

Bosnia i Hercegovina

Missing persons from the armed conflicts of the 1990s: **A STOCKTAKING**

International Commission on Missing Persons (ICMP)

Bosnia and Herzegovina
Missing Persons from the Armed Conflicts of the 1990s: A Stocktaking

Sarajevo, 2014

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Foreword

In the world today there are millions of missing and disappeared persons from armed conflicts and human rights abuses. In addition, thousands of persons go missing every year as a result of disasters, human trafficking, organized crime and other causes.

During the last two decades there has been a striking evolution in how the issue of the missing has been addressed, particularly following conflict and disasters. These recent advances have been propelled by broader movements in the world to build peaceful societies through transitional justice strategies and rule of law initiatives that attempt to redress the legacy of violent conflict and massive human rights abuses. Such strategies have also had resonance in cases of persons missing from disasters and other causes, where law-based approaches are becoming the norm. Furthermore, scientific and technological developments in the field of genetics, the use of modern forensic methods and informatics have made it possible to locate missing persons more effectively than was possible before.

These advances are also quantifiable. More persons have been accounted for who have gone missing from recent conflicts or disasters, than was the case several decades ago. During the conflicts which took place in the former Yugoslavia in the 1990s an estimated 40,000 persons went missing. Today, 70% of those missing have been accounted for. The mass loss of life following the attacks in New York City on 11 September 2001 is another example where, following extensive efforts, the majority of those killed have been identified. The unprecedented effort by the world's police forces to account for persons missing from the 2004 Southeast Asian Tsunami is another example of the ability to deploy resources on an international level, which resulted in accounting for a significant number of the missing.

These advances have had an impact on the development of countries emerging from conflict, or following large-scale disasters. Where countries have successfully addressed missing persons issues following conflict and human rights abuses, such as the former Yugoslavia, Chile, Argentina, East Timor and South Africa, governments assume ownership of the process, investigate missing persons cases effectively and hold perpetrators to account. These factors have had a significant bearing on strengthening the rule of law and allowing relatives of the missing to seek justice and reparations.

The problem of missing persons does not respect borders, whether persons are missing from conflict, human rights violations, disasters, or organized crime. The issue of the missing is hence rightly viewed as a global concern, and as one that warrants a structured and sustainable international response. The role of the international community has also evolved as a result. This shift was underpinned in the 1990s in relation to violent conflict and human rights abuses with the establishment of the International Criminal Court (ICC), the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Court for Rwanda (ICCR) and other international and hybrid justice mechanisms. The efforts of the International Criminal Police Organization (INTERPOL) to establish a permanent platform to respond to disasters is also a case in point.

Furthermore, regarding armed conflicts, the ratio of civilian to combatant deaths has shifted over the last decades. During the 1990s alone, almost 4 million people died in wars, by some reports 90% of them civilians.¹ A ratio of 10 civilian deaths for every combatant killed has also been reported for wars fought since the mid-20th century. By contrast, for World War I that ratio has been estimated at nine combatant deaths for each civilian killed.² Assessing numbers of civilian deaths is a complex matter and average ratios may be off the mark.³ However, it is clear that more recent wars have had a different impact on populations than warfare in the 19th century. As Mary Kaldor pointed out, new wars “are wars in which the difference between internal and external is blurred; they are both global and local and they are different both from classic inter-state wars and classic civil wars.”⁴ As a result, there are practical problems today in applying the rules and customs of war to missing and disappeared persons. In particular, warring parties could once be reasonably presumed to know best the whereabouts and identity of persons who went missing during conflict, but that is no longer the case today.

As the search for the missing in the former Yugoslavia has demonstrated, different approaches are required that rest on the responsibility of states to safeguard human rights and promote peace and stability through their democratic and rule of law institutions. As a result, new technical, administrative and judicial processes have been forged that engage the support of a broad swath of political and societal forces, including, and first of all, the families of the

1 “A Secure Europe in a Better World,” European Institute for Security Studies, 5, 2003.

2 Sabrina Tavernise and Andrew W. Lehren, “A Grim Portrait of Civilian Deaths in Iraq,” *The New York Times*, 22 October 2010.

3 Human Security Centre. *The Myth of Civilian War Deaths* in Human Security Report 2005: War and Peace in the 21st Century, 75. New York: Oxford University Press, 2005.
<http://www.humansecurityreport.com>.

4 Mary Kaldor, *New and Old Wars: Organised Violence in A Global Era*, Cambridge, Polity Press, 2012 (preface).

missing. Most importantly in Bosnia and Herzegovina (BIH) relatives of missing persons have had effective legal and political recourse to ensure that the work of locating and identifying their missing is carried out by the authorities in a transparent and accountable manner.

Such processes have been put into place with the help of the international community, in particular the International Commission on Missing Persons (ICMP), the Office of the High Representative (OHR), the ICTY, the European Court of Human Rights (ECtHR), the EU and others. Together with state authorities in BIH, these international organizations helped to embed the issue of missing persons in the fabric of legal and constitutional guarantees in BIH and other countries in the region. ICMP in particular provided capacities, both administrative and technical, that were domestically unavailable, because in addition to granting families of the missing the right to an effective investigation it is necessary to bolster mechanisms to meet that obligation. The latter involves clarifying roles and responsibilities of domestic public institutions, implementing adequate data processing capacities, and providing for technical abilities.

Today, in BIH, locating and identifying the more than 9,000 persons still reported missing requires sustained efforts of the country's democratic institutions, including courts, law enforcement agencies and civil service. It requires maintaining a law-based approach. Seventeen years into this process, BIH should unequivocally acknowledge that clarifying the fate of the missing is not a matter of political will, but of rights.

ICMP was established at the initiative of US President Bill Clinton in 1996 at the G-7 Summit in Lyon, France, initially to secure the cooperation of governments to locate persons missing from the conflicts in the former Yugoslavia. Since 2004, ICMP has been a globally active organization assisting governments in locating and identifying missing persons regardless of the circumstances of their disappearance.

Executive Summary

This report would not have been possible without the dedicated efforts of Professor Jeremy Sarkin, Dr. Lara Nettelheld, Mr. Max Matthews, Ms. Renee Kosalka, Mr. Kevin Sullivan, and the Missing Persons Institute of BiH (MPI). This report addresses efforts in BiH to account for persons who went missing as a result of the wars on the territory of the former Socialist Federal Republic of Yugoslavia (SFRY) between 1991 and 1996.⁵ The report includes a historical overview of the legal and institutional infrastructure developed to address the large numbers of persons missing from these armed conflicts; a detailed examination of technical and scientific efforts to locate, recover, identify and return human remains to family members of the missing; and a discussion of what these efforts mean in the context of the broader processes of state-building and democratic transition.

In BiH, approximately 70% of the persons reported missing as a consequence of the war have been accounted for. No other post-conflict country has achieved such a high rate of resolving cases of missing persons, which has been one of the most successful aspects of BiH's post-war recovery. Since 1996, ICMP has played a central role in this effort, through building Bosnia's institutional capacity to address the issue in a non-discriminatory manner, crafting legislation to safeguard the rights of families, introducing systematic forensic methods, including the use of DNA, upholding rule of law-based processes that ensured the provision of evidence to domestic courts and the ICTY, as well as facilitating the active engagement of the families of the missing.

To date, more than 25,000 missing persons, out of an estimated 31,500 reported missing as a consequence of the war in BiH, have been located in illicit mass graves and other clandestine locations. Of this total number, the remains of around 8,192 missing persons have been accounted for by traditional techniques, while a further 14,792 have been identified using DNA-assisted methods. An estimated 3,000 bodies remain unidentified in 11 mortuaries around the country.

This very high rate of locating and identifying war related missing persons was achieved as a result of the authorities' willingness to build institutional and

⁵ The Law on Missing Persons of BiH provides in Article 2 that it shall apply to persons who disappeared between 30 April 1991 and 14 February 1996, because hostilities continued even after the Dayton Peace Agreement was signed on 14 December 1995.

legal frameworks that have secured cooperation among relevant government departments and agencies and which have also sustained broad societal support. A country wide opinion survey commissioned by ICMP in 2011 found that citizens want the BIH authorities to continue dedicating resources to the issue of missing persons. More than 70% of citizens believe the search for missing persons contributes to reconciliation and a better future for the country.

While a high success rate has been achieved, the process is not complete. There are over 9,000 individuals still to be accounted for in BIH. This report identifies current challenges and lays out priorities for future efforts. The state institutions responsible for locating and identifying the missing have been plagued by a lack of resources, political manipulation and, in recent years, by increasing obstructionism. This report also provides recommendations to the authorities on how to facilitate the process in the years to come.

Lastly, this report also suggests ways in which the experience of BIH in locating and identifying missing persons can provide lessons for other countries emerging from armed conflict. The manner in which BIH has developed capacity to address the issue of the missing effectively has been complemented by a fundamental change in the way governments approach the issue generally. This report discusses this change and its implications for the search for the missing in BIH and beyond. It is hoped that the most substantive and extensive efforts yet to locate missing persons will contribute to a lasting peace in the Western Balkans and to the prevention of persons going missing in the future.

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Acronyms

AM	Ante-mortem
AMD	Ante-mortem Data
BAM	Bosnia and Herzegovina Convertible Mark
BIH	Bosna i Hercegovina (Bosnia and Herzegovina)
BIM	Ludwig Boltzmann Institut für Menschenrechte (Ludwig Boltzmann Institute of Human Rights)
CATI	Computer-assisted telephone interview
CEN	Central Records on Missing Persons
CoM	Council of Ministers
CPC	Criminal Procedure Code
DNA	Deoxyribonucleic acid
ECtHR	European Court of Human Rights
ECHR	European Convention on Human Rights (also known as the Convention for the Protection of Human Rights and Fundamental Freedoms)
FAs	Associations of Families of the Missing
FBIH	Federacija Bosne i Hercegovine (Federation of Bosnia and Herzegovina)
FRY	Federal Republic of Yugoslavia (Serbia and Montenegro)
ICRC	International Committee of the Red Cross
ICMP	International Commission on Missing Persons
ICTY	International Criminal Tribunal for the former Yugoslavia
IFOR	Implementation Force (NATO)
INTERPOL	International Criminal Police Organization
IPTF	International Police Task Force
JEP	Joint Exhumation Process
KIP	Krajina Identification Project
LKRC	Lukavac Reassociation Center
MHRR	Ministry for Human Rights and Refugees

MPI	Missing Persons Institute of BIH
mtDNA	Mitochondrial DNA
NIOD	Nederlands Instituut voor Oorlogsdocumentatie (Netherlands Institute for War Documentation - now known as the Netherlands Institute for War, Genocide, and Holocaust Studies)
NN	No Name
NNWG	NN Working Group
OHR	Office of the High Representative
OSA	Intelligence and Security Agency
OSA	Open Society Archives
PHR	Physicians for Human Rights
PIP	Podrinje Identification Project
PM	Post-mortem
POBIH	Prosecutor's Office of BIH
RS	Republika Srpska
SDWC	Special Department for War Crimes
SFOR	NATO-led Stabilization Force
SFRY	Socialist Federal Republic of Yugoslavia
SIPA	State Investigation and Protection Agency
STR	Short Tandem Repeats (DNA)
UNDP	United Nations Development Programme
UNFET	United Nations Finnish Expert Team
UNHRC	United Nations Human Rights Council
UNTAES	United Nations Transitional Administration in Eastern Slavonia, Baranja and Western Sirmium
VRC	Visoko Reassociation Center
VRS	Vojska Republike Srpske (Army of Republika Srpska)
WGEID	United Nations Working Group on Enforced or Involuntary Disappearances

I. Introduction

International law distinguishes between missing persons generally and disappearances more specifically. Further distinctions are frequently made in the context of crimes and disasters. These legal distinctions to some extent define competencies in missing persons scenarios. Missing persons as a consequence of disasters, for instance, are seen primarily as a responsibility of the police, whereas following armed conflict the issue has for a long time been regarded as the competency of parties to such conflicts. As a result, there are dichotomies between conflict-related humanitarian approaches and rule of law based responses by police, prosecutors and courts.

With the establishment of the ICTY in 1993, and the ICMP in 1996, rule of law based processes have taken precedence in missing persons issues in the former Yugoslavia. This has not, of course, reduced the need for humanitarian support, in particular the need to respect the anguish suffered by families of the missing. However, rule of law-based processes have provided for a more unified and inclusive response linking support for families with efforts to locate and identify the missing and, in turn, with the overall process of rebuilding a war-torn society. Today, approximately 70% of persons missing as a result of the armed conflicts of the 1990s have been located and accounted for despite great difficulties.⁶

Other than ICMP, a range of international actors have sought to address the issue of missing persons. NATO's Implementation Force (IFOR) and its Stabilization Force (SFOR), the International Police Task Force (IPTF), the UN Transitional Administration in Eastern Slavonia, Baranja and Western Sirmium (UNTAES), the Ludwig Boltzmann Institute for Human Rights (BIM), the International Committee of the Red Cross (ICRC), the United Nations Finnish Expert Team (UNFET), Physicians for Human Rights (PHR), and the ICTY, as well as the OHR and the UN have all at various times contributed to the process of locating and identifying missing persons in BiH, and some continue to do so.

Large numbers of persons missing as a result of war and human rights abuses are a reminder of the failure to safeguard individual rights and to uphold the rule of law. They perpetuate the specter of a painful past, exacerbate the fragility of peace and reconciliation and represent an obstacle to the development of

⁶ Numbers of missing persons, statistics and estimates provided in this report represent the situation of 31 July 2014.

democratic society through institutions that are effective, accountable and fair. Reliable information about what happened to the missing persons is important for the families of the missing. Without this information, families and others are left in a limbo of uncertainty and are often subjected to mental torture by being deliberately denied knowledge of the fate of their loved ones. The use of modern forensic methods, in the politically charged, post-conflict circumstances of BiH, has hence been a significant factor in effectively dealing with denial, manipulation of facts and the propagation of myths about the war.

1.1. Historical Context

BiH declared independence from the Socialist Federal Republic of Yugoslavia (SFRY) on 3 March 1992, after a referendum held on 1 March that year. War raged for the next three and half years.⁷ Killings, torture and disappearances resulted from the armed conflict, from “ethnic cleansing” and other human rights violations and crimes against humanity, often perpetrated against civilians.⁸ Just over 100,000 people lost their lives in BiH alone. This figure includes approximately 31,500 missing persons.⁹

7 The literature on the war in the Republic of BiH and in the former Yugoslavia is vast. See for example: Robert J. Donia and John V.A. Fine, *Bosnia and Herzegovina: A Tradition Betrayed* (London: C. Hurst & Company, 1994); Laura Silber and Alan Little, *Yugoslavia: Death of a Nation* (New York: Penguin Books, 1997); Peter Maass, *Love Thy Neighbor: A Story of War* (New York: Vintage Books, 1997); David Rieff, *Slaughterhouse: Bosnia and the Failure of the West* (New York: Touchstone, 1996); Christopher Bennett, *Yugoslavia's Bloody Collapse: Causes, Course and Consequences* (London: C. Hurst & Company, 1995); V.P. Gagnon, *The Myth of Ethnic War: Serbia and Croatia in the 1990s* (Ithaca, NY: Cornell University Press, 2004); Lenard J. Cohen and Jasna Dragović Soso, *State Collapse in South-Eastern Europe: New Perspectives on Yugoslavia's Disintegration* (West Lafayette, IN: Purdue University Press, 2007).

8 For early works addressing this issue see: Roy Gutman, *A Witness to Genocide: The First Inside Account of the Horrors of 'Ethnic Cleansing' in Bosnia* (Rockport, MA: Element Books, 1993); Ed Vulliamy, *Seasons in Hell: Understanding Bosnia's War* (New York: St. Martins Press, 1994).

9 On the numbers of casualties in the Bosnian war see the ICTY estimate produced in 2010 using a multiple systems estimate (MSE), see Jan Zwierchowski and Ewa Tabeau, “The 1992-1995 War in Bosnia and Herzegovina: Census-based Multiple Systems Estimation of Casualties Undercount,” Conference paper, International Research Workshop on “The Global Costs of Conflict” the Households in Conflict Network (HiCN) and the German Institute for Economic Research, 1-2 February 2010, <http://www.icty.org/x/file/About/OTP/War_Demographics/en/bih_casualty_undercount_conf_paper_100201.pdf>. The research of the ICTY Demography Department found that there were 42,106 civilians and 62,626 soldiers killed between 1992 and 1995. On MSE generally, see the Human Rights Data Analysis Group (HRDAG)'s list of core concepts: <http://www.hrdag.org/resources/core_concepts.shtml>. See also Nedim Hasić, “Bosanska Knjiga Mrtvih” (Bosnian Book of the Dead (BBD)), *Slobodna Bosna*, 20 May 2010. See also the BBD compiled by the Research and Documentation Center (RDC) in Sarajevo. For an early assessment of the BBD, see: Patrick Ball, Ewa Tabeau and Philip Vermip, “Bosnian Book of the Dead: Assessment of the Database,” HiCN Research Note, 17 June 2007. <http://www.hicn.org/research_design/rdn5.pdf>.

It is estimated that in total in the former Yugoslavia about 40,000 persons went missing during the conflicts. Two-thirds of those missing, approximately 27,000, have been accounted for. However, the recently established Regional List of Missing Persons counts 12,760 persons still missing for the region as a whole; approximately 1,868 in Croatia, 1,766 in Kosovo and 9,643 from the war in BiH.¹⁰

Annex IV of the 1995 General Framework Agreement for Peace in BiH (Dayton Peace Agreement)¹¹ established the Constitution of BiH,¹² introducing a democratically elected government.¹³ BiH's complex post-war political and administrative system created significant problems in regard to the issue of missing persons in particular. Based on two Entities, the Republika Srpska (RS) and the Federation of BiH (FBiH), and a self-governing administrative unit, the Brčko District, the country's constitutional framework has only partially reflected the political reality on the ground. That reality has not always been predicated on formal Entity mechanisms, but has been informally dominated by Bosniak, Serb and Croat ethnically-centered political factions.

The need to locate and identify persons unaccounted for as a result of international or non-international armed conflict or internal violence, including persons who have disappeared, is now a well-recognized international human right. It is also enshrined in International Humanitarian Law. For example, the Fourth Geneva Convention in Article 32 requires that parties to a conflict facilitate enquiries about individuals missing as a result of hostilities. Protocol Additional to the Geneva Conventions of 1977 "requires each party to the conflict to search for persons who have been reported missing by the adverse party."¹⁴ These provisions are complementary to the universal guarantees anchored in human rights. Various legal instruments such as the European Convention on Human Rights enshrined the state's obligation to conduct effective investigations regarding missing persons. A range of corresponding rights have emerged, including the right to the truth, the right to justice and the duty of the state to investigate human rights violations.

The United Nations Human Rights Council (UNHRC) has stated that the international community should "endeavor to recognize the right of victims

10 ICRC Working Group List/October 2012, Book of Missing Persons on the Territory of the Republic of Croatia, April 2012, CEN Unified List, 31 December 2013.

11 For an analysis of peace agreements including Dayton see: Christine Bell, *Peace Agreements and Human Rights* (Oxford: Oxford University Press, 2000).

12 Zoran Pajić, "A Critical Appraisal of the Human Rights Provisions of the Dayton Constitution of Bosnia and Herzegovina" *Human Rights Quarterly* 20(1) (1998): 125-138.

13 David Chandler, "Democratization in Bosnia: The Limits of Civil Society Building Strategies" 5(4) (1998) *Democratization*: 78-102.

