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Press Release

UNITED NATIONS WORKING GROUP ON ENFORCED OR INVOLUNTARY DISAPPEARANCES CONCLUDES ITS VISIT TO BOSNIA AND HERZEGOVINA

21 June 2010

The United Nations (UN) Working Group on Enforced or Involuntary Disappearances (WGEID) visited Bosnia and Herzegovina (BiH) from 14 to 21 June 2010. The WGEID wishes to thank the Government of Bosnia and Herzegovina for extending an invitation to the WGEID to visit the country and for its very positive cooperation before and during the mission. The WGEID also wishes to thank the United Nations Development Programme (UNDP) in BiH, the United Nations Office of the High Commissioner for Human Rights (OHCHR) Secretariat, and the interpreters for their invaluable support.

The mission was conducted by two members of the WGEID, its Chair-Rapporteur Jeremy Sarkin (South Africa), and Olivier de Frouville (France). The purpose of the visit was to learn about the country's efforts in addressing cases of enforced disappearances/missing persons, and to examine lessons learned and good practices in dealing with past cases, the fight against impunity, and other issues including matters concerning truth, justice and reparations for victims.

During the mission, the WGEID held meetings with the Minister of Human Rights and Refugees of BiH, senior officials of the Ministry of Foreign Affairs of BiH, the Ministry of Justice of BiH, as well as the Ministry of Human Rights and Refugees of BiH. It met officials from the Federal Ministry of Labour and Social Policy and the Ministry of Labour and the Protection of Veterans and Disabled Persons of the Republika Srpska. It met with representatives of the Joint Commission for human rights, rights of the child, youth, immigration, refugees, asylum and ethics of the Parliamentary Assembly of BiH; the President and Vice President of the Constitutional Court of BiH; the State Court of BiH; the District Court of Banja Luka; and the Deputy Chief Prosecutor of BiH. It also met with representatives of the municipalities of Srebrenica and Mostar. The WGEID met with the

directors of the Missing Persons Institute (MPI) and members of the Coordination Team for War Crimes and Missing Persons of Republika Srpska, including the Chief Prosecutor of the Republika Srpska and the Head of the Republika Srpska Operative Team for Missing Persons.

The WGEID also met with many non-governmental organizations, associations of families of missing persons, families of missing persons and other civil society actors all over BiH.

The WGEID held a number of meetings with representatives of the international community, including the United Nations Resident Coordinator in BiH, a senior representative of the Office of High Representative (OHR), the head of the delegation in BiH of the International Committee of the Red Cross (ICRC), the Director-General of the International Commission on Missing Persons (ICMP), a representative of the International Criminal Tribunal for the former Yugoslavia (ICTY), and other representatives of these institutions.

The WGEID travelled around the country. It visited Sarajevo, Vogošća, Srebrenica, Tuzla, Banja Luka, Kotor Varoš, Prijedor and Mostar. It attended a commemoration event held by families of victims, went to exhumation sites, visited former detention camps and went to the Potočari memorial centre in Srebrenica.

The WGEID was shown various ICMP's facilities where human remains were being kept and processes of identification were being undertaken. The procedures of DNA analysis, the capturing of family of missing person data, as well as other scientific processes were observed.

The WGEID in the past did have a role in dealing with cases of persons who disappeared in the former Yugoslavia, including Bosnia and Herzegovina. The Commission on Human Rights established the Special Process on Missing Persons in the Territory of the former Yugoslavia in 1994 and appointed one of the WGEID members to carry out this task. That person resigned in 1997 and the Commission on Human Rights requested the Special Rapporteur on the situation of human rights in the former Yugoslavia and other institutions to continue this task.

BiH suffered severe and massive human rights violations. More than 100,000 people were killed. More than two million people were displaced. Tens of thousands of people disappeared. The number of missing persons is a highly political and controversial issue. There are disagreements about the number of people who went missing. Nevertheless, the

WGEID learned from various institutions that they largely agree that between 28,000 and 30,000 persons disappeared in BiH during the conflict. Of these missing persons, it is estimated that about two thirds of the missing people have been accounted for, while one third remain missing.

