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Visit to Bosnia and Herzegovina

Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*

Summary

The Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli, presents his report on his visit to Bosnia and Herzegovina from 2 to 10 December 2021, in which he assesses the measures adopted by the Government to address the serious violations of human rights and international humanitarian law committed during the 1991–1995 armed conflict.

In the report, he notes the efforts made after the conflict, with sustained support from the international community, to address past abuses, in particular with regard to the search for missing persons, the criminal prosecution of war criminals, and institutional reforms. Conversely, he stresses the manifest insufficiency and inadequacy of reparation measures and the long-standing harm they inflict on victims. Furthermore, he underscores the inadequacy of memorialization processes and history teaching, and of measures aimed at promoting inter-ethnic understanding, combating discrimination and curbing incendiary nationalisms, while warning about the tangible risks that these deficiencies pose to peace in the country.

He concludes the report with recommendations addressed to the Government and the international community.

* The summary of the report is being circulated in all official languages. The report itself, which is annexed to the summary, is being circulated in the language of submission only.

Annex

Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on his visit to Bosnia and Herzegovina

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I. Introduction

1. From 2 to 10 December 2021, the Special Rapporteur conducted an official visit to Bosnia and Herzegovina. He thanks the Government for extending the invitation to visit the country, as well as for its openness and cooperation during the visit. He also extends his sincere gratitude to the United Nations office in Bosnia and Herzegovina for its support in preparing for the visit and during the visit.

2. The objective of the visit was to assess the measures in the fields of truth, justice, reparation, memorialization and guarantees of non-recurrence adopted by the authorities to address the serious violations of human rights and international humanitarian law committed during the 1992–1995 armed conflict.

3. The Special Rapporteur visited Sarajevo, Srebrenica, Prijedor, Bosanski Petrovac and Foča. He had the opportunity to conduct field visits, including to sites where atrocity crimes had been committed, to sites of mass graves and to memorials and museums.

4. The Special Rapporteur met with officials from several ministries, representatives of the judiciary at the State level, at the entity level and in the Brčko District, representatives of legislative bodies at the State and entity levels, municipal authorities at the entity levels, and the Human Rights Ombudsman. He also met with victims and their families, civil society organizations, human rights practitioners, academic and legal experts, journalists, and representatives from the international community.

II. General background

A. Historical context

5. During the disintegration of the former Yugoslavia, a referendum favouring independence led to the country declaring independence in March 1992. Hostilities broke out immediately after, with Bosnian Serbs and Bosnian Croats asserting dominance over portions of the territory. The war that ensued turned into a fierce three-sided fight for territories, which lasted until 1995. The General Framework Agreement for Peace in Bosnia and Herzegovina and its Annexes (the Dayton Peace Agreement), signed in November 1995, ended the conflict.

6. Genocide, crimes against humanity, war crimes and other serious violations of human rights and international humanitarian law were committed during the armed conflict as warring parties sought to create ethnically homogenous territories, displacing vast numbers of people. Camps later described as concentration camps were set up by all warring parties – in and around Prijedor, Foča, Konjic, Mostar and other locations, where civilians were detained, tortured, raped and killed. Sarajevo fell under siege, with artillery shelling and sniper attacks affecting all civilian residents. In the summer of 1995, the Bosnian town of Srebrenica, a United Nations-declared safe area, came under attack by Bosnian Serb forces, who executed more than 8,000 Bosnian Muslim men and boys and forcibly displaced all remaining children and women, in an act of genocide as established by the International Tribunal for the Former Yugoslavia. The International Tribunal for the Former Yugoslavia calculated that the war caused 104,732 fatalities, that over 30,000 went missing and that thousands of women, girls, men and boys were systematically raped.[1] In addition, more than 2 million people were displaced.

B. Legal and institutional framework

7. The Dayton Peace Agreement established a governance system, with a central government responsible for defence, foreign policy and fiscal policy, and a second tier of government composed of two entities (the Federation of Bosnia and Herzegovina, and the Republika Srpska) responsible for overseeing most government functions and bestowed with

[1] A/HRC/16/48/Add.1, para. 21; and see https://www.icty.org/sid/322.

their own constitution as well as executive, legislative and judicial powers. There is also the Brčko District.

8. At the State level, the power-sharing modalities between the three "constituent peoples" identified in the Constitution (Bosniaks, Croats and Serbs) apply to the presidency, the Council of Ministers and the Parliamentary Assembly. The country's complex institutional design has resulted in difficulties for the central Government in carrying out legal and policy reforms, and in polarization, and challenges to peace consolidation.

9. Annex 10 of the Dayton Peace Agreement established a High Representative to oversee and facilitate implementation of the Agreement's civilian aspects. The High Representative was subsequently vested with executive powers to impose legislation and remove officials.

10. The Constitution of Bosnia and Herzegovina, which enshrines human rights and fundamental freedoms, is contained in annex 4 of the Dayton Peace Agreement. Annex 4 also establishes a Commission on Human Rights (initially composed of a Human Rights Ombudsman and a Human Rights Chamber) and mandates the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Organization for Security and Cooperation in Europe (OSCE) to monitor and report on the human rights situation. Annex 7 established that several international and regional human rights treaties are directly applicable in the country and prevail over all domestic laws. Bosnia and Herzegovina is a party to all international human rights instruments.

11. The Dayton Peace Agreement stipulates that anyone indicted or convicted by the International Tribunal for the Former Yugoslavia may not hold public office in the country.

C. General context and impressions

12. In the immediate post-conflict period, the international community supported the Government of Bosnia and Herzegovina to adopt legal and institutional reforms aimed at promoting the rule of law and addressing the legacy of the conflict.

13. Due to the extent and the nature of the crimes committed during the conflict, a strong focus was placed on prosecuting war crimes, led by the work of the International Tribunal for the Former Yugoslavia, and subsequently on establishing and developing the capacities of national courts and prosecutorial offices to undertake such a task. There were also extensive investments in the search for missing persons.

14. Sustained support initially helped progress in these areas, but as international attention drifted away, and the country and the context grew increasingly politicized, the incipient transitional justice process reached an impasse. A national transitional justice strategy was drafted in 2012, following broad consultations and support from the international community, but it was never adopted.

15. In recent years, relentless political bargaining by political elites and the exacerbation of nationalist agendas for political purposes has led to a virtual standstill in governance. This, combined with an exponential rise in anti-ethnic minority rhetoric and the glorification of convicted war criminals, has led to worrying levels of polarization and tangible risks to peace sustainability, which require an immediate national and international response.

16. The present report focuses on the situation as it was during the visit, although some references are made to subsequent developments.

III. Truth-seeking initiatives

A. Search for and identification of missing persons

17. Official truth-seeking initiatives in Bosnia and Herzegovina have predominantly focused on the search for missing persons. The armed conflict was characterized by

disappearances on a massive scale, with an estimated 31,500 missing persons.[2] Since then, the number of missing persons has been a politicized and controversial subject in the country.

18. With support from international actors, particularly the International Commission on Missing Persons and the International Committee of the Red Cross (ICRC), but also OSCE, the International Residual Mechanism for Criminal Tribunals, and the European Union, the country adopted an institutional, technical and legal framework for the search for missing persons that incorporates relevant international standards.

19. Official efforts to trace missing persons began in 1992 with the establishment of State- and entity-level commissions on missing persons, a Working Group on Missing Persons (with support from ICRC), a Joint Exhumation Process (under the auspices of the Office of the High Representative), and an Expert Group on Exhumations and Missing Persons.

