Defence, the Ministry of Justice, the Ministry of Foreign and European Affairs, the Ministry of Health, the State Attorney's Office, security agencies, the Department of Forensic Medicine and Criminology of the School of Medicine at the University of Zagreb and the Croatian Red Cross. The Commission is in charge of cooperation with relatives of disappeared persons and their associations.

22. The Directorate for Detained and Missing Persons in the Ministry of Veterans' Affairs is in charge of collecting data on all persons who went missing during the war. It performs all the expert and administrative tasks related to the search for missing persons, including exhumations and identification of human remains.

23. The Directorate for Detained and Missing Persons also organizes burials of identified victims, according to the wishes of the family regarding the type, place and time of the ceremony. The Directorate cooperates with all governmental institutions, international organizations and civil society associations that are working on the issue of missing persons.

24. Enforced disappearances occurred on the territory of the Republic of Croatia, particularly at the beginning and the end of the conflict. Most of the Croat victims were disappeared in 1991, while most of the Serb victims were disappeared in 1995, during the Flash and Storm military operations. According to information from the Ministry of Veterans' Affairs, 18,000 individuals disappeared in 1991 and another 1,226 disappeared in 1995. In Vukovar, for example, most disappearances occurred between 18 and 20 November 1991, when the territory of Croatia was controlled by the Yugoslav Army. According to the information received, the persons who disappeared from Vukovar were shot and buried in a mass grave at Ovčara, 6 km far from Vukovar, one of the 18 mass graves of victims from Vukovar.

25. According to information from the Ministry of Veterans' Affairs, more than 80 per cent of the cases of enforced disappearances and missing persons have been solved. However, according to the Directorate for Detained and Missing Persons, the fate and whereabouts of 1,642 persons are still unknown. Some 938 of them went missing in 1991/1992 and 704 in 1995. In addition, the burial sites of 428 people remain unknown.

IV. Legal framework

26. The Constitution of Croatia was adopted on 22 December 1990 and amended in 1997, 2000, 2001 and 2010. While Croatia signed the International Convention for the Protection of All Persons from Enforced Disappearance in 2007, it has not yet ratified it.

[5] See www.icty.org/sid/322.

[6] Ibid.

[7] Official Gazette of the Republic of Croatia No. 46/13.

27. The Croatian criminal legislation does not define enforced disappearance as an autonomous criminal offence. Article 90 of the new Criminal Code, which entered into force on 1 January 2013,[8] defines enforced disappearance exclusively in the context of crimes against humanity and does not establish it as a separate criminal offence. Therefore, the prosecution of the crime of enforced disappearance and the determination of the criminal responsibility thereof can occur only in the context of investigations into crimes against humanity and war crimes. The Criminal Code does not contain a statute of limitations in respect of the criminal prosecution of genocide (art. 88), aggression (art. 89), crimes against humanity (art. 90) or war crimes (art. 91).

28. Article 1 of the General Amnesty Law of 1996 grants general amnesty from criminal prosecution and proceedings to perpetrators of criminal acts committed during aggression, armed rebellion or armed conflicts, or related to aggression, armed rebellion or armed conflicts in the Republic of Croatia committed between 17 August 1990 and 23 August 1996. However, according to article 3 of the Law, the perpetrators of the most serious violations of humanitarian law, which constitute war crimes, are exempt from the amnesty.[9]

29. The Republic of Croatia has amended its legislative and institutional framework in the field of the protection and promotion human rights by adopting new legislation and national strategies, programmes and plans. It is especially worth emphasizing the adoption of the Act on the National Preventive Mechanism against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[10]

30. In 2013, the Free Legal Aid Act was adopted with the aim of ensuring that economically and socially disadvantaged categories of citizens have access to legal aid. Based on the analyses of existing legislative provisions and on the accounts of the victims of the conflict with respect to the accessibility of free legal aid, the Working Group believes that the existing free legal aid system could be improved, particularly by taking into account the needs of victims for legal information and counselling, primary legal aid.

