### Human Rights Committee

**Communication No. 1997/2010**

**Views adopted by the Committee at its 110th session**  
(10-28 March 2014)

**Submitted by:** Fatima Rizvanović and Ruvejda Rizvanović  
(represented by counsel, Track Impunity Always–TRIAL)

**Alleged victims:** The authors and their missing relative, Mensud Rizvanović

**State party:** Bosnia and Herzegovina

**Date of communication:** 15 September 2010 (initial submission)

**Document references:** Special Rapporteur’s rule 97 decisions, transmitted to the State party on 18 November 2009, 24 November 2009, 29 December 2009 and 1 June 2010 (not issued in document form)

**Date of adoption of Views:** 21 March 2014

**Subject matter:** Enforced disappearance and effective remedy

**Substantive issues:** Right to life, prohibition of torture and other ill-treatment, liberty and security of person, right to be treated with humanity and dignity, recognition of legal personality, right to an effective remedy.

**Procedural issues:** Insufficient substantiation

**Articles of the Covenant:** 6, 9, 10 and 16 read in conjunction with article 2(3); 7 read alone and in conjunction with article 2(3); 26 and 2(1)

**Articles of the Optional Protocol:** -

[Annex]
Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political rights (110th session)

concerning

Communications Nos. 1997/2010*

Submitted by: Fatima Rizvanović and Ruvejda Rizvanović (represented by counsel, Track Impunity Always–TRIAL)

Alleged victims: The authors and their missing relative, Mensud Rizvanović

State party: Bosnia and Herzegovina

Date of communication: 15 September 2010 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 21 2014,

Having concluded its consideration of communications Nos. 1997/2010, submitted to the Human Rights Committee by Fatima and Ruvejda Rizvanovic under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The authors of the communication are Fatima Rizvanović, a Bosnian national born on 28 August 1929, and Ruvejda Rizvanović, a Bosnian national born on 18 August 1952. They submit the communication on their behalf and on behalf of Mensud Rizvanović (son of Fatima Rizvanović).

* The following Committee members participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kālin, Ms. Zonke Zanele Majodina, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Victor Manuel Rodríguez-Rescia, Mr. Fabián Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili, Ms. Margo Waterval, and Mr. Andrei Paul Zlatescu.

The text of an individual opinion by Committee members Mr. Gerald L. Neuman and Ms. Anja Seibert-Fohr is appended to the present Views.

† On 20 August 2013, the authors informed the Committee that Mrs. Fatima Rizvanović passed away on 19 May 2013, and that Mrs. Ruvejda remains the sole author of the communication filed on 15 September 2010 on her behalf, on behalf of Mrs. Fatima Rizvanović and on behalf of her husband, Mensud Rizvanović.
of Fatima Rizvanović, and husband of Ruvejda Rizvanović), victim of enforced disappearance that took place in July 1992 and whose fate and whereabouts remain unknown since then. At the time of the events that led to his enforced disappearance, Mensud Rizvanović resided in Rizvanovci and worked as a postman. He is the father of two children. The authors claim a violation of articles 6, 7, 9, 10 and 16, in conjunction with article 2 (3) of the Covenant in respect to Mensud Rizvanović. They further allege that they are themselves victims of a violation by Bosnia and Herzegovina (hereinafter BiH) of article 7 read alone and in conjunction with article 2(3), and of articles 2(1) and 26 of the Covenant. The authors are represented by the organization TRIAL (Track Impunity Always).

The facts as presented by the authors

2.1 After its declaration of independence in March 1992, an armed conflict started in Bosnia and Herzegovina. The key local parties to the conflict were Armija Republike Bosne i Hercegovine (ARBiH; mostly made up of Bosniacs and loyal to the central authorities), Vojska Republike Srpske (VRS) and Hrvatsko vijeće obrane (mostly made up of Croats). 2

2.2 On 20 July 1992, members of the VRS forces and of paramilitary groups surrounded the village of Rizvanovci and apprehended many civilians, including Mensud Rizvanovic who was in his house with his wife and children. This event took place in the general context of the “ethnic cleansing operations” that were perpetrated in the area. According to eyewitnesses, Mensud Rizvanovic was taken to the school in Rizvanovci together with other men. From there, they were taken to the concentration camp Keraterm. In Keraterm, Mensud Rizvanovic and the other men were living in inhumane conditions and they were frequently beaten and ill-treated. Mensud Rizvanovic was last seen alive by eye-witnesses in life threatening circumstances in the hands of the guards of the facility, who were allegedly taking him and other men to an unknown location to perform forced labour. 3 The fate and whereabouts of Mensud Rizvanovic remain unknown since then.

2.3 The armed conflict came to an end in December 1995 when the General Framework Agreement for Peace in Bosnia and Herzegovina (hereinafter “the Dayton Agreement”) entered into force. 6

2.4 More than 18 years after the disappearance of Mensud Rizvanovic, no ex officio, prompt, impartial, thorough, independent and effective investigation has been carried out.