20. The Law on Missing Persons, adopted in 2004 following consultations with national and international actors and with victims, stipulates the rights of families of missing persons, and provides for the establishment of the Missing Persons Institute of Bosnia and Herzegovina, the Central Records on Missing Persons and the Fund for Support to the Families of Missing Persons. These mechanisms are aimed at ensuring the integrity of processes and information collected on missing persons and at preventing politicized and discriminatory practices.

21. The Missing Persons Institute was established in 2008, with representation of the three "constituent peoples", to document records of missing persons and mass grave sites, to assist in search and identification efforts, to support and inform families and to cooperate with neighbouring countries.[3] Several reports indicate that the Missing Persons Institute experiences budget cuts and understaffing and lacks the necessary equipment and capacities, which hinders its work.[4]

22. Though delayed, the Central Records on Missing Persons were completed in 2011, consolidating records from various government and entity offices, as well as data from ICRC and the International Commission on Missing Persons, in a unified database. The Central Records are vital to ensuring accurate and reliable figures on missing persons, and to reduce the scope for manipulation. The data stemming from the records has allowed the rate of identification to be determined, by region and by location, thus dispelling suspicions of discriminatory practices. Of the persons reported missing, 75 per cent in the Republika Srpska and 76 per cent in the Federation of Bosnia and Herzegovina have been identified.[5] Despite this progress, political disputes have slowed down the process of verification of the authenticity of individual reports on missing persons and undermined its credibility.

23. The prosecutors' offices are involved in the search for missing persons and the initiation of exhumations in the context of criminal investigations, in close collaboration with the Missing Persons Institute. As of 2011, the supervision of exhumations previously entrusted to cantonal and local prosecutors was transferred to the State Prosecutor's Office where a dedicated prosecution team started to operate at full capacity in 2012. The International Tribunal for the Former Yugoslavia conducted exhumations in the context of its war crimes prosecutions until 2001.

24. The identification of missing persons has been hindered by the extensive use of secondary mass graves, wells and other complex deposition sites during the war; the advanced state of decomposition of remains; the lack of medical or dental records or identifying data on missing persons; and the relocation of surviving family members. To overcome these difficulties, a DNA-led identification process was established in 2000, with support from the International Commission on Missing Persons, which matched the DNA of human remains and of relatives of missing persons unselectively and on a large scale.[6] To

[2] See https://www.icmp.int/where-we-work/europe/western-balkans/bosnia-and-herzegovina/.

[3] See https://www.icmp.int/wp-content/uploads/2014/12/StocktakingReport_ENG_web.pdf, p. 39.

[4] CCPR/C/BIH/CO/3, para. 19; CAT/C/BIH/CO/6, para. 26; and https://rm.coe.int/report-following-the-visit-to-bosnia-and-herzegovina-from-12-to-16-jun/16807642b1, para. 42.

[5] See https://www.icmp.int/wp-content/uploads/2017/06/stocktaking-2021.pdf; and https://www.icmp.int/wp-content/uploads/2014/12/StocktakingReport_ENG_web.pdf, p. 92.

[6] See https://www.icmp.int/where-we-work/europe/western-balkans/bosnia-and-herzegovina/.

obtain DNA profiles of the persons reported missing, the Government set up a multi-year public outreach effort and centres for the collection of samples.

25. The problem of misidentification of persons who went missing during the war and the immediate post-war years is extensive in the country due to the use of traditional identification methods before DNA-based processes were introduced. Estimates suggest that some 8,100 missing persons were identified by these traditional methods. In 2013, the State Prosecutor's Office established an inter-institutional cooperation mechanism to examine unidentified human remains and to inventory mortuaries and ossuaries.

26. Despite these efforts, the Working Group on Enforced or Involuntary Disappearances and the Committee on Enforced Disappearances have noted the insufficiency of local forensic capacity and expertise, the limited number of local forensic pathologists involved in the search for missing persons, and the lack of a forensic institute (except for one in the Republika Srpska, which is reportedly understaffed and undertrained).[7]

27. The focus and efforts placed by Bosnia and Herzegovina and the international community on developing a relevant legal, policy and technical framework for the search for missing persons, alongside information stemming from the International Tribunal for the Former Yugoslavia and domestic criminal investigations, has led to discernible progress. By 2020, an estimated 23,000 missing persons had been identified – estimated to be 70 per cent of the reported cases – making Bosnia and Herzegovina the post-conflict country with the highest rate of resolved cases. Nevertheless, nearly 8,000 persons remain missing, from all ethnic backgrounds.[8]

28. Numerous interlocutors as well as statistical data point to a concerning stall in the search for and identification of missing persons in the past few years, prompted by delays in criminal investigations and the insufficient forensic training and capacities of the Missing Persons Institute and prosecutors' offices. The passage of time has further hindered progress, due to reduced access to direct sources of information and to witness testimonies, as well as topographical changes in the sites of potential graves. Families of victims whom the Special Rapporteur met have continued to claim that there are delays in the search for missing persons depending on the ethnic background of the victims.

B. Regional cooperation in the search for missing persons

29. Bosnia and Herzegovina is part of regional cooperation efforts and agreements to facilitate the search for missing persons. Strengthened regional cooperation led to joint and co-monitoring of excavations and exhumations, joint reconnaissance visits, transfer of human remains, and exchange of information and materials with Croatia and Serbia. In 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 Result of Armed Conflict and Human Rights Violations, which was followed by bilateral protocols to operationalize it. Associations of families of missing persons consider that the agreement did not yield the expected outcomes in terms of effective sharing of information across borders.

30. In 2017, Bosnia and Herzegovina joined an International Commission on Missing Persons project to create the Database on Active Missing Persons Cases from the Armed Conflicts in the Former Yugoslavia. In 2018, it signed a joint declaration on missing persons alongside 15 countries participating in the Berlin Process,[9] which was followed by a framework plan derived from the declaration and by the establishment of a Missing Persons Group by Bosnia and Herzegovina, Croatia, Montenegro and Serbia, as well as Kosovo.[10] In July 2019, Croatia and Bosnia and Herzegovina adopted rules of procedure to operationalize a protocol of cooperation on missing persons.

[7] A/HRC/16/48/Add.1, para. 35; A/HRC/27/49/Add.2, p. 49; and CED/C/BIH/CO/1, para. 17.
[8] See https://www.icmp.int/wp-content/uploads/2017/06/stocktaking-2021.pdf.
[9] See https://www.icmp.int/wp-content/uploads/2018/09/Deklaracije.pdf.
[10] References to Kosovo shall be understood to be in the context of Security Council resolution 1244 (1999).

31. Regional cooperation has, however, been hampered by claims of insufficient exchange of information and evidence about missing persons and about the locations of mass graves, and by constant measuring of each other's efforts. This pattern of behaviour has been described by several interlocutors as a "trade in missing persons" and has often been cited as a major impediment to enhancing bilateral cooperation.

C. Other truth-seeking initiatives

32. Despite several attempts, Bosnia and Herzegovina has not been able to implement an official countrywide truth-seeking mechanism. Truth-telling is particularly challenging since wartime propaganda and subsequent decades of nationalist rhetoric have led to differing narratives about the conflict and the crimes committed by each side, including in the education system. Consequently, an officially endorsed truth commission has never been set up, which has further helped to fuel revisionism, including denial of atrocity crimes recognized by international and national tribunals and the glorification of war criminals. Some attempts have been made at the national, entity and local levels, but most did not come to fruition, or were criticized for lack of impartiality, transparency or consultation with victims or for their revisionist aims.