14 Customary International Humanitarian Law, Rule 117, Accounting for Missing Persons, <http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule117>.

of gross violations of human rights, and their families, and society as a whole to know the truth to the fullest extent practicable.”¹⁵ Those whose human rights have been violated are entitled to all possible information regarding the circumstances of this violation and those responsible for it. The UNHRC’s amended Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity of 5 February 2005 reaffirms the inalienable right to know the truth regarding gross human rights violations. The right to the truth is also asserted in the International Convention for the Protection of All Persons from Enforced Disappearance, which was adopted by the UN General Assembly on 20 December 2006 and entered into force on 23 December 2010.¹⁶ Several other international instruments, as well as domestic law, jurisprudence and resolutions of intergovernmental bodies, also recognize this right. The International Day for the Right to the Truth of Victims of Gross Human Rights Violations and for the Dignity of Victims, inaugurated by the United Nations on 24 March 2011, recognizes the importance accorded to these issues. In 1981, the Latin American Federation of Associations of Relatives of the Disappeared-Detainees (Federación Latinoamericana de Asociaciones de Familiares de Detenidos-Desaparecidos – FEDEFAM) initiated the commemoration of what is now officially recognized by the United Nations as the International Day of the Disappeared, 30 August.

In addition to the right to the truth, the right to justice is critical and a basic demand of families of the missing. States have a duty to prosecute perpetrators of human rights violations and war crimes. This is linked to the right to a remedy, including the right to an effective investigation, verification of the facts and the disclosure of the truth. The ECtHR has ruled, for example, that a state’s failure to conduct an effective investigation to clarify the whereabouts and fate of missing persons who disappeared in life-threatening circumstances constitutes a continuing violation of the State’s procedural obligation to protect the right to life under Article 2 of the Convention.¹⁷ In this regard, it is important to recall the comments, in 2010, of the UN Working Group on Enforced or Involuntary Disappearances (WGEID) in their General Comment on the Right to the Truth in Relation to Enforced Disappearances. The WGEID noted that “the relatives of the victims should be closely associated with an investigation into a case of enforced disappearance. The refusal to provide information is a limitation on the right to the truth.”¹⁸

15 United Nations Human Rights Council, Human Rights Resolution 9/11, “Right to the truth,” 24 September 2008, A/HRC/RES/9/11.

16 Article 24.

17 *Cyprus v. Turkey* (Applic. no. 25781/94), ECtHR Judgment (10 May 2001), para. 136.

18 UN Working Group on Enforced and Involuntary Disappearances, “General Comment on the Right to Truth in Relation to Enforced Disappearances,” August 2010, 3.

ICMP's overall purpose and function has been to help the authorities implement processes designed to locate and identify missing persons and to inculcate standards and norms of pluralistic, democratic society in these processes. In BiH, ICMP has sought to ensure that the authorities continuously address the issue of missing persons and has promoted objective standards and methods of work. BiH's progress on this issue should be seen in the context of a developed policy framework incorporating international standards of technical and administrative capacity. The result has been an interconnected institutional, legislative and cooperative process, underpinned by the establishment of the MPI, the adoption of a Law on Missing Persons and the creation of an inter-institutional Working Group to address the issue of unidentified human remains in the country's mortuaries. Importantly, all of this has been done under the auspices of domestic courts and prosecutors.

II. Wartime Efforts to Account for the Missing

2.1. United Nations Efforts to Address the Issue of Missing Persons in the former Yugoslavia

The United Nations encountered great difficulties in addressing the deteriorating human rights situation in the countries of the former Yugoslavia as the war raged at the beginning of the 1990s. War broke out in BiH in April 1992 after a number of Western countries had recognized the Republic of BiH. In the early months of the war, there were considerable civilian casualties, reports of mass atrocities and reports of human rights violations in prison camps. In paragraphs 23 and 24 of Resolution 1994/72 on the human rights situation in the territory of the former Yugoslavia, the UN Commission on Human Rights urged all parties and, in particular, the governments of the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro - FRY), to cooperate in determining the fate of thousands of missing persons by disclosing all information and documentation to locate them.

In 1992, more than 11,000 cases of disappearance were reported by non-governmental organizations to the WGEID. These cases were not taken into consideration, however, since the WGEID's mandate did not cover international armed conflicts. The WGEID sought guidance as to how to proceed with such cases from the UN Commission on Human Rights at its 49th session. Subsequently, in 1994, a Special Process on Missing Persons in the Territory of the former Yugoslavia was established by the commission.¹⁹

The Special Process instituted a joint mandate of the Expert on Missing Persons of the WGEID, Mr. Manfred Nowak, and the Special Rapporteur on the Situation of Human Rights in the territory of the former Yugoslavia, Mr. Tadeusz Mazowiecki.²⁰ During their tenures, Nowak and Mazowiecki issued a number of reports,²¹ emphasizing the continuing human rights violations in the region

¹⁹ E/CN.4/1995/37, 1995.

²⁰ Question of the Human Rights of all Persons Subjected to any Form of Detention or Imprisonment, Question of Enforced or Voluntary Disappearances, Special Process on Missing Persons in the territory of the former Yugoslavia, Report Submitted by Mr. Manfred Nowak, expert member of the WGEID, responsible for the special process, pursuant to paragraph 4 of Commission resolution 1995/35, 4 March 1996, E/CN.4/1996/36.

²¹ Situation on human rights in the territory of Former Yugoslavia, Final periodic report on the situation of human rights in the territory of the Former Yugoslavia submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, pursuant to para 42 of Commission resolution 1995/89. Annex II E/CN.4/1996/9.

and the increasing problem of missing and disappeared persons. Resigning on 26 March 1997, Nowak noted that just 5% of the promised funding for investigations and exhumations of mass graves had materialized.²² The political will to address the issue of missing persons in a comprehensive way would only gradually develop in the post-war period.

2.2. Efforts to Locate Missing Persons During and Immediately after the War

The ICRC established a presence in BiH in 1991 and remained in the country throughout the war, except for a brief withdrawal of its personnel on 20 May 1992. The local chapters of the Red Cross were the first point of contact during the war where families could report missing persons, information that was eventually handed over to the ICRC.²³ This was not new, as the Tracing Bureau of the Red Cross of Yugoslavia was still actively working on resolving missing persons cases from the Second World War.

Efforts by domestic authorities to trace missing persons began as early as April 1992. Jerko Doko, Minister of Defense of the Republic of BiH, formed a state-level Commission for Prisoners of War, Detained Persons and Killed Persons. In July 1992, a new commission was formed²⁴ consisting of three commissions, the Commission for the Exchange of Prisoners of War, Detainees and the Bodies of Killed Persons, the Commission for the Registration of the Wounded and Killed, and the Commission for the Registration of Missing Persons. Concerning missing persons, the commission distinguished among those believed to be still alive, those believed to be dead and those whose fate was unknown. It declared that it focused on all citizens regardless of ethno-religious affiliation.²⁵

However, while the multiethnic composition of the personnel initially employed at the commission appeared to support this claim, as the war continued, the multiethnic character of State institutions such as the police and army changed, and over time the commission lost many of its Bosnian Serb and Croat staff,²⁶ but remained committed to documenting the fate of all citizens. Increasingly, however, other data-collection efforts were introduced that were largely autonomous and often did not allow for the exchange of information. Commission representatives noted that it was difficult to obtain information

22 "UN Envoy on Missing Persons in Yugoslavia Resigns," Deutsche Presse-Agentur, 26 March 1997.

23 Interview with Elvira Šišić, Red Cross Society of BiH, Sarajevo, 10 August 2011.

24 Decision on Establishment of the State Commission for Exchange of Prisoners of War, Official Gazette of RBiH, No. 10/92.

25 Interview with Amor Mašović, Chairman of the Board of Directors, Missing Persons Institute, Sarajevo, July 2011.

26 Ibid.

even from the ICRC, because of the organization's strict adherence to its principles of neutrality and confidentiality. By the end of the war 24,742 missing persons had been documented on the territory of BIH.²⁷

In November 1991, the Croatian Community of Herceg-Bosna was established, initially as a separate region within BIH,²⁸ governed by the Croatian Defense Council (*Hrvatsko vijeće obrane*) and in August 1993 as the independent Croatian Republic of Herceg-Bosna.²⁹ In the Croatian Community of Herceg-Bosna, responsibility for missing persons resided initially with the Department of Defense and the Department of Interior.³⁰ In July 1993, the Office for the Exchange of Prisoners of War and Other Persons of the government of the Croatian Community of Herceg-Bosna was formed.^{31 32} The Office dealt exclusively with Croat victims and those who died, were imprisoned, killed or went missing on the territory of Herceg-Bosna. The commission documented hundreds of missing persons³³ until its mandate ended with the creation of the Federation Commission on Missing Persons.

Like its counterparts in the rest of BIH, the RS Commission for Prisoner of War Exchange and Missing Persons sought to document and account for those who went missing. Although this commission never provided information to the WGEID, it is estimated that some 2,000 soldiers of the Army of Republika Srpska (*Vojska Republike Srpske - VRS*) were still unaccounted for at the end of the war.³⁴

Thus, by the time the Dayton Peace Agreement was signed in December 1995, different organizations and institutions had recorded different numbers of missing persons, as some were looking only for members of their own ethnic or national group, others were looking for all, while some also exhumed and exchanged remains of the deceased.

27 Commission on Human Rights, E/CN.4/1996/36, Report submitted by Mr. Manfred Nowak, expert member of the Working Group on Enforced or Involuntary Disappearances, responsible for the special process, pursuant to paragraph 4 of Commission resolution 1995/35, 5.

28 Official Gazette of the Croatian Community Herceg-Bosna, 1/92.

29 Official Gazette of the Croatian Republic of Herceg-Bosna, 1/93.

30 Official Gazette of the Croatian Community Herceg-Bosna, 1/92.

31 Official Gazette of the Croatian Community Herceg-Bosna, 13/93.

32 Berislav Pušić, who headed the Office, was later sentenced in the first instance on 29 May 2013 to 10 years imprisonment by the ICTY. Case of The Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoje Petković, Valentin Ćorić and Berislav Pušić (IT-04-74).

33 E/CN.4/1996/36, 5.

34 Question of the Human Rights of All Persons Subjected to any Form of Detention or Imprisonment; Question of Enforced or Voluntary Disappearances, UN Commission on Human Rights, Report submitted by Mr. Manfred Nowak, expert member of the WGEID, responsible for the special process, pursuant to Commission resolution 1996/71, 15 January 1997, E/CN.4/1997/55.

2.3. The Dayton Peace Agreement and Missing Persons

Given the large number of unresolved cases of detainees at the end of the war, the ICRC proposed that the missing persons issue be included in the Dayton Peace Agreement,³⁵ which subsequently assigned the ICRC a special role. There were discussions about the establishment of a multilateral commission on missing persons which would mediate between the various parties, compile lists of missing persons and coordinate efforts to locate the missing.³⁶ The proposed commission was not formed, however, as international players then believed that excavating graves would disrupt the peace process.³⁷

35 For an analysis of the Dayton Peace Agreement see Sumantra Bose, *Bosnia After Dayton: Nationalist Partition and International Intervention* (London: C. Hurst & Co., 2002).

36 Ibid. 17.

37 Telephone interview with Manfred Nowak, September 2011.

III. Post-war Efforts to Locate and Identify Missing Persons

3.1. Working Group on Missing Persons Led by the ICRC

Following the signing of the Dayton Peace Agreement, the ICRC set up and chaired a Working Group on Missing Persons.³⁸ The Working Group, which was active until 1999, comprised representatives of the former warring parties, the OHR, representatives of Red Cross societies in BiH and Associations of Families of Missing Persons (FAs).³⁹ Through the Working Group, the ICRC established a process for the collection of tracing requests by persons searching for a missing relative with whom a family member had lost contact. Additionally, the Working Group aimed to serve as a mechanism through which the parties to the conflict could provide information, take steps to trace persons unaccounted for and inform their families accordingly.

Despite their limitations, tracing requests were an important resource that made it possible to compile credible lists of missing persons. Since the first tracing requests were registered in 1992, the ICRC has collected more than 22,457 names in BiH.⁴⁰ This effort resulted in the publication of the ICRC's Book of Missing Persons on the Territory of Bosnia and Herzegovina, first issued on 30 May 1996, listing missing persons by their reported place of disappearance. The 1996 issue listed 10,994 names. There have been eight subsequent issues, the last released in January 2009.

While it was hoped that the former warring parties would fulfill their obligations and provide information, meetings of the Working Group were described as having been regularly "misused as political platforms and any kind of cooperation was primarily based on calculated negotiations of give and take."⁴¹

38 The Working Group was formally established on 30 March 1996. See: Manfred Nowak, "Disappearances in Bosnia and Herzegovina," in Michael O'Flaherty and Gregory Gisvold, eds. *Post-war Protection of Human Rights in Bosnia* (The Hague: Martinus Nijhoff Publishers, 1998), 112.

39 The Office of the High Representative is an institution unique to BiH, which is charged with civilian implementation of the Dayton Peace Agreement.

40 ICRC, "Missing in Bosnia and Herzegovina" 7 April 2001. Since 1998 the ICRC has also collected "Reports on Death". These reports registered information to support the process of recovering human remains. Of the 9,745 persons still recorded as missing in the ICRC's files, 1,122 are represented by this method of documentation. E-mail communication with ICRC representatives, August 2011.

41 Renate Frech, *Disappearances in Bosnia and Herzegovina*, Association for the Promotion of the Ludwig Boltzmann Institute of Human Rights, Sarajevo/Tuzla/Vienna, 1998: 21.

The process was also continuously plagued by the tumultuous political situation in the country. In 1999, the Working Group suspended formal sessions because of ongoing disputes about the representation of domestic institutions. However, it kept receiving tracing requests and information on the location of illicit graves. Sessions started again in 2003 with representatives of the State and Entity governments.

Eventually, State-led efforts to address the issue of missing persons rendered the working group process obsolete and it concluded in 2007. Those who participated in the sessions, from across the institutional spectrum, agreed that the Working Group's most significant contribution was to bring the various parties together to discuss the pressing issue of missing persons.⁴² However, as a mechanism designed to produce information about the location of missing persons it proved unproductive.

3.2. Efforts to Search for Missing Persons Prior to the Establishment of a State-level Process in Bosnia and Herzegovina

The commissions set up during the war to deal with prisoners of war and to document missing and killed persons were transformed after the signing of the Dayton Peace Agreement, which reaffirmed the State's obligations to surviving family members. On 24 March 1996, The State Commission for Prisoners of War, Detained Persons and Killed Persons became the State Commission on Tracing Missing Persons.⁴³ The State Commission was now responsible for locating, documenting and identifying missing persons; giving relevant data to institutions responsible under the laws concerning the missing, those killed and those imprisoned; certifying on the basis of evidence their status to family members; and working with relevant organizations on these issues.

However, by 1997 the State Commission was increasingly regarded as an exclusively "Bosniak Commission." In response to that perception, the Federation Commission on Missing Persons was founded on 15 July 1997 and was divided into two separate divisions: the Mostar section and the Sarajevo section. The two were formally merged in 1999.

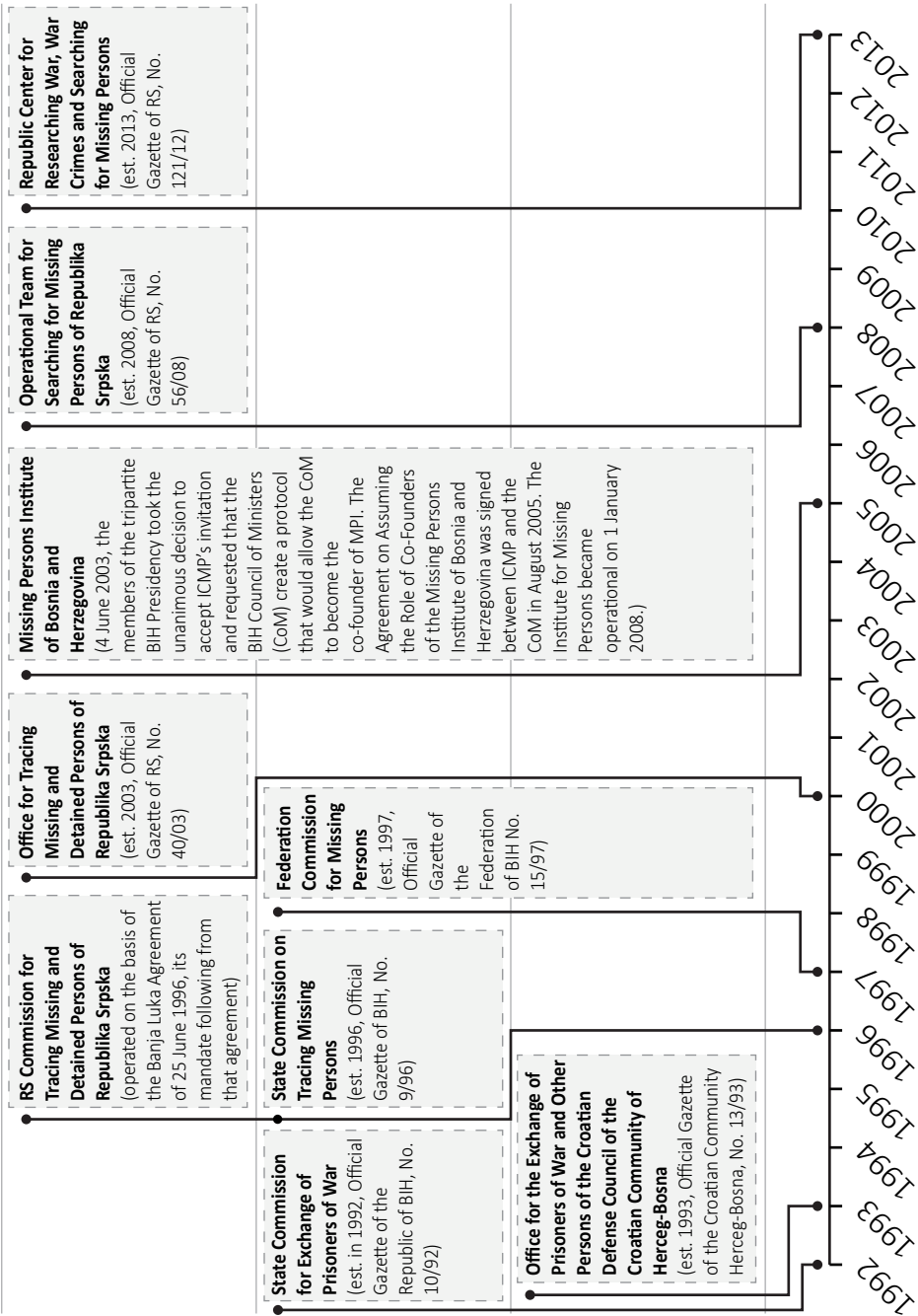
The Commission for Tracing Missing and Detained Persons of the RS was established on 25 June 1996. Like the Federation Commission and its predecessors, it also monitored the excavation and identification process, as well as the handover of mortal remains. It worked with families of the missing and

42 Ibid. ICMP interviews, 2011 and 2012.

43 *Odluka o obrazovanju Državne komisije za traženje nestalih osoba* (Decision on the Formation of the State Commission on Tracing Missing Persons), Official Gazette of RBiH No. 9/96, 24 March 1996.

facilitated the storage of unidentified remains as well as burials.

Table 1



Evolution of institutions involved in the missing persons process in BiH.