2 Bosnia and Herzegovina is a State party to the ICCPR (on 1 September 1993 it succeeded the Former Yugoslavia, which ratified the treaty on 2 June 1971), as well as to the First Optional Protocol to the ICCPR, ratified on 1 March 1995. The Protocol entered into force for BiH on 1 June 1995.

3 Bosniacs were known as Muslims until the 1992–1995 war. The term “Bosniacs” (Bošnjaci) should not be confused with the term “Bosnians” (Bosanci) which is commonly used to denote citizens of Bosnia and Herzegovina irrespective of their ethnic origin.

4 After the war, the ARBiH, the Vojska Republike Srpske – VRS and the Hrvatsko vijeće obrane gradually merged into the Armed Forces of Bosnia and Herzegovina.

5 Eye-witness to these events is Midhad Duratovic who was taken to Keraterm together with Mensud Rizvanovic and with whom he shared the same room in the detention facility. The information was confirmed in 2000 by Mr. Ibrahim Alagic, nephew of Mensud Rizvanovic who had been apprehended together with him.

6 In accordance with the Dayton Agreement, Bosnia and Herzegovina consists of two entities: the Federation of Bosnia and Herzegovina and the Republika Srpska. The Dayton Agreement failed to resolve the Inter-Entity Boundary Line in the Brčko area, but the parties agreed to a binding arbitration in this regard under the rules of the United Nations Commission on International Trade Law (UNCITRAL). The Brčko District, under the exclusive sovereignty of the State and international supervision, was formally inaugurated on 8 March 2000.
by the BiH authorities. Notwithstanding the existence of evidence that those responsible for the apprehension and the enforced disappearance of Mensud Rizvanović were members of the VRS army, no one has been summoned, indicted or convicted for these crimes, thus fostering an ongoing climate of impunity.

2.5 Four days after the apprehension of her husband, Ruvejda Rizvanović and her children were taken by VRS soldiers to the concentration camp in Tnopolje, and then to Travnik, where they remained for two weeks. From there, they reached Posusje. On 25 August 1992, the brother in law of Ruvejda Rizvanović took her and her children to Sierning in Austria. Throughout this period, Ruvejda Rizvanović had no information as to what had happened to Fatima Rizvanović. They finally met again in Sierning.

2.6 Together, Fatima and Ruvejda Rizvanović initiated proceedings to look for Mensud Rizvanović. They reported his enforced disappearance to the municipality of Sierning, they visited monthly the Sierning office of the Red Cross; sent letters and tracing requests through the Austrian Red Cross and the Office for Banned Persons and Refugees in Zagreb; sent information to the ICRC headquarters and to a Bosnian magazine diffused among the Bosnian diaspora. Upon their return to Rizvanovići, the authors reported the enforced disappearance of Mr. Mensud Rizvanović before international organizations present in BiH (the International Commission on Missing People, the ICRC) and before entities dealing with missing persons (e.g. the Australian Red Cross, the Federation Commission on Missing People, the Missing People Institute, the Republika Srpska Operative Team for Tracing Missing Persons). Fatima Rizvanović and Mensud Rizvanović’s children also gave DNA samples to the ICRC to facilitate the potential identification of Mensud Rizvanović’s remains. Mensud Rizvanović is still registered as “person unaccounted for” in the ICRC database.

2.7 On 26 November 2003, Ruvejda Rizvanović obtained a decision of the Municipal Court in Prijedor declaring Mensud Rizvanović dead on 22 November 1996, being the “first day after the passing of one year since the end of the hostilities”. The authors were extremely reluctant to go through this procedure without knowing with certainty the fate and whereabouts of Mensud Rizvanović, but it was necessary for them to have access to a monthly pension since the Municipal Courts indeed condition the award of a social allowance to relatives of missing persons to the presentation of a death certificate. The authors consider that this painful procedure amounts to treating “enforced disappearance” as a “direct death”, while there is no certainty as to the fate and whereabouts of the disappeared person. In February 2009, the Administrative Service, Department for Veterans and Protection of the Disabled in Prijedor issued a decision granting both the authors with the right to obtain a monthly pension from 1 October 2007. This pension is a form of social assistance. It can therefore not be considered as an adequate measure of reparation for the violations suffered.

2.8 In May 2006, Fatima Rizvanović submitted an application to the Human Rights Commission of the BiH Constitutional Court. The Court joined it to the application of other members of Izvor Association of relatives of Missing People. On 16 July 2007, the
Constitutional Court adopted a decision, concluding the applicants of this collective case were relieved from exhausting domestic remedies before ordinary courts, as “no specialized institution on enforced disappearance in BiH seems to be operating effectively”. The Court further found a violation of articles 3 and 8 of the European Convention on Human Rights because of the lack of information on the fate of the disappeared relatives of the applicants, including Mensud Rizvanović. The Court ordered the BiH authorities concerned to provide “all accessible and available information on members of the applicants’ families who went missing during the war, […] urgently and without further delay and no later than 30 days from the date of the receipt of the decision”. The Constitutional Court did not adopt any decision on the issue of compensation considering that it was covered by the provisions on the Law on Missing Persons concerning “financial support” and by the establishment of the Fund for Support to the Families of Missing Persons. The authors argue that the referred dispositions on financial support have not been implemented and that the fund still has not been established.