33. In 2003, following a decision of the then Human Rights Chamber and pressure from the High Representative, the Republika Srpska established a commission for investigating the events in and around Srebrenica between 10 and 19 July 1995. It led to the discovery of 32 mass graves, the recognition that more than 7,000 Bosniaks had been killed in Srebrenica, and official apologies from entity authorities. In 2006, as a result of local pressure, the State Government established the Commission for Establishing Truth on the Fates of Serbs, Croats, Bosniaks, Jews and Others in Sarajevo in the Period between 1992 and 1995. The Commission was severely criticized by national and international actors, fell prey to political ambivalence and lack of funding, and ultimately failed to deliver results. There was some backtracking on the findings of these commissions. In the Republika Srpska, a commission of inquiry was established in 2006 (and an ad hoc one in 2009), pursuant to a ruling of the Human Rights Chamber and pressure from the High Representative, to investigate the fate of the commander of the Bosniak forces, Colonel Avdo Palić, which produced a report on his fate and led to the issuance of arrest warrants against the perpetrator.[11]

34. The absence of comprehensive truth-seeking processes in the country and in the region prompted an alliance of NGOs in post-Yugoslav countries to spearhead a campaign to establish the Regional Commission for the Establishment of Facts about War Crimes and Other Gross Violations of Human Rights Committed on the Territory of the Former Yugoslavia. Despite strong domestic and international support, the initiative did not receive unanimous support from the Governments of the countries concerned for it to be set up.

35. Institutionalized efforts to collect testimonies of victims and to register all gross human rights violations suffered by all victims of the conflict, or to ensure the preservation of and access to the existing information for current and future generations, remain scattered and have been mostly carried out by civil society or international organizations. Some successful non-governmental initiatives have resulted in the creation of the Bosnian Book of the Dead, databases of direct casualties of the war in Bosnia and Herzegovina, locally led information-gathering efforts to support prosecutions, and civil society-led cross-border information-sharing.[12]

[11] In 2008, the municipal assembly of Bijeljina established a truth commission, which ceased work a year later due to internal problems. See Faruk Teksen, "Implementation of transitional justice initiatives in Bosnia and Herzegovina: the need for an inclusive approach", *Journal of Muslim Minority Affairs*, vol. 39, issue 2 (June 2019), pp. 206–207; and https://www.ictj.org/sites/default/files/ICTJ-DDR-Bosnia-CaseStudy-2009-English.pdf, p. 22.

[12] See https://www.ictj.org/sites/default/files/ICTJ-DDR-Bosnia-CaseStudy-2009-English.pdf, p. 23.

IV. Accountability for past violations and abuses

A. International prosecutions

36. Initially, the International Tribunal for the Former Yugoslavia led the process, as the domestic judicial system lacked the necessary impartiality, independence and institutional capacity. The Tribunal was established in 1993 as a temporary institution to investigate and prosecute the perpetrators of serious violations of international humanitarian law committed during the wars in the former Yugoslavia, when the domestic judicial systems were unable or unwilling to do so themselves. The Tribunal focused on the prosecution and trial of the most senior leaders, and later referred the cases involving intermediate and lower ranks to national courts to finalize the process assisted by the evidence received from the Tribunal. The Tribunal issued 161 indictments and convicted 91 perpetrators.[13] Besides indicting and convicting individuals for specific war crimes, the Tribunal prosecuted the leadership for their responsibility as part of a "joint criminal enterprise".

37. With a strategy to close down by 2010 to encourage ownership of domestic judicial systems, the Tribunal's last indictments were issued in 2004. Out of the eight cases (involving 13 accused) transferred to domestic jurisdictions, six (involving 10 accused) were transferred to Bosnia and Herzegovina. The State Court issued final judgments on all cases by 2015.[14]

38. The International Residual Mechanism for Criminal Tribunals took over functions from the International Tribunal for the Former Yugoslavia and issued final verdicts, including in the Mladic case. The International Residual Mechanism for Criminal Tribunals remains very engaged in the region, advocating for quality domestic prosecutions, improved regional cooperation, and coordinated transitional justice efforts.

B. Domestic prosecutions

39. The prosecution and criminal sanctioning of war crimes was prioritized in Bosnia and Herzegovina in the aftermath of the conflict. A decade after the end of the conflict and in the context of the International Tribunal for the Former Yugoslavia's completion strategy, the focus shifted from internationally led efforts to enhancing the capacity of domestic courts and prosecutorial offices to ensure that they could continue to process war crimes. In 2005, a special War Crimes Chamber was established at the State Court and a section dealing with war crimes was set up at the State Prosecutor's Office. Initially, their composition was hybrid, with national and international judges and prosecutors, which was instrumental in increasing their technical capacities to work on complex cases.

40. These efforts were initiated at the behest of the Office of the High Representative, with strong support and involvement by international actors, particularly the International Tribunal for the Former Yugoslavia Outreach Programme. The process faced resistance from domestic nationalist leaders. As the international component was removed, the capacities of these institutions markedly decreased, leading to a deceleration of prosecutions and trials. Members of the judiciary, experts, victims and other stakeholders whom the Special Rapporteur met underscored the need to reinstate international support to enhance the effectiveness, independence and credibility of war crimes prosecutions.

41. Local courts and prosecutor's offices at the entity and district levels are also involved in the prosecution and trial of war crimes. However, they are poorly equipped and staffed, and there are concerns about possible bias, notably in favour of war veterans.

42. In 2008, the National War Crimes Prosecution Strategy was adopted to reduce the backlog and increase the pace of criminal proceedings. The strategy set war crimes prosecution objectives for the courts and prosecutor's offices, and envisaged the establishment of a supervisory body to monitor the achievement of these targets. A revised National War Crimes Strategy was adopted in 2020, defining new criteria for the selection

[13] See https://www.icty.org/en/cases/key-figures-cases.

[14] See https://www.icty.org/en/cases/transfer-of-cases/status-of-transferred-cases.

and prioritization of cases between State and entity or district courts (according to which less complex cases would be transferred from State to entity or district courts), enhancing judicial and police investigations, and updating witnesses and victim protection measures. The supervisory body is yet to be appointed.

43. The Government stated that the High Judicial and Prosecutorial Council was implementing a project to monitor war crimes cases, to provide technical and administrative support to the supervisory body mandated to monitor the implementation of the National War Crimes Strategy, and to organize capacity-building training.[15] Training on war crimes prosecution is also conducted at the entity and district levels,[16] including by the International Residual Mechanism for Criminal Tribunals and by OSCE.

44. The State-level Law on Free Legal Aid was adopted to support war crimes victims. However, they do not have access to governmental free legal aid in criminal proceedings at the entity level, with the exception of some cantons in the Federation of Bosnia and Herzegovina.

45. The legal framework applicable to war crimes proceedings is complex and unevenly applied. The Criminal Code of Bosnia and Herzegovina, adopted in 2003, criminalizes crimes against humanity, and was subsequently amended to bring the definition of torture and other international crimes into line with international standards, and to define enforced disappearance as a distinct crime. New criminal codes were also adopted at the entity and district levels, introducing new international crimes alongside war crimes previously codified in the Criminal Code of the former Yugoslavia. However, entity and district courts have continued to apply the former Yugoslav code (which does not define crimes against humanity, sexual slavery, enforced pregnancy or command responsibility) to wartime crimes, despite decisions of the War Crimes Chamber and the Constitutional Court allowing the retroactive application of the Criminal Code of 2003 to those crimes. The State Court applies the former Yugoslav code to genocide and war crimes cases, and the Criminal Code of 2003 to crimes against humanity cases. In 2015, amendments to the Criminal Code brought the definition of sexual violence as a form of war crime and crime against humanity into compliance with international standards.

