



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Communication No. 1966/2010

##### Views adopted by the Committee at its 112th session (7–31 October 2014)

<i>Submitted by:</i>	Tija Hero, Ermina Hero, Armin Hero (represented by counsel, Track Impunity Always–TRIAL)
<i>Alleged victims:</i>	The authors and their missing husband and father, Sejad Hero
<i>State party:</i>	Bosnia and Herzegovina
<i>Date of communication:</i>	14 April 2010 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decisions, transmitted to the State party on 24 June 2010 (not issued in document form)
<i>Date of adoption of views:</i>	28 October 2014
<i>Subject matter:</i>	Enforced disappearance and effective remedy
<i>Substantive issues:</i>	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; and every child's right to such measures of protection as are required by their status as minor
<i>Procedural issues:</i>	none
<i>Articles of the Covenant:</i>	2, para. 3; 6; 7; 9; 16 and 24, para. 1
<i>Articles of the Optional Protocol:</i>	2



## 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 (112th session)**

concerning

#### **Communication No. 1966/2010\***

*Submitted by:* Tija Hero, Ermina Hero, Armin Hero  
(represented by counsel, Track Impunity  
Always–TRIAL)

*Alleged victims:* The authors and their missing husband and  
father, Sejad Hero

*State party:* Bosnia and Herzegovina

*Date of communication:* 14 April 2010 (initial submission)

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

*Meeting on 28 October 2014,*

*Having concluded* its consideration of communication Nos. 1966/2010, submitted to the Human Rights Committee by Tija Hero et al. 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 dated 14 April 2010, are Tija Hero, Ermina Hero and Armin Hero, nationals of Bosnia and Herzegovina, born on 20 May 1966, 21 July 1986 and 28 December 1990 respectively, who submitted the communication on their behalf and on behalf of their disappeared husband and father, Sejad Hero. The authors claim to be victims of a violation of article 7, read alone<sup>1</sup> and in conjunction with article 2.3 of the International Covenant on Civil and Political Rights. They further claim on behalf of Sejad Hero the violation of his rights under articles 6; 7; 9 and 16, read in conjunction with

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\* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Christine Chanet, Ahmad Amin Fathalla, Cornelis Flinterman, Yuji Iwasawa, Walter Kälin, Zonke Zanele Majodina, Gerald L. Neuman, Sir Nigel Rodley, Victor Manuel Rodríguez-Rescia, Fabian Omar Salvioli, Dheerujlall B. Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili, Margo Waterval and Andrei Paul Zlătescu.

<sup>1</sup> The claim of a violation of article 7, read alone, was included in the authors' submission dated 23 July 2013 (see paragraph 7.3).

article 2.3 of the Covenant. Ermina Hero and Armin Hero, who were minors at the time of the arrest and disappearance of their father, allege that the State party violated their right to special protection as minors until 21 June 2004 and 28 December 2008 when they reached their respective majorities. They claim a violation of article 24, paragraph 1, read in conjunction with articles 7 and 2, paragraph 3, of the Covenant in that regard. The authors are represented by Track Impunity Always (TRIAL). The Optional Protocol entered into force for the State party on 1 June 1995.

### **The facts as submitted by the authors**

2.1 The events took place during the armed conflict surrounding the independence of Bosnia Herzegovina. On 4 July 1992, members of the Yugoslav National Army (JNA) surrounded the village of Tihovići and apprehended 13 civilians, including Sejad Hero. At the time, the area of Tihovići was under the control of the Serbian Democratic Party. In addition, from April to August 1992, a variety of Serb paramilitaries operated in the area. According to eye witnesses, the 13 men were taken to a meadow in Tihovići and were beaten and tortured in the presence of the eyewitnesses.<sup>2</sup> Sejad Hero's ear was cut off. Shortly afterwards, the members of the JNA ordered the women present to leave. The authors consider it likely that the 13 men were subsequently arbitrarily executed by the members of the JNA and the remains transferred to a nearby stream in Tihovići. Nonetheless, the fate and whereabouts of Sejad Hero remain unknown since then, and his mortal remains have not been located, nor identified. Sejad Hero had been enrolled in the army since the beginning of the conflict. When the events took place on 4 July 1992, he was at home and was not taking part in any combat operation.

2.2 In May 1992, Tija Hero and her children, Ermina Hero (then six years old) and Armin Hero (then aged one year and a half) had fled to Prozor. On 4 July 1992, Tija Hero heard on the radio that Tihovići had been seized by the JNA. Upon learning of the events, she had a nervous breakdown and was hospitalized. When her father-in-law came to pick her up at the hospital, he told her that Sejad Hero was among those captured and killed by the JNA. After her recovery, Tija Hero reported the alleged enforced disappearance and torture of her husband to the Red Cross and the local police station. She also went to the police station in Ilijaš and to the headquarters of the Bosnian Army, but she did not obtain any relevant information about her husband.