31. In 2003, a law was adopted on free access to information, governing the right to access to information possessed by, at the disposal of or under the control of the public authorities.[11] The Working Group notes the importance of the adoption of this law, which is one of the main tools for the families of the disappeared to achieve the truth, as it allows for access to public information or secret information on enforced disappearances that is held by the State.

32. During the process of accession to the European Union, for the Republic of Croatia, building the institutional capacity of the Office of the Ombudsperson was one of the measures required to close chapter 23 on the judiciary and fundamental rights, which contributed to the further development of the institution. The capacity-building included improving the normative framework with the aim of strengthening the independence of the Ombudsperson, extending its competence to promote human rights and ensuring the availability of appropriate resources for the stable functioning of the institution.

V. Right to the truth

33. The Working Group notes that there has been significant progress in the process of exhumations and identifications of disappeared and missing persons. Since 1995, 148 mass graves and 1,200 individual graves have been identified by the Croatian authorities. Human remains of conflict victims have also been found at 14 registered graves sites. After the Flash and Storm military operations, the Croatian authorities collected all the dead bodies in the affected areas. The remains were photographed, recorded and buried in or near a cemetery, in

[8] Official Gazette of the Republic of Croatia Nos. 125/11 and 144/12.

[9] Official Gazette of the Republic of Croatia No. 80/96.

[10] Official Gazette of the Republic of Croatia No. 18/2011.

[11] Official Gazette of the Republic of Croatia No. 172/2003.

accordance with the Geneva Conventions relating to the protection of victims of international armed conflicts and the Additional Protocols thereto.

34. Up to the date of the Working Group's visit, a total of 4,942 bodies had been exhumed, of which 3,979 had been identified. That includes the remains of 1,007 individuals that were exhumed from registered grave sites since 2001 under the supervision of the Directorate for Detained and Missing Persons. The Working Group notes that 80.5 per cent of the exhumed bodies have been identified (85 per cent from 1991/1992 and 62 per cent from 1995). The identification rate for the 1995 cases is lower owing to the fact that the relatives of the persons who went missing in 1995 do not live in Croatia and therefore may not have provided blood samples for the relevant database of the Croatian authorities. The Working Group notes that all missing persons, regardless of their nationality and circumstances of disappearance, are recorded in the official records of missing persons using the same criteria. However, representatives of associations of missing Serbs in Croatia explained to the Working Group their sense that, despite all the initiatives taken by the authorities, depending on the ethnicity of the victims, the authorities paid more or less attention to searching for, identifying and excavating mass graves of potentially missing persons.

35. All three editions of the *Book of Missing Persons on the Territory of the Republic of Croatia*, including the third edition, published in July 2012, were the result of cooperation between the Directorate for Detained and Missing Persons of the Ministry of Veterans' Affairs, ICRC and the Red Cross of Croatia, with the agreement of the Commission on Missing Persons of Serbia.

36. About 900 remains exhumed at different times and in different places remain unidentified even after medical-forensic tests, including on DNA through bone sampling, and are temporarily stored in morgues or are buried in one of two collective tombs built especially for that purpose (Mirogoj Cemetery in Zagreb and Central Cemetery in Osijek), until their identification. Although DNA profiles were generated for 80 per cent of those bodies, they cannot be matched with any blood samples in the database of the relatives of the disappeared. This poses a challenge, considering that there is limited space available to accommodate exhumed unidentified bodies in Croatia and before exhuming additional bodies, a space for storage needs to be ensured. Therefore additional bodies can only be exhumed when space becomes available through identifications. This slows down the process of exhumation and it is therefore important that additional measures are taken to identify the 900 exhumed bodies currently in morgues and to develop additional capacity for the storage of exhumed bodies.

37. The Working Group notes that families and representatives of institutions responsible for searching for disappeared persons from the Republic of Serbia and from Bosnia and Herzegovina are invited to be present during the exhumations if it is felt that their presence can contribute to ascertaining the fate or whereabouts of disappeared persons who are in some way related to those countries. The Red Cross of Croatia also has a significant role in the process of the searching for, exhumation and identification of missing persons in the Republic of Croatia.