46. Despite countless recommendations from the international community, article 118 of the State Criminal Code continues to provide for the possibility of granting amnesty for international crimes. The Special Rapporteur was informed of plans to amend this provision and urges the authorities to bring it into compliance with international standards without delay.

47. The Special Rapporteur notes the legislative proposals discussed in the past to allow a pardon for persons convicted of genocide, war crimes and crimes against humanity after having served three fifths of the sentence, and warns against the adoption of any measures that disregard the seriousness of such crimes and have the effect of rendering accountability illusory. Similarly, while noting the importance of plea agreements in exchange for information on missing persons, he warns against granting immunity from prosecution to accused persons that hinders victims' access to justice and leads to impunity.

48. Despite efforts over the years to develop and improve the legal and institutional framework, several factors continue to negatively affect war crimes prosecutions and delay progress. These include political obstacles, including limited regional cooperation; the multi-level legal and judicial framework applicable to war crimes; insufficient human and material resources; and the limited availability of evidence and witnesses. Many experts and interlocutors expressed concern that staff in entity or district courts and prosecutor's offices continued to lack sufficient training and experience in the prosecution of international crimes. Some interlocutors also noted disparities in the pace and quality of criminal prosecutions and trials depending on the jurisdiction where the proceedings took place, and some noted a pattern of selectivity of cases depending on the ethnic origin of the victim or the perpetrator.

[15] A/HRC/WG.6/34/BIH/1, para. 55.
[16] Ibid., para. 61.

49. A total of 594 war crimes proceedings involving 904 defendants have been completed since 2004, according to the OSCE Mission to Bosnia and Herzegovina. At the end of 2020, a backlog of 571 unresolved cases involving 4,498 suspects remained. In 2020, 18 proceedings against 31 defendants charged with war crimes were completed by the judiciary, compared with 51 proceedings in 2014. Only 18 indictments were issued in 2020 compared to 96 in 2014.[17]

50. Concerns have been expressed over the years at cases of intimidation and threats against victims and witnesses, and at insufficient witness protection capacity.[18] The Government mentioned the adoption of the State Law on the Witness Protection Programme and of laws on protection of witnesses under threat at the State, entity and district levels; the establishment of 22 witness support offices in courts and prosecutor's offices across the country; the creation of psychosocial support programmes at the State and entity levels; and the provision of witness protection training for war crimes judicial and prosecutorial officials.[19] Special protection measures are available to victims of sexual violence.

C. Regional cooperation

51. To improve regional cooperation in the processing of war crimes, the State Prosecutor's Office signed cooperation agreements with its counterparts in Croatia, Montenegro and Serbia. In 2015, the relevant prosecutorial entities in Bosnia and Herzegovina, Croatia and Serbia signed the Guidelines for the Advancement of Regional Cooperation in Processing War Crimes and Searching for Missing Persons and in the Establishment of Coordination Mechanisms. They also participated in the United Nations Development Programme project entitled "Strengthening regional cooperation in the prosecution of war crimes and the search for missing persons" aimed at improving the efficacy of their work and the exchange of information. Notwithstanding these positive steps, concern has been expressed, including by the International Residual Mechanism for Criminal Tribunals prosecutor, about negative trends and even regression in regional judicial cooperation.

V. Reparations

52. Bosnia and Herzegovina has failed to establish a national legal framework and comprehensive administrative reparation programme to ensure comprehensive access to full reparation for all categories of civilian wartime victims. While several legislative attempts have been made to address this issue, they have been unsuccessful due to the lack of political agreement between authorities at different levels, who have conflicting agendas and narratives of the past. In the absence of a national reparations programme, victims rely on the existing social protection system and on individual proceedings before criminal and civil courts, both of which have shown considerable shortcomings.

53. Civilian wartime victims can receive benefits in the form of monthly allowances pursuant to the existing entity-level or district-level social protection and disability schemes. However, the recognition of victim status – and therefore the requirements for accessing rights, the benefits guaranteed, and the implementation of those rights – is regulated differently in each entity or district, pursuant to the legislation in force. These allowances are not intended as reparation for the damage suffered, but rather as social protection measures without any link to the liability of the entity paying the benefit, or to the beneficiary's rights as wartime victim. In addition, access to this benefit is mainly linked to the place of residence. As a result, ethnic Bosnian or Croat victims of army or police officers from the Republika Srpska receive allowances from the Federation of Bosnia and Herzegovina, where they resettled during the war, but cannot receive them from the entity in which the harm took place, and vice versa for ethnic Serb victims.

[17] See https://www.osce.org/files/f/documents/d/1/494881.pdf.
[18] A/HRC/16/48/Add.1, para. 65; and CED/C/BIH/CO/1, para. 23.
[19] A/HRC/WG.6/34/BIH/1, para. 55.

54. Moreover, until recently, the respective entity laws required a high threshold of disability or of documental evidence to acquire victim status (some of these requirements remain in force in the Republika Srpska). Also, short deadlines are prescribed for the submission of victim status applications in the Republika Srpska, including under the Law on the Protection of Victims of War Torture, of 2018.[20] Disparities also apply to the amount of benefit received on the basis of the place of residence. Furthermore, disability benefits received by civilian wartime victims remain significantly lower than those received by war veterans.

55. In the absence of a domestic reparations programme and given the inadequacy of the existing social protection system in providing redress to wartime victims, many have decided to exercise their rights through criminal or civil proceedings in courts. Victims can initiate compensation claims in civil proceedings against the persons, entity or State responsible for the harm suffered. However, legal discrepancies and restrictive requirements at the entity level have created legal uncertainty and resulted in courts dismissing victims' claims. Civil courts in the Republika Srpska apply a statute of limitations to wartime compensation claims, effectively blocking access by victims to compensation through civil proceedings. In 2013, the Constitutional Court of Bosnia and Herzegovina ruled that pecuniary damages claims for war crimes were subject to statutes of limitations if they were directed against the State or the entities, prompting the courts of the Federation of Bosnia and Herzegovina to follow suit, thus effectively blocking victims' access to compensation through this procedure countrywide. This is contrary to international standards, according to which atrocity crimes are not subject to statutes of limitations.

56. Moreover, victims who lost their claims against the entities, mostly due to the illegal application of statutes of limitations, have been forced by some courts to pay the entities' high court fees in application of the "loser pays" principle. Reportedly, in some cases the fees amounted to KM 6,000 to 10,000 (€3,000–€5,000).[21] Enforcement proceedings are initiated against these victims to collect payment, resulting in the confiscation of their assets or belongings and/or part of their income, or in indebtedness through loans. This practice is as unethical as it is unacceptable, and runs contrary to the international standards on the protection of victims of serious violations of human rights and international humanitarian law. In 2018, the State Court ruled that this practice constituted an excessive burden and a violation of the victim's right to property and access to remedy, prompting many payment exemptions before regular courts. Nevertheless, in a significant number of cases in the Republika Srpska, property seizures already under way have continued.