Two early agreements facilitated inter-Entity cooperation on missing persons issues in BiH. The so-called Banja Luka Agreement of 25 June 1996 (“Measures Concerning the Detention of Prisoners, the Tracing of Unaccounted for Persons and Exhumation”) committed parties to a timetable and priority list for the removal and identification of unburied mortal remains, in addition to the exhumation of mass graves and other clandestine graves. This process, however, stalled in the summer of 1996 for procedural reasons, which required the presentation of detailed lists of probable gravesites for joint investigation by all three parties. The priority grave for each group was to be investigated in sequence, followed by the second highest priority grave and so on. However, there was a disparity in the quality of information presented, forcing the process to slow to the pace of the institution that provided the least accurate information.

The problem was resolved in the fall of 1996 with the signing of the Sarajevo Agreement of 4 September, i.e. the Operational Agreement on “Exhumations and the Clearing of Unburied Mortal Remains.” The Sarajevo Agreement set out principles to guide inter-Entity exhumations. Permitting inter-Entity excavations between the Entity commissions on missing persons was critical, given that the majority of missing Bosniaks were presumed to be located in the RS, and the majority of missing Bosnian Serbs on the territory of the FBiH.⁴⁴ The Sarajevo Agreement in particular allowed Courts from the other Entity to issue orders for exhumation, to collect evidence, and to control the storage of mortal remains and artifacts found at crime scenes.

From 1996 to 2001 the OHR was responsible for coordinating this process, which became known as the Joint Exhumation Process (JEP). Under the auspices of the OHR, the JEP permitted establishing guidelines for forensic work, also mechanisms were created whereby the Entity commissions would exchange information about the location of graves, work undertaken or under preparation.

The key players in this process were the local authorities responsible for searching for missing persons, investigative judges and prosecutors at the Entity level, crime technicians, and legal medicine experts, in addition to OHR and later ICMP. At the international level, an Expert Group on Exhumations and Missing Persons was established on 22 February 1996 to coordinate the activities of the various international actors engaged in this issue. The Expert

44 The Sarajevo Agreement also comprised Rules for Exhumations and the clearing of Unburied Mortal Remains, and outlined procedures whereby each Entity commission had to submit the location to be visited and the personnel who would be present at each site, three days in advance of a field visit. The receiving commission had 24 hours in which to review the list for suspected war criminals and to ensure that the site would be secured for the team. This system of advance notification became unnecessary after the formation of the MPI.

Group was chaired by the OHR, and was initially composed of the UN Office of the High Commissioner for Human Rights (OHCHR), the Special Rapporteur on the Situation of Human Rights, the Expert on Missing Persons, ICTY, IFOR, IPTF, UNTAES, ICRC, PHR, BIM, a representative of the United States government and eventually ICMP. The role of coordinating the joint exhumation process and the Expert Group was formally transferred to ICMP by the OHR on 1 January 2001.⁴⁵

In September 2009, pursuant to the Law on Missing Persons that provides for the development of domestic capacities to resolve the missing persons issue, the Expert Group was transferred to MPI. The Expert Group includes representatives of the State and Entity prosecutors' offices, the State Investigation and Protection Agency (SIPA), the Intelligence and Security Agency (OSA), the Ministries of Interior and other relevant ministries, the Mine Action Centre (BHMIC), court appointed forensic specialists, as well as ICMP. It continues to provide coordination for the work of these institutions and to contribute to the establishment of standards for exhumation and excavation work in BiH, while it also serves as a forum for dialog among these stakeholders.

3.3. The International Commission on Missing Persons

On 29 June 1996, President Clinton at the G-7 Summit in Lyon, announced the creation of a Blue Ribbon Commission on the Missing in the former Yugoslavia that was chaired by former US Secretary of State Cyrus Vance, the organization that would eventually become known as the International Commission on Missing Persons (ICMP). The inclusion of the missing persons issue at an international summit was significant. US government support for work on the missing persons issue gave it the international profile needed to mobilize resources and technical expertise. Other Lyon Summit decisions regarding BiH reaffirmed support for the implementation of the Dayton Peace Agreement, development of the rule of law, prosecution of violations of international law at the ICTY and the return of refugees to their homes.⁴⁶

The commission was envisaged initially to facilitate "high level moral and political interchange with those most directly involved in the resolution of difficult humanitarian issues associated with determining the fate of missing persons in the former Yugoslavia."⁴⁷ Manfred Nowak flagged potential tasks for

45 See generally Edwin Huffine, John Crews, Brenda Kennedy, Kathryn Bomberger, and Asta Zinbo, "Mass Identification of Persons Missing from the Break-Up of the former Yugoslavia: Structure, Function, and Role of the International Commission on Missing Persons," *Croatian Medical Journal* 42(3) (2001): 271-275.

46 "Decisions Concerning Bosnia and Herzegovina," Lyon, 29 June 1996. G8 Information Center, <<http://www.g8.utoronto.ca/summit/1996lyon/bosnia.html>>, last accessed 28 February 2014.

47 "ICMP Summary Terms of Reference," internal document, 28 August 1996. On file with ICMP.

the new body at its first meeting in Geneva on 11 October 1996. He noted that it could, “depoliticize the whole issue of missing persons and detach it from the issue of reciprocity,” and “make the international community aware that a solution to the problem of missing persons is an essential condition for achieving a lasting peace in the region.”⁴⁸ By 1996, the resolution of the issue was broadly considered essential to the processes of state-building and democratization in the region of the former Yugoslavia.⁴⁹

48 Manfred Nowak, “First Meeting of the Blue Ribbon Commission on Missing Persons,” Working Paper, UN Special Process on the Territory of the former Yugoslavia, 11 October 1996.

49 See for instance Roberto Belloni, *State Building and International Intervention in Bosnia* (London: Routledge, 2008).

IV. The Domestic Legal and Institutional Framework

4.1. The Law on Missing Persons

The search for and identification of BIH's missing has been complemented by various pieces of legislation that supported the State's obligations toward surviving family members. In particular, the BIH Parliamentary Assembly passed the Law on Missing Persons in October 2004.⁵⁰

The Law was adopted following an intensive consultative process led by the Ministry for Human Rights and Refugees (MHRR), including FAs, the Ministry of Justice, representatives of both Entity governments and the Brčko District, as well as ICMP and the ICRC. Importantly, the MHRR initiated a consultative process with the families of the missing in order to identify their primary problems and needs.⁵¹

The Law was the first of its kind in a post-conflict country, representing a unique achievement for BIH. It outlines the method of creating and managing central records of the missing and the social and economic rights of family members of the missing. The legislation also called for the creation of the MPI, for which negotiations between ICMP and the BIH Council of Ministers (CoM) were already underway.⁵² Overall, the legislation was seen as meeting international human rights requirements.⁵³

The Law closed legal gaps that families of the missing often confront. For example, prior to the adoption of the Law, families often had to declare their missing loved ones dead so as to receive financial assistance from the State or take possession of property.⁵⁴ The Law also tasked the State with locating and identifying the remains of the missing. Finally, the Law stipulated earmarking State funds, in the form of a Fund for the Support of Families of Missing Persons of BIH, to direct resources to the families of the missing. It also prescribed

50 Official Gazette of BIH, No. 50/04.

51 Tilman Blumenstock, "Legal Protection of the Missing and Their Relatives: The Example of Bosnia and Herzegovina" *Leiden Journal of International Law* 19 (3) (2006): 773-793.

52 Simultaneous consultative efforts to create the MPI started in 2003 between ICMP and the Council of Ministers, Entity government representatives, representatives of the Brčko District and families of the missing.

53 Tilman Blumenstock, *Legal Protection of the Missing*, 773.

54 Article 18 of the Law on Missing Persons. For how this may be applicable in other post-conflict states see: Beth Kampschorr, "Bosnia Moves to Help Families of the Missing," *Christian Science Monitor*, 11 February 2005.

punitive financial measures against individuals or institutions that obstruct the search for the missing or family members' access to information.⁵⁵

Although the Law was adopted in 2004, it has not yet been fully implemented, a fact which the BIH Constitutional Court has taken note of in at least 15 decisions.⁵⁶ The Court ordered the Entity governments to forward to appellants all accessible and available information on members of their families who went missing during the war on the territory of BIH, in addition to information concerning the state of investigations into the circumstances under which their family members disappeared or died. The Court also ordered the CoM, the FBiH, the RS and the Brčko District governments to provide for the operational functioning of the institutions established in accordance with the Law on Missing Persons, i.e. the MPI, the Fund for the Support of Families of Missing Persons of BIH and the Central Records on Missing Persons (*Centralna evidencija nestalih osoba - CEN*) in BIH. In some of these cases the Constitutional Court also issued rulings on the non-implementation of its decisions.

Additionally, the Committee Against Torture and the WGEID in their decisions and recommendations called on the authorities in BIH to implement the Law on Missing Persons fully and to ensure justice for victims and their families. Following the establishment of MPI in January 2008 and that of the CEN in February 2011, the MHRR undertook efforts to set up the Fund for the Support of Families of Missing Persons of BIH, that would provide assistance to families of the missing and their associations. Unfortunately, the Fund has not been established. Similarly, other provisions of the Law are not yet implemented, such as the right of family members to dispose temporarily of property; priority processing of requests for financial and technical support submitted to BIH authorities by family associations of missing persons, priority in education and employment for children of missing persons; health protection for family members without health insurance; the right to mark places of burial and exhumation; and entry in the register of deaths at the place of choice.

The reasons for non-implementation are threefold. Firstly, the Entities and the Brčko District failed to fully harmonize their regulations and practices with the Law on Missing Persons. Secondly, the Entity and lower administrative levels did not issue instructions to their officials, as a result the MHRR has to intervene separately on individual complaints. Thirdly, progress was stifled by a lack of political will to implement the Law in a non-discriminatory manner.

55 Article 25 of the Law on Missing Persons.

56 AP 129/04, AP 228/04, AP 1226/05, AP 171/06, AP 2980/06, AP1143/06, AP 95/07, AP36/06.

4.2. The Fund for the Support of Families of Missing Persons

Article 15 of the Law on Missing Persons provides for the creation of the Fund for the Support of Families of Missing Persons of BiH. The Fund was envisioned to alleviate some of the economic hardships borne by families of the missing. However, despite the prescribed deadlines for its establishment⁵⁷ and orders by the BiH Constitutional Court,⁵⁸ the CoM, the Entity governments and the Brčko District have been unable to agree on the location of offices, method of funding, governance and other issues related to the Fund.

In order to overcome the stalemate, in 2009 the MHRR proposed amendments to the original decision on the establishment of the Fund, which would allow the Fund to be financed from the State budget. The House of Peoples of the BiH Parliament failed to adopt the amendments even though the estimated number of potential beneficiaries of the Fund is low as applicants may not benefit from any other type of income.

4.3. The Missing Persons Institute

Following the end of the war and the initial efforts of the Entity commissions on missing persons, it became increasingly clear that progress on the issue would not be made unless a mechanism was established that would work without regard to the ethnic, religious or national affiliation of the missing, within a regulatory framework under the State's responsibility.

The concept of a missing persons institute for this purpose had been the subject of discussions among OHR, ICRC, PHR, ICMP and relevant domestic institutions since 1997. In 2000, with the support of the Entity commissions on missing persons, ICMP officially registered the MPI with the Cantonal Court in Sarajevo. At the inauguration ceremony on 28 August 2000, under the auspices of ICMP's second chairperson Senator Bob Dole and ICMP Commissioner Susanna Agnelli, the Entity commissions on missing persons declared solemnly to ensure that through the MPI the fate of missing persons would be determined "without distinction of their ethnic or national origin."⁵⁹

57 Article 15 of the Law on Missing Persons provides for a decision on the establishment of the fund to be issued by the BiH Council of Ministers within 30 days of the date of the entry into force of this Law (adopted in December 2006, Official Gazette of BiH, No. 96/06) and that an Agreement regulating the headquarters, method of funding, governance, and other issues related to the work of the Fund shall be signed by the BiH Council of Ministers and the governments of FBiH, RS and the Brčko District within 30 days from the entry into force of the mentioned decision of the Council of Ministers.

58 AP 129/04, AP 228/04, AP 1226/05, AP 171/06, AP 2980/06, AP1143/06, AP 95/07, AP36/06.

59 Declaration in Support of the Missing Persons Institute for BiH, 28 August 2000.

In 2003, ICMP invited the CoM to establish the MPI jointly at the level of the State. At its 16th session, 4 June 2003, the Presidency of BiH resolved unanimously to accept the proposal and asked the CoM to proceed with assuming the role of co-founder.⁶⁰ Following a two-year consultative process that included, the Entity governments, the Brčko District, representatives of the families of the missing and the ICRC as an observer, the Agreement on Assuming the Role of Co-Founders of the Missing Persons Institute of BiH was signed between the CoM and ICMP on 30 August 2005. The MPI had thereby become an institution of the State.

The first three members of the MPI Board of Directors took office in 2006, the members of other management bodies were formally appointed in the summer of 2007 following an open selection process. Establishing the MPI was a milestone in rebuilding BiH and provides an important model for a transitional justice mechanism. The purpose of the MPI is to provide BiH with a sustainable domestic mechanism to locate missing persons regardless of their ethnic, religious or national affiliation, or their role in past hostilities. MPI also ensures that mass grave sites are protected, documented and properly excavated, and that relatives of the missing and others are able to participate in the institution's work.

The activities of the MPI are five-fold: 1) to document and maintain records of missing persons and grave sites, as well as to request court orders to investigate these sites; 2) to participate in technical activities relating to the search, excavation, examination, identification and storage of the mortal remains of missing persons; 3) to provide support to families of the missing and their associations, especially in covering funeral costs; 4) to cooperate with neighboring countries in searching for the missing and 5) to inform the public about the outcomes of investigations and progress made.⁶¹

The launching of the MPI as a state-level institution, on 30 August 2005, the International Day of the Disappeared, marked the transfer of responsibilities from the Entity commissions to the State level and the end of a segregated process of accounting for missing persons.⁶² However, it took the CoM three

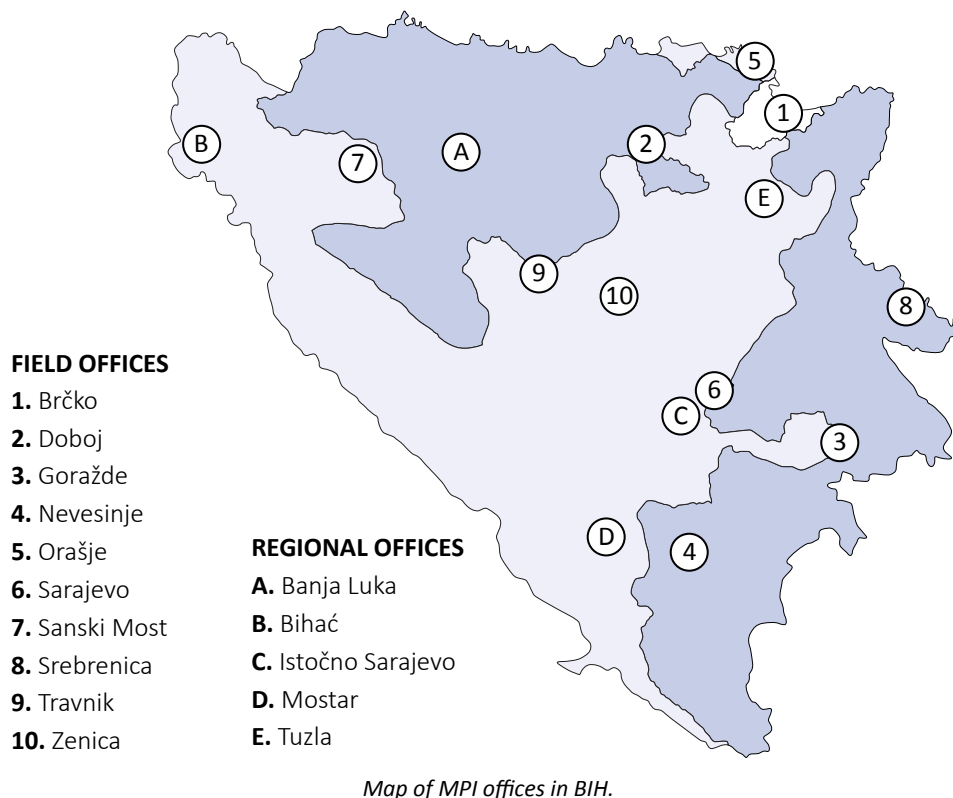
60 BiH Presidency Conclusion made at its 16th session held on 4 June 2003, No. 01-1261-11/03 dated 6 June 2003, which includes the decision on accepting the role of co-founder of the MPI of BiH.

61 ICMP "Locating and Identifying Missing Persons: A Guide for Families in Bosnia and Herzegovina", <www.ic-mp.org>.

62 Decision on Transfer of Competency of the Office of the Missing and Detained Persons of the RS to the BiH Missing Persons Institute (Official Gazette of RS, No. 65/06) and Regulation on Repealing the Regulation on Establishment of the Federation Commission of Missing Persons (Official Gazette of the FBiH, No. 55/06).

years to establish the management bodies of the MPI and to approve the institute's bylaws. As a consequence, MPI did not become fully operational until 2008, when it established its headquarters in Sarajevo and 15 regional offices across the country.

Figure 1



The initial staff of MPI was that of former Entity-level commissions on missing persons.⁶³ Reflecting their ethnic or national affiliations, MPI staff consisted of 17 Bosniak, 12 Serb and 7 Croat staff members at the time. Today, the MPI employs a staff of 51, again proportionally representing the “Constituent Peoples of BiH.”⁶⁴ As with other state-level bodies in BiH, the administrative and advisory

63 Article 5(c) of the Agreement on Assuming the Role of Co-Founders of the Missing Persons Institute of BiH. The Board of Directors consists of 3 members (1 Bosniak + 1 Serb + 1 Croat), the Steering Board of 6 members (2 Bosniaks + 2 Serbs + 2 Croats) and the Supervisory Board of 3 members (1 Bosniak + 1 Serb + 1 Croat). The same applies for the Advisory Board (Article 10) that consists of 6 members.

64 Article 6 of the Agreement on Assuming the Role of Co-Founders of the Missing Persons Institute of BiH, 30 August 2005.

bodies of the MPI observe proportional representation and decisions are taken by consensus.

MPI's governance structure consists of a Steering Board, which oversees the work of MPI; a managing Board of Directors; a Supervisory Board, which is in charge of financial operations and an Advisory Board consisting of representatives of families of the missing, allowing them to monitor and advise the work of MPI. MPI's Statute also allows for the establishment of working groups and the development of other initiatives as necessary.

MPI's annual budget covers the costs of field reconnaissance activities, excavations, storage of mortal remains and burials. Since 2011, approximately half of the budget for excavations has been transferred directly to the Prosecutor's Office of BIH (POBIH) which assumed responsibility for the excavation process in January 2011. The remaining funds are transferred by MPI to cantonal and district prosecutor's offices for the storage and examination of mortal remains excavated before that time.

Table 2

Year	Cost of excavations	Cost of burials	Total approved budget
2008	1,760,000 BAM	612,046 BAM	6,455,467 BAM
2009	1,650,000 BAM	369,048 BAM	6,069,000 BAM
2010	1,400,000 BAM	315,278 BAM	4,358,000 BAM
2011	1,050,000 BAM	408,604 BAM	3,156,030 BAM
2012	445,000 BAM	600,000 BAM	3,066,000 BAM
2013	596,000 BAM	600,000 BAM	3,217,000 BAM
2014	596,000 BAM	600,000 BAM	3,248,000 BAM

Overview of MPI's approved budget between 2008 and 2014.