2.3 The armed conflict came to an end in December 1995, when the General Framework Agreement for Peace in Bosnia and Herzegovina entered into force.<sup>3</sup>

2.4 In 1996, exhumations were carried out by the Commission for Missing Persons in order to identify those who had possibly been killed and buried in Tihovići in 1992. Those exhumations were not conducted using scientific methods: families were requested to identify their loved ones only through clothing and personal belongings. On that occasion, the mother (Fazila Hero) and brother (Omer Hero) of Sejad Hero attended the exhumation. Due to the passing of time and to the fact that the dead bodies of the executed men had been burnt, the identification through clothing and personal belongings was difficult and hardly reliable. No conclusive results were obtained as to the fate of the alleged executed victims, and the authorities did not conduct any further scientific tests at that time to ascertain the

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<sup>2</sup> A declaration signed by eye witnesses is annexed to the present communication. All the eyewitnesses referred to in the complaint are women.

<sup>3</sup> In accordance with the Dayton Agreement, Bosnia and Herzegovina consists of two entities: the Federation of Bosnia and Herzegovina and Republika Srpska. Brčko District was formally inaugurated on 8 March 2000 under the exclusive sovereignty of the State and international supervision.

identity of the bodies. The remains exhumed were either buried as “No Name” (NN), or with different identities in the cemetery for fallen soldiers in Tihovići. Sejad Hero’s mortal remains have not been identified and returned to his family.

2.5 In spite of the complaints filed by Tija Hero to the local authorities and to the Red Cross, no ex officio, prompt, thorough, impartial, independent and effective investigation has been carried out in order to locate Sejad Hero, or to exhume, identify and return his remains to his family. Notwithstanding the existence of strong evidence of the identity of those responsible for the apprehension, torture, enforced disappearance and possible arbitrary execution of Sejad Hero, no serious investigation has been carried out and no one has been summoned, indicted or convicted for the above-mentioned crimes.

2.6 Under the Federation Law on Administrative Procedure, relatives of disappeared persons were requested to obtain a decision from local courts declaring their loved ones dead in a non-litigation procedure to obtain a pension. Furthermore, article 21 of the Law on the Rights of Demobilized Soldiers and their Families established that “the rights referred to in the paragraph 1 of this article shall be also employed by members of family of missing defender until he is declared deceased but no longer than two years after this Law comes into force if during that period they do not commence a procedure to declare the missing defender deceased”.<sup>4</sup> In spite of the severe additional pain caused by that procedure, Tija Hero had no option but to request a declaration that Sejad Hero was dead, despite having no certainty or official confirmation of his death. The procedure was the only way for her to alleviate a particularly difficult material situation.<sup>5</sup> On 8 August 2006, Tija Hero obtained a decision by the Municipal Court of Sarajevo, whereby Sejad Hero was declared dead and the official date of his death was fixed as 22 December 1996, without any further explanation being given as to why such a date had been chosen. On 7 September 2009, the Office for Soldiers-Disability Protection of the municipality of Vogošća issued a decision recognizing the right of Tija Hero and Armin Hero to receive a monthly pension.<sup>6</sup> That pension is a form of social assistance. It can, therefore, not be considered as an adequate measure of reparation for the violations suffered. Ermina Hero is not even receiving such social assistance and has not been awarded any compensation for the harm suffered.

2.7 On 19 April 2004, Tija Hero filed an ante-mortem questionnaire with regard to her husband before the International Committee of the Red Cross (ICRC), the Association of the Red Cross of Bosnia and Herzegovina and the Red Cross of the Federation of Bosnia and Herzegovina, and she gave them her DNA samples to facilitate the identification process of mortal remains exhumed by local forensic experts. So far, she has not received any feedback on that initiative.

2.8 On 16 August 2005, the Association of Families of Missing Persons from Vogošća reported the kidnapping of 98 people, including Sejad Hero, to the 5th Police Station of Vogošća. On 9 September 2005, the Association brought criminal charges against unknown perpetrators, members of the Serb army, to the Sarajevo Cantonal Prosecutor’s Office, with a request to the Prosecutor to undertake all necessary measures to identify those responsible for the kidnapping and to locate and identify the disappeared persons. None of the members of the Association has received any response from the above-mentioned authorities.

2.9 On 20 September 2005, Tija Hero obtained two certificates: one issued by the State Commission on Missing Persons, declaring that Sejad Hero had been registered as a

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<sup>4</sup> Translation provided by the authors, as is the case for the other quotes in the present document.

<sup>5</sup> Sejad Hero was the only breadwinner of the family and their house was damaged during the conflict.