2.9 In March 2008, Fatima Rizvanović received a letter dated 27 December 2007 from the Republika Srpska Government Office for Tracing Missing Persons, informing the author that Mensud Rizvanović had been inscribed in the register of missing persons of the ICRC and of the Federation Commission for Missing Persons, and that the Republika Srpska Government Office for Tracing Detained and Missing Persons committed itself to resolve the issue of missing persons as soon as possible. This letter was the last one that Fatima Rizvanović received from the “concerned authorities” in the context of the implementation of the Constitutional Court decision. The time limit set by the Constitutional Court decision of 16 July 2007 expired and no relevant information on the fate and whereabouts of Mr. Mensud Rizvanović was provided to the Court or to the authors.

2.10 On 13 May 2009, Fatima Rizvanović filed a request for compensation under the Law on the Right to Compensation for Pecuniary and non-Pecuniary Damage caused by War Activities from 20 May 1992 to 19 June 1996. On 23 September 2010, the State Attorney’s Office of the Republika Srpska rejected her request, arguing that it had no competence to decide on her claim which did not refer to a damage suffered in connection with the conduct of military service and military defense activities. On 28 September 2010,

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13 On 21 September 2010, TRIAL requested clarification about the functioning of the procedure established by the Law on the Right to a Compensation for Pecuniary and non-Pecuniary Damage, caused by the War Activities in the period from 20 May 1992 to 19 June 1996. On 27 September 2010, the State Attorney’s Office of the Republika Srpska sent an official answer, stating that the amended provisions extending the deadline for submitting applications are “connected to articles 15 and 16 (war disabled persons and families of killed and disappeared soldiers) of the basic law and thus they do not encompass civilian victims of war who can realize their right entirely through judicial institutions under the condition that they have filled requests to regular courts.” Since from the reading of the Law on the Right to Compensation and its subsequent amendments it does not result that civilians are excluded from the right to receive compensation nor that they have to follow a procedure different from that applied to veterans, TRIAL contacted anew the State Attorney’s Office of the Republika Srpska. On this occasion, the representative of State Attorney’s Office admitted that civilians are not expressly excluded from the enjoyment of compensation by the text of the law, but this is their interpretation of the law, according to which only members of the VRS are entitled to compensation. The author submits that the interpretation of the law is clearly discriminatory and not grounded in any legal provision.
Fatima Rizvanović appealed this decision before the Ministry of Justice of the Republika Srpska. No decision had been adopted at the time of the complaint.

2.11 On 19 July 2010, Fatima Rizvanović sent another letter to the Republika Srpska Operative Team for Missing Persons, seeking additional information as to the measures undertaken to implement the 2007 decision of the Constitutional Court. On 23 July 2010, she received a reply stating that it is the responsibility of the Missing Persons Institute to provide information. On 13 April 2011, she contacted the BiH Constitutional Court pointing out the failure to implement the judgment of 16 July 2007 and requesting the Court to adopt a ruling under article 74.6 of its Rules of Procedure. At the time of the communication to the Committee, the Court had not replied.

2.12 On 16 September 2010, Fatima Rizvanović received a letter from the Missing Persons Institute, informing her that, so far, it had been impossible to establish the fate of Mensud Rizvanović, that a request for the exhumation of a number of mass graves on the territory of Prijedor municipality had been processed by the Prosecutor’s Office of BiH and that a court order was expected. The Institute finally indicated that, in case of receiving a DNA analysis corresponding to the preliminary identity of her son, they would inform her on the process of final identification, and deliver the mortal remains of Mensud Rizvanović for burial.

2.13 The authors refer to the findings of the Constitutional Court according to which, currently, “referral to ordinary courts of BiH would yield no result” and that no specialized institution on missing persons in BiH operates effectively. Accordingly, the Constitutional Court considered that Fatima Rizvanović and the other applicants “did not have at their disposal an effective and adequate remedy to protect their rights”. In compliance with article VI (4) of the BiH Constitution, the ruling of 16 July 2007 must be considered final and binding, and the authors do not have any other effective remedy to exhaust. As to the competence ratione temporis of the Committee, the authors refer to the jurisprudence of national and international jurisdictions and human rights mechanisms, and to the dispositions of international treaties stating the continuous or permanent nature of enforced disappearances. In the present case, Mensud Rizvanović was arbitrarily deprived of his liberty on 20 July 1992 and, since then, the violations of his rights and of the rights of the authors continue.