While nationalist politics have always been a feature of BIH, there have been ebbs and flows, and these have determined the impact of aggressive nationalism on the relative power of State institutions *vis-a-vis* those at Entity levels. Disillusionment with State institutions has increased in the RS in particular. MPI was not exempt from this. In 2008, MPI staff who had been transferred from the former RS Office for Tracing Missing and Detained Persons left MPI, claiming that MPI, which had not yet begun its operations, was biased against Bosnian Serbs. MPI soon filled these vacancies in accordance with its rules providing for proportional representation of the "Constituent Peoples of BIH within MPI staff."⁶⁵

⁶⁵ Ibid.

Nevertheless, in June 2008, the RS government created the RS Operational Team for Tracing Missing Persons, seated in Banja Luka with district teams in Istočno Sarajevo and Doboj. Its mandate as provided by the RS government encompassed efforts to locate mass grave sites and participation in exhumations. The team consisted of some former Bosnian Serb members of the MPI and the move was characterized by the RS government as an effort to redress perceived discrimination by the State. However, it was understood by others as an attempted return to a segregated approach to the missing.

The RS Operational Team eventually merged with the Coordination Team for Research of War Crimes to form a new body now called the Republic Center for Researching War Crimes and Searching for Missing Persons. The MPI retains its mandate in accounting for missing persons throughout BiH in an impartial manner.

4.4. Central Records on Missing Persons

By February 2011, the CEN combined 12 separate databases of information on missing persons, collected by the former Federation Commission on Missing Persons, the RS Office for Tracing Missing and Detained Persons and the State Commission on Tracing Missing Persons, as well as data from the ICRC and ICMP. The CEN is a collection of individual records of missing persons, including physical characteristics, place and circumstances of a person's disappearance and other information relevant to locating and clarifying the fate of the missing. Having compiled this information from various sources, it was recognized that a thorough review was required to eliminate duplicate records and eventually to verify every entry. ICMP contributed to the establishment of the CEN through the provision of purpose specific computer software and data on missing persons, including anthropological examination and field data.

In January 2013, ICMP launched the project "Assistance in the gathering of information necessary for verification of the Central Records of Missing Persons (CEN)" to train and assign additional staff to MPI to assist with this process. The project was completed on 31 December 2013, when MPI reported that it had verified 16,300 out of a total of 34,463 records. In addition, 337 reported missing persons cases were added to ICMP's database as a result of the project.

MPI's Rulebook on Central Records on Missing Persons provides for the establishment of a Verification Commission, consisting of three MPI staff members appointed by the MPI Board of Directors. The Verification Commission assesses the authenticity of reports of persons having gone missing and compares them to other official records pertaining to these individuals. The

minimal information required for verifying a missing persons case includes the person's first and last name, the name of one parent, place and year of birth, the supposed place, date and year of disappearance, as well as the circumstances of the disappearance. In addition, the CEN files often contain other records, such as DNA match reports or death certificates, that indicate whether missing persons cases have been resolved.

Very few countries in the world can claim to have accurate records of the number of persons missing following armed conflict. Bosnia's efforts to create such a record on the level of the state, as mandated by the Law on Missing Persons, are therefore unique. However, the process is fraught with political challenges. Importantly, decisions by the Verification Commission are taken by consensus, if consensus cannot be reached, a final decision should be taken by the MPI Board of Directors. Therefore, the verification process depends also on the ability of the Verification Commission and MPI Directors to steer the process through BIH's volatile political environment. Recent disputes within MPI regarding, amongst other things, the inclusion of additional data fields – e.g. missing persons' ethnic affiliation, their combatant status and cause and manner of death - as well as allegations that current verification practices contravene the Law on Missing Persons need to be understood in that context. These disputes have slowed down the verification process and are undermining the credibility of the process. It should be recalled that the BIH Constitutional Court in at least 15 decisions ordered the implementation of measures prescribed in the Law on Missing Persons, including the CEN.⁶⁶

As opposed to the CEN, which is based on data submitted by many institutions, ICMP maintains a database containing information received from a single source, i.e. relatives of the missing providing DNA reference samples and other personal data. ICMP's database represents an investigative instrument, while the CEN confers a status on reported missing persons' cases as either pending or closed. Hence, the CEN may include persons who have later been found alive or where it cannot be clearly established whether they went missing as a result of the conflicts.

Comparing the CEN to ICMP's database is nonetheless important for several reasons. It allows the pinpointing of cases in which family members should provide information, including a DNA reference sample. It also facilitates the analysis of regional variations with regard to missing persons numbers, as well as rates of locating and identifying the missing. Furthermore, it permits a determination of the overall number of persons still reported as missing. To make such comparisons it is necessary, however, that missing persons cases

⁶⁶ Supra at 57.

recorded on the CEN – but which are not included in ICMP’s database – be reviewed individually to ascertain whether these cases relate to persons having been found alive or having died for reasons unrelated to the conflict.

The CEN contains records of 3,091 cases for which no information exists in ICMP’s database. To date, 2,311 such cases have been reviewed through telephone and field interviews with family members, as well as through contacts with their associations. In 415 of these cases individuals concerned had died for reasons unrelated to the conflict, mostly during earlier periods, and their burial sites are known and marked. In 866 cases, persons initially reported missing had been found alive. 1,030 cases concern combatants who were captured during the conflict and subsequently exchanged or released. A total of 780 records are still in the process of being reviewed. The analysis in this report is based on the CEN’s records reduced by these 2,311 cases, i.e. on a total of 32,152 cases as of 31 July 2014.

The completion of the CEN is of regional significance. In 2011, at the request of the governments in the region, ICMP initiated the compilation of a unified regional list of persons missing in the Western Balkans. This list seeks to arrive at a definitive number of persons missing in these countries and help to clarify jurisdictional issues related to the search for persons reported missing in more than one country. BIH, Serbia, Croatia, Montenegro, as well as Kosovo have been participating in this effort. In addition to its practical benefits, the list will also represent a historical record.

ICMP, having assisted the project technically, presented a first working version of the Regional List in Derventa, BIH, on 19 November 2013 at a Regional Meeting of the Commissions on Missing Persons. The list included records provided by the Croatian Office for Detained and Missing, the Serbian Commission on Missing Persons and the Kosovo Commission on Missing Persons, as well as MPI. A compilation of duplicate records and individual lists in need of further discussion was also presented. The Regional List allows processing of missing persons data throughout the region and hence increases efficiency and transparency.

4.5. The Role of Courts and Prosecutors

The issue of missing persons has also been addressed as part of war-crimes trials. War-crimes prosecutions started during the war in the former Yugoslavia by the ICTY and to some extent by the domestic courts. However, domestic courts are obliged to defer to the jurisdiction of the ICTY, which takes

precedence over domestic jurisdiction.⁶⁷

At the national level, jurisdiction over war-crimes prosecutions has changed over time. Until 2003, the Cantonal Courts in the FBiH, District Courts in the RS and the Basic Court of the Brčko District had exclusive jurisdiction to hear first-instance war-crimes trials. Appeals were decided upon by the Supreme Courts in the respective Entity and the Appellate Court of the Brčko District.⁶⁸ The pre-2003 criminal procedure codes were typical of the investigative system of criminal justice and largely mirrored the system in the former Yugoslavia. In this system, the investigative judge was responsible for the entirety of the criminal investigation. The role of the prosecutor and defense attorney was, accordingly, secondary in nature.⁶⁹

In 2003, the BiH Criminal Code established state-level jurisdiction over serious crimes including genocide, war-crimes and crimes against humanity, thereby eliminating the previous exclusive jurisdiction of the Courts in the Entities and the Brčko District over such crimes. However, the Court of BiH (hereinafter: the State Court) may transfer such cases to other courts in BiH. The new state-level Criminal Procedure Code (CPC) was also introduced in 2003, eliminating investigative judges and shifting to a more adversarial trial procedure where prosecutors assume a greater role in the presentation of evidence and questioning of witnesses.

A Special Department for War Crimes (SDWC) of the POBiH was set up in 2005. Its primary role is to collect evidence to prosecute war crimes, crimes against humanity and genocide committed between 1992 and 1995 at trials before the State Court. An important part of this process is locating and identifying the remains of victims of these crimes. Both of these activities – pursuing prosecutions and the search for the missing – link to the larger process of post-conflict reconciliation and strengthening the rule of law.

POBiH jurisdiction stems from its primary purpose, to investigate wartime crimes that resulted in unlawful killings and disappearances, including the unlawful concealment of human remains. The POBiH's work in relation to mass graves is conducted pursuant to provisions of the CPC that relate to criminal investigations, exhumations, identifications and the engagement of expert

67 Article 9 of the Statute of the International Criminal Tribunal for the Former Yugoslavia, <http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf>.

68 Organization for Security and Cooperation in Europe (OSCE), "War Crimes Trials before the Domestic Courts of Bosnia and Herzegovina: Progress and Obstacles," March 2005.

69 Christopher P. DeNicola, "Criminal Procedure Reform in Bosnia and Herzegovina: Between Organic Minimalism and Extrinsic Maximalism," *DePaul Rule of Law Journal*, Fall 2010.

assistance.⁷⁰ POBIH inquiries into the location of missing persons' remains take place within the larger context of criminal investigations into the events that led to the disappearance and ultimate death of those persons.

Prosecutors gather evidence about possible gravesites from any available, relevant and reliable source. They initiate exhumations through filing a motion to the State Court requesting a court order authorizing the recovery of human remains, their examination, and identification, and expert evaluation of the remains and the crime scene. A State Court judge then reviews the motion and, if satisfied, issues an Order for Exhumation. POBIH then disseminates the order to all relevant parties and coordinates the exhumation through an authorized official on site.

From the time of the establishment of the SDWC in 2005 until 2010, the supervision of exhumations was delegated to cantonal and district prosecutor's offices. The involvement of local prosecutors in the exhumation process raised a number of legal problems relating to subject matter and territorial jurisdiction, which resulted in fewer exhumations. Some of the prosecutors failed to cooperate fully in the process, though other prosecutor's offices performed their supervisory role well. To redress these problems, POBIH assumed full supervisory responsibility for exhumations from January 2011. From then on, prosecution teams within the SDWC were expected to coordinate and supervise all exhumations related to their assigned geographical area. Similarly, a lack of resources and experience contributed to a backlog of exhumation requests from MPI through much of 2011. This process was streamlined when a single prosecutor for exhumations was appointed to focus exclusively on mass graves and to initiate and supervise all exhumations.

While it is the POBIH that conducts war-crimes investigations and initiates and supervises exhumations, it is MPI investigators who conduct the overwhelming majority of investigative work locating suspected mass graves and other clandestine graves. It is therefore essential to an efficient process that MPI has adequate resources and support, and that there is full cooperation between the POBIH and MPI. The POBIH routinely initiates exhumations based on investigative information received from MPI, but it does not do this automatically. Often, MPI requests have been returned for further clarification or additional information. Effective communication, information sharing and collaboration is essential for an efficient exhumation process.

Once exhumations and identifications have been carried out in accordance with

70 See the Prosecutor's Office of BIH, Department I (Special Department for War Crimes). <<http://www.tuzilastvobih.gov.ba/?opcija=sadrzaj&kat=2&id=4&jezik=e>>.

the Order for Exhumation, POBIH receives, analyzes and stores documentary evidence related to the exhumation, such as autopsy reports, records of identification and DNA match reports, as well as ballistic and other artifact evidence for analysis to produce a more detailed picture of the crime as the basis for a criminal indictment.

The forensic evidence supplements a larger body of evidence submitted by the prosecutor at trial relating to the circumstances that resulted in the death or disappearance of the victims and the role of the accused in those events. Also, evidence transferred to POBIH from the ICTY is admissible before the State Court pursuant to the law regulating transfer of cases from the ICTY.⁷¹

At the conclusion of a trial, the Trial Panel issues a verdict, which usually includes factual findings based on the forensic evidence. Sometimes, depending on the number of victims, the verdict may expressly name the individual victims. Though it is authorized to do so under the CPC, the State Court has never ruled on property claims submitted by victims' families and instead leaves the injured parties to pursue their claims in a civil action.

ICMP has assisted the POBIH in its missing persons work. Onsite technical assistance has also been provided by ICMP forensic archeologists and anthropologists. ICMP has also sought to bolster the capacity of the POBIH to supervise exhumations through monitoring, documentation and advice concerning best-practice methods of forensic archaeological excavation of grave sites. Exhumation and identification records are routinely submitted into evidence and form part of the evidentiary basis of the Court's verdicts. ICMP and MPI personnel have been available to testify at trial and to meet with POBIH staff to explain complex aspects of the exhumation and identification procedures in a way that enables POBIH prosecutors to present such evidence more effectively.

DNA identifications performed by ICMP have scientifically established connections between primary and secondary graves and consequently demonstrated where the human remains originated and, often, where the victims were killed. The ability to match tens of thousands of disassociated human remains scattered across numerous graves over a large territory has allowed prosecutors to prove that specific victims are connected to distant crime scenes – despite the perpetrators' efforts to prevent this eventuality. Proving these connections through DNA evidence has been particularly useful in trials

71 Law on the Transfer of Cases from the ICTY to the Prosecutor's Office of BIH and the Use of Evidence Collected by ICTY in Proceedings before the Courts in BIH (Official Gazette of BIH, No. 61/04, 46/06, 53/06, 76/06).

where relevant witness testimony is lacking, where non-DNA forensic indicators such as soil comparison are inconclusive, and where lower-level perpetrators are charged with responsibility with regard to just one execution site.

V. The Scientific Process of Identifying the Remains of the Missing

5.1. Early Efforts by the ICTY

UN Security Council Resolution 827 established the ICTY in May 1993, as an *ad hoc* response to violations of International Law in the region. Article 8 of the ICTY's Statute provides that the "territorial jurisdiction of the International Tribunal shall extend to the territory of the former Socialist Federal Republic of Yugoslavia, including its land surface, airspace and territorial waters." The ICTY was thereby given the authority to conduct investigations and exhumations in BiH.

The ICTY conducted exhumations of mass graves and other clandestine graves for the purpose of collecting evidence for its ongoing war-crimes prosecutions until 2001. It conducted its first exhumations in Eastern Bosnia in July 1996. Most of these exhumations were related to war crimes which occurred following the fall of the Srebrenica and Žepa UN Safe Areas in July 1995, although court officials also worked in the Brčko District and in the Prijedor area in north-western Bosnia. These exhumations were conducted by international staff, though local pathologists generally signed death certificates.

ICTY rules and standard operating procedures were sensitive to the need for individual identifications. At exhumation sites, ICTY scene-of-crime officers were instructed to document and catalogue anything that could assist in the identification of the dead. Those working in the field also emphasized how every effort was made to preserve information that might lead to identifying the victims.⁷² However, when the ICTY ceased field investigations in 2001, it left a legacy of some 6,000 to 7,000 exhumed remains of victims for whose identification no effective provision had been made.

In the early years, traditional identification methods were applied. By these methods the mortal remains of the missing and any associated personal effects are compared to ante-mortem (AM) information provided by families of the missing. Because of the prolonged time since death, performing identifications was complicated by advanced decomposition and environmental factors. Since most mortal remains were partially or completely skeletonized, anthropologists established so called biological profiles of the deceased, where parameters such

72 Telephone interview with Dr. Richard Wright, former Chief Archeologist, ICTY, July 2011.

as age, sex and stature were estimated, and pathological conditions, distinctive dental features, etc. were documented. Unfortunately, even with well-established biological profiles, the subjective and circumstantial information provided by families proved often either inaccurate, for example in the case of height estimation, or not very distinctive.

In addition, bodies or body parts were recovered in large numbers from all over the country. The ICTY conducted intensive efforts in regard to Srebrenica-related graves, with particular attention to forensic archaeological best practice of scene-of-crime evidence recovery. Countrywide, however, there was considerable activity by various teams applying different levels of archaeological expertise. In some cases, hurried or inexperienced recovery methods caused body parts to be artificially commingled, which greatly complicated subsequent identification processes.⁷³

5.1.1. Ante-Mortem Data Collection

In 1992, PHR deployed forensic teams to collect AM Data (AMD) from relatives of the missing and to investigate mass graves in the former Yugoslavia. In 1996 PHR became the main provider of international teams of experts to the International Criminal Tribunals for Rwanda and the former Yugoslavia. Their work in former Yugoslavia consisted of monitoring exhumations and subsequent examinations in mortuaries.

In BiH, PHR assisted at a total of 508 exhumation sites, where the remains of at least 1,427 persons were located.⁷⁴ It left behind a voluminous record of its work, placing site reports of its Forensic Assistance Project on a Google Earth page of the Open Society Archives (OSA) in Budapest.⁷⁵ The AMD was eventually handed over to the ICRC.

The development of a database that included AMD about missing persons was recognized as important early on. PHR had helped design a questionnaire that contained more than 220 questions to aid the identification of missing persons where remains had been found. These included demographic information, physical characteristics and information regarding the circumstances of disappearances, as well as other identifying features such as tattoos or scars.

73 Eric Stover and Rachel Shigekane, "The Missing in the Aftermath of War: When Do the Needs of Victims' Families and International War Crimes Tribunals Clash?", *International Review of the Red Cross* (IRRC) 84 (848) 2002: 845-866.

74 Physicians for Human Rights Bosnia Projects, Annual Report January – December 1999.

75 OSA can be found at: <<http://www.osaarchivum.org>>.

Initially, PHR hoped to interview 80% of the families of missing persons as a consequence of the fall of the Srebrenica and Žepa UN Safe Areas in 1995. This represented a formidable challenge because family members were displaced and scattered throughout BIH. In addition, rumors persisted of men being held in detention facilities in the FR Yugoslavia, giving family members hope that they were still alive, and prompting some not to provide information. The BIM in Vienna also collected 5,022 AM questionnaires that were eventually handed over to PHR and later to the ICRC.⁷⁶ AMD came to be important in assisting with the confirmation and evaluation of DNA-based identifications, especially in the context of Srebrenica, while identification efforts in other parts of the country did not use AMD on a significant scale.

However, until wide-scale DNA testing was employed, AMD did little to enable positive identification of the thousands of cases of human remains that had been exhumed in the initial years by international and domestic teams. AMD specifically for purposes of scientific identification methods, including DNA matching, was collected by ICMP, which currently maintains 23,623 such records.

5.1.2. Early DNA Identification Efforts

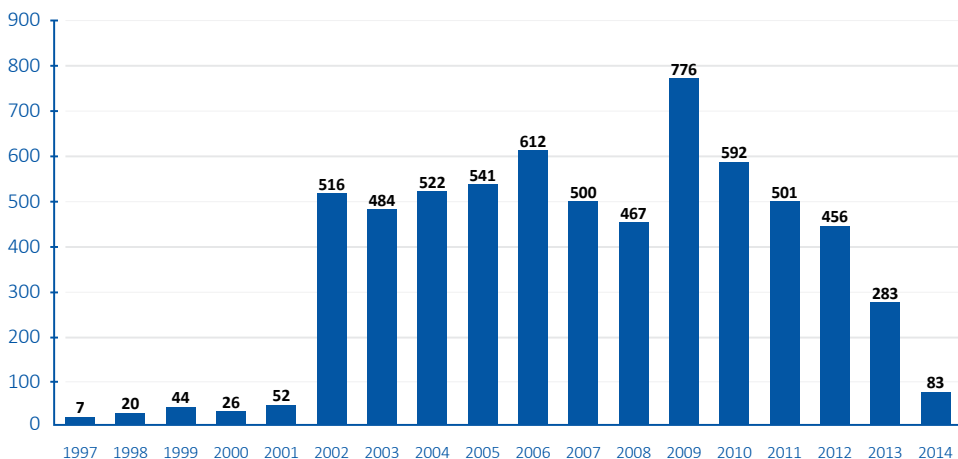
At the request of the UN Expert Group on Exhumations and Missing Persons, PHR started its Identification Project in August 1996. The project sought to complete individual identifications of primarily Srebrenica victims. By the end of 1999, 70 identifications had been made,⁷⁷ which highlighted the limitations of traditional approaches to identification when applied to the situation in BIH. The majority of these identifications were made on the basis of mitochondrial DNA (mtDNA), which is inherited exclusively through the maternal line. This method enables DNA comparisons even with distant maternal relatives, which makes it relatively easy to obtain suitable family reference samples. However, mtDNA provides relatively weak information on identity, because of the prevalence of identical mtDNA profiles between unrelated people in a large population.