<sup>6</sup> The monthly pension granted amounted to KM 443.10 (approximately 228 euros) per month.

missing person since 4 July 1992, and one issued by ICRC, indicating that Sejad Hero had been registered as missing and that the process of searching for him had been initiated.

2.10 On 22 December 2005, Tija Hero, together with other members of the Association of Families of Missing Persons from Vogošća, submitted an application to the Human Rights Commission of the Constitutional Court of Bosnia and Herzegovina, claiming a violation of articles 3 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and of articles II, paragraph 3 (b) and (f), of the Constitution of Bosnia and Herzegovina.<sup>7</sup> The Constitutional Court decided to join together all the applications submitted by members of the Association of Families of Missing Persons from Vogošća, and therefore dealt with them as one collective case. On 23 February 2006, the Constitutional Court adopted a decision, concluding that the applicants of the collective case were relieved from exhausting domestic remedies before ordinary courts, as “no specialized institution on enforced disappearance in Bosnia and Herzegovina seems to be operating effectively”.<sup>8</sup> The Court further found a violation of articles 3 and 8 of the European Convention, because of the lack of information on the fate of the disappeared relatives of the applicants. The Court ordered the Bosnian 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 Court also ordered “the parties referred to in article 15 of the Law on Missing Persons” to provide for operational functioning of the institutions established in accordance with the Law on Missing Persons, namely the Missing Persons Institute, the Fund for Support to the Families of Missing Persons in Bosnia and Herzegovina and the Central Records of Missing Persons in Bosnia and Herzegovina, immediately and without further delay, and no later than 30 days from the date of the court order. The competent authorities were requested to submit information within six months to the Constitutional Court about the measures taken to implement the decision of the latter.

2.11 The Constitutional Court did not adopt a decision on the issue of compensation, considering that it was covered by the provisions of 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 dispositions on financial support have not been implemented and that the fund has still not been established.

2.12 On 3 August 2006, Tija Hero received a letter from the government office for tracing missing persons of Republika Srpska, declaring that Seja Hero had been inscribed in the register of missing persons of ICRC, while he was not registered by the office in Republika Srpska. The letter further indicated that “the Government of the Republika Srpska is determined to resolve the issue of missing persons as quickly as possible and has accordingly instructed all relevant institutions in the Republika Srpska to urgently and without delay conduct investigations and other necessary activities with the aim to establish facts about the persons mentioned in the decision of the Constitutional Court of BiH”.<sup>9</sup> The letter further states that “within its mandate, the Republika Srpska Office for Tracing Detained and Missing Persons will give its full contribution in order to discover the whereabouts of Mr. Sejad Hero”. Since August 2006, Tija Hero has not received any further information.

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<sup>7</sup> A copy of the complaints is available in the file.

<sup>8</sup> Principle on admissibility stated in the Constitutional Court, *M.H. and others* (case No. AP-129/04), 27 May 2005, paras. 37-40, referred to in the judgement for the case of Mensud Rizvanović: *Jele Stepanović and others* (case No. AP 36/06), 16 July 2007.

<sup>9</sup> Letter No. 647-144/06, annexes 48 and 49 of the file.

2.13 The time limits set forth by the Constitutional Court in its decision expired and the relevant institutions did not provide any information on the fate and whereabouts of the victims, nor did they submit to the Court any information on the measures taken to implement its decision. On 18 November 2006, the Constitutional Court adopted a ruling in which it declared that the Council of Ministers of Bosnia and Herzegovina, the Government of Republika Srpska, the Government of the Federation of Bosnia and Herzegovina and the Government of Brčko District had failed to enforce its decision of 23 February 2006. Furthermore, the Prosecutor's Office of Bosnia and Herzegovina had failed to take any measure to criminally prosecute those who had not enforced the decision of the Constitutional Court.

2.14 The ruling adopted by the Constitutional Court on 18 November 2006 on the failure of the Bosnian authorities to enforce the decision of 23 February 2006 is final and binding. The authors therefore have no other effective remedy to exhaust. The authors also recall that Ermina Hero and Armin Hero were minors when the events in question took place and that they turned 18 in 2004 and 2008 respectively. Until they reached their majority, Ermina Hero and Armin Hero were not formally entitled to bring complaints on behalf of their father, but they actively supported the search activities and the submission of complaints by their mother. Thereafter, they decided that, in order not to create confusion or submit overlapping complaints, Tija Hero would be the only one to represent the family and formally submit complaints to the relevant authorities.

2.15 Since 1992, Tija Hero, Ermina Hero and Armin Hero have undergone deep and severe psychological stress trying to cope with the uncertainty over the fate and whereabouts of Sejad Hero. They have indefatigably applied over the last 18 years to various official authorities with enquiries, but they have never received any plausible information. The authors have continuous feelings of frustration, suffering, distress and anguish.