The complaint

3.1 On the admissibility of the communication ratione temporis, the authors submit that, even though the events took place before the entry into force of the Optional Protocol for the State party, enforced disappearances of persons is per se a continuing violation of

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14 Art. 74.6 of the Constitutional Court Rules of Procedure: “in the event of a failure to enforce a decision, or a delay in enforcement or in giving information to the Constitutional Court about the measures taken, the Constitutional Court shall render a ruling in which it shall establish that its decision has not been enforced and it may determine the manner of enforcement of the decision. This ruling shall be transmitted to the competent prosecutor or another body competent to enforce the decision, as designated by the Constitutional Court to adopt the mentioned ruling on the lack of enforcement of previous decisions”.

several human rights. In the authors’ case, the lack of information about the causes and circumstances of the disappearance of Mr. Mensud Rizvanović, as well as on the progress and results of the investigations carried out by BiH authorities continue after the Protocol’s entry into force. In that regard, the authors submit that the ongoing failure by BiH authorities to carry out an ex officio, prompt, impartial, thorough and independent investigation, and to prosecute and punish those responsible for the arbitrary deprivation of liberty, ill-treatment and enforced disappearance of Mensud Rizvanović, as well as the State party’s failure to implement the July 2007 decision of the Constitutional Court, amounts to a violation of articles 6, 7, 9, 10 and 16 in conjunction with article 2(3) of the Covenant in respect of Mensud Rizvanović.

3.2 The authors consider that the responsibility for shedding light on the fate of Mensud Rizvanović lies with the State party. They refer to an expert report of the Working Group on Enforced or Involuntary Disappearances (WGEID) which states that the primary responsibility for carrying out these tasks remains with the authorities under whose jurisdiction a suspected mass grave falls. The authors further argue that the State party has an obligation to conduct a prompt, impartial, thorough and independent investigation of gross human rights violations, such as enforced disappearances, torture or arbitrary killings. The obligation to conduct an investigation also applies in cases of killings or other acts affecting the enjoyment of human rights that are not imputable to the State. In these cases, the obligation to investigate arises from the duty of the State to protect all individuals under its jurisdiction from acts committed by private persons or groups of persons which may impede the enjoyment of their human rights.

3.3 With regard to article 6, the authors refer to the Committee’s jurisprudence according to which a State party has a primary duty to take appropriate measures to protect the life of a person. In cases of enforced disappearances, the State party has an obligation to investigate and bring perpetrators to justice. The authors consider that the State party’s failure to do so in the present case amounts to a violation of Mensud Rizvanović’s right to life, in breach of article 6 read in conjunction with article 2, paragraph 3, of the Covenant. Mensud Rizvanović was illegally detained and has remained unaccounted for since 20 July 1992. Despite numerous efforts by the authors, no ex officio, prompt, impartial, thorough and independent investigation has been carried out and the victim’s fate and whereabouts remain unknown.

3.4 The authors further submit that Mensud Rizvanović was illegally detained without charge by VRS soldiers and that he was held indefinitely, without communication with the outside world, while repeatedly ill-treated and subjected to forced labour. To that regard, the authors consider that the mere fact that Mensud Rizvanović was last seen in the Keraterm camp in the hands of agents known to have committed several other acts of torture and arbitrary killings concretely exposed him to a grave risk of suffering violations of his right under article 7 of the Covenant. The authors further refer to the jurisprudence of the Committee according to which enforced disappearance constitutes in itself a form of

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16 The authors refer to the report by Manfred Nowak, expert member of the WGEID, Special process on missing persons in the territory of the former Yugoslavia, document E/CN.4/1996/36, para. 78.

17 The authors refer to Committee’s General Comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties, para. 8; Chitay Nech and others v. Guatemala, IACHR, Ser. C No. 212, 25 May 2010, para. 89; Velásquez Rodríguez v. Honduras, IACHR, 29 July 1988, Series C, No. 4, para. 172; and Demiray v. Turkey, Application no. 27308/95, ECHR, 21 November 2000, para. 50; Tanrikulu v. Turkey, Application no. 23763/94, 8 July 1999, ECHR, para. 103; and Ergi v. Turkey, Application no. 23818/94, 28 July 1998, ECHR, para. 82.

torture, on which no investigation has yet been carried out by the State party in order to identify, prosecute, judge and sanction those responsible in the case under review. The authors consider that this amounts to a violation of article 7 read in conjunction with article 2, paragraph 3 of the Covenant in respect of Mensud Rizvanović.

3.5 The authors further argue that the State party has provided no explanation as to the arrest of Mensud Rizvanović without a warrant, and his transfer to the Keraterm camp by members of the VRS army. The authors also point out that the detention of Mensud Rizvanović was not recorded in any official register or proceedings brought before a court to challenge its lawfulness. As no explanation has been given by the State party and no efforts were made to clarify the fate of Mensud Rizvanović, the authors consider that the State party has violated article 9 read in conjunction with article 2, paragraph 3, of the Covenant.