PHR, and at the outset to a very limited extent ICMP, sent biological samples taken from the remains of the missing to a variety of outside laboratories to confirm a pre-existing “presumptive” hypotheses of identity through a one-to-one comparison between a victim sample and reference samples from a particular family. In cases where a presumptive hypothesis was correct, the DNA results provided scientific confirmations. However, DNA-based “exclusions” (disproof) of a presumptive hypothesis of identity often resulted as well.

⁷⁶ Telephone interview with Manfred Nowak, September 2011.

⁷⁷ “Physicians for Human Rights Bosnia Projects, Annual Report: January-December 1999.” See also, Laurie Vollen, “All That Remains: Identifying the Victims of the Srebrenica Massacre,” *Cambridge Quarterly of Healthcare Ethics* 10 (3) (2001): 336-340.

Figure 2



DNA-led process before and after 2001 regarding Srebrenica related cases by the end of July 2014.

5.2. Current Efforts: The DNA-Led Identification Process

A component of ICMP's tasks has been the provision of technical assistance including forensic assistance to identify the missing. The major impediments to earlier identification efforts were the general absence of AM medical or dental data in BIH that could have been used for identifications; a relatively uniform demographic of adult males in some large-scale events such as Srebrenica; the advanced state of decomposition of remains; the frequent lack of identification papers or cards, or other distinctive personal effects from war-ravaged or refugee populations; the fact that many of the missing were disinterred and then reburied in secondary mass graves; and the relocation of surviving family members from their homes and in many cases from their country. Lacking an accurate list of the missing at the outset, particularly with regard to specific events or recovery sites, meant that their remains largely had to be considered as simply part of an open population of missing.

In 2000, following extensive consultations with families of the missing, government authorities and others, a new approach to the use of DNA was taken that came to be known as a DNA-led process. This new approach applied DNA testing unselectively on a wide scale, with identifications resulting from "blind" computer-driven DNA matches between the DNA of unidentified human remains and that of family members of the missing. While initially an uncertain venture, the DNA-led approach proved highly successful. In BIH alone, ICMP's genetic database currently contains 71,816 DNA profiles from families of the missing. Comparison of this database to 34,097 DNA profiles of skeletal remains

has produced 14,792⁷⁸ DNA identifications of high certainty.⁷⁹

The scientific process of identifying the remains of missing persons in BIH has since consisted of an integrated, multi-disciplinary process involving forensic archaeology, forensic anthropology, pathology, DNA and advanced database informatics. Concentrating on the single scientific mode of DNA comparison, the identification effort, instead of being intractably complex, came under a uniform process of very high scientific surety, objectivity and quality control.

Once the remains of the missing are located and biological samples have been taken, three elements are required in a DNA-led process of identifications:

- The ability to recover highly discriminating Short Tandem Repeat (STR) DNA profiles chemically from highly degraded skeletal remains;
- The ability to reach out to a broad range of surviving family members to obtain a sufficient number of family reference DNA profiles;
- The setting in place of a computer-driven solution for comparing genetic profiles within large databases, so that DNA matches can be reliably found that indicate with high certainty genetic relationships between DNA profiles from mortal remains and DNA profiles from family references.

Initially, forensic DNA work on skeletal remains was done with mtDNA. However academic research on so-called ancient DNA reported success with nuclear STRs on very old skeletal samples. A key to improved results in BIH was the development of nuclear STR extraction methods.⁸⁰ Nuclear STRs have become the standard method for achieving certainty in DNA testing for human identification and are used today almost universally in criminal casework. The advantage of using nuclear STRs is that multiple different STR markers are typed simultaneously. These highly variable STR markers are found in widely separate locations on different chromosomes, and are inherited independently from one another. The probabilities of the genetic types from each locus can be multiplied quickly, which makes it possible to distinguish between individuals with a very high degree of certainty. With STRs, family reference DNA profiles can be effectively compared to DNA profiles from skeletal remains to find evidence of

78 This number includes DNA taken from remains recovered in Serbia and Croatia but reported disappeared in BIH, including 78 third party identifications commissioned by ICMP.

79 Croatia: 4,632 DNA profiles from family of the missing, 484 DNA profiles from human skeletal remains, and 521 DNA matches. Kosovo: 14,766 DNA profiles from family of the missing, 5,385 DNA profiles from human skeletal remains, 2,510 DNA matches. Macedonia: 62 DNA profiles from family of the missing, 12 DNA profiles from human skeletal remains, 9 DNA matches.

80 Jonathan Davoren, Daniel Vanek, Rijad Konjhodžić, Edwin Huffine, Thomas J. Parsons, "Highly Effective DNA Extraction Method for Nuclear STR Testing of Skeletal Remains from Mass Graves," *Croatian Medical Journal*. 48 (2007): 478-85.

family relationships, even in the absence of any other information. Using this approach, it became possible to apply an efficient uniform mechanism from which to launch the overall process of identifying BIH's missing persons.⁸¹

DNA-led processes of identifying missing persons are dependent on obtaining family reference DNA profiles representing a substantial portion of the reported missing persons. In BIH, this was accomplished through a multi-year public-outreach effort, including the establishment of centers where family reference samples were collected in the form of small drops of blood that were dried onto specially prepared paper cards.

Between 2000 and 31 July 2014, ICMP systematically collected 71,816 such reference samples for DNA analysis, representing 23,623 persons reported missing. Samples were collected from family members in BIH, other European countries, North America and Australia. AMD on the missing was collected at the same time as reference samples. Details included the relationship between the missing person and the family member providing a reference sample, and if known the place, date and circumstance of disappearances.

With large databases of DNA profiles automated computer searches are necessary to compare all DNA profiles against each other. When significant levels of similarity are found between a reference family profile and a missing person's DNA profile, all family reference DNA profiles associated with that missing person are assessed to confirm or refute a DNA match.

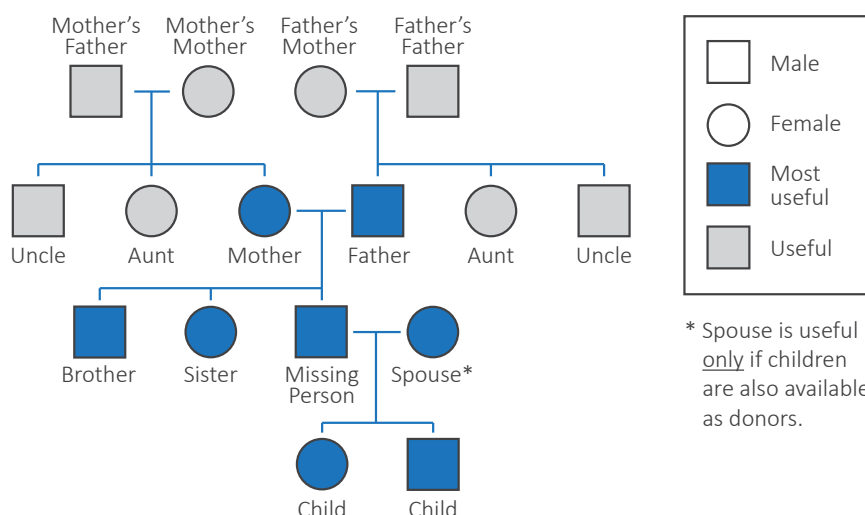
A single biological reference DNA profile is rarely sufficient for very high certainty DNA matches with STRs. Generally, therefore, multiple first- and/or second-degree relatives are needed to reach a high degree of certainty; on average, three family reference profiles for each missing person. Optimal reference sets would be two parents, a spouse and children, or multiple siblings (see Figure 3 that indicates the utility of various family relatives in STR DNA identification). In BIH, the minimum certainty required for issuing a standard DNA Match Report has been 99.95%, although in most cases the degree of certainty is far higher.

Once DNA matches above 99.95% certainty are made, formal DNA Match Reports are issued to the competent domestic authorities that are responsible for closing cases and issuing death certificates. Since 2008, all DNA Match Reports have been transmitted to the MPI. In most cases, the receipt of a DNA Match Report is the first significant evidence that associates a case of

81 ICMP SOP for DNA Matching and Report Generation Process, ICMP.SOP.DNA.75.4.doc, November 2012.

mortal remains to a particular family. It is, however, not the final step in the identification process, which ultimately depends on a synthesis of the available evidence.

Figure 3



DNA Match Reports are evaluated in light of all the available additional information in each case. Given the extremely strong evidence provided by DNA matches, cross comparison with non-DNA data is primarily a matter of quality control: the identity listed on the DNA Match Report is compared with the characteristics of the mortal remains to determine if there are inconsistencies that would call the identification into question.

In many areas, ICMP's work in the Western Balkans has resulted in greater refinement and sophistication of DNA. ICMP has developed and published several increasingly efficient protocols for the extraction of DNA from highly degraded samples, it has custom-developed an integrated forensic data management system to process missing persons data including archaeological, anthropological and DNA matching processes. In 2007, ICMP's DNA Laboratory System, its testing methods and protocols were internationally accredited to the ISO 17025 standard.⁸²

DNA testing has a reputation for being expensive, as hard cost values can

⁸² Accreditation is awarded by the independent accreditation agency *Deutsche Akkreditierungsstelle (DAKKS)*, and conforms to additional quality requirements specific to forensic DNA laboratories specified by the International Laboratory Accreditation Cooperation (ILAC).

be applied to the testing which is in the order of several hundred EUR per identification. However, these costs are often highlighted without considering the less visible costs of other identification methods which can be dependent on comparatively laborious case-by-case investigations, for example in determining contact information for medical authorities, obtaining relevant records, etc. The uniformity of process in DNA identification can be conducted very efficiently, and is amenable to large-scale, high throughput processes. Moreover, in many instances, DNA is the only reliable scientific method of identification (with an absence of medical or fingerprint records) and the cost then must be weighed against the societal cost of not identifying the missing, or of applying unreliable techniques.

Nuclear STR analysis and comparison for purposes of identifying large numbers of skeletal remains is a scientific achievement that was made possible through significant funding by countries supporting the peace process in BIH. It has since become the standard method also in other parts of the world and in other contexts of persons going missing, such as natural and man-made disasters.

5.3. Protecting Genetic and Other Personal Data

Generally in the field of processing personal data, including genetic data, the interests and welfare of the individual have priority over the rights and interests of society.⁸³ The collection, use and storage of human genetic data must therefore be in conformity with the principles of informed consent, confidentiality and anonymization of personal genetic information. Genetic data should in particular not be disclosed or made accessible to third parties (employers, insurance companies, educational institutions or family) except in cases of a compelling public interest provided for under law. Participation of family members in DNA-led processes is therefore voluntary and subject to their consent. Informed consent means that families are informed in advance of the uses that will be made of their data. Consent forms used in BIH have stated that genetic and other personal information will be processed for identification purposes only.

In particular, providing personal data, including genetic data, as evidence in trials constitutes a different use. ICMP policies stipulate therefore that parties to criminal trials, i.e. the prosecution or the defense, that wish to have access to DNA evidence should specify individual missing persons cases, and individuals concerned must provide their express, informed, and free consent to the use of their data in court. To date, ICMP has collected 6,058 such consent declarations.

⁸³ International Declaration on Human Genetic Data, UNESCO 32nd General Conference, 16 October 2003.

DNA testing consent forms in use today in BIH permit family members to decide at the time of providing personal information whether or not their data may be used for purposes of criminal prosecutions.

Genetic testing carries risks, including those of accidental loss of data, theft, manipulation or other forms of unauthorized processing, unwanted disclosure on court orders, the possibility of disclosing discrepant familial relationships to laboratory personnel, or illegal seizures of data. Such risks can discourage participation in DNA-led processes and hence prevent individuals from exercising their rights, including the right to know about the fate of missing family members.

While informing family members of such risks is mandatory, it is also important to provide information about protective measures. In BIH, such protective measures have been pervasive and have underpinned the broad participation in the DNA-led process. ICMP's policies provide that personal data processing must be adequate, relevant and is not excessive in relation to the purposes for which it is performed. In addition, it may not be retained longer than necessary. However, in missing persons processes generally, and in the context of war crimes, crimes against humanity and genocide in particular, forensic evidence needs to be kept for extended periods of time. Obtaining data subject consent thus required implementing commensurate measures of protection. In BIH and other countries of the region such protections have been provided, i.a. through granting ICMP, its premises, data processing systems and communications, privileges and immunities under domestic and international law.

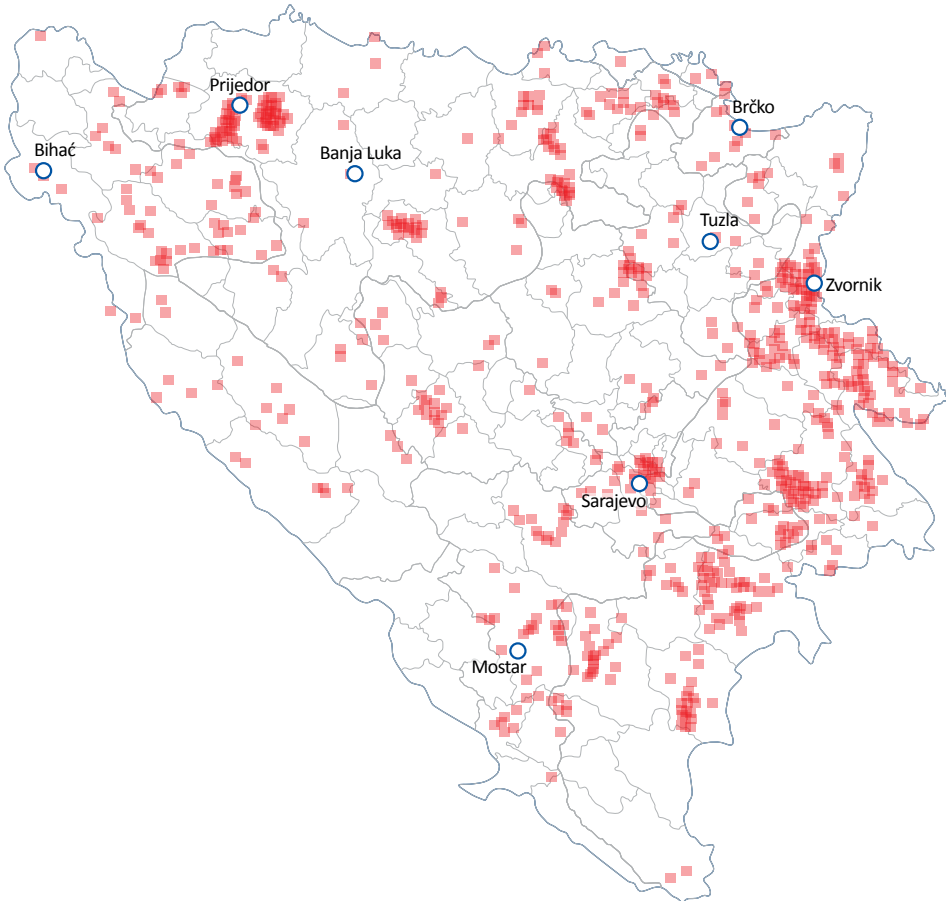
5.4. Grave Site Reconnaissance and Recovery of Human Remains

ICMP has provided extensive assistance in the reconnaissance of grave sites, and the recovery of human remains through monitoring field operations by the Entity commissions, as well as through technical assistance. Monitoring assistance was provided by ICMP monitors who had taken over the role of OHR's exhumation officers in 2001. ICMP monitors attended all sites and recorded a significant amount of site parameters in field databases. The monitors served in this capacity until 2006, and then for another year in the capacity of MPI implementation officers, a practice that ended as MPI developed its own operational capacity.

Many ICMP forensic experts who have provided direct technical and operational assistance had previously participated in the ICTY's field and mortuary teams. From 2001 to 2008, between five and fifteen anthropologists and archaeologists worked with domestic teams to assist with the excavation process at 1,368 sites.

Of these, 586 proved not to be illicit graves, while human remains were located at the other 782 sites. Figure 4 below shows the geographic distribution of sites from which human remains have been recovered since 1996.

Figure 4



Field sites from which human remains have been recovered since 1996, based on ICMP records and including all sites attended by ICMP, ICTY and PHR.

Particularly in the early years, BIH had limited capacity to work on challenging forensic sites in accordance with accepted forensic best practice. ICMP has disseminated guidelines and continues to promote standards of best practice, including:

- Integrating intelligence on potential grave locations and planning effective excavation operations;
- Locating illicit grave sites through the study of aerial imagery, patterns of grave deposition, vegetation and other surface features, probing and

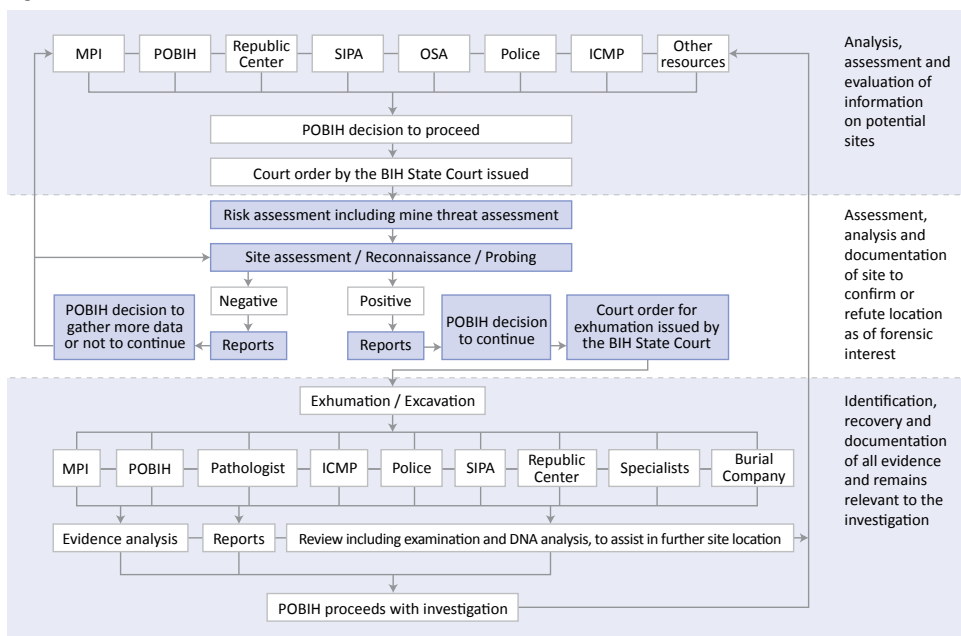
trenching;

- Ensuring proper identification, surface exposure and demarcation of illicit graves;
- Documenting operations following standard scene-of-crime procedures using forensic photography, field archaeological observations and notes, evidence numbering, body collection forms, and three-dimensional mapping of grave features, recovered remains and other associated evidence;
- Ensuring the systematic stratigraphic excavation of grave sites, permitting an understanding of their original construction, sequence of activity, dating of sites and the deposition of remains;
- Conducting osteological and physical anthropological evaluations on-site to promote in an optimal way the understanding of cause and manner of death, and the collection of properly associated sets of remains.