38. The Working Group notes that an electronic database of missing persons that contains all the relevant data regarding missing persons, including ante-mortal data, has been established. The application of DNA analysis in the identification of remains began in 1994, with wider application in 1996. The process was further enhanced in 2004 with a joint project on identification by DNA analysis between the Ministry of Defence (Directorate for Detained and Missing Persons) and the International Commission on Missing Persons. The joint project, which includes the collection of blood samples from missing persons' family members as potential donors for DNA analysis in the process of identification, has also been developed. This cooperation has a significant role in the process of identification, given that the International Commission on Missing Persons has a database of persons who went missing from the territory of neighbouring countries, which enables comparison to be made of relevant indicators for the identification of remains.

39. The Working Group is aware that it is difficult to find remains for a number of reasons, including the lack of documentation that could contribute to the clarification of facts, the transfer of remains and the reluctance of witnesses to testify. One of the main challenges when it comes to clarifying the fate and whereabouts of those who went missing during the events of 1991 is that the relevant documentation was reportedly taken away by the Yugoslav Army. The Working Group notes that the remains of 938 persons who disappeared in Vukovar were exhumed at the Novo Groblje cemetery in Vukovar. Of those, 850 (91 per cent) have been identified. The documentation provided by the Republic of Serbia contributed to the exhumation and the subsequent identification by the competent authorities. From the Ovčara mass grave, the remains of 200 individuals were exhumed, from which 193 persons were identified. Croatia is still seeking information on another mass grave in Ovčara, where it is believed that about 50 more victims were buried.

40. The Working Group notes that the main request of family members of missing persons is to receive information on the fate and whereabouts of their loved ones. A number of institutional mechanisms have been established with the goal of collecting information on disappeared persons, locating and marking graves, and collecting blood samples of family members of the missing, which is a precursor to the identification of exhumed remains through a DNA process. The Working group recalls its general comment on the right to the truth in relation to enforced disappearances, which states that "the right to the truth is both a collective and an individual right. Each victim has the right to know the truth about violations that affected him or her, but the truth also has to be told at the level of society".[12]

41. There is continuing disagreement about the total number of persons that disappeared in 1995. This is linked to the fact that persons disappeared on the territory of Croatia, but their relatives registered their tracing requests in neighbouring countries, especially in Bosnia and Herzegovina and in Serbia. In 2000, the Directorate for Detained and Missing Persons of Croatia and the Commission on Missing Persons of Serbia held a meeting in the presence of ICRC and the International Commission on Missing Persons to address that issue. An agreement was reached to record and collect data on disappearance cases from 1995 using criteria identical to those used in the case of missing persons from 1991 and 1992. However, the Working Group has received allegations that a number of missing persons are still not registered for various reasons.

42. The Working Group notes that Croatia and Serbia took some initiatives concerning the search for missing persons in the course of 2013, including organizing official meetings of State authorities responsible for the search for missing persons. However, there has only been one such meeting to date, which was held on 18 June 2013. According to the information received, as of March 2014 there were 2,205 case files open on missing persons between Croatia and Serbia.[13]

43. The cooperation between Croatia and Serbia has led to some positive results. With regard to identification of human remains exhumed in Croatia, the Forensic Institute in Zagreb organized a session for Serbian families in May 2014, which resulted in the identification of a total of 19 bodies.

44. In April 2013, the Government adopted the National Programme for Protection and Promotion of Human Rights for the period 2013-2016 in accordance with the recommendation of the Vienna Declaration of 1993. The National Programme is a strategic document containing measures and priorities for the protection and promotion of human rights, based on an analysis of the human rights situation in the country. The priorities of the National Programme include missing persons, the rights of Homeland War victims, the rights of national minorities, the right to free legal aid, the right to access information, protection of personal information, protection of

[12] See A/HRC/16/48, para. 39.