57. Due to the rejection of claims against the State and the entities in civil proceedings, victims can only get a judgment establishing responsibility for the damage suffered through judicial proceedings, mainly criminal, against the perpetrators. However, despite the existing obligations, judges used to neglect to award compensation to victims in criminal proceedings, or referred them to civil proceedings (where protection mechanisms are not available, which has led to instances of revelation of the identity of victims). This changed with a court judgment in 2015, after which 16 judgments obliged the perpetrators to pay compensation, although payment was rarely enforced due to the perpetrators' reported lack of assets.[22]

58. As a result of this inadequate and intricate legal and institutional framework, which has the effect of deterring the submission of claims, victims spend years in administrative and legal proceedings, in many cases to no avail, or, leading to new forms of harm inflicted by State or entity institutions. The lack of information provided to victims about their rights and the avenues for claiming them has compounded the problem.

59. Due to the absence of a legal framework that expressly addresses the needs of victims, including victims of conflict-related sexual violence, and that uniformly regulates their status and rights, victims have to navigate the existing inadequate legal and institutional framework and face the numerous aforementioned challenges. This has led to unequal requirements for access to rights, non-harmonized standards for proving victim status, unequal scope of

[20] See https://trialinternational.org/wp-content/uploads/2022/03/GSFReportBiH_ENG_Web.pdf, p. 56.

[21] See https://rm.coe.int/report-following-the-visit-to-bosnia-and-herzegovina-from-12-to-16-jun/16807642b1.

[22] See https://trialinternational.org/wp-content/uploads/2022/03/GSFReportBiH_ENG_Web.pdf, p. 63.

guaranteed rights and unequal monthly allowances. Reports also attest to insensitive communication with victims of conflict-related sexual violence.[23]

60. The legal framework does not recognize children born out of wartime rape as a category of victim, which prevents them from enjoying rights, accessing reparation or benefits, receiving dedicated psychosocial or socioeconomic support, or solving the administrative obstacles they regularly face.

61. The failure to create the Fund for Support to the Families of Missing Persons, notwithstanding several decisions of the Constitutional Court in this regard, has resulted in the denial of the right of relatives of missing persons to obtain compensation. Political disputes and lack of agreement over the proportion of the Fund that each entity would finance has reportedly contributed to preventing its establishment, once more to the detriment of victims.

Restitution of returnees' rights

62. Annex VII of the Dayton Peace Agreement recognizes the right of all refugees and displaced persons to return to their homes and to receive compensation for any property that cannot be restored to them. It established an internationally led commission to process property rights claims. While good progress was registered in this field, much remained to be done, as many refugees and internally displaced persons were not able to return and those who did, faced discrimination and marginalization.

63. In 2010, the Government issued its Revised Strategy for the Implementation of Annex VII. A report on the implementation of the strategy issued by the State Parliamentary Assembly in 2016 noted progress in access to electricity and support for employment and income generation, but warned that implementation was severely behind schedule, mostly due to insufficient funding.[24] In 2018, the European Commission noted the progress made in the areas of repossession of property and occupancy rights, reconstruction of houses, and infrastructure, but warned that more attention was required in the areas of compensation for damage to property that cannot be returned, access to health care, social protection, education and employment, and safety and demining. It also noted continued cases of attacks against properties of returnees.[25]

64. In 2019, the Government reported that 1,062,000 persons had returned – nearly 50 per cent of the total number of 2.2 million refugees and displaced persons due to the war. The greatest progress had been made on the reconstruction of the housing units of returnees and refugees, and on the reconstruction of the communal and social infrastructure and the electrification of the returnee settlements. It estimated that nearly 344,000 housing units had been reconstructed, representing two thirds of the damaged and destroyed housing stock.[26]

VI. Memorialization

65. There is no comprehensive legal or policy framework regulating memorialization processes at the State level. Therefore, this matter is handled unevenly at local levels. A law on memorials adopted in the Republika Srpska in 2011 has been criticized for fostering discrimination.

66. Official memorialization processes mainly focus on commemorating war incidents, honouring war veterans and killed soldiers, or commemorating civilian victims of majority ethnic groups within the entities. Monuments have been erected and plaques installed in different parts of the country commemorating killed soldiers.

[23] See https://trialinternational.org/wp-content/uploads/2022/03/GSFReportBiH_ENG_Web.pdf, p. 49.
[24] See https://rm.coe.int/report-following-the-visit-to-bosnia-and-herzegovina-from-12-to-16-jun/16807642b1, p. 11.
[25] See https://ec.europa.eu/neighbourhood-enlargement/system/files/2019-05/20180417-bosnia-and-herzegovina-report.pdf.
[26] A/HRC/WG.6/34/BIH/1, paras. 108–111.

67. The Special Rapporteur has noticed with great concern the scarcity of memorialization efforts, memorials, plaques or ceremonies remembering all violations committed during the conflict and commemorating all victims. Very few official memorials have been established to preserve the memory of the civilian victims of the conflict regardless of their ethnicity, such as the monument to children lost to the conflict in Sarajevo, or to honour victims of minority groups within a particular entity or municipality unless they have been established by civil society or as a result of international pressure. The Srebrenica-Potočari Genocide Memorial and Cemetery, a State-run institution, opened its doors in 2003 following years of demands from mothers and widows of the victims and pursuant to a decree from the High Representative ordering its creation.

68. The Special Rapporteur was encouraged, nonetheless, by efforts undertaken at the local level, such as in Bosanski Petrovac, to elicit inter-ethnic understanding and memorialize local victims from different ethnic backgrounds. He would like to see this replicated across the country as part of efforts towards reconciliation. The civil society-led War Childhood Museum in Sarajevo is one admirable example of inclusive and effective memorialization processes, which should be replicated by official authorities or with their support, countrywide, to address different aspects of the war.

69. Besides the lack of memorials dedicated to all victims, there are rarely joint commemorations of all victims by local or national authorities from different ethnic backgrounds. In contrast, some families of victims have joined efforts for years to jointly commemorate victims regardless of ethnicity, such as on the International Day of the Victims of Enforced Disappearances. This practice should be established officially and amplified.

70. The Special Rapporteur has received numerous reports indicating that civil society efforts to memorialize victims belonging to national or ethnic minorities at the entity level, particularly in the Republika Srpska, have been hampered by local authorities (often belonging to the majority ethnic group) or by administrative requirements that delay or block the process for years. As a result, families of victims and survivors do not have the possibility to remember the harm suffered and to honour the victims.

71. Moreover, local authorities have erected memorials that intimidate victims from minority ethnic groups and/or without consulting victims. The Special Rapporteur has seen with dismay commemorative plaques (produced by civil society and victims' families) lying on the dusty floors of former concentration camps rather than respectfully displayed on the sites, due to the negligence or unwillingness of local authorities. He has similarly witnessed how a sports hall where women and girls were systematically raped and which was later reconstructed with the support of international organizations does not have a commemorative plaque honouring the victims, despite repeated demands from the survivors. The Special Rapporteur urges international donors to ensure human rights due diligence and particular attention to the needs of victims in any development and other types of assistance across the country.

72. The municipality of Bratunac, located in the immediate vicinity of the Srebrenica memorial, has recently approved plans to reconstruct the Kravica agricultural cooperative where over 1,300 Bosniak men and boys were executed during the Srebrenica genocide and where physical evidence of the crimes remains available, despite the requests from victims' families to memorialize the site and erect a commemorative plaque on it. It is preposterous that a government would take active measures to destroy the criminal evidence and the memory of the largest killing site of the Srebrenica genocide. These actions must stop immediately.