One of the greatest challenges to the proper conduct and documentation of forensic recovery of human remains in BIH is the common occurrence of large, complex graves or deposition sites, including secondary graves, where bodies have been moved after originally being buried elsewhere, or deposition sites such as caves or wells, which also result in body fragmentation and commingling. The standard procedures promoted by ICMP enable effective investigation of these sites. Another significant complication for grave reconnaissance and excavation is the potential for mines and unexploded ordnance in the vicinity of the site or in the site itself. Ordnance is recovered at grave sites frequently. Safe operations in forensic recovery then require risk assessment and coordination with demining authorities and proper determination and documentation that the site is cleared of such hazards.

Currently, ICMP responds to MPI requests for technical assistance in forensic archaeology and provides analytical, planning and site management support as part of the multi-agency response to mass grave investigation (see Figure 5). ICMP assistance is usually requested in the context of complex sites. Since 2009, as a result of fewer large or complex grave sites being found, ICMP has provided assistance in 12% of sites examined by MPI. Overall since 1996, reconnaissance and examination work has continued at an annual rate of 200 sites on average, with 57% of alleged grave sites yielding human remains.

Figure 5



POBIH - Prosecutor's Office of BIH; CPO - Cantonal Prosecutor's Office; OSA - Intelligence Security Agency; SIPA - State Investigation and Protection Agency; Republic Center - Republic Center for Researching War Crimes and Searching for Missing Persons, MPI - Missing Persons Institute

Chart showing the sequence of cooperation and information flow in undertaking the grave location process.

5.5. Family Outreach and DNA Reference Sample Collection

DNA-led identifications require obtaining DNA profiles from the remains of missing persons and that family members of the missing provide DNA reference samples. A fundamental component of the identification process is to be as comprehensive as possible in effort to obtain reliable reference samples from the families of all missing persons.

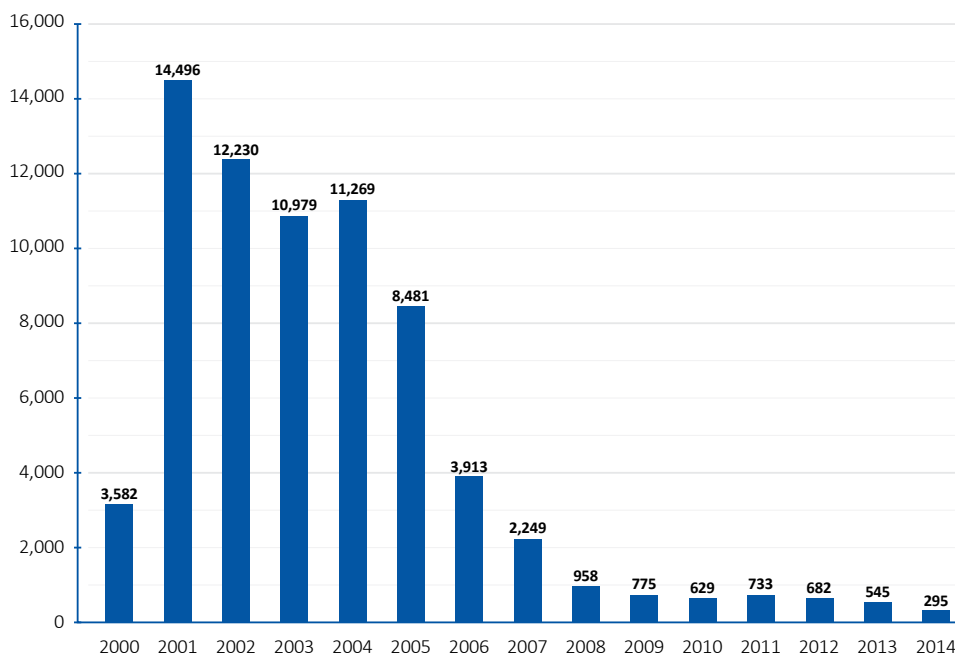
To collect DNA reference samples, ICMP has undertaken large-scale campaigns. In BIH, ICMP's Family Outreach Centers focused initially on refugees and internally displaced persons inside the country. Reference sample collection began in Tuzla Canton, at the time home to a large number of collective centers accommodating internally displaced persons. Later, mobile teams covered the Brčko District and parts of the eastern RS. Efforts in Sarajevo Canton, the Krajina and Herzegovina Regions and Eastern Bosnia followed. ICMP's offices in Belgrade and Pristina supported collection efforts in Serbia, Kosovo, Montenegro and Macedonia. FAs from across BIH committed themselves to informing their members about the DNA-based method of identification and encouraged them

to participate.

However, a large number of people from the region had resettled in the EU and elsewhere, which made it necessary to broaden the campaign beyond the Western Balkans. A series of collection efforts were undertaken across Europe. In addition, ICMP engaged in collection efforts in North America.⁸⁴ The largest number of persons who had resettled from the Western Balkans resided in Germany, Austria, the Netherlands, Sweden and Denmark. During one collection campaign in the United States in 2005, residents of 16 US States participated. In total 4,097 reference samples were collected outside the Western Balkans.

As a result, 91,484 reference samples were collected between June 2000 and July 2014 for persons missing from the region of the Western Balkans. For BIH, 71,816 samples were collected, representing 23,623 missing persons. The figure below indicates the rate of reference sample collection for BIH.

Figure 6



Rate of reference sample collection for BIH.

Despite collection programs continuing, there has been a marked decrease in

⁸⁴ A discussion of ICMP's outreach efforts in Europe and the United States can be found in Lara J. Nettelfield and Sarah E. Wagner, *Srebrenica in the Aftermath of Genocide* (Cambridge: Cambridge University Press, 2014): 163-170.

the rate of obtaining reference samples. This trend indicates that reference sample collection today may not contribute significantly to resolving many remaining missing persons cases in BIH.

5.6. The Problem of Misidentifications

Prior to the use of DNA for scientific identification, especially during the war and in the early post-war years, unidentified bodies in BIH were returned to families based primarily on visual recognition of personal effects, including identification cards or papers, or of the bodies themselves. Visual recognition might be coupled with other circumstantial information, AM and PM biological profile comparisons, and sometimes comparisons of fingerprint and medical or dental records in the rare instances where these were available. Such traditional methods have a higher likelihood of being correct if applied soon after a person's death. However, even then they are error prone and are not consistent with best practice in human identification, which generally calls for the application of at least one so-called primary identifier, i.e. DNA, fingerprints or conclusive dental comparison.⁸⁵

In the absence of capacity for scientific identification, the authorities in many cases did the best they could to return mortal remains to families, often under pressure. While thousands of families did in fact receive the mortal remains of their family members, established standards or operating procedures defining acceptable criteria for identification did not exist and there was a lack of mortuary facilities and pathologists. Moreover, no systematic records of these early efforts in different parts of BIH exist. It is therefore not possible to know the exact number of identifications by traditional methods or to review their evidentiary basis. Estimates based on a review of records of the CEN,⁸⁶ and information collected from current and past forensic agencies suggest that 8,192 missing persons from BIH were accounted for in that manner.

Primarily as a result of DNA testing it is now known that many misidentifications were made as a result of traditional methods of identification. However, the lack of clear records that would permit unbiased retrospective studies means that the full extent of the misidentification problem remains unclear. Traditional methods as applied to mortal remains recovered long after death, particularly in the case of complex, commingled sites, have a significantly reduced probability

85 Internationally recognized primary identifiers are set forth, for instance, in the INTERPOL Disaster Victim Identification Guide, available at <http://www.interpol.int/INTERPOL-expertise/Forensics/DVI-Pages/DVI-guide>.

86 In light of cases registered in the CEN, MPI estimates that there were approximately 8,192 such cases. However, the CEN verification process is not complete and it is likely that some of these cases may have been verified by DNA at a later date.

of providing accurate results.

Misidentifications have a compound effect on efforts to account for all the missing. When a body is misidentified, the family that has incorrectly received the body in many instances will not have provided family DNA reference samples. Therefore, the actual mortal remains of their family member, if located, will remain unidentified; and the family whose missing relative's remains were released incorrectly to another family will not have resolution through a match to reference DNA samples that they have provided. A higher proportion of misidentifications, then, may have an impact at a regional level, giving rise to a lower DNA matching rate for both family reference samples and DNA profiles from mortal remains, and may thus contribute to an increased number of unidentified mortal remains in mortuary facilities. Such scenarios vary by region and a regional analytical approach is hence necessary to deal with this complex problem.

5.7. Regional Analysis of Identifications and the Missing

In BIH, reported places of disappearance may be categorized into nine regional clusters and two events. These clusters and events, as shown in Table 3, correspond to well-documented areas of conflict, as ICTY investigations and court proceedings have demonstrated. Demographic analyses that form the basis of ICTY investigations note that these regional divisions “cover particularly well the major episodes of the war: the 1992 initial conflict in the Autonomous Region of Krajina and at the eastern border with Serbia, the 1993-1994 conflict in Herceg-Bosna and in Mostar, the 1992-1995 siege of Sarajevo, and the pre-1995 episodes in Podrinje and the 1995 fall of Srebrenica.”⁸⁷

ICMP's data, while supporting this analysis, demonstrates that the regions of the Krajina, Lower Podrinje and Upper Podrinje show the highest proportion of missing persons.⁸⁸ The following presents a detailed analysis of reported missing persons by region in BIH.

87 Zwiernichowski and Tabeau, “The 1992-95 War in Bosnia and Herzegovina,” 5.

88 Numbers reported in this section other than those related to DNA samples, profiles, DNA matching rates and reports are those reported by CEN.

Table 3

Region/Event	Number of reported missing	Identified by traditional means	Percentage of closed cases by traditional means	Identified by DNA	Percentage of closed cases by DNA	Total identified	Non-identified
Srebrenica, Žepa 1995	7,833	51	0.74%	6,873	99.26%	6,924	909
Lower Podrinje	4,124	565	22.53%	1,943	77.47%	2,508	1,616
Posavina	1,484	338	36.11%	598	63.89%	936	548
Krajina	6,817	2,355	47.21%	2,633	52.79%	4,988	1,829
Upper Podrinje	3,783	1,083	51.35%	1,026	48.65%	2,109	1,674
Ozren 1995	350	137	59.83%	92	40.17%	229	121
Northeast Bosnia	556	231	64.17%	129	35.83%	360	196
Central Bosnia	2,325	1,030	66.32%	523	33.68%	1,553	772
Sarajevo	2,299	1,071	66.98%	528	33.02%	1,599	700
Herzegovina	1,705	857	70.71%	355	29.29%	1,212	493
Western Bosnia	654	420	82.19%	91	17.81%	511	143
Unknown	222	54	98.18%	1	1.82%	55	167
Grand total	32,152	8,192	35.64%	14,792	64.36%	22,984	9,168

Missing persons by region.

5.7.1. The Situation in the Krajina Region

5.7.1.1. Background

The Krajina Region, which represents more than 20 municipalities, has the second largest number of reported missing persons, 6,817, after the Lower Podrinje Region including Srebrenica. Large numbers of persons went missing in May 1992 (895), June 1992 (920) and July 1992 (1,852). The Municipality of Prijedor accounts for the highest number of reported missing (3,113), followed by Sanski Most (757) and Ključ (699). In the Prijedor Municipality area alone, more than 60 mass graves have been excavated so far.

Figure 7



Map of the Krajina Region.

5.7.1.2. Early Recoveries and Traditional Identifications

The recovery of human remains in this region began in early 1997. During the period from 1997 to 2000, a large number of remains were also found in caves, such as Lanište 1 and 2 and Hrastova Glavica. The deposition of bodies in caves often resulted in extensive commingling of skeletal remains, complicating the identification process and requiring reassociations of body parts.

Many of the bodies recovered in this period were identified using traditional methods: examination of clothing, personal effects and identification documents and comparison with family descriptions. Additionally, the reassociation efforts of disarticulated remains from many sites were limited to anthropological analysis, in which the forensic anthropologist examines and compares the size, shape and area of articulation to associate the bones. ICMP estimates that in the Krajina Region 2,355 individuals were accounted for in this manner, including the remains of 612 persons found in Prijedor, 520 in Ključ and 418 in Sanski Most. Some of these traditional identifications and reassociations have been shown through DNA analysis to be incorrect.

5.7.1.3. Later Recoveries and DNA Identifications

As of 31 July 2014, ICMP had collected 15,470 DNA reference samples from relatives of the missing representing 4,388 missing persons from the Krajina region. In parallel, DNA analysis was carried out on 6,982 bone samples, which yielded DNA profiles for 2,939 individuals. The overall number of DNA based identifications is 2,633.

In 2001, one of the larger mass graves in BIH was discovered in this region. Jakarina Kosa, a secondary mass grave, contained a high number of disarticulated and mostly incomplete bodies. The MNI (minimum number of individuals) determined at the time of the excavation was 298, with the number increasing after DNA analysis. The remains of 44 individuals were later matched by DNA identification to the primary grave of Tomašica Mine, located and partly excavated in 2004 and 2006. Excavations continued at this grave in September 2013, when an additional 275 complete bodies and 125 body parts were found. Following the excavation of the Tomašica grave (TOM 04 PRD), ICMP analyzed 521 PM samples and obtained 462 DNA profiles. DNA matches to relatives of the missing were found for all these profiles resulting in 274 new DNA identifications. One hundred-six PM samples were DNA matched to human remains from the Jakarina Kosa site, confirming a link between the Tomašica site and the Jakarina Kosa secondary grave.

Table 4 displays the identification status of reported missing persons by

municipality. In total, about 69% of the missing have been accounted for, with a relatively even proportion across the municipalities.

Table 4

Municipality of disappearance	Total number of missing persons	Number of missing persons identified by DNA	Number of missing persons identified by traditional means	Number of missing persons accounted for	Missing persons accounted for in %
Prijedor	3,113	1,713	612	2,325	74.69
Bihać	400	208	83	291	72.75
Sanski Most	757	210	418	628	82.96
Ključ	699	87	520	607	86.84
Unknown	215	76	49	125	58.14
Bosanska Krupa	224	59	114	173	77.23
Kotor Varoš	411	55	102	157	38.20
Bosanski Petrovac	230	54	134	188	81.74
Velika Kladuša	81	47	6	53	65.43
Mrkonjić Grad	251	34	189	223	88.84
Banja Luka	128	33	42	75	58.59
Novi Grad	131	24	47	71	54.20
Cazin	22	9	2	11	50.00
Kneževo	45	6	7	13	28.89
Šipovo	30	6	13	19	63.33
Gradiška	29	5	4	9	31.03
Kozarska Dubica	37	4	8	12	32.43
Kostajnica	5	1		1	20.00
Srbac	2	1	1	2	100.00
Bužim	1	1		1	100.00
Prnjavor	1			0	0.00
Čelinac	4		4	4	100.00
Laktaši	1			0	0.00
Total	6,817	2,633	2,355	4,988	73.17

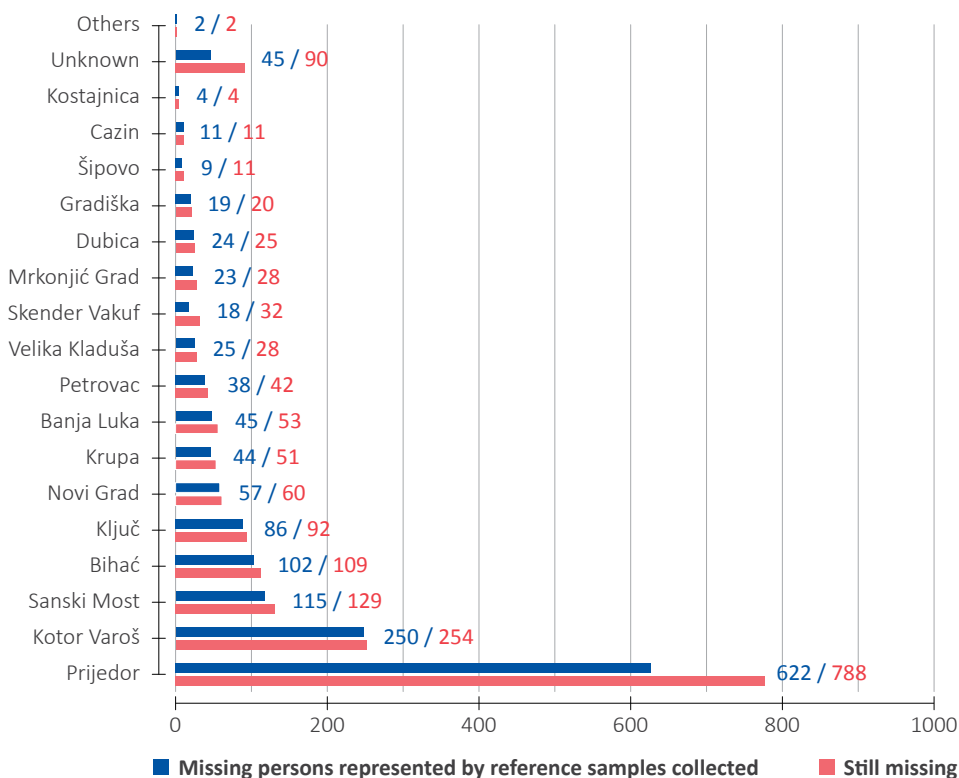
Identification status of reported missing persons by municipality.

5.7.1.4. Open Cases of Missing Persons

The Krajina Region currently has the highest number of persons who remain missing (1,829), including Prijedor (788), Kotor Varoš (254) and Sanski Most (129). The Figure below displays the extent of family reference sample collection, and indicates that for a great majority of the remaining missing (84%), reference samples that would enable future DNA matching have been collected. It is estimated that the remains of more than 1,500 missing persons have not yet been located in the Krajina Region.

Resolution of additional identifications will require the investigation of cases of previous misidentifications arrived at by traditional methods. See sections below on the KIP Mortuary and the NNWG.

Figure 8



Status of family reference blood sample collection by municipality.

5.7.2. The Situation in the Lower Podrinje Region

5.7.2.1. Background

The region of Lower Podrinje as a whole has the highest concentration of missing persons and the highest number of grave sites, due to the large number of persons reported missing in relation to the 1995 fall of the Srebrenica and Žepa UN Safe Areas. This section focuses on persons reported missing in the Lower Podrinje Region other than those related to the fall of the UN Safe Areas. A separate section of the report will address persons missing as a result of that event.

Figure 9



Map of the Lower Podrinje Region.

In the Lower Podrinje Region between 1992 and 1995, 4,124 persons have been reported missing under circumstances unrelated to the fall of the Safe Areas, with the majority coming from the municipalities of Zvornik, Vlasenica, Bratunac and the Srebrenica Municipality. The highest numbers of missing persons are reported from the municipalities of Zvornik (1,790) and Vlasenica (955). Many missing persons (3,586) were last seen in 1992, particularly the months of May (1,086) and June (1,231).

Table 5

Municipality of disappearance	Total number of missing persons	Number of missing persons identified by DNA	Number of missing persons identified by traditional means	Number of missing persons accounted for	Missing persons accounted for in %
Zvornik	1,790	972	227	1,199	66.98
Vlasenica	955	408	179	587	61.47
Bratunac	635	342	55	397	62.52
Srebrenica	457	116	61	177	38.73
Bijeljina	165	74	19	93	56.36
Han Pijesak	104	29	18	47	45.19
Šekovići	7	1	4	5	71.43
Ugljevik	6	1	1	2	33.33
Unknown	5		1	1	20.00
Total	4,124	1,943	565	2,508	60.81

Identification status of reported missing persons by municipality.