### **The complaint**

3.1 The authors base their complaint on the multi-offensive nature of enforced disappearance. In particular, they consider that the disappearance of their husband and father amounts to a violation of articles 6; 7; 9 and 16, read in conjunction with article 2, paragraph 3, of the Covenant. In that regard, they refer to (a) the lack of information about the causes and circumstances of the disappearance of their relative; (b) the failure of the national authorities to conduct an *ex officio*, prompt, impartial, thorough and independent investigation into his arbitrary arrest, torture, and subsequent enforced disappearance; (c) the failure to identify, prosecute and sanction those responsible; and (d) the failure to provide an effective remedy to his family.

3.2 The authors consider that the responsibility for shedding light on the fate of their missing husband and father lies with the State party. They refer to the report of an expert of the Working Group on Enforced or Involuntary Disappearances, in which he states that the primary responsibility for carrying out those tasks remains with the authorities under whose jurisdiction a suspected mass grave falls (E/CN.4/1996/36, para. 78). The author further argues 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. In general, 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 those 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.<sup>10</sup> In the present case, despite the complaints promptly filed by Tija Hero with the local authorities and the Red Cross, no ex officio, prompt, thorough, impartial, independent and effective investigation has been carried out in order to locate Seja Hero and clarify his fate and whereabouts. Notwithstanding the existence of strong evidence and concordant testimonies on the identity of those responsible for the arbitrary deprivation of liberty, ill-treatment, and enforced disappearance of Seja Hero, to date no one has been summoned, indicted, judged or convicted for the crimes concerned.

3.3 With regard to article 6 of the Covenant, 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 disappearance, the State party has an obligation to investigate and bring perpetrators to justice. By not doing so, the State party continues to violate its positive procedural obligations under article 6, read in conjunction with article 2, paragraph 3, of the Covenant. Sejad Hero was illegally detained by members of the JNA who tortured and mutilated him before eyewitnesses, and he has remained unaccounted for since 4 July 1992. Although there are reasons to believe that he has been arbitrarily executed, his mortal remains still have not been located, exhumed, identified and returned to his family.

3.4 The authors further submit that their missing husband and father was illegally detained by members of the JNA and was subjected to torture and inhuman and degrading treatment, including mutilation. The authors further refer to the jurisprudence of the Committee, according to which enforced disappearance constitutes in itself a form of torture, on which no ex officio, prompt, impartial, thorough and independent investigation has yet been carried out by the State party, in order to identify, prosecute, judge and sanction those responsible.<sup>11</sup> The authors therefore consider that this amounts to a continuing violation of the State party's positive procedural obligations under article 7, read in conjunction with article 2, paragraph 3, of the Covenant.

3.5 Sejad Hero was arrested on 4 July 1992 by members of the JNA without an arrest warrant, nor was his detention recorded in any official register, or proceedings brought before a court to challenge its lawfulness. As no explanation has been given and no efforts have been made to clarify the fate of the victim, the authors consider that the State party continues to violate its positive procedural obligations under article 9, read in conjunction with article 2, paragraph 3, of the Covenant.

3.6 Additionally, the authors consider that Sejad Hero's enforced disappearance suspended his enjoyment of all other human rights, confining him to a situation of absolute defencelessness. In that perspective, they 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.<sup>12</sup> In the instant case, Sejad Hero was deprived of his liberty by

<sup>10</sup> The authors refer to the Committee's general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 8; Inter-American Court of Human Rights, *Velasquez Rodriguez v. Honduras*, judgement of 29 July 1988, Series C, No. 4, para. 172; and European Court of Human Rights, *Demiray v. Turkey*, application No. 27308/95, judgement of 21 November 2000, para. 50; *Tanrikulu v. Turkey*, application No. 23763/94, judgement of 8 July 1999, para. 103; and *Ergi v. Turkey*, application No. 23818/94, judgement of 28 July 1998, para. 82.

<sup>11</sup> See communications No. 449/1991, *Mojica v. Dominican Republic*, Views adopted on 15 July 1994, para. 5.7; 1327/2004, *Grioua v. Algeria*, Views adopted on 10 July 2007, para. 7.6; and 540/1993, *Basilio Laureano Atachahua v. Peru*, Views adopted on 25 March 1996, para. 8.5.

<sup>12</sup> See communication No. 1495/2006, *Zohra Madoui v. Algeria*, Views adopted on 28 October 2008, para. 7.7; and *Grioua v. Algeria*, para. 7.9.

members of the JNA and there has been no information as to his fate and whereabouts since then, and no ex officio, prompt, official, impartial, thorough and independent investigation has been conducted by the State party as to his fate and whereabouts. The unceasing efforts undertaken by Sejad Hero's relatives to obtain access to potentially effective remedies have been impeded, thereby placing the disappeared person outside the protection of the law, amounting to a continuing violation of article 16, read in conjunction with article 2, paragraph 3, of the Covenant.