3.6 Mensud Rizvanović was held in Keraterm camp and he did not have the possibility to communicate with the outside world. The authors refer to the jurisprudence of the International Tribunal for the Former Yugoslavia in which the conditions endured in Keraterm were qualified as inhumane and degrading. They further recall that eyewitnesses saw Mensud Rizvanović being ill-treated. The authors recall the Committee's jurisprudence according to which enforced disappearance itself constitutes a violation of article 10 of the Covenant. They consider that the failure by the State party to investigate the torture and inhuman and degrading treatment the victim suffered in detention amounts to a violation of article 10, read in conjunction with article 2, paragraph 3, of the Covenant in respect of Mensud Rizvanović.

3.7 The authors refer to the jurisprudence of the Committee, under which enforced disappearance may constitute a refusal to recognize the victim before the law if that person was in the hands of the authorities of the State party when last seen, and if the efforts of their relatives to obtain access to effective remedies have been systematically denied. The ceaseless efforts undertaken by the authors to shed light on the fate of Mensud Rizvanović and to access potentially effective remedies have been impeded since his disappearance. The authors therefore consider that the State party is responsible for a continuing violation of article 16 read in conjunction with article 2, paragraph 3 of the Covenant in respect of Mensud Rizvanović.

3.8 The authors further allege that they are themselves victims of a violation by BiH of article 7 read alone and in conjunction with article 2(3) of the Covenant because of the severe mental distress and anguish caused by (a) the disappearance of Mensud Rizvanović; (b) the de facto requirement to declare him dead to accede to a pension; (c) the continued uncertainty about his fate and whereabouts; (d) the failure to investigate and ensure an effective remedy; (e) the lack of attention to their case reflected for example in the use of template letters to reply to their reiterated requests for information, which still remain without answer; (f) the non-implementation of various provisions of the Law on Missing


20 See inter alia: ICTY, Prosecutor v. Dusko Sikirica, Damir Dosen and Dragun Kolundzija, 13 November 2001, Case No. IT-95-8-S, paras.52-100; Prosecutor v. Miroslav Kovcka et al., Trial Chamber, 2 November 2001, Case II/98/30-1, paras. 112-114.

21 Supra footnote No. 4


23 Zohra Madoui v. Algeria, op.cit., para. 7.7; Grioua v. Algeria, op.cit., para. 7.9.
Persons, including those concerning the establishment of the Fund for Support to the Families of Missing Persons, (g) the failure by the State party to implement the judgment of the BiH Constitutional Court. They therefore consider that they have been victim of a separate violation of article 7 read alone and in conjunction with article 2, paragraph 3, of the Covenant.

3.9 The authors also consider that the application of specific procedural burdens to civilian victims of war for their access to non-pecuniary damages, as opposed to veterans of the VRS, amounts to discrimination in violation of articles 2(1) and 26 of the Covenant. In line with this statement, the authors maintain that the rejection of their claim for non-pecuniary damage under the Law on the Right to Compensation for Pecuniary and non-Pecuniary damage caused by War Activities from 20 May 1992 to 19 June 1996, on the ground that Mensud Rizvanović was a civilian victim of war, does not result of the dispositions of the referred legislation, but of their interpretation by the Attorney’s Office of the Republika Srpska. They consider that this interpretation amounts to a discrimination in violation of their right to an effective remedy and to fair and adequate compensation and reparation for the harm suffered.

The State party’s observations

4.1 The State party submitted observations in April 2011. As regards the general framework, the State party submits that in the post-war period, since 1996, a large number of requests for compensation for non-pecuniary damage have been submitted by citizens to courts in the Republika Srpska, which have issued a large number of final judgments ordering the payment of damages in a short period and without discrimination. To avoid undermining the fulfillment of budgetary commitments of the Republika Srpska and its functioning, the Law on Determination and Manner of Settling the Internal Debt of the Republika Srpska was passed on 15 July 2004 providing that pecuniary and non-pecuniary damages caused during the war shall be settled by an issue of bonds of the Republika Srpska “with maturity of 14 years”. The payment is to be made in 10 instalments in the 9 to 14 years period after the decision. The State party further informs that in order to deal efficiently with these damages, the Republika Srpska passed a special Law on Compensation for Pecuniary and Non-Pecuniary damages as an attempt to relieve the courts in the Republika Srpska from the caseload involving war damage compensation, trying to enter into extra-judicial settlement upon agreement of the injured party.

4.2 As regards the authors’ situation, the State party submits that Fatima Rizvanović filed a request for compensation to the Srpska Attorney General’s Office on 13 May 2009. The State party further indicates that article 8, paragraph 2 of the “Law on Compensation for Pecuniary and Non-pecuniary damage caused during the War from 20 May 1992 to 19 June 1996” provides for the right to reach extra-judicial settlement for pecuniary and non-pecuniary damage caused during the war to those persons whose requests were received after 19 June 2001, and whose damage was caused “in the military line of duty and duties to defend the country”. The State party considers that, as Mensud Rizvanović disappeared as a civilian victim of war and not as military personnel, the Srpska Attorney General’s Office did not have jurisdiction to reach an extra-judicial settlement in order to compensate Fatima Rizvanović, and that she had been informed of this situation in writing. The State party considers that Fatima Rizvanović should seek compensation in a civil action before a competent court.