The Table 5 presents the identification status of reported missing persons by municipality. In total, about 61% of the missing have been accounted for, with a relatively even proportion across the municipalities.

5.7.2.2. Early Recoveries and Traditional Identifications

Excavation operations at sites related to persons reported to have gone missing during 1992 in the Lower Podrinje Region began in October 1998, later than in other regions of BIH. As a result, fewer identifications employed traditional methods. During this period, Ramin Grob, one of the largest mass grave sites, was excavated and the remains of 274 individuals were exhumed from this grave, which was located in a cemetery in the Glumina village, Zvornik Municipality. Post-mortem (PM) examinations were carried out at the Tuzla Clinical Center in December 1998. A total of 565 identifications in this region were conducted using traditional methods. However, many of the identifications established by traditional means were confirmed in 2002 by DNA matching.

5.7.2.3. Later Recoveries and DNA Identifications

Lower Podrinje was the first region in BIH where large-scale family DNA reference collection took place. ICMP collected 12,660 reference samples for DNA analysis representing 3,702 persons reported missing in this region. Meanwhile, a total of 5,612 samples collected from the remains of the missing yielded 2,092 unique DNA profiles. The overall number of DNA based identifications is 1,943.

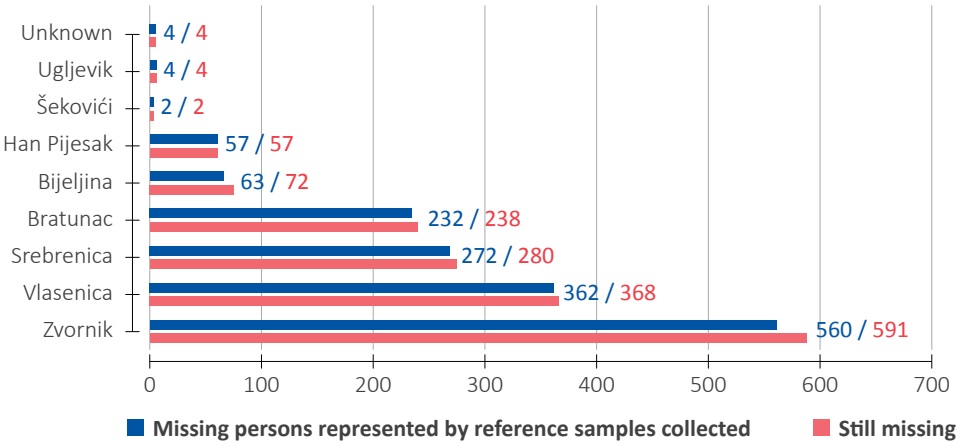
In 2003, the remains of more than 500 individuals were found in a large, secondary grave, the Crni Vrh grave that contained more than 800 commingled bodies and disarticulated body parts that had been deposited there from multiple primary graves within the region. Forensic examinations were later conducted at the Tuzla Clinical Center. Following DNA testing of 1,696 post mortem samples, 532 missing persons, who had last been seen in 1992, were identified.

5.7.2.4. Open Cases of Missing Persons

The fate of 1,616 individuals reported missing from this region is still unknown, although reference samples for DNA testing have been obtained from relatives for 1,556 of these cases. Efforts to collect additional DNA reference samples from family members continue. However, it is not expected that additional reference samples will resolve many of these cases.

The Figure below shows the extent of family reference blood sample collection by municipality.

Figure 10



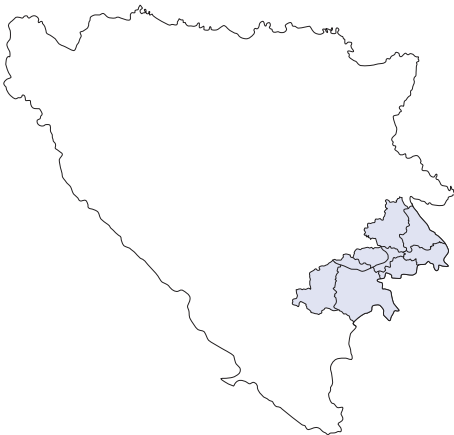
Status of family reference blood sample collection by municipality.

5.7.3. The Situation in the Upper Podrinje Region

5.7.3.1. Background

The Upper Podrinje Region contains the municipalities of Čajniče, Foča, Goražde, Kalinovnik, Rogatica, Rudo and Višegrad. A total of 3,783 persons went missing in this region, 3,615 of whom were last seen in 1992, mostly in May (936) and June (1,279). The highest number of mortal remains was found in Foča and Višegrad. In the Region of Upper Podrinje 1,083 individuals were initially accounted for by traditional methods and 1,026 individuals were identified by DNA analysis. A total of 1,674 missing persons are still unaccounted for.

Figure 11



Map of the Upper Podrinje Region.

The Table below presents the identification status of reported missing persons by municipality. In total, about 55% of the missing have been accounted for, with

a relatively even proportion across the municipalities.

5.7.3.2. Early Recoveries and Traditional Identifications

Table 6

Municipality of disappearance	Total number of missing persons	Number of missing persons identified by DNA	Number of missing persons identified by traditional means	Number of missing persons accounted for	Missing persons accounted for in %
Višegrad	1,028	380	133	513	49.90
Foča	1,566	370	590	960	61.30
Rogatica	577	134	178	312	54.07
Čajniče	140	72	20	92	65.71
Goražde	312	39	116	155	49.68
Rudo	126	31	12	43	34.13
Kalinovik	34		34	34	100.00
Total	3,783	1,026	1,083	2,109	55.75

Identification status of reported missing persons by municipality.

Recovery operations in the Upper Podrinje Region commenced in 1996. Missing persons in that region were located in a wide variety of site types with relatively few human remains at each, including caves and burnt-out buildings, single graves and small mass graves. Compared to other regions traditional identifications were carried out in relatively large numbers (1,083) according to CEN, while a large number of remains could not be identified by traditional methods. These cases were either stored in the Visoko and Goražde mortuaries or reburied in a local cemetery and labeled “NN” (No Name). Many of these NN cases may be attributable to the fragmentary or charred status of remains that had been located in burnt-out houses and ruins, and which could not be identified.

5.7.3.3. Later Recoveries and DNA Identifications

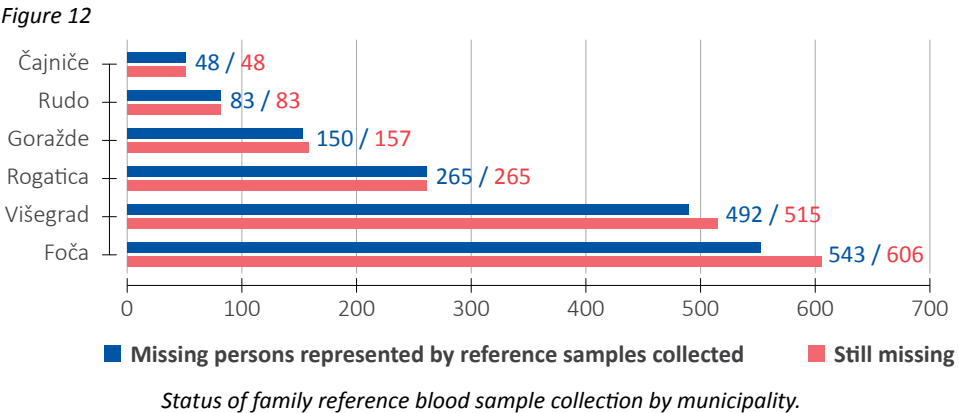
Since June 2000, ICMP has implemented a large-scale family reference sample collection effort relating to the Upper Podrinje Region resulting in 8,075 samples representing 2,709 missing persons. These reference samples have been compared to the 1,273 individual DNA profiles that ICMP obtained from 3,599 bone and tooth samples. 1,026 persons were positively identified by DNA analysis. The remaining unmatched unique DNA profiles may relate to skeletal elements of persons previously identified through traditional methods, or dating from earlier events, such as the two World Wars.

One of the largest operations in this region was conducted in 2010 along the Drina River between the town of Višegrad and the hydro-electric dam in Bajina Bašta. During maintenance operations on the Bajina Bašta dam on the border with Serbia, water levels along the river were significantly reduced for more than two months, exposing more than 50 kilometers of riverbank and allowing the recovery of the remains of a large number of persons reported to have been thrown into the river between 1992 and 1995. Following manual digging and surface survey by multiple agencies, hundreds of bodies and body parts were discovered in the municipal territory of Višegrad, Rogatica and Srebrenica, as well as Bajina Bašta in Serbia. Most of the body parts were commingled and disarticulated. The remains were transported to several mortuaries for examination and DNA sampling. The majority of bone and tooth samples (1,550) originated from Upper Podrinje Region. A significant percentage of these samples yielded DNA profiles (1,012 or 66%) and permitted DNA identifications of 161 missing persons.

5.7.3.4. Open Cases of Missing Persons

The municipalities of Višegrad and Foča have the highest number of unresolved cases. Family reference samples and DNA profiles have been obtained for 1,581 of the 1,674 missing individuals. This reference collection represents more than 94% of persons reported missing from this region. However, it is believed that a significant number of unidentified remains may not relate to the conflicts of the 1990s and that some previous identifications by traditional methods may have been incorrect.

The Figure below displays the status of family reference sample collection by municipality.



5.7.4. The Situation in the Herzegovina Region

5.7.4.1. Background

The Region of Herzegovina is represented by 15 municipalities, where 1,705 individuals were reported missing and last seen between 1992 and 1995. Mostar has the highest number of missing persons (730), followed by Nevesinje (306) and Konjic (227). A total of 1,212 individuals have been accounted for from this region, 857 by traditional methods and 355 by DNA matching.

Figure 13



Map of the Herzegovina Region.

The Table below displays the identification status of missing persons by municipality.

Table 7

Municipality of disappearance	Total number of missing persons	Number of missing persons identified by DNA	Number of missing persons identified by traditional means	Number of missing persons accounted for	Missing persons accounted for in %
Mostar	730	185	347	532	72.88
Nevesinje	306	61	130	191	62.42
Trebinje	45	23	11	34	75.56
Konjic	227	24	167	191	84.14
Stolac	83	19	24	43	51.81
Čapljina	86	17	47	64	74.42
Gacko	144	8	110	118	81.94
Bileća	15	6	6	12	80.00
Tomislavgrad	19	4	8	12	63.16
Jablanica	28	4	4	8	28.57
Neum	2	2		2	100.00
Posušje	2	2		2	100.00
Široki Brijeg	2		1	1	50.00
Unknown	3		1	1	33.33
Ljubuški	2		1	1	50.00
Grude	11			0	0.00
Total	1,705	355	857	1,212	71.09

Identification status of reported missing persons by municipality.

5.7.4.2. Early Recoveries and Traditional Identifications

Efforts to locate the missing in this region began in December 1996. From 1996 to 1999, a significant number of remains were located at 80 field sites and identified by traditional methods. These sites included smaller mass graves and deep cave sites in more remote areas. Caves in this region often also contained remains dating to the two World Wars.

One of the larger sites was a mass grave excavated near Tasovčići, Čapljina in 1998, which contained the remains of at least 32 individuals. The grave appeared to have been partially disturbed. Following mortuary examination, the remains were determined to be those of men, women and children that evidenced a large number of gunshot trauma and had been wearing civilian clothing.

A large number of missing persons were accounted for by traditional methods in Mostar (347) and Nevesinje (130). In Konjic 167 of 227 missing persons were identified by such methods, and a total of 857 people in the region. Unidentified remains (NN) were stored in mortuaries in the towns of Mostar (Sutina) and Nevesinje.

5.7.4.3. Later Recoveries and DNA Identifications

ICMP collected 2,554 family reference samples for DNA testing representing 809 missing persons. Also, 1,241 bone and tooth samples were DNA tested, yielding DNA profiles for 514 missing persons. The overall number of DNA based identifications is 355. Several of those newly identified missing persons were located in a grave near Goranci, Mostar in 2007. This primary mass grave contained the remains of at least 15 individuals, who were later identified by DNA as belonging to a group of persons last seen in Mostar in 1993.

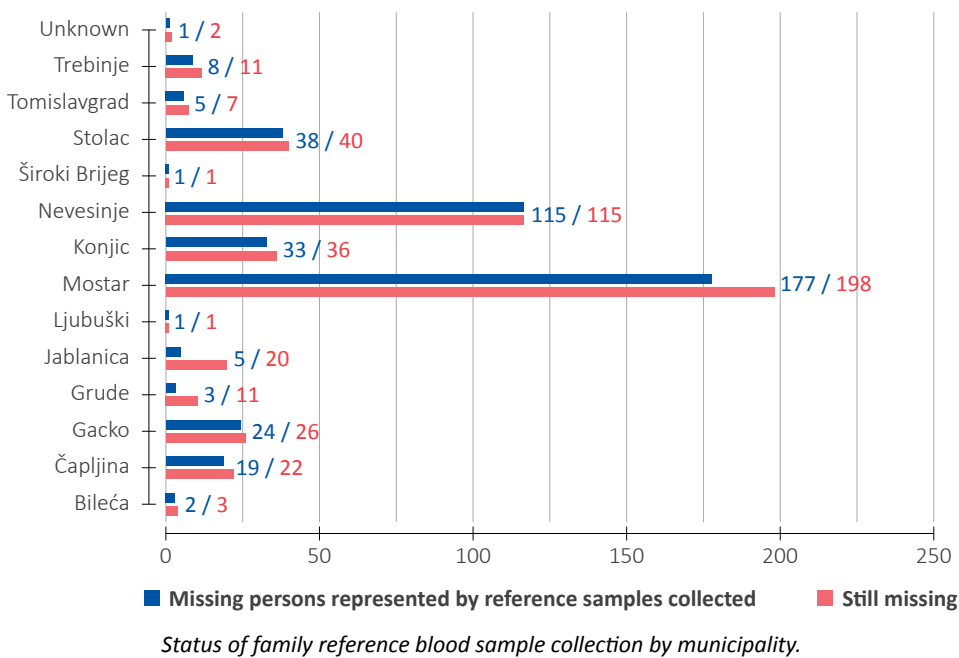
5.7.4.4. Open Cases of Missing Persons

A total of 493 missing persons have yet to be located. Most are reported missing from Mostar (198) and Nevesinje (115). Field sites are still being investigated for new graves and there are many bodies and body parts awaiting identification in the mortuaries. The mortuaries in Mostar (Sutina) and Nevesinje listed 189 and 57 cases respectively. In 2013, the NN Working Group (NNWG) Project began an inventory to obtain new DNA profiles and to exclude skeletal remains that may date back to earlier events such as the First and Second World Wars. The inventory found, however, that there were 395 cases of human remains at Sutina and 161 cases at Nevesinje, and that 41% of the cases had apparently never been sampled. New DNA testing of these cases yielded 32 new DNA

profiles and 92 reassociations by the end of July 2014.

The Figure below displays the status of family DNA reference sample collection by municipality.

Figure 14



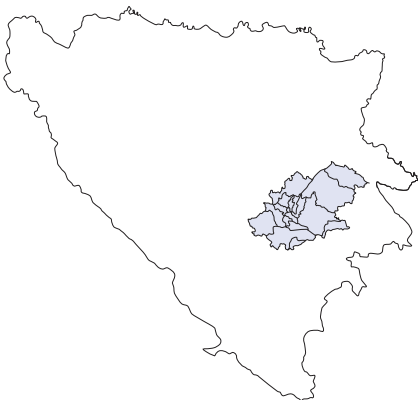
5.7.5. The Situation in the Sarajevo Region

5.7.5.1. Background

The Sarajevo Region primarily consists of the city of Sarajevo and the surrounding municipalities of Hadžići, Ilidža, Pale, Ilijaš, Sokolac, Trnovo and Vogošća. More than half of the 2,299 reported missing people within the region have been reported missing from the city of Sarajevo (1,387).

The Table 8 displays the identification status of reported missing persons by municipality. The number for the city of Sarajevo includes its multiple municipalities (Stari Grad, Novo Sarajevo, Centar Sarajevo and Novi Grad).

Figure 15



Map of the Sarajevo Region.

Table 8

Municipality of disappearance	Total number of missing persons	Number of missing persons identified by DNA	Number of missing persons identified by traditional means	Number of missing persons accounted for	Missing persons accounted for in %
Sarajevo	1,387	369	539	908	65.47
Hadžići	165	45	64	109	66.06
Sokolac	153	49	75	124	81.05
Vogošća	140	20	96	116	82.86
Ilijaš	168	16	104	120	71.43
Trnovo	167	14	128	142	85.03
Other	42	9	13	22	52.38
Ilidža	49	6	36	42	85.71
Pale	28		16	16	57.14
Total	2,299	528	1,071	1,599	69.55

Identification status of reported missing persons by municipality.

5.7.5.2. Early Recoveries and Traditional Identifications

Field excavations began in 1996 with many sites being located at the large cemeteries in the city. Hundreds of bodies had been buried in marked and unmarked graves throughout the region. Several of these cemetery sites contained larger mass graves, along with single burial plots. Human remains located at these sites underwent autopsy and identification at the mortuaries in Visoko, Istočno Sarajevo and Banja Luka. A total of 1,071 individuals were accounted for using traditional methods, while many more unidentified bodies remain in storage in mortuaries.

5.7.5.3. Later Recoveries and DNA Identifications

In the Sarajevo Region ICMP obtained 4,175 family reference samples for DNA analysis representing 1,178 missing persons. A total of 861 unique DNA profiles were obtained from bone and tooth samples. The overall number of DNA-based identifications from the Sarajevo Region is 528.

The Bečari site is an example of a recent site resulting in new identifications. At this suspected execution site in the forest in Sokolac scattered, skeletal remains of at least 19 men and women were located in 2009-2010. One hundred and fifteen samples were analyzed to reassociate and identify these remains.

MPI and the POBIH have made renewed efforts since 2012 to locate graves in the Sarajevo area. Substantial excavations were undertaken in 2013 including

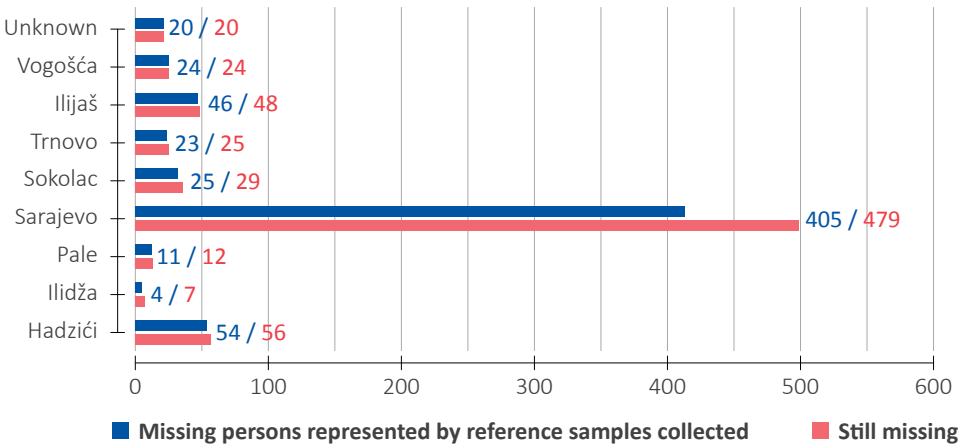
at Alipašin Most and at the Sarajevo “city dump” rubbish disposal site at Buća Potok. Witness information provided to MPI suggested that 100 bodies were disposed of there in 1992. The excavation in 2013 moved an estimated 200,000 cubic meters of waste. It yielded the remains of one individual who has since been identified.