3.7 The authors allege that they are themselves victims of a violation by Bosnia and Herzegovina of article 7, read in conjunction with article 2, paragraph 3, of the Covenant because of the severe mental distress and anguish caused by (a) the disappearance of Sejad Hero; (b) the de facto requirement to declare him dead in order to obtain the right 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 requests for information as to the fate and whereabouts of their loved ones; (f) the non-implementation of various provisions of the Law on Missing Persons, including those concerning the establishment of the Fund for Support to the Families of Missing Persons; and (g) the failure by the State party to implement the judgment of the Constitutional Court of Bosnia and Herzegovina. The authors therefore consider that they have been victims of a separate violation of article 7 in conjunction with article 2, paragraph 3, of the Covenant.

3.8 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 are per se a continuing violation of several human rights.

3.9 Finally, Ermina Hero and Armin Hero submit that they were minors when their father was disappeared. They were forced to grow up without being able to enjoy a family life and experiencing the ongoing anguish of not knowing the truth about what had happened to their father, and the frustration of not being able to help their mother in putting an end to the terrible situation and alleviate her constant suffering. They both actively supported their mother in the activities undertaken to establish what had happened to their father and have his remains exhumed, identified and returned to the family, in order to honour them in accordance with their beliefs and customs. They also joined the Association of Families of Missing Persons from Vogošća. However, all their efforts have been frustrated, leaving them in a painful, ongoing state of uncertainty. They have experienced not only the permanent anguish of not knowing the truth of what happened to the victim, but also additional emotional distress, because their mother has been forced to declare Sejad Hero dead, in order to receive a monthly pension, although his fate and whereabouts have not been established with certainty. The silence of the authorities can only be categorized as inhuman treatment and the length of time over which the ordeal of the authors of the communication has been dragged out and the attitude of official indifference in face of their acute anxiety to know the fate of Sejad Hero have generated deep frustration and a sense of degradation. Finally, Ermina Hero and Armin Hero have never received any compensation for the harm suffered as a result of the disappearance of their father. Instead of being granted the special measures of protection they would have been entitled to as minors, they had to grow up without the presence of their father, and were forced to live with the dreadful doubt as to what exactly happened to him. They therefore submit that the State party has violated their rights under article 24, paragraph 1, read in conjunction with articles 2, paragraph 3, and 7 of the Covenant, as they were minors in need of special protection until they reached the age of majority on 21 June 2004 and 28 December 2008 respectively.

### **State party's observations on admissibility and merits**

4.1 The State party submitted observations on 25 March 2011. It refers to the legal framework that has been established for the prosecution of war crimes in the post-war period since December 1995. It states that a national strategy for war crimes was adopted in December 2008, with the objective of finalizing the prosecution of the most complex war crimes in 7 years, and of "other war crimes" within 15 years of the adoption of the strategy. The State party further refers to the adoption of the 2004 Law on Missing Persons, creating the Missing Persons Institute, and recalls that, of the nearly 32,000 persons who went missing during the war, the remains of 23,000 persons have been found and 21,000 identified.

4.2 As regards the authors, the State party submits that a regional office was established in Istočno, Sarajevo, as well as a field office and organizational units in Sarajevo. The State party considers that those initiatives provide the conditions for faster and more efficient processes to search for disappeared persons in the territory of Sarajevo. Their investigators are on site every day to collect information on potential mass graves and to establish contacts with witnesses. The State party further informs the Committee that the remains of Sejad Hero could perhaps be found in the area of Vogošća, or in part of Centar municipality, Sarajevo (Nahorevska brda). The State party specifies that since 1996, 135 victims have been found and exhumed and 120 missing persons identified, and it states that the Missing Persons Institute, with the support of the appropriate authorities, will continue to take all the necessary actions to find missing persons faster and to solve the case of Sejad Hero.

### **Authors' comments on the State party's observations**

5.1 The authors submitted their comments on the State party's observations on 23 May 2011. They refer to the general comment of the Working Group on Enforced or Involuntary Disappearances on enforced disappearance as a continuous crime (A/HRC/16/48, para. 39). They consider that the State party's observations do not object to the admissibility of the communication and substantially acknowledge on the merits the allegations formulated therein. The authors further consider that those observations corroborate the allegation that Sejad Hero remains registered as an "unaccounted for" missing person, and state that no match has been found through the online inquiry tool set up by the International Commission on Missing Persons. The tracing process is, therefore, still open under the responsibility of the Bosnian authorities.