[13] The statistics on missing persons in Croatia is provided by the Croatian Red Cross on a quarterly basis. The most recent update was received on 31 March 2014.

the human rights of particularly vulnerable groups, including persons with disabilities, and victim and witness protection. Furthermore, the National Programme creates the conditions for quality cooperation with civil society organizations in the field of human rights protection and promotion. In relation to disappeared persons, the National Programme includes plans to improve the system of records and databases that should contain reliable information on persons who went missing during the war and those who were in captivity, and on exhumed, identified and non-identified remains, as well as plans to regularly update data on mass and individual graves.

45. The Working Group has learned that a project has been initiated to establish the truth in local communities in respect of the events that took place between 1991 and 1995. That is an important way of dealing with the past, while at the same time serving as a forum for dialogue. The Working Group supports those activities, which should include not only local authorities but also victims' associations.

VI. Right to justice

46. The Working Group notes that in 2011, Croatia adopted a specific strategy for investigating and prosecuting war crimes. Special war crimes departments were established in police administrations, located in accordance with the territorial structure of the attorney's offices and courts. Since the beginning of the war, the Ministry of the Interior, in accordance with its legally binding obligations and competences, started collecting, processing and documenting information and evidence on crimes committed during the armed rebellion and aggression, especially events characterized as war crimes. Operation Phoenix was established with the aim of uncovering the fate and whereabouts of disappeared persons and collecting information on mass and individual graves, but also in order to collect information on prosecutions of crimes against humanity and international law. During that operation, the Ministry of the Interior, in cooperation with other relevant bodies and services, registered 1,857 offences and reported on 9,110 perpetrators of war crime.

47. The State Attorney's Office represents the State in legal procedures and is responsible for the prosecution of war crime cases. In addition to the General State Attorney's Office, the four local State Attorney's Offices at Osijek, Rijeka, Split and Zagreb contain sections dedicated to the prosecution of war crimes. The State Attorney's Office has drawn up an operational programme determining in detail all the immediate obligations of all attorneys, especially the obligation to coordinate their activities with police officers in relation to the handling of war crimes cases and to support the implementation of the Ministry of Justice strategy for the investigation and prosecution of war crimes committed in the period 1991-1995.

48. The Working Group also notes that the State Attorney's Office has made extraordinary efforts to create a unified electronic database of all reported cases of war crimes, which is available to all county attorneys' offices, the Ministry of the Interior and intelligence agencies. This contributes significantly to the coordination of investigation efforts and helps to avoid duplication.

49. However, the Working Group notes that there have been significant delays in the prosecution of war crime cases owing to the unavailability of witnesses or their unwillingness to testify. In this respect, various steps have been taken to increase cooperation between the Croatian State Attorney's Office and its counterparts in neighbouring countries through the signing of agreements and memorandums. On 3 June 2013, the Protocol of the State Attorney's Office of the Republic of Croatia and the Prosecutor's Office of Bosnia and Herzegovina on Cooperation in Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide was signed in Sarajevo. Similar agreements were signed with the Prosecutor for War Crime of Serbia on 13 June 2006 and with the State Prosecutor of Montenegro on 28 June 2006.

50. An additional problem in the prosecution of war crime cases is the fact that many alleged perpetrators live in other countries and, despite the fact that their identities and addresses are well known, they cannot be prosecuted in Croatia given that they reside in countries that do not permit the extradition of their nationals. This is particularly problematic with regard to the prosecution of war crime cases from 1991.

51. The Working Group was informed by relatives of the disappeared and representatives of victims' associations that many crimes allegedly committed by members of the Croatian Army and police forces in the course of 1995 have not been investigated or the perpetrators prosecuted. In addition, during its visit, the Working Group received reports that some perpetrators of war crimes still hold official positions in the Government, including in the administration of local communities in which victims and their families live. In some cases, alleged perpetrators even hold high positions. This represents a constant threat and source of intimidation for victims, particularly when they know that their disappeared relatives were taken by such individuals.