24 ECIHR, Suljagic v. Bosnia and Herzegovina, 10 November 2009, para. 21.
Authors’ comments on the State party’s observations

5.1 The authors submitted their comments on 12 May 2011. They refer to the General comment of the Working Group on Enforced or Involuntary Disappearances (WGEID) on enforced disappearance as a continuous crime. They consider that the State party’s observations corroborate that Mensud Rizvanović remains registered as a missing person “unaccounted for” and inform that no match has been found through the on-line inquiry tool set up by the International Commission on Missing Persons (ICMP). The tracing process is therefore still open under the responsibility of the BiH authorities.

5.2 The authors consider that the observations of the State party do not raise any challenge to the claims they submitted, that they do not refer to any ongoing investigation to determine those responsible, or to the measures undertaken to establish the fate and whereabouts of Mensud Rizvanović. They consider that the silence of the State party only corroborates that the BiH authorities are not fulfilling their obligation to investigate, bring to trial and punish. The authors further point out that they had not been contacted by the MPI and consider this silence as another demonstration of the lack of communication between the authorities of the State party and relatives of missing persons.

5.3 The authors reiterate their claim to know the identity of the perpetrators, the fate and whereabouts of Mensud Rizvanović, the progresses and results of the search. They also request to be closely associated with all the steps of the proceedings initiated by the competent authorities of the State party. In that regard, the authors refer to the WGEID’s “General Comment on the Right to the Truth in relation to Enforced Disappearances” which identifies the participation of the relatives of the victim as part of their right to the truth.

5.4 The authors submit that their case must be read in the overall situation of impunity of war crimes. Many obstacles are practical, such as limited prosecutorial resources, lack of necessary expertise and lack of witness protection. The authors also consider that this situation results from a lack of willingness of the police to investigate, and from the failure of prosecutors to make use of available evidentiary sources.

5.5 The authors further argue that the State party’s observations only refer to the issue of the claim for non-pecuniary compensation presented by Fatima Rizvanović on 19 May 2009. They indicate that the appeal she presented on 28 September 2010 against the decision of the Republika Srpska’s Attorney General Office was still pending at the time of their submission.

5.6 The authors consider that the letter of the Republika Srpska’s Attorney General Office confirms the existence of discrimination in the enjoyment of the right to an effective remedy to the detriment of civilian victims of war. In its submission, the State party does not challenge the existence of such discrimination and it does not submit any comment as to


27 WGEID, General Comment on the Right to the Truth in relation to Enforced Disappearances, 2010, para. 3

28 The authors refer to a report of the Commissioner for Human Rights of the Council of Europe, Report on the Mission to BiH, paras. 132 and 133.
the fact that the authors have not received redress and reparation. The authors consider that this silence corroborates their arguments on this issue.

5.7 The authors inform the Committee that, on 22 March 2011, the Constitutional Court replied to Fatima Rizvanović’s request for the adoption of a ruling of non-implementation of the Court’s decision of 16 July 2007. In that letter, the Court stated that on 27 March 2009, it had adopted an “Information” on the Enforcement of Constitutional Court Decisions in the period from 1 January until 31 December 2008, and that the Court’s decision of 16 July 2007 was therefore considered enforced. The authors argue that they had to wait two years to be informed of the referred decision, the adoption of which does not reflect the reality: the Fund still has not been established, and no information has been provided as to the fate and whereabouts of Mensud Rizvanović. The authors consider that the referred decision reflects the systemic problem of non-implementation of the Constitutional Court’s decisions and is a further sign of indifference by BiH authorities.

Further submissions from the State party

6.1 The State party provided further information in reply to the authors’ comments on 4 and 17 August 2011. The Attorney General’s Office of Republika Srpska considers that it is not competent to address the authors’ request for compensation because it is only in charge of the representation and protection of property interests of Republika Srpska for civil matters, while the Prosecutor’s Office has jurisdiction over criminal matters. It therefore argues that the decision dismissing the authors’ claim was adopted for lack of jurisdiction. Additionally, taking into account that the Law on Compensation for Pecuniary and Non-pecuniary Damage caused during the War is not the only relevant legislation, and that other procedures exist for the authors to exercise their right to compensation, the State party considers that the authors do not sufficiently substantiate their claim as to the discriminatory character of the referred decision.

6.2 The State party argues that important efforts have been done to improve the process of tracing missing persons, particularly through the adoption of the 2004 Law on Missing Persons and the establishment of an Operational Team for Tracing Missing persons by the Republika Srpska Government.

6.3 The State party further submits that a lot of success has been achieved in the quest to determine the whereabouts or fate of all missing persons. During the war, nearly 30,000 people went missing, of which more than 20,000 were exhumed and more than 18,000 were identified. Since its creation, the Missing Persons Institute has taken measures to have a faster and more efficient process of searching, including through the creation of regional offices and organizational units. At the time of the report, more than 769 exhumations had been carried out, and others were still pending, while 800 persons were still missing in the municipality of Prijedor, including Mensud Rizvanović.