73. The Special Rapporteur received reports of instances of the instrumentalization of victims' and families' associations for political purposes, and condemns such practices.

74. The Special Rapporteur emphasizes that accurate and comprehensive memorialization of the harm suffered by all victims is vital to reconciliation, to guarantee non-recurrence of past violations and to restore the dignity of victims. The adoption of State-wide legislation on memorialization processes that ensures the active participation of victims is urgently needed and could be instrumental in avoiding the manipulation of narratives around past violations and the concomitant social tensions. Memorialization efforts must be aimed at establishing the conditions for a debate within society about the causes, responsibilities and

consequences of past violence, thus allowing society to live more peacefully with the legacy of past divisions without falling into a dangerous revisionism, including denial and relativism.

VII. Guarantees of non-recurrence

A. Institutional and security sector reform

75. A reform of the judicial and police sectors, including vetting, took place immediately after the conflict. In response to international pressure to reform the judicial system, which was overstretched, insufficiently qualified, inefficient and subject to undue influence, a judicial reform strategy was developed in 2001 which was aimed at restructuring and rationalizing the courts and the prosecutorial systems. The reform included the merging and restructuring of courts, and the establishment of professional disciplinary bodies, new procedural codes and budgetary processes. It also encompassed mandatory reappointments to all judicial and prosecutorial posts through an open competition, which included an assessment of qualifications, of compliance with property laws, of political affiliation and of the activities of officials during the war. Three high judicial and prosecutorial councils (established by the High Representative with national and international personnel) implemented the process, whereby 70 per cent of incumbents were reappointed. The reform helped improve the independence, the professionalism, and the ethnic and gender composition of the judicial and prosecutorial systems. The councils were subsequently merged and fully nationalized to function as a judicial commission with advisory support from international staff.[27] Subsequent justice sector reform strategies, and action plans for their implementation, were adopted in 2008 and 2015.

76. Between 1999 and 2002, 23,751 police officers were screened and certified by the United Nations Mission in Bosnia and Herzegovina, and 15,786 of them were fully certified.[28] The certification process included an assessment of their qualifications, their training, their professional history and their wartime human rights record, and of whether they had illegally occupied property whose owners had been killed, expelled or otherwise forced to leave their home during the conflict. The process also allowed better ethnic representation, as well as the integration of more women. While the process generally improved the credibility of the police force, it was criticized for lacking rigour, transparency and appeal mechanisms. Following the closure of the United Nations mission, the certification files were transferred to the United Nations archives in New York. This, coupled with the failure to embed its procedures in law and to establish a follow-up mechanism, undermined the transparency of the process. In many cases, the relevant ministries failed to initiate proceedings against the uncertified officers or continued to employ them in alternative roles. Further reforms to the security sector included the establishment of civilian oversight, the restructuring of internal regulations, improved arrest and custody procedures, and the creation of separate State-level intelligence and border services.[29]

77. Some vetting applied to the armed forces and political sectors, although it was more limited. Some high-ranking military officers were vetted out as part of the defence sector reform in 2004. The screening of elected and appointed government officials and civil servants was not systematic. As a result, some convicted and indicted war criminals have held office, including high-ranking positions at different administrative levels and sometimes in the (usually small) municipalities where victims or their families live, which can be intimidating.

78. Disarmament, demobilization and reintegration measures were scarce and were mainly run by international actors, without any interface with transitional justice-related

[27] Alexander Mayer-Rieckh and Pablo de Greiff (eds.), *Justice as Prevention: Vetting Public Employees in Transitional Societies* (Social Science Research Council, New York, 2007), pp. 195–212.

[28] Ibid., pp. 189 and 191.

[29] Ibid., pp. 189–193; and see https://www.ictj.org/sites/default/files/ICTJ-DDR-Bosnia-CaseStudy-2009-English.pdf.

measures. Most ex-combatants did not participate in such programmes, and for those who did, there was no screening of their wartime human rights record. Moreover, the information gathered from them was not shared with transitional justice initiatives, such as accountability processes.[30]

79. The ethnic-based election and appointments processes for public officials established under the Dayton Peace Agreement perpetuate divisions and the manipulation of ethnic constituencies for political aims, as well as the exclusion of other minorities, who are unable to run for high political office and are also often underrepresented at the municipal levels.

80. Concerning the protection of human rights, the Human Rights Ombudsman institution has been accredited "A" status under the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), but has been criticized for lacking sufficient resources and efficiency.[31]

B. Education, culture and the media

81. The Special Rapporteur observed with concern the differing narratives about the conflict found in school curricula depending on the school, canton or entity where children attended classes. As school curricula are established at the entity and/or cantonal level, federal institutions have little influence on this matter. In mono-ethnic or ethnically segregated schools – particularly at the entity and cantonal levels – the teaching of history is tainted with ethnonationalism and fails to include comprehensive and accurate accounts of the conflict and the atrocity crimes committed during it as established by international and domestic courts, and to recognize all victims. As a result, students reach adulthood with insufficient knowledge, and bias, about this turbulent period and the violations that took place during it, which hampers mutual understanding and effective reconciliation. In addition, school names, symbols and events and commemorations impose and shape the identity narratives of the majority ethnic groups.[32]

82. Despite persistent demands by the international community to abolish segregation practices in the education system and to introduce a common curriculum, particularly for sensitive subjects such as history and geography[33] discrimination along ethnic lines persists. In 2016, the Minister of Education and Culture of the Republika Srpska stated that no children attending schools in the Republika Srpska would learn about the siege of Sarajevo or the Srebrenica genocide.[34] Some 32 "two schools under one roof" continue to exist across the country.[35] Nonetheless, good examples can be found where children from different ethnic communities are taught together, for instance in the Brčko District. Official attempts at the State level to introduce a countrywide common curriculum for some subjects have made progress, but not in the field of history teaching.[36]

83. The Special Rapporteur expresses grave concern at the continued use of the education system to manipulate wartime facts and shape historical and cultural narratives favourable to political agendas, which has the noxious effect of perpetuating divisions and hatred into new generations. He recalls that the legacy of past violations in all its complexities must be adequately and comprehensively transmitted to younger generations to assist in the process of social reconciliation and peacebuilding.

[30] See https://www.ictj.org/sites/default/files/ICTJ-DDR-Bosnia-CaseStudy-2009-English.pdf.
[31] CCPR/C/BIH/CO/3, para. 9; and CAT/C/BIH/CO/6, para. 20.
[32] See https://www.osce.org/mission-to-bosnia-and-herzegovina/509321, p. 48.
[33] See, for example, https://rm.coe.int/third-report-on-bosnia-and-herzegovina/16808b5602, p. 57.
[34] See https://www.nezavisne.com/novosti/bih/Malesevic-O-genocidu-u-Srebrenici-se-nece-uciti-u-RS/429052.
[35] See https://rm.coe.int/report-following-the-visit-to-bosnia-and-herzegovina-from-12-to-16-jun/16807642b1, p. 47.
[36] See https://rm.coe.int/third-report-on-bosnia-and-herzegovina/16808b5602, p. 57.