52. The Working Group notes that, while national legislation allows for trials in absentia, including hearing the testimony of victims and witnesses, some problems have been reported in practice. The Working Group received allegations that, in some cases, a person convicted in absentia could appear in court as the result of a complaint having been lodged, requesting the reopening of the case. If granted, there would be a new hearing and the available evidence from victims and witnesses would be reviewed. This repetition of hearings could result in re-victimization and increase victims' and witnesses' trauma and suffering. In most cases tried in absentia by the Croatian justice system, the alleged perpetrators of war crimes are Serbian nationals currently residing on the territory of another State. The Prosecutor of the Republic of Croatia has adopted an Action Plan for reviewing trials conducted in absentia.[14] The Plan includes the adoption of amendments to the Criminal Procedure Act. Based on these amendments, combined with the General Instruction on war crime cases issued by the Chief State Prosecutor's Office,[15] requests for the reopening of proceedings have been submitted for 94 out of a total of 464 persons who have been convicted in absentia. That has resulted in a substantial reduction in the number of final verdicts reached in absentia.

53. Prosecutors and judges should be more sensitive to the needs of victims and should establish and consistently abide by rules concerning their interaction with the general public and with relatives of missing persons in particular. The families of missing persons should be informed regularly about investigations and their outcomes.

54. Since 2006, the Ministry of Justice of the Republic of Croatia has been developing a support system for victims and witnesses. The Directorate for Probation and Support to Victims and Witnesses was established within the Ministry to perform administrative and professional tasks. The support system functions on two levels, through the activities of the Independent Sector for Victim and Witness Support and through the departments organizing and supporting witnesses and victims established at county courts in Osijek, Rijeka, Sisak, Split, Vukovar, Zadar and Zagreb. Two organizational units were established within the Independent Sector for Victim and Witness Support: the Department for Indemnity in Criminal Procedures and the Department for Victim and Witness Support and International Cooperation. The latter systematically develops and coordinates the victim and witness support system and offers victims and witnesses psychological support and general legal information. Information and support are available to witnesses coming to testify from abroad and to witnesses from Croatia who have been summoned to testify abroad.

55. According to the information received by the Working Group, the Ministry of Justice has established good cooperation with the Ministry of the Interior with regard to the organization of

[14] Action Plan for the Implementation of Instructions Number O-4/08 related to work on war crimes cases. The Chief State Prosecutor's Office, Number: A-223/08-2, 12 December 2008.

[15] The Chief State Prosecutor's Office: Instruction on the implementation of the Criminal Procedure Act provisions in war crime cases — criteria (standards) for criminal prosecution, Number: O-4/08, 9 October 2008.

physical protection and access to the courts in the context of investigations of war crimes and crimes against humanity.

56. The Working Group notes that Croatia adopted a Witness Protection Act in October 2003,[16] which provides for protection and support for witnesses and persons close to witnesses before and after criminal proceedings, in cases where a person's life, health or considerable assets might be in danger as a result of his or her testimony in a criminal proceeding. The Act provides for protection measures including physical protection, relocation, measures to disguise identity and ownership and change of identity. In 2004, following the adoption of the Act, the Criminal Police Directorate established the Witness Protection Office, which implements and organizes the witness protection programme, implements and organizes urgent protection measures and performs all other tasks related to the protection of endangered persons as prescribed in the Act.

57. The budget of the Ministry of the Interior includes a special item for the witness protection programme each year. There are some specific difficulties in the implementation of witness protection measures in a small country such as Croatia, where people know each other and are mutually connected. Additional effort is therefore required to ensure effective witness protection and to encourage more people to disclose information, including information related to possible burial places, mass graves and potential perpetrators.

58. The Working Group notes that the laws and programmes adopted to regulate the support and protection of witnesses need to be strengthened and systematized. More needs to be done to protect and provide assistance to victims and witnesses, especially women. Psychological support to victims and witnesses should not be limited to a short period of time before the person appears in court. It is well established that such support is crucial both prior to testimony at trial and for a period after the trial.