There have been major developments and advances made by the authorities of BiH to try and find the truth about the fate and the whereabouts of the missing persons. Steps taken include the enactment of the Law on Missing Persons (LMP) of 2004; the establishment of the Missing Persons Institute (MPI); the significant number of exhumations and identifications carried out. In addition a number of criminal cases have been brought at state and entity level.

The WGEID recognises the role played by various international actors in dealing with the question of missing persons. The UN, OHR, ICMP, ICRC, and other international organisations should keep on working on the problem of enforced disappearances and missing persons in BiH. They should continue to assist BiH as well as the families of the disappeared to realize the right to truth, the right to justice and the right to reparation. Clarifying most cases of missing persons should be a priority in the dialogue between BiH and the European Union.

The WGEID notes that the major demand by family members is for the truth about the fate of their missing loved ones. Perceptions exist that some missing persons have not been reported for various reasons while some argue that the number of cases has been over-reported. While the Law on Missing Persons provides for a Central Record of the Missing Persons (CEN) this has not yet been completed. This should be done as soon as possible and be made public with the listing of the ethnic origin of those classified as missing. This will promote transparency, accuracy and certainty about who went missing. It will reduce the politicisation of these issues.

Victims from the various ethnic groups have different positions on a number of questions relating to missing persons. All allege discrimination in the way they and their communities are dealt with. In BiH, the right to non-discrimination should be promoted and protected in any activities, and all citizens of BiH should be treated equally, wherever they live and whatever their ethnic origin. Legislation and processes to promote equality and prevent discrimination ought to be a priority.

The process to determine where mass graves can be found is becoming more difficult with the passage of time. One of the major constraints is determining where further mass graves can be found. Much more needs to be done to obtain information where they can be found. Other countries could assist in the information gathering process to locate further grave sites. To encourage more people to reveal information concerning grave sites, witness protection programs should be strengthened. Witness support and protection should also be provided to families of missing persons who are at times threatened, intimidated and sometimes blackmailed. When plea bargaining occurs with a person suspected of having information on missing persons, providing such information should be part of an agreement.

The WGEID was impressed by the professionalism, quality and importance of the work done by the ICMP. It ought to remain actively engaged with this work in BiH in the future. We visited an exhumation site and saw the processes that were being performed to identify the remains found. When visiting the ICMP, facilities we were extremely impressed by the DNA analysis systems and the processes by which blood and other data from 88,000 relatives of missing persons were being processed.

The WGEID was also impressed by the MPI and its high level of commitment, its tripartite structure, the consensual atmosphere between its three directors, and the level of participation of families of the disappeared through an advisory board and direct contact. The institution should be supported and strengthened. In particular, the independence of the MPI should be guaranteed. More resources should be put at the disposal of the MPI to allow it do its work. All available technology necessary to detect graves and to exhume them should be provided to the institution.

For an exhumation to take place, a prosecutor has to obtain a court order. This has not always been easy and which court and which prosecutor has jurisdiction has been a complicating factor. The number of prosecutors working on exhumations and war crimes prosecutions is extremely low. They also have few resources and staff. Additional prosecutors at local level should be appointed to accelerate the process of investigations.

Families of victims should be more regularly given information on the process of investigation, the results of those investigations and whether trials might be forthcoming. Courts at all levels should have consistent rules in dealing with the public in general and with families of the disappeared in particular. Special personnel should be appointed to meet with families and inform them, on a regular basis, of progresses made in their cases. Some courts

have appointed psychologists. This should be more regularly done. Programs that especially assist women ought to be implemented.

Other avenues should also be explored to establish the truth about what occurred. This could include a truth mechanism but not as a substitute for justice. There could also be localized commissions of inquiry. International organizations should give their full support to such activities. The National Strategy for Transitional Justice should be fully supported and funded.