6.4 The State party considers that, to avoid additional trauma, family members are usually not informed of exhumations and DNA testing. However, the State party submits that on 16 September 2010, they informed Fatima Rizvanović that exhumations were pending in the area of Prijedor Municipality and that they would notify her if preliminary identification of her son was to be carried through DNA analysis.

Further comments from the authors

7.1 On 15 September 2011, the authors sent their additional comments, considering that the State party’s reply did not provide any new information with regard to the enforced disappearance of Mensud Rizvanović, and that it failed to address number of the issues they had raised. The authors therefore reiterate their previous submissions.
7.2 The authors further inform that on 1 April 2011, the Ministry of Justice of Republika Srpska issued a decision rejecting the appeal presented by Fatima Rizvanović against the decision of the State Attorney’s Office of the Republika Srpska on her claim for non-pecuniary damage, and inviting her to turn to ordinary courts. The authors argue that since Mensud Rizvanović was a civilian, the existing legal framework does not allow his relatives to obtain compensation for non-pecuniary damages in the same way as the relatives of a veteran could do. Additionally, they consider that it is the practice of regular courts to reject claims for non-pecuniary damage considering the harm suffered during the war, as they apply a statute of limitations of subjective 3 years and objective 5 years. The authors therefore argue that they do not dispose of an effective remedy.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must, in accordance with rule 93 of its rules of procedure, decide whether the case is admissible under the Optional Protocol.

8.2 The Committee has ascertained, as required under article 5, paragraph 2, of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement and that the authors have exhausted all available domestic remedies.

8.3 The Committee notes that the State party has not challenged the admissibility of the communication and that the authors’ allegations have been sufficiently substantiated for the purposes of admissibility. All admissibility criteria having been met, the Committee declares the communication admissible and proceeds to their examination on the merits.

Consideration of merits

9.1 The Committee has considered the case in the light of all information made available to it by the parties, as provided under article 5, paragraph 1, of the Optional Protocol.

9.2 The authors claim that Mensud Rizvanović has been victim of enforced disappearance at the hands of the VRS since his illegal arrest on 20 July 1992, and that despite their numerous efforts, no prompt, impartial, thorough and independent investigation has been carried out by the State party to clarify his fate and whereabouts and to bring the perpetrators to justice. In this respect, the Committee recalls its General Comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, according to which a failure by a State party to investigate allegations of violations and a failure by a State party to bring to justice perpetrators of certain violations (notably torture and similar cruel, inhuman and degrading treatment, summary and arbitrary killings and enforced disappearances) could in and of itself give rise to a separate breach of the Covenant.

9.3 The authors do not allege that the State party is directly responsible for the enforced disappearance of their relative.

9.4 The Committee notes the State party’s information that it has made considerable efforts at the general level in view of the more than 30,000 cases of enforced disappearances that occurred during the conflict. Notably, the Constitutional Court has established that authorities of the State party are responsible for the investigation of the disappearance of the authors’ relatives (see paragraph 2.8 above); domestic mechanisms have been set up to deal with enforced disappearances and other war crimes cases (see paragraph 4.2 above); and DNA samples from a number of unidentified bodies have been
compared with the DNA samples of Fatima Rizvanović and of Mensud Rizvanović’s children.

9.5 The Committee recalls its jurisprudence according to which the obligation to investigate allegations of enforced disappearances and to bring the culprits to justice is not an obligation of result, but of means, and that it must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities of the State party. However, the Committee notes that, according to the information provided by the authors and the State party, no specific measures have been undertaken to investigate the arbitrary deprivation of liberty, ill-treatment and enforced disappearance of Mensud Rizvanović and to bring to justice those responsible. The Committee further notes, inter alia, that the authors have never been consulted by the Constitutional Court on whether the decision of 16 July 2007 had been enforced; that they were not informed of the adoption of the Constitutional Court decision of 27 March 2009 holding that this decision was enforced, while no information has been provided as to the fate and whereabouts of Mensud Rizvanović, and that the Fund for Support to the Families of Missing Persons still has not been established. Finally, the Committee notes that the limited information that the family managed to obtain throughout the proceedings was only provided to them at their own request, or after very long delays, a fact that has not been refuted by the State party. The Committee considers that information on the investigation of enforced disappearances must be made promptly accessible to the families. Accordingly, the Committee concludes that, in the circumstances, the facts before it reveal a violation of article 2, paragraph 3, of the Covenant, read in conjunction with articles 6, 7, and 9 with regard to the authors and their disappeared relative.

9.6 The Committee further notes that the social allowance provided to the authors depended upon their acceptance to recognize their missing relative as dead, while there is no certainty as to his fate and whereabouts. The Committee considers that to oblige families of disappeared persons to have the family member declared dead in order to be eligible for compensation while the investigation is ongoing makes the availability of compensation dependent on a harmful process, and constitutes an inhumane and degrading treatment in violation of article 7 read alone and in conjunction with article 2, paragraph 3 of the Covenant with respect to the authors.