VII. Right to reparation

59. The Working Group notes that the Republic of Croatia has put in place some special measures for families of missing persons, including informing the families about available mechanisms and about progress in and the results of the search for their family members. Croatia has adopted two laws regulating the rights of missing persons: the Act on the Rights of Croatian Homeland War Veterans and their Family Members, which defines the rights of the families of Croatian missing war veterans, and the Act on the Protection of Military and Civilian War-Disabled Persons, which regulates the rights of families of missing civilians. These laws prescribe a monthly financial benefit for families of missing persons. According to the Declaration on the Protection of All Persons from Enforced Disappearance, "victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible. In the event of the death of the victim as a result of an act of enforced disappearance, their dependants shall also be entitled to compensation" (art. 19).

60. The Working Group notes that the laws do not attribute equal status to all family members of missing persons, as the benefits family members receive depend on the status of the missing person. The family members of veterans receive significantly higher benefits than the family members of civilian war victims. The Working Group was told that the families of missing persons who disappeared as civilians did not enjoy the same rights concerning burial as members of the families of missing soldiers. In the case of a civilian, the Government would cover only the cost of the transportation of the remains from the morgue to a burial place, not the funeral costs, while for missing veterans all costs are covered, including the cost of a grave. However, after its visit, the Working Group was informed by the Government that identified civilian victims have the same rights as identified Croatian war veterans with respect to the type

[16] Offical Gazzete of the Republic of Croatia Nos.163/03 and 18/11.

of funeral service, the organization and free transport of remains to a burial site in Croatia or to the appropriate State border crossing and the coverage of burial expenses. Identified civilian victims do not have the same rights as identified Croatian war veterans in relation to the burial place and military honours, as those rights arise from service in the Armed Forces. Additionally, the exercise of the rights of family members of missing civilians under the Act on the Protection of Military and Civilian War-Disabled Persons is connected to the level of income of the family members. The Working Group also notes that relatives claim that, although the above-mentioned laws may not be discriminatory in principle, the way they are implemented may in practice exclude some ethnic groups from the enjoyment of the rights stipulated in the laws.

61. That falls short of the requirements specified by the Working Group in its general comment on article 19 of the Declaration on the Protection of All Persons from Enforced Disappearance. The general comment indicates that the right to redress of victims of an act of enforced disappearance and their family places States "under an obligation to adopt legislative and other measures in order to enable the victims to claim compensation before the courts or special administrative bodies empowered to grant compensation".[17]

62. A system of psychosocial assistance to families of missing persons has been set up and the State supports projects conducted by organizations of family members of missing persons.

63. The Working Group notes that the Republic of Croatia has adopted the Act on the liability of the Republic of Croatia for damage caused by members of the Croatian army and police when acting in their official capacity during the homeland war[18], regulating the responsibility of Croatia for damages caused between 17 August 1990 and 30 June 1996. It constitutes a legal base for compensation for each person damaged by an act committed by a government official. The Act does not require prior determination of individual responsibility for the damage. Examples presented to the Working Group indicate that there have been problems with the implementation of the Act which have led to the majority of claims being rejected, except in cases of lawsuits in which criminal responsibility had already been established. The main reasons the claims were refused were the rejection by Croatia of responsibility for damage caused during the war on territory that was not under its control and the absence of criminal prosecution of perpetrators. At the same time, a practice has been established, particularly in cases of enforced disappearances, that shifts the burden of proof mainly onto the plaintiff.

64. There is no law regulating the status of missing persons and guaranteeing the rights of victims. That is a significant obstacle to the realization of the rights of the relatives of the disappeared. In the absence of such a law, the only possible way for relatives of the disappeared to qualify potentially for any compensation or pension as a war victim is to legally declare the disappeared relative dead. There is no procedure in place for obtaining a declaration of absence by reason of enforced disappearance. Many relatives understandably refuse to legally declare their disappeared family member dead in the absence of any information on his or her fate or whereabouts and perceive that legal procedure as an additional trauma. As a result, they suffer additional consequences on several fronts, including in terms of social welfare, financial matters, family law and property rights.