C. Glorification of war criminals and the denial of atrocity crimes

84. The Special Rapporteur is alarmed at the concerning instances of denial of atrocity crimes; the concomitant rejection or relativization of war crimes rulings of the International Tribunal for the Former Yugoslavia and national courts; and the glorification, in various forms, of convicted war criminals. These practices have proliferated in the country, and in the rest of the region, in recent times, including at the highest political levels. In April 2019, the Serb member of the Bosnian Presidency called the Srebrenica genocide a fabricated myth.[37] In the Federation of Bosnia and Herzegovina, concerts have been dedicated to Bosnian Croat convicted war criminals,[38] and streets are named after Bosniak convicted war criminals or Ustasha leaders.[39] In the Republika Srpska, Serb convicted war criminals have received awards and murals have been painted in their honour, including in areas where atrocity crimes were perpetrated, which is offensive and hostile to survivors. In July 2021, a report commissioned by the government of the Republika Srpska stated that the crimes perpetrated in Srebrenica did not constitute genocide, and that a total of 3,000 persons had been killed, all of whom were combatants.

85. The Special Rapporteur expresses alarm at the ever-increasing exacerbation of nationalistic rhetoric and divisive political discourse for political profit. The nationalist political elites frequently instrumentalize the media to advance their agendas, using hate speech to rally voters from their respective ethnic group around an ethnonationalistic narrative, and weaponizing the memory of wartime events to revive ethnic resentments.[40]

86. In parallel, or as a societal reflection of the aforementioned behaviour, there is a worrying sustained trend of hate speech based on ethnic or associated religious grounds. Incitement to ethnic or religious intolerance and hate speech is also common in the media and social media. Instances of hate speech, divisive or inflammatory rhetoric and exaltation of war crimes are also usual at football matches and other public events.[41] OSCE noted with alarm the spate of hate incidents on ethnic or religious grounds registered recently, including 60 cases between January and March 2022.[42] Ethnic tensions are also the leading cause of ethnic-based violence, which is often directed against returnees and against religious buildings and graveyards associated with ethnic groups.[43]

87. The State Criminal Code does not criminalize public expression with a racist intent. At the level of the entities, the criminal codes of the Republika Srpska and the Brčko District now establish aggravating circumstances for hate crimes on ethnic, national or religious grounds. The unavailability of official statistics on types of hate crime impedes comprehensive assessment and response to this problem. In addition, despite the legal framework, only a small number of hate crimes are prosecuted effectively. Official condemnation of such acts is not systematic, which transmits a message to the general public that they are tolerable.

88. The Special Rapporteur urges political and nationalist leaders and public figures to urgently stop engaging in irresponsible behaviour that sows division and undermines peace, and notes with concern the insufficient domestic and international response in the face of this concerning challenge. International attention appears to have increased in the months following the country visit.

89. In July 2021, the High Representative introduced amendments to the State Criminal Code to punish with prison sentences instances of: (a) incitement to violence or hatred on racial, religious, ethnic or national grounds; (b) public denial, condoning, trivialization or

[37] See https://news.sky.com/story/bosnian-serb-leader-milorad-dodik-calls-srebrenica-massacre-of-8-000-people-a-myth-11692695.

[38] See https://www.justiceinfo.net/en/33504-bosnia-s-glorification-of-war-criminals-unacceptable-prosecutor.html.

[39] See https://rm.coe.int/third-report-on-bosnia-and-herzegovina/16808b5602, p. 17.

[40] Ibid., p. 15.

[41] Ibid., p. 16.

[42] See https://www.osce.org/mission-to-bosnia-and-herzegovina/509819 and https://www.osce.org/files/f/documents/9/d/517767.pdf.

[43] See https://rm.coe.int/third-report-on-bosnia-and-herzegovina/16808b5602, p. 18.

justification of war crimes, crimes against humanity and genocide adjudicated at final instance by international and domestic courts (directed against a group of persons defined by reference to race, colour, religion, descent or national or ethnic origin), when they are conducted in a manner likely to incite to violence or hatred against such group; and (c) the recognition, awarding or memorializing of war criminals convicted by international or domestic courts. The Special Rapporteur notes the impact that the law has had in reducing such instances. He reminds national authorities that the implementation of the law, or of any other related regulation, must be carried out in full compliance with international human rights standards, particularly article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination (on the prohibition of incitement to discrimination and hatred), articles 19 and 20 of the International Covenant on Civil and Political Rights (on the right to freedom of expression and on the prohibition of advocacy of national, racial or religious hatred), and the relevant treaty bodies' general comments.[44]

VIII. Conclusions

90. **The Special Rapporteur notes the efforts made after the conflict, with sustained backing from the international community, to address past abuses, in particular with regard to the search for missing persons, the criminal prosecution of war criminals, and institutional reforms.**

91. **However, as international attention shifted away from the country, the transitional justice process reached a stalemate, leaving the grievances of victims almost entirely unaddressed. The Special Rapporteur notes with concern the manifest inadequacy of reparation measures and the long-standing harm that this situation inflicts on victims. He is further concerned about the inadequacy of memorialization and education processes, and of measures aimed at promoting inter-ethnic understanding, combating national-ethnic or religious hatred, and curving incendiary nationalisms. The lack of progress in establishing comprehensive truth-seeking mechanisms, combined with persistent instances of revisionism, is also worrisome.**

92. **While nationalist politics seem to permeate many decisions and negotiations domestically and internationally, it is worth reminding all relevant actors that the human rights obligations of Bosnia and Herzegovina – including to comprehensively and effectively address the legacy of its past – are incumbent on the State and all its constitutive parts (comprising all branches of government at the federal, entity and local levels).[45] These obligations are not subject to bartering, as they are set in the treaties to which the country is party. The effective discharge of this duty constitutes the cornerstone of sustainable peace.**

93. **Rhetoric stigmatizing specific ethnic communities and divisive nationalist agendas driven by nationalist political elites – and sometimes supported in neighbouring countries – have made antagonism and political bargaining a prominent feature of politics, leading to a virtual standstill in governance. Moreover, the highly inflammatory postures of these actors and the exploitation of inter-ethnic grievances for political gain have permeated society, polarizing political and social life and engendering distrust and hatred. This is reflected in the persistence of hate speech, and of the denial of atrocity crimes committed against ethnic groups.**

94. **During his visit, the Special Rapporteur witnessed a highly charged and volatile environment in different parts of the country and in different sectors of society, particularly in towns where some of the most terrible war crimes had been committed, such as Prijedor and Foča. He was struck by the existing tension, mistrust and**

[44] Committee on the Elimination of Racial Discrimination, general recommendation No. 35 (2013) on combating racist hate speech; and Human Rights Committee, general comment No. 34 (2011) on the freedoms of opinion and expression. See also the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, at https://www.ohchr.org/sites/default/files/Rabat_draft_outcome.pdf.

[45] Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 4.

sometimes confrontation among official and/or civil society representatives, to an extent not seen on any previous country visit. Verbal confrontation and accusations were on some occasions also directed at him. Mistrust, fear and discontent due to unresolved grievances from the conflict is found across the country and was expressly communicated by almost all interlocutors with whom the Special Rapporteur met. In some areas, there are distressing fears of a resumption of violence and of extremism.