5.2 The authors state that, so far, none of them, and none of the eyewitnesses of the events that led to the enforced disappearance of Sejad Hero, have been contacted by personnel of the regional office of Istočno or the field office in Sarajevo referred to by the State party, while they consider that they would be able to provide those authorities with information that could be relevant to locating him.<sup>13</sup> Instead, the authors contend that they were never informed that the remains of Sejad Hero could be located in Centar municipality (Nahorevska brda) before the observations of the State party were submitted to the Human Rights Committee. The authors rather consider that the remains of Sejad Hero are probably located in the area of Tihovići. They argue that they should be associated with the processes of exhumation and identification that is under way. On 25 April 2011, Tija Hero sent a letter to the Missing Persons Institute, referring to the information contained in the observations of the State party. She never received any reply to that letter.

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<sup>13</sup> The authors refer to A/HRC/AC/6/2, paras. 53, 56 and 80–97; and to the general comment of the Working Group on Enforced or Involuntary Disappearances on the right to the truth in relation to enforced disappearance, para. 4.

5.3 The authors contend that, six years after they filed the original complaint for the kidnapping of 98 people (including Sejad Hero) with the police, they had still received no feedback on whether an investigation was being carried out, and whether their case had been given a specific number. In the light thereof, Ema Čekić, in her capacity as President of the Association of Relatives of Missing Persons from Vogošća, wrote a letter to the Missing Persons Institute to inquire as to the state of the investigation. On 29 April 2011, she received a reply from the Cantonal Prosecutor's Office stating that, after conducting the necessary verifications, a case had been filed against Drago Radosavljević et al. for war crimes against civilians, in accordance with article 142 of the Criminal Code of the Socialist Federal Republic of Yugoslavia, and that one of the suspects in that case had managed the activities of Serbian military and paramilitary formations in Vogošća. On 1 March 2011, a prosecutor was assigned to the case. While welcoming such developments, the authors express their concern that this important piece of information was not transmitted by the State party in its observations on admissibility and merits, and also that the prosecutor intends to prosecute the alleged suspects under the Criminal Code of the Socialist Federal Republic of Yugoslavia and not the Criminal Code of Bosnia and Herzegovina of 2003. The authors further allege that no specific investigation has been carried out in the case of Sejad Hero and that no information has been provided as to his fate and whereabouts.

5.4 The authors further argue that the high number of war crimes still requiring investigation does not relieve the authorities of the State party from their responsibility to conduct a prompt, impartial, independent and thorough investigation into cases of gross human rights violations, or from regularly informing relatives of the victims on the progress and results of those investigations. Since 1992, the enforced disappearance of Sejad Hero has been reported to various authorities, including the police in Vogošća. Nonetheless, the authors have not been contacted or received any feedback.

5.5 The authors consider that the implementation of the national strategy for war crimes has been deficient and cannot be used by the State party as a sufficient response concerning the lack of information on the progress and results of the investigations carried out, nor can it justify the inactivity of the authorities concerned. The authors further argue that the adoption of a transitional justice strategy cannot replace access to justice and redress for the victims of gross human rights violations and their relatives.

#### **State party's additional observations on admissibility and merits**

6.1 On 12 September 2011, 6 October 2011, and 21 October 2012 the State party submitted additional replies from different State authorities to the Committee, reiterating the information provided in their previous submission and highlighting the efforts made to determine the fate and whereabouts of all missing persons in Bosnia and Herzegovina.<sup>14</sup> The State party further stated that no relevant developments had occurred in the case of Sejad Hero and that no evidence was available as to the circumstances of his death or disappearance. The Missing Persons Institute also transmits a letter, dated 18 July 2011, sent to the families of some of the victims, in which it states that all unidentified mortal remains were buried in the city cemetery in Visoko and recorded under appropriate "NN" marks, and that additional mass graves and individual graves remain to be exhumed. The Institute further comments that the number of registered missing persons from the municipalities of Vogošća and Centar is much larger than the number of exhumed and unidentified human remains, and that all efforts will be pursued to uncover the truth.

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<sup>14</sup> Ministry of Justice, No. 05/37/1401/11, dated 23 August 2011; Missing Persons Institute, No. 01/1-02-2-3256, dated 25 August 2011; Cantonal Prosecutor's Office of Sarajevo Canton, No. T09KTRZ001688198, dated 26 August 2011.

6.2 As regards the argument of the authors that they have received no information about the status of the case of their husband and father, the State party states that the central database of all pending war crimes cases provided for in the national war crimes prosecution strategy is now functioning. The State party refers to the proceedings under way against Drago Radosavljević and 10 other suspects for war crimes against civilians under article 142 of the Criminal Code of the Socialist Federal Republic of Yugoslavia. It indicates that “in September, the Prosecutor’s Office will give an order to the Federal Ministry of Internal Affairs, Department for War Crimes, for the collection of information and evidence in this case, i.e. hearing of witnesses, family members of the missing, about what they know about the illegal abduction and disappearance of civilians from the municipality of Vogošća”.<sup>15</sup>

6.3 In its submission dated 6 October 2011, the State party also sent a letter from the mayor of Centar municipality stating that the name of Sejad Hero does not appear in their official records.