65. The Act on Financial Compensation to Victims of Criminal Offences entered into force in Croatia on 1 July 2013. It was adopted in accordance with the Accession Treaty to the European Union, which Croatia accepted under the *acquis communautaire* in the section pertaining to the protection of victims of violent crime. The Act has been brought into line with European Council Directive 2004/80/EC of 29 April 2004, thus adopting the highest standards of legal protection for victims of violent crimes committed on the territory of Croatia.

[17] See E/CN.4/1998/43, para. 72.

[18] Official Gazette of the Republic of Croatia No. 117/03.

66. The Working Group notes that Croatia has made significant efforts in the area of memory by establishing a common memorial with which the mass graves of Croatian missing persons have been marked.

67. The 2010 amendments to the Constitution and the 2012 Ombudsperson Act strengthened the Office of the Ombudsperson. The institution aims to promote and protect human rights and to protect citizens from any unlawful or irregular activities undertaken by State bodies. The Working Group was informed that no appeals from victims related to enforce disappearances have been registered with the Ombudsperson. That would suggest that the Ombudsperson's approach to human rights violations is reactive rather than proactive. The main reason for that is the limited resources of the Office of the Ombudsperson. The Working Group notes the importance of enabling the Office of the Ombudsperson to take a proactive role, including the ability to examine cases of human rights violations ex officio, in particular where serious human rights violations have allegedly occurred or the rights of particularly vulnerable persons have allegedly been violated.

68. While there had been public debate on the idea of merging the offices of the Ombudsperson, the Ombudsperson for Gender Equality, the Ombudsperson for Persons with Disabilities and the Ombudsperson for Children, the majority of parliament had not voted in favour of the merger. Nonetheless, the Ombudsperson Act provides for strengthened coordination between the Office of Ombudsperson and the three specialized ombudsmen. The Working Group notes, however, that although a cooperation agreement has been signed between the four entities, is not clear how effective protection will be provided to victims of multiple human rights violations and in cases in which the victim is a person whose rights should be protected under the mandate of one of the specialized ombudsmen.

VIII. Conclusions and recommendations

69. **Considering the amount of time that has passed since the disappearances occurred in the Western Balkans and the very advanced age of many relatives and witnesses, there is an urgent need for everyone involved in the process of searching for missing persons to set as an immediate priority the establishment of the truth, particularly the determination of the fate and whereabouts of all the disappeared. The issue of disappearances should be considered as a humanitarian as well as a human rights issue on the agenda of political processes.**

70. **The Working Group acknowledges the current working-level cooperation that takes place between forensic experts, prosecutors and judges across the region. Successful cooperation requires clear and strong political commitment from the highest levels of all parties involved. Currently, regional cooperation is marred by mutual mistrust, which results, inter alia, in delays in exhumations. Therefore, building trust between concerned parties is of high importance; they must all contribute to that process by putting ill-will behind them and fostering a trusting environment that will promote regional cooperation. In the meantime, mature political conduct and determined political leadership are required in order to foster the inter-ethnic reconciliation and social cohesion that could eventually help to establish the truth in the region.**

71. **The Working Group reiterates its gratitude to the Government of Croatia for the invitation and sincere cooperation it demonstrated with the Working Group throughout the visit. During the visit, the Working Group was deeply saddened by the unbelievable suffering that the relatives of missing persons endured and have continued to endure for so many years. In the hope of being able to contribute some elements of a solution, the Working Group reiterates its offer of future cooperation and dialogue with all stakeholders.**

A. Regional recommendations to Governments and authorities

72. **Act with due urgency and speed in the matter of enforced disappearances, as required by the Declaration on the Protection of All Persons from Enforced Disappearance and other international obligations.**

73. **Disclose all information on mass graves and make that information accessible to all countries and authorities in the region.**

74. **Ensure high-level commitment to clarifying the fate and whereabouts of all missing persons, bringing all perpetrators to justice and ensuring full reparation for all victims.**

75. **Reinvigorate efforts to establish a common regional list of the disappeared.**