95. **The Special Rapporteur perceived a highly insecure environment and disrespect towards victims belonging to minority groups, who nonetheless conduct their advocacy work with remarkable courage and perseverance. The level of official domestic and international attention to these challenges has been insufficient, although it has increased at the international level in recent months following the country visit.**

96. **The Special Rapporteur expresses alarm at the rapidly deteriorating sociopolitical and inter-ethnic environment observed in the country as a result of these patterns, and warns about the immediate risk that it poses to peace sustainability. This threat must not be underestimated or left unaddressed. The authorities and the international community must act diligently to prevent the recurrence of past violence.**

97. **To respond to this challenge, the Special Rapporteur urges the Government of Bosnia and Herzegovina, all political leaders, and the Governments of neighbouring countries to put an end to divisive political agendas, to prioritize the promotion of human rights and the rule of law, and to renew efforts to advance a comprehensive transitional justice process with a view to achieving effective reconciliation and peace. Such an agenda should be anchored in the country's international obligations and should place the rights of all victims at the centre of legislative and policy decisions.**

98. **In this pressing and vital endeavour, Bosnia and Herzegovina will need the unwavering support and attention of the international community, including in the context of the European Union's accession framework. This task must no longer be postponed if Bosnia and Herzegovina is to reverse the threats to peaceful coexistence and steer back to a political course focused on democratic governance and development, based on respect of human rights for all, without discrimination.**

IX. Recommendations

A. Recommendations addressed to the State

99. **Domesticate all ratified international legal instruments and harmonize legislation to make the rights therein justiciable and enforceable.**

100. **Accelerate the search for and identification of the remaining missing persons, on the basis of objective and transparent criteria, and regardless of the circumstances in which the victims went missing. Provide continued financial, technical and qualified human resources to the Missing Persons Institute and related entities. Consider establishing a forensic institute to enhance the country's forensic capacities.**

101. **Ensure full access to relevant information for the families of missing persons, and full cooperation with the countries in the region affected by the conflict.**

102. **Adopt official initiatives aimed at comprehensively establishing the truth and at collecting data and victims' testimonies about all the violations committed during the conflict. Such an exercise should include support for the existing documentation and truth-seeking efforts by civil society, including regionally, as well as the adoption of measures to guarantee the preservation of and public access to the documentation collected.**

103. **Provide the judiciary with continued financial, material and human resources to undertake effective, prompt and adequate criminal investigations and prosecutions of war crimes. Accelerate the processing of pending cases and ensure that all such crimes are prosecuted in a non-discriminatory manner, regardless of the ethnicity of the victim**

and the perpetrator, the circumstances in which the crimes were committed, or the jurisdiction where the trial takes place.

104. **Ensure harmonization of the legislation and jurisprudence on international crimes throughout the country, in compliance with international standards.**

105. **Repeal the legal provisions that allow the granting of amnesty for international crimes, and prevent legal reforms that could allow pardons for these crimes.**

106. **Ensure that plea agreements to facility access to information about international crimes do not hinder victims' access to justice and lead to impunity.**

107. **Ensure that all victims have access to witness protection services, free legal aid, and psychosocial and health services, and that the mechanisms in place have adequate financial and material resources to discharge their functions effectively.**

108. **Adopt without delay a comprehensive legal framework, and a concomitant national reparation programme, that: (a) recognizes the status of all categories of wartime victims, including, inter alia, victims of torture, victims of conflict-related sexual violence, children born of rape, and relatives of missing persons; and (b) provide full, prompt and effective reparation (including compensation, rehabilitation, restitution and satisfaction) to all categories of victims, regardless of their place of residence, their ethnic origin or where the violation took place. The framework should clearly define the criteria for obtaining the status of victim and set out the specific rights and entitlements guaranteed to all victims throughout the country. Registration procedures should be clearly communicated and accessible to all victims, require a low threshold of evidence of victimhood, and not be time-bound. The legal framework and the reparation programme should be adopted in full consultation with victims, be fully compliant with international standards, and include a victim-centred approach and a gender and disabilities perspective.**

109. **Establish a mechanism to monitor the effective and adequate registration, recognition, and awarding of reparations to wartime victims, which includes data disaggregated by type of violation suffered, ethnicity, gender, place of residence, and type and amount of reparation granted to victims.**

110. **Immediately halt the application of the statute of limitations to reparation claims directed against the entities/the district or the State, as well as the imposition and forced collection of legal fees from victims whose claims have been unsuccessful. Immediately cancel the related debts imposed on victims, and compensate those who had their income or assets seized.**

111. **Establish without delay the Fund for Support to the Families of Missing Persons, as required under the Law on Missing Persons.**

112. **Adopt, in consultation with and with the full participation of victims, comprehensive legislation and policies on memorialization processes, which entail plural and accurate accounts of past violations (as established by international and domestic courts) and narratives of victimhood, set out the criteria and process for establishing memorials in full compliance with international standards, and facilitate and support, without restrictions or discrimination, the memorialization efforts of victims and/or their families.**

113. **Repeal any regulations or policies at the State, entity/district and local levels which preclude victims' access to memorials and gravesites or prevent them from establishing memorials or marking such sites. Ensure the adequate signage and preservation of atrocity crimes sites.**

114. **Adopt at the State and entity/district levels policies in the fields of education, culture and the media to provide society with plural and accurate accounts of past violations (as established by international and national courts) and narratives of victimhood, and to educate people about the history and culture of ethnic and national minorities and about their contribution to society at large, with a view to promoting mutual understanding, cultural diversity and coexistence.**

115. **Reform the educational system to: (a) end any form of segregation, including on the basis of the national or ethnic affiliation of students; (b) implement a common core curriculum, including on sensitive subjects such as history and geography; (c) ensure minority students' access to learning in their mother tongue, and about their cultural heritage; (d) adopt a multi-perspective approach in history teaching; (e) prevent the intrusion of divisive ethnonationalist agendas in school curricula, names, symbols and events and commemorations; and (f) prevent practices that exclude, discriminate against or stigmatize minority students and their communities.**

116. **Accelerate realization of the rights of all returnees and displaced persons, and the establishment of socioeconomic conditions, free from discrimination, conducive to sustainable minority reintegration.**

117. **Address instances of glorification of war criminals and denial of atrocity crimes established by international and domestic courts, in full compliance with the aforementioned international standards.**

118. **Maintain and improve vetting processes to ensure that public institutions do not employ, or allow to run for office, convicted or indicted war criminals.**

119. **Adopt the necessary measures to investigate – and where necessary prosecute and sanction, to publicly condemn and to monitor all instances of hate crime, hate speech and incitement to violence on national, ethnic or religious grounds. Train judicial and police officials on the relevant international standards and procedures.**

120. **Train public officials, including teachers, the judiciary and security personnel, on human rights and historical memory, including with an examination of comprehensive and accurate accounts of the violations committed and the responsibilities of State and entity- or district-level institutions, as established by domestic and international courts.**

121. **Ensure that victims and civil society actively participate in the design and implementation of all aspects of transitional justice processes: truth, justice, reparation, memorialization and guarantees of non-recurrence.**

B. Recommendations addressed to the international community

122. **Regional and international partners, including Governments and agencies, should consider providing, or maintaining, technical collaboration and assistance to support the unfinished transitional justice process in Bosnia and Herzegovina – with a particular focus on monitoring and supporting the establishment of comprehensive reparations programmes for all wartime victims; countering hate speech and incitement to national or ethnic violence; adopting comprehensive memorialization processes that provide plural and accurate accounts of the violations suffered by all parties to the conflict; adopting policies in the fields of education, culture and the media to promote integrated and non-discriminatory learning, mutual understanding and cultural diversity; accelerating criminal prosecutions; and searching for the remaining missing persons.**

123. **The European Union should consider instituting, as part of the accession negotiations for Bosnia and Herzegovina, mechanisms to comprehensively assess, and to monitor with a long-term focus, the progress made in achieving a comprehensive transitional justice process.**