5.7.5.4. Open Cases of Missing Persons

Currently, 1,599 of the 2,299 persons reported as missing from the Sarajevo Region have been accounted for, while 700 remain missing, mostly from the city of Sarajevo (479). Family reference samples have been collected to permit DNA matching for 612 of these remaining missing persons once their remains are located.

The Figure below displays the status of family reference sample collection for DNA analysis by city and municipality.

Figure 16



Status of family reference blood sample collection by municipality.

5.7.6. The Situation in the Posavina Region

5.7.6.1. Background

The Posavina Region is located in northern Bosnia, where the Sava River marks the border with Croatia. The region consists of eight municipalities including the Brčko District. A total of 1,484 individuals were reported missing from the Posavina Region between 1992 and 1995, most from the Brčko District (413), Brod (281) and Derventa (233).

The Table below displays the identification status of reported missing persons by municipality.

Figure 17



Map of the Posavina Region.

Table 9

Municipality of disappearance	Total number of missing persons	Number of missing persons identified by DNA	Number of missing persons identified by traditional means	Number of missing persons accounted for	Missing persons accounted for in %
Brčko District	413	240	79	319	77.24
Brod	281	136	31	167	59.43
Modriča	219	87	43	130	59.36
Derventa	233	60	75	135	57.94
Odžak	120	23	56	79	65.83
Šamac	79	21	24	45	56.96
Orašje	58	16	12	28	48.28
Gradačac	66	15	16	31	46.97
Unknown	15		2	2	13.33
Total	1,484	598	338	936	63.07

Identification status of reported missing persons by municipality.

5.7.6.2. Early Recoveries and Traditional Identifications

The earliest efforts to locate remains were conducted in 1993 near Brod. In addition, large numbers of remains were retrieved from the Sava River in the 1990s. In 1997, the ICTY investigated a site in Brčko which included four mass graves. Following forensic excavation, bodies and body parts of at least 66 individuals were recovered, with the ICTY reporting that some of the graves had

been disturbed. A large number of bodies were also collected from cemeteries, ruined houses and forests in the region. During the first few years of field operations, 338 individuals were accounted for using traditional methods.

5.7.6.3. Later Recoveries and DNA Identifications

Family reference sample collection for DNA analysis in this region commenced in 2000. Since then, 3,703 reference samples have been collected, representing 1,072 missing persons. A total of 805 DNA profiles of different missing persons were obtained from 1,538 bone and tooth samples. The total number of DNA-based identifications from the Posavina region is 598.

A large number of these missing persons were located in 2006 in the Gorice secondary mass grave in the Brčko District, which contained 115 bodies and more than 160 disarticulated body parts. Forensic examination and DNA analysis led to the identification of 134 missing persons who were last seen in Brčko in May 1992.

In 2004, an excavation of 60 bodies was conducted in the Sijekovac cemetery in Brod.⁸⁹ Eight of these bodies were located in a mass grave and 52 in separate unmarked burial plots. Following extensive examination and DNA testing, only two missing persons from this site could be identified. Poor bone preservation, and only two of 17 DNA profiles matching to family reference DNA samples, indicated that remains dated either to earlier armed conflicts or represented persons who have not been reported missing.

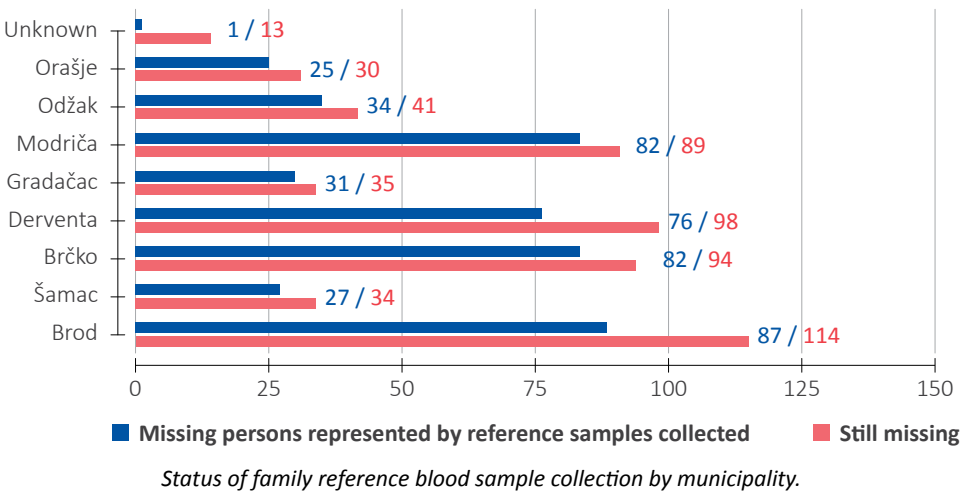
5.7.6.4. Open Cases of Missing Persons

A total of 1,484 persons have been reported missing from the Posavina Region and 936 have been accounted for. Most of those still missing are from the areas of Brod, Derventa, the Brčko District and Modriča. Approximately 81% of those who remain missing could be identified on the basis of available family DNA reference samples if their remains were located.

The Figure 18 displays the status of family reference blood sample collection by municipality.

⁸⁹ ICMP Report: ICMP Assistance Relating to the Cases of Human Remains Exhumed at the Sijekovac Site, Bosanski Brod under Court Code KTA-1191/04 – document number ICMP.FSD.EXEX.311.1.doc, 10 August 2009.

Figure 18

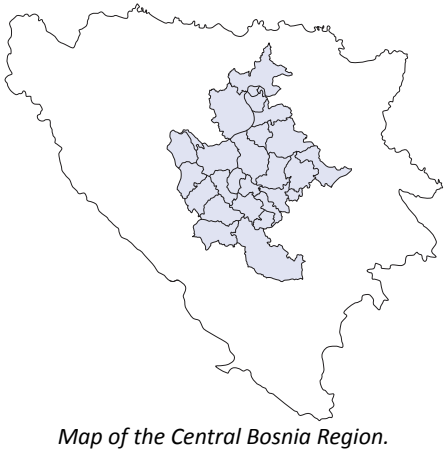


5.7.7. The Situation in the Central Bosnia Region

5.7.7.1. Background

Central Bosnia is a geographically large area bordering all of the eight other regions of BiH. In this region, which includes a large number of towns and municipalities, 2,325 people were reported missing between 1992 and 1995, more than half of them in the urban areas of Doboј, Jajce, Travnik, Bugojno and Vitez. A large number of remains in that region were identified using traditional methods during the 1996-2000 period.

Figure 19



The Table 10 displays the identification status of reported missing persons by municipality.

Table 10

Municipality of disappearance	Total number of missing persons	Number of missing persons identified by DNA	Number of missing persons identified by traditional means	Number of missing persons accounted for	Missing persons accounted for in %
Vitez	195	108	30	138	70.77
Doboj	413	77	168	245	59.32
Žepče	115	59	34	93	80.87
Travnik	218	52	98	150	68.81
Jajce	285	51	153	204	71.58
Donji Vakuf	129	22	72	94	72.87
Olovo	53	17	17	34	64.15
Maglaj	53	15	11	26	49.06
Prozor	149	14	84	98	65.77
Bugojno	189	13	118	131	69.31
Kiseljak	118	13	55	68	57.63
Teslić	94	21	53	74	78.72
Zavidovići	45	10	21	31	68.89
Busovača	20	9	5	14	70.00
Zenica	42	8	12	20	47.62
Visoko	48	7	29	36	75.00
Kreševo	12	6	3	9	75.00
Tešanj	19	5	6	11	57.89
Fojnica	26	4	8	12	46.15
Gornji Vakuf - Uskoplje	16	4	3	7	43.75
Vareš	33	4	10	14	42.42
Breza	16	2	9	11	68.75
Unknown	7	2	5	7	100.00
Kakanj	30		26	26	86.67
Total	2,325	523	1,030	1,553	66.80

Identification status of reported missing persons by municipality.

5.7.7.2. Early Recoveries and Traditional Identifications

A total of 1,030 individuals were identified by traditional means during the 1996-2000 period. Most of these sites were cemetery burials and primary mass graves. Most forensic examinations were conducted at the mortuaries in Visoko, Travnik and Banja Luka.

In 1998, one of the largest sites in the region was located in Carevo Polje near Jajce, where 78 bodies from two large mass graves were excavated. Many of the dead were civilians, men and women, as well as children, who were reported missing in 1995.

5.7.7.3. Later Recoveries and DNA Identifications

Since 2000, a total of 4,444 family reference samples for DNA analysis have been collected, representing 1,247 of the missing persons in that region. A total of 1,910 PM samples were tested from which 1,201 DNA profiles were obtained. The number of DNA based identifications is 523. A significant number of DNA profiles of missing persons (417) have not matched available family DNA reference profiles, of which some may relate to earlier events, such as earlier wars, or identification errors that occurred in the course of traditional identifications before 2001.

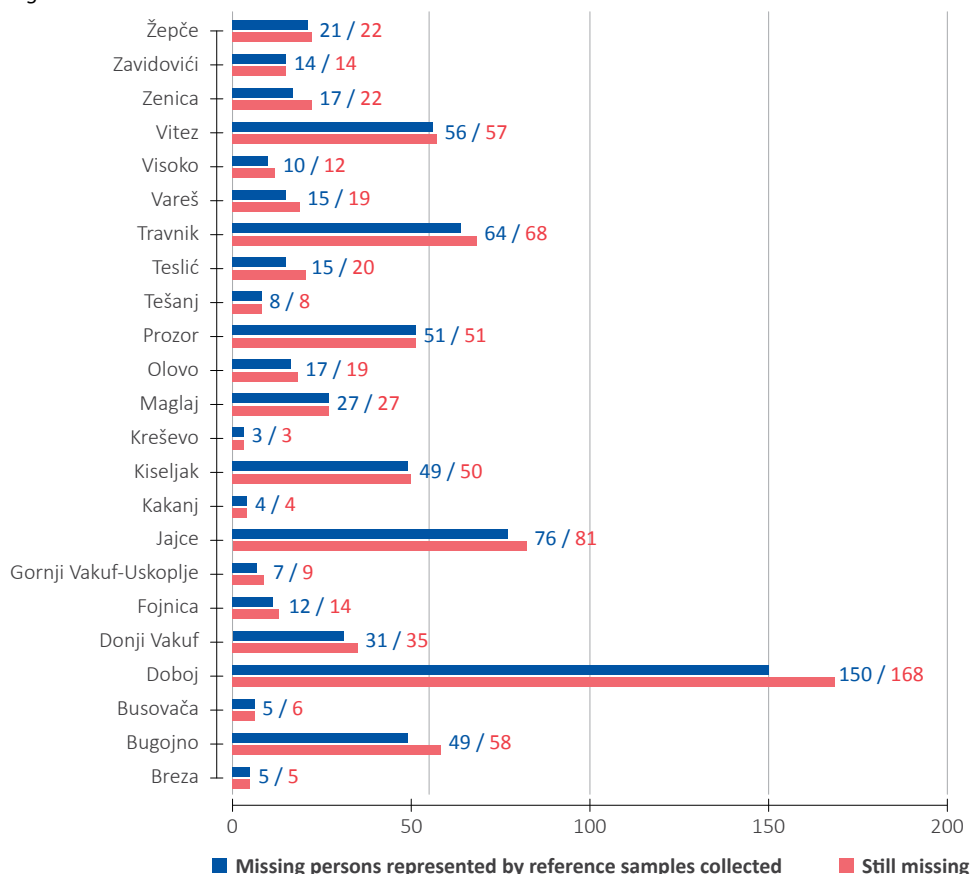
A large number of persons missing from the Central Bosnia Region were located in the area of Donji Korićani in the Municipality of Kneževo within the adjacent Krajina Region. Between 2003 to 2013 repeated excavations and collections of surface remains took place in that area, where more than 200 people were reported to have been executed in 1992. DNA analysis of 742 samples from human remains was conducted and more than 118 missing persons were identified by DNA matching.

5.7.7.4. Open Cases of Missing Persons

A total of 1,553 of the 2,325 missing persons from the Central Bosnia Region have been accounted for and 772 are still missing. Almost half of these missing persons originate from the areas of Doboj, Jajce, Travnik, Bugojno and Vitez. Currently available family DNA references would permit the identification of 706 of these missing persons once their remains are located.

The Figure 20 displays the status of family DNA reference sample collection by municipality.

Figure 20



Status of family reference blood sample collection by municipality.

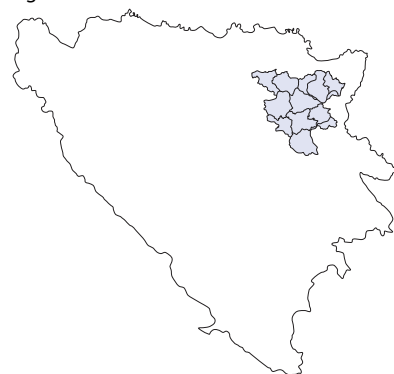
5.7.8. The Situation in the Northeast Bosnia Region

5.7.8.1. Background

Most of the missing from the Northeast Bosnia Region were last seen in the areas of Tuzla, Lukavac and Kalesija. Of the 556 reported missing persons in the region, 360 have been accounted for. A large number of remains have been recovered from relatively small field sites in that region.

The Table 11 displays the identification status of reported missing persons by municipality.

Figure 21



Map of the Northeast Bosnia Region.

Table 11

Municipality of disappearance	Total number of missing persons	Number of missing persons identified by DNA	Number of missing persons identified by traditional means	Number of missing persons accounted for	Missing persons accounted for in %
Tuzla	118	42	48	90	76.27
Kalesija	124	32	31	63	50.81
Lukavac	123	15	78	93	75.61
Lopare	48	11	13	24	50.00
Unknown	27	9	3	12	44.44
Kladanj	44	9	17	26	59.09
Teočak	10	4	1	5	50.00
Banovići	20	2	16	18	90.00
Osmaci	8	2	3	5	62.50
Čelić	1	1		1	100.00
Živinice	12	1	7	8	66.67
Gračanica	6	1	3	4	66.67
Srebrenik	15		11	11	73.33
Total	556	129	231	360	64.75

Identification status of reported missing persons by municipality.

5.7.8.2. Early Recoveries and Traditional Identifications

Efforts to locate the missing commenced in 1998-1999. The sites examined consisted of many individual burial plots and cemeteries near Tuzla and Lukavac. Most remains underwent forensic examination in the mortuaries of Tuzla and Banja Luka. During the first few years, 231 missing persons were identified using traditional methods.

5.7.8.3. Later Recoveries and DNA Identifications

ICMP collected 1,298 family reference samples for DNA analysis representing 326 missing persons. Analysis of 570 PM samples taken from the remains of the missing yielded DNA profiles for 276 different persons. A total of 129 missing persons have been identified through DNA matching.

One of the larger sites where excavations took place was the Trnovac cemetery in Tuzla, where approximately 52 bodies were located in 2004. Excavations continue, though most sites today are smaller and contain fewer remains. A mass grave containing eight complete bodies was excavated in Osmaci Municipality in 2012. Only one body could not be identified by DNA matching.

5.7.8.4. Open Cases of Missing Persons

A total of 556 persons were reported missing from the Northeast Bosnia Region, and 360 have been accounted for. Most of those still missing have been reported last seen in the areas of Kalesija, Tuzla and Lukavica. Family reference samples have been obtained for more than 91% of the remaining missing persons.

The Figure below displays the status of family reference blood sample collection by municipality.



5.7.9. The Situation in the Western Bosnia Region

5.7.9.1. Background

Most of the 654 missing persons are evenly distributed across the municipalities of Glamoč, Kupres, Bosansko Grahovo, Drvar and Livno. By 31 July 2014, 511 individuals had been accounted for. The table 12 displays the identification status of reported missing persons by municipality.

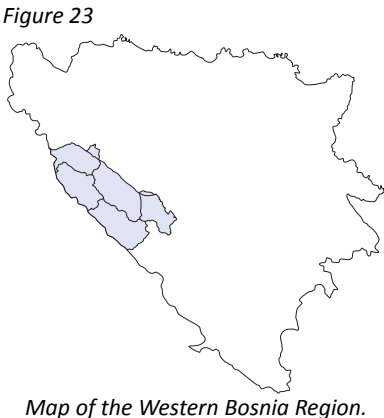


Table 12

Municipality of disappearance	Total number of missing persons	Number of missing persons identified by DNA	Number of missing persons identified by traditional means	Number of missing persons accounted for	Missing persons accounted for in %
Drvar	127	30	66	96	75.59
Bosansko Grahovo	128	25	81	106	82.81
Livno	50	14	24	38	76.00
Glamoč	171	13	134	147	85.96
Kupres	166	7	106	113	68.07
Unknown	12	2	9	11	91.67
Total	654	91	420	511	78.90

Identification status of reported missing persons by municipality.

5.7.9.2. Early Recoveries and Traditional Identifications

While initial efforts to locate remains of the missing began with several small forested sites near Glamoč in 1996, most operations in the region began in 1998. Livno Cave was one of the more challenging recovery sites in this early period. This 25-meter deep cave was excavated in 1999 in an operation that required the removal of a large amount of rubbish and unexploded ordnance. The commingled remains of at least 10 individuals were recovered.

A very large number of missing persons in the region, 420 or 64% of the reported missing, have been accounted for by traditional methods.

5.7.9.3. Later Recoveries and DNA Identifications

In 2008, another large cave site containing the skeletonized remains of at least 61 individuals was excavated near Livno. However, following mortuary analysis in Banja Luka the remains were dated to the Second World War.

A total of 744 family reference DNA samples were obtained representing 215 missing persons for this region and 274 post mortem samples were DNA analyzed. The total number of DNA identified individuals is 91.

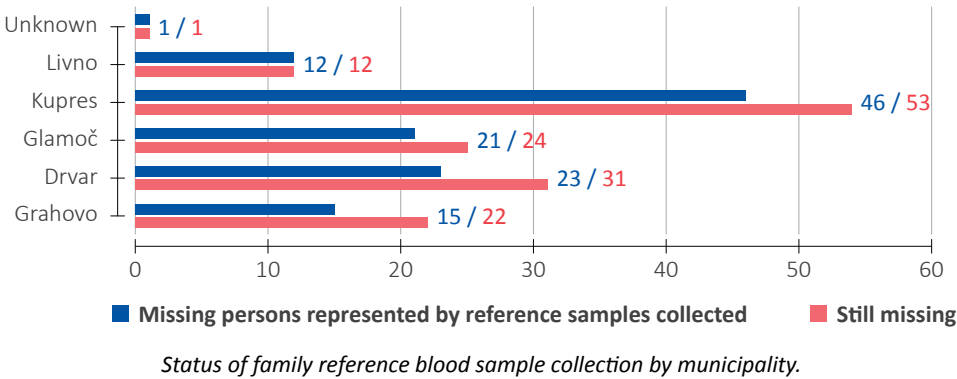
5.7.9.4. Open Cases of Missing Persons

For the Western Bosnia Region, 511 out of 654 reported missing have been accounted for. Based on available family reference DNA samples, 118 of the remaining 143 missing persons could be identified once their remains are

located.

The Figure below displays the status of family reference blood sample collection by municipality.

Figure 24



5.7.10. Summary of Regional Identification Status

Table 13 presents a summary of missing persons and their identification