9.7 In the light of the above findings, the Committee will not examine separately the author’s allegations under article 2, paragraph 3, read in conjunction with articles 10 and 16 of the Covenant.

9.8 As regards the alleged violation of articles 2(1) and 26 of the Covenant, the Committee notes the argument of the authors that the “Law on Compensation for Pecuniary and Non-pecuniary damage caused during the War from 20 May 1992 to 19 June 1996” and its subsequent amendments do not exclude civilians from the right to receive compensation, and that the referred exclusion results from the interpretation of the law by the State Attorney’s office and is discriminatory. The Committee further notes that, according to the State party, the non-applicability of the referred legislation to civilians and their families arises from article 8, paragraph 2 of the law which specifies that the law only applies to damages caused “in the military line of duty and duties to defend the country”. The Committee further notes the argument of the State party that other procedures exist for the authors to exercise their right to compensation, and that the authors therefore do not

30 Ibid., para. 9.6
31 Ibid.
sufficiently substantiate their claim as to the discriminatory character of the law and its interpretation. In the absence of any further information before it, the Committee considers that the available information does not enable it to find a violation of the authors’ rights under articles 26 and 2(1) of the Covenant.

9.9 The Committee further acknowledges that, according to the last information provided by Ruvejda Rizvanović, Fatima Rizvanović passed away on 19 May 2013, without having fulfilled her right to the truth, to justice and to reparation for the enforced disappearance of her son.

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the State party has violated the authors’ rights under article 2, paragraph 3 in connection with articles 6, 7; and 9 of the Covenant with regard to the authors and their disappeared relative; of article 7 read alone with regard to the authors.

11. In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide Ruvejda Rizvanović and her family with an effective remedy, including (a) continuing its efforts to establish the fate or whereabouts of Mensud Rizvanović, as required by the Law on Missing Persons 2004; (b) continuing its efforts to bring to justice those responsible for his disappearance and to do so by the end of 2015, as required by the National War Crimes Strategy; and (c) ensuring adequate compensation. The State party is also under an obligation to prevent similar violations in the future and must ensure, in particular, that investigations into allegations of enforced disappearances are accessible to the missing persons’ families, and that the current legal framework is amended so that providing social benefits and measures of reparations to relatives of victims of enforced disappearance is not subjected to the obligation to obtain a municipal court’s decision certifying the death of the victim.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the present Views. The State party is also requested to publish the present Views and to have them widely disseminated in all three official languages of the State party.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee’s annual report to the General Assembly.]
Appendix

Individual opinion by Committee member Mr. Gerald L. Neuman, joined by Committee member Ms. Anja Seibert-Fohr (concurring)

I write separately to address two issues that the majority has defensibly chosen not to reach. The authors asked the Committee also to find that the State party had violated the obligation to provide an effective remedy for violations of articles 10 and 16 of the Covenant. I would address those claims, and find that they are not substantiated, for legal reasons that it would be useful to explain.

First, as a general matter:

The Committee has frequently held that enforced disappearances conducted by state authorities result in violations of article 10, which guarantees humane treatment of persons deprived of their liberty. But the state’s obligations under article 10 concern the conditions of detention under its own authority, not the forms of lawless deprivations of liberty by others.1 Article 10 differs in this respect from article 7, which requires States parties “to take positive measures to ensure that private persons or entities do not inflict torture or cruel, inhuman or degrading treatment or punishment on others within their power.”2 The fact that an enforced disappearance has occurred does not imply that the state has violated its obligations under article 10, when the disappearance is not attributable to the state.

Similarly, the Committee has concluded that enforced disappearances conducted by state authorities may, in appropriate factual circumstances, violate article 16, which guarantees the right to recognition as a person before the law. It is difficult to see how actors who are not agents of a state, acting without collusion by that state, could themselves negate the recognition by that state of a victim as a person before the law. Thus the fact that an enforced disappearance has occurred in the state’s territory does not imply that the state has violated article 16, when the disappearance is not attributable to the state.

Turning to the present case, the authors do not allege that the enforced disappearance of Mensud Rizvanović was attributable to Bosnia and Herzegovina, but rather to armed forces that opposed it. They appear merely to assume that because the atrocity inflicted upon him can be described as an enforced disappearance, articles 10 and 16 must have been implicated, generating additional obligations to provide effective remedies under article 2, paragraph 3 of the Covenant. I would have preferred to explain that this reasoning is erroneous. Without a further basis for connecting the State party to the disappearance, I would hold that the authors have not substantiated their claims that the State party violated article 2, paragraph 3 in conjunction with article 10 or article 16.

[Done in English. Subsequently to be issued also in Arabic, Chinese, French, Russian and Spanish as part of the Committee’s annual report to the General Assembly.]

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1 See General Comment No. 21: Article 10 (Humane treatment of persons deprived of their liberty) (1992), para. 2.