#### **Additional information submitted by the authors**

7.1 On 14 and 21 October 2011, 23 January 2012 and 23 July 2013, the authors sent comments related to the State party’s observations dated 12 September 2011, 6 October 2011 and 21 October 2012. Reiterating their initial submission, the authors consider that the only new information included in the additional replies of the State party is the reference to the order that the Prosecutor’s Office intended to give to the Department of War Crimes of the Ministry of Internal Affairs in September for the collection of information and evidence in the case of the illegal abduction and disappearance of civilians from the municipality of Vogošća. The authors insist on their availability and willingness to be called to give their testimony before the Department of War Crimes and to be kept informed of the proceedings.

7.2 The authors further state that, on 11 October 2011, the Association of Relatives of Missing Persons from Vogošća sent a letter to the Cantonal Prosecutor’s Office enquiring as to whether the order referred to by the State party had been issued by the Prosecutor’s Office and, if so, what activities had been carried out so far. The letter also reiterates that it is of utmost importance that the case is dealt with pursuant to the Criminal Code of Bosnia and Herzegovina of 2003, and not to the Criminal Code of the Socialist Federal Republic of Yugoslavia, which does not include provisions for crimes against humanity and the crime of enforced disappearance. In that regard, the authors refer to the report of the Working Group on Enforced or Involuntary Disappearances on its mission to Bosnia and Herzegovina (A/HRC/16/48/Add.1, para. 57), in which it emphasized that enforced disappearance being a continuous crime, it could be punished on the basis of an ex post legislation without violating the principle of non-retroactivity, for as long as the fate or whereabouts of the disappeared person has not been clarified.

7.3 In their further submission, dated 23 July 2013, , the authors state that on 24 May 2013, Tija Hero received a letter from the International Committee of the Red Cross informing her that all data concerning her missing husband had been transferred to the Missing Persons Institute, in conformity with the Law on Missing Persons. The authors further state that, in April 2013, the mortal remains of a person were exhumed in Tihovići, where Sejad Hero went missing. The authors heard a rumour that the remains could be those of Sejad Hero and that identification could take place in early June 2013. They have nonetheless not been contacted or kept informed by the State party. Tija Hero argues that this situation has

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<sup>15</sup> Letter from the Cantonal Prosecutor’s Office of Sarajevo Canton, dated 16 August 2011, annexed to the documentation provided by the State party on 12 September 2011.

caused her stress, anxiety, frustration and marginalization, and she considers that the silence of the State party amounts to inhumane treatment. On 10 July 2013, she sent a letter to the Missing Persons Institute urging it to conduct the identification of the said remains without any further delay, and requesting to be kept regularly informed about the status and results of the identification process. No formal reply had been received as of the date of the authors' submission. The authors further recall that they were forced to declare Sejad Hero dead as a condition for receiving a pension, and that this caused additional suffering to the authors, which they characterize as amounting to a violation of article 7, read both alone and in conjunction with article 2, paragraph 3 of the Covenant.

7.4 The authors reiterate that no investigation has been initiated by the State party into the illegal detention, torture, enforced disappearance and possible arbitrary execution of Sejad Hero; his remains have not been located and returned to his family; and the authors have not received any compensation for the harm suffered. They observe that the judgement issued on 15 December 2006 by the State Court of Bosnia Herzegovina regarding other crimes against humanity committed in the vicinity of Vogošća cannot be considered as a verdict applicable to the enforced disappearance of Sejad Hero, because the defendant was never charged or convicted for crimes committed in Tihovići. The authors further argue that the ongoing criminal proceedings against another defendant cannot be considered relevant in their case insofar as they have not been formally notified of any charge against that defendant for the crimes committed in Tihovići and, to date, no one has been investigated, judged or sanctioned for those crimes.

### **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 regarding violations of articles 6; 7; 9; 16 and 24, read in conjunction with article 2, paragraph 3, of the Covenant, and article 7 read alone, have been sufficiently substantiated for the purposes of admissibility. The Committee therefore declares the communication admissible and proceeds to its examination on the merits.

#### *Consideration of the merits*

9.1 The Committee has considered the case in the light of all the 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 Sejad Hero has been a victim of enforced disappearance since his illegal arrest by the JNA on 4 July 1992 and that, despite the numerous efforts of his family, no prompt, impartial, thorough and independent investigation has been carried out by the State party to clarify the victim's fate and whereabouts, and to bring the perpetrators to justice. In that 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 was directly responsible for the enforced disappearance of their husband and father. Indeed, the authors allege that the disappearance was initiated in the State party's territory by the armed forces of a foreign State, which did not recognize the independence of Bosnia and Herzegovina. What happened thereafter is uncertain and the authors allege that other paramilitary forces hostile to the State party were active in the vicinity. The Committee observes that the term "enforced disappearance" may be used in an extended sense, referring to disappearances initiated by forces independent of or hostile to a State party, in addition to disappearances attributable to a State party.<sup>16</sup> The Committee also notes that the State party does not contest the characterization of the events as an enforced disappearance.