As far as justice is concerned, many perpetrators are still at large. In many communities they live side by side with their victims. Even though there have been a number of trials by both the ICTY and by BiH courts, to prosecute the huge number of perpetrators that remain would require substantial additional financial resources. While there has been devolution to local courts of the competence to try such cases, there are numerous problems in implementation. The lack of the harmonization of criminal codes at entity level makes it difficult to prosecute enforced disappearances as crimes against humanity.

To enhance prosecutions, the process of witness protection needs to be improved. Immunity from prosecution or plea bargaining should be used cautiously.

The criminal codes at the Entity level should be harmonized with the criminal code at the State level, in particular with the view to integrate the crime of enforced disappearances as a crime against humanity and to set appropriate penalties. The criminal codes at all levels should be amended to integrate an autonomous crime of enforced disappearance. The capacities of cantonal and districts courts to try war criminals should be strengthened so to able them to try most of the cases in the future. Cooperation and sharing of evidence on cases of enforced disappearances should be enhanced between the State Prosecutor and the prosecuting authorities at the Entity level. The international judges in the Court of BiH should continue to ensure that justice is delivered and perceived to be delivered in an impartial manner.

Persons accused or suspected of having committed serious crimes, in particular the crime of enforced disappearance, should be suspended from any official or public function. A vetting procedure should be properly implemented to this effect, including for the security forces at all levels.

Many orders of the Constitutional Court are not implemented. This should be done and failure to comply should be prosecuted as provided by the law of BiH.

An effective public system of free legal aid should be established to enable relatives of disappeared persons to receive legal support if they cannot afford it.

As far as reparations are concerned, a number of laws at Entity level provide for social support for civilian war victims or war veterans, but there is no general provision for reparations. However, many seemingly did not know about the law and others claimed that these processes are extremely difficult to access. Some allege discrimination in the provision of such services. They argue that in some areas while the law in theory does not discriminate between the ethnic groups anymore, implementation is designed to exclude certain ethnic groups from such services.

The LMP provides for reparation by the creation of a State-level fund called the Fund for Families of Missing Persons to assist families of missing persons. This would allow reparation and assistance to associations of families. However, such a fund has not been established. Establishing the fund is a priority.

The WGEID recalls that reparations are not only financial in nature. A national programme on reparations for relatives of victims of enforced disappearance, that includes compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition should be established. Reparation programs should take into account a gender perspective, considering that most of family relatives of missing persons are women.

More assistance should be given to associations of families of disappeared at the State level, without any discrimination as to ethnic origin. Measures should be taken in order to see that members of families of disappeared persons are entitled to social benefits and other measures of social support irrespective of where they live, including health care, special education programs and psychological assistance.

Greater training to all public servants working on issues related to enforced disappearance ought to take place.

Much more ought to be done to promote reconciliation in the country. A national law on the issue of memorials should be enacted. It should set out the criteria and the process to establish such memorials as victims across the country complained that memorials they wished to erect were disallowed by local authorities controlled by those from other ethnic groups. It was also argued that some memorials were erected in places in order to intimidate victims from other ethnic groups.

To commemorate the issue of missing persons, without choosing a day that is acceptable to one community only, 30 August (International Day of the Disappeared) should be declared as the national day for commemorating the memory of all missing persons in BiH. This would commemorate victims of enforced disappearance, without ethnic distinction. This day is already commemorated by some in the country, including for example, the Parliament of BiH.

The WGEID notes with appreciation that BiH has signed the International Convention for the Protection of All Persons from Enforced Disappearance. It looks forward to BiH ratifying the Convention, and accepting the competence of the Committee in terms of articles 31 and 32 of the Convention. The WGEID looks forward to the entering into force of the Convention and working in close cooperation with the Committee to be established.

The above-mentioned preliminary findings, and other issues arising from the information-gathering activities during this mission, will be elaborated on in greater detail in the report to be presented to the Human Rights Council in March 2011.