76. **Speed up the process of tracing missing persons through strengthened cooperation with institutions engaged in tracing disappeared persons in neighbouring countries, especially between prosecutors and judicial institutions. Such cooperation must include the exchange of relevant evidence.**

77. **Everyone involved must support the search for missing persons by providing relevant information and documentation at the national and regional level.**

78. **Continue the regional dialogue on missing persons and initiatives aimed at finding solutions to properly solve the issue.**

79. **Implement fully the Declaration on the Role of the State in Addressing the Issue of Persons Missing as a Consequence of Armed Conflict and Human Rights Abuses, signed by Bosnia and Herzegovina, Croatia, Montenegro and Serbia.**

80. **Improve cooperation in accordance with the 1996 bilateral protocol between Croatia and Serbia.**

81. **Offer more in-service training to judges and prosecutors on the Declaration on the Protection of All Persons from Enforced Disappearance and other international instruments.**

82. **Immediately open archives that are relevant to cases of enforced disappearances in order to facilitate the localization of undiscovered gravesites and speed up the search for missing persons.**

B. Recommendations to Croatia

83. **Ratify the International Convention for the Protection of All Persons from Enforced Disappearance and recognize the competence of the Committee, under articles 31 and 32 of the Convention, to receive and consider communications from individuals and inter-State communications.**

84. **Establish enforced disappearance as a separate offence in accordance with the definition contained in the Declaration on the Protection of All Persons from Enforced Disappearance. The offence of enforced disappearance should be punishable by appropriate penalties that take into account its extreme seriousness.**

85. **Consider enforced disappearance a continuing offence in accordance with article 17 (1) of the Declaration on the Protection of All Persons from Enforced Disappearance, which requires that "acts constituting enforced disappearance shall be considered a continuing offence as long as perpetrators continue to conceal the fate and whereabouts of persons who have disappeared".**

86. **Recognize the status of families of missing persons by law and guarantee their rights in a non-discriminatory manner.**

87. **Ensure that all victims receive equal treatment, without discrimination on any grounds, and ensure that authorities adopt a non-discriminatory approach in all measures they take to solve the issue of missing persons.**

88. **Ensure that all victims of enforced disappearance obtain full reparation, including restitution, rehabilitation, satisfaction and guarantees of non-repetition, without discrimination and without having to declare the disappeared person dead.**

89. **Improve the current system of reparations, ensuring that it provides for a comprehensive, detailed and non-discriminatory gender-sensitive programme of reparations.**

90. **Ensure equitable allocation of existing funds for civilian victims of war and reduce the differences in the budget for civilian and military victims of the war.**

91. **Address the possible misidentifications made in the past, provided that the right to privacy of the families of victims of enforced disappearances are fully respected and that the DNA data are protected with the utmost care. A review process should be commenced to remove the obstacles to the ongoing identification work.**

92. **Expedite the process of war crimes prosecutions.**

93. **Initiate a vetting process to identify all government officials who were allegedly involved in the commission of war crimes. Improve and systematize vetting measures in the recruitment and appointment of State officials.**

94. **Pay equal attention to all victims regardless of their nationality in respect of memorials. This principle needs to be integrated in future activities related to this aspect of reparations.**

95. **Develop educational materials that promote pluralism and teach history from an objective perspective in order to combat ethnic polarization and ethnic discrimination.**

96. **Conduct a thorough analysis of the above-mentioned obstacles to the implementation of the Act on the liability of the Republic of Croatia for damage caused by members of the Croatian army and police, with the aim of ensuring the effective implementation of the Act.**

97. **Reconsider the option of merging the Office of the Ombudsperson and the three specialized Ombudsmen with the aim of rationalizing. Parallel to this, the plan to make the Ombudsperson more accessible to citizens by opening field presences should be supported.**

98. **The Working Group invites the Government of Croatia, within 90 days from the date of presentation of the present report to the Human Rights Council, to submit a timetable showing the steps it will take to implement the recommendations of the Working Group, the dates by which each measure will be taken and the dates by which it plans to finalize the implementation of the recommendations.**