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 disappearance that occurred during the conflict. Notably, the Constitutional Court has established that the authorities are responsible for investigating the disappearance of the applicants' relatives, including Sejad Hero (see para. 2.10 above), and domestic mechanisms have been set up to deal with enforced disappearances and other war crimes cases (see paragraph 4.2 above).

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.<sup>17</sup> The Committee further recognizes the particular difficulties that a State party may face in investigating crimes that may have been committed on its territory by the hostile forces of a foreign State. Therefore, while acknowledging the gravity of the disappearances and the suffering of the authors, because the fate or whereabouts of their missing husband and father has not yet been clarified and the culprits have not yet been brought to justice, that in itself is not sufficient to find a breach of article 2, paragraph 3, of the Covenant in the particular circumstances of the present communication

9.6 That being said, the authors claim that, at the time of the filing of their communication, nearly 18 years after the initial detention of their missing husband and father and more than 3 years after the judgement of the Constitutional Court, the investigative authorities had not contacted them for information regarding the suspected perpetrators of the disappearance of Sejad Hero. In February 2006, the Constitutional Court held that the authorities of the State party had violated the rights of the authors by failing to take effective measures to investigate the fate and whereabouts of their husband and father, and in November 2006, it held that those authorities had failed to enforce its decision. The State party describes its efforts to search for the remains of Sejad Hero, but does not identify any steps taken to pursue the investigation by other means, such as interviewing witnesses. The Committee further notes that the limited information that the family managed to obtain

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<sup>16</sup> Compare article 7, paragraph 2 (i), of the Rome Statute of the International Criminal Court (defining enforced disappearance as including disappearances conducted by a political organization), with articles 2 and 3 of the International Convention for the Protection of All Persons from Enforced Disappearance (distinguishing between enforced disappearances conducted by States or by persons or groups acting with their authorization, support or acquiescence, and similar acts conducted by persons or groups acting without such authorization, support or acquiescence); and see communication No. 1956/2010, *Durić v. Bosnia and Herzegovina*, Views adopted on 16 July 2014, para. 9.3.

<sup>17</sup> See communication No. 1997/2010, *Rizvanović v. Bosnia Herzegovina*, Views adopted on 21 March 2014, para. 9.5.

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 the authorities investigating enforced disappearances must give the families a timely opportunity to contribute their knowledge to the investigation, and that information regarding the progress of the investigation must be made promptly accessible to the families. It also takes note of the anguish and distress caused to the authors by the continuing uncertainty resulting from the disappearance of their relative. The Committee concludes that the facts before it reveal a violation of articles 6; 7 and 9, read in conjunction with article 2, paragraph 3, of the Covenant with regard to the victim, and article 7, read in conjunction with article 2, paragraph 3, of the Covenant, with regard to the authors.

9.7 The Committee further notes that the social allowance that they have received depended upon their agreeing to recognize their missing husband and father as dead, while there was 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 inhuman 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.<sup>18</sup>

9.8 In the light of the above findings, the Committee will not examine separately the authors' allegations under articles 16 and 24, read in conjunction with article 2, paragraph 3, of the Covenant.<sup>19</sup>

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 articles 6; 7 and 9, read in conjunction with article 2, paragraph 3, of the Covenant, with regard to Sejad Hero; and article 7, read alone and in conjunction with article 2, paragraph 3, 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 the authors with an effective remedy, including (a) continuing its efforts to establish the fate or whereabouts of Sejad Hero, as required by the Law on Missing Persons 2004, and having its investigators contact the authors as soon as possible to obtain the information that they can contribute to the investigation; (b) continuing its efforts to bring to justice those responsible for his disappearance, without unnecessary delay, as required by the national war crimes strategy; and (c) ensuring adequate compensation for the authors. 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 families of missing persons, and that the current legal framework is not applied in a manner that requires the relatives of victims of enforced disappearance to obtain certification of the death of the victim as a condition for obtaining social benefits and measures of reparation.

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

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<sup>18</sup> See communication No. 2003/2010, *Selimović et al. v. Bosnia Herzegovina*, Views adopted on 17 July 2014, para. 12.7; *Durić v. Bosnia Herzegovina*, para. 9.8; and *Rizvanović v. Bosnia Herzegovina*, para. 9.6.

<sup>19</sup> See *Selimović et al. v. Bosnia Herzegovina*, para. 12.8.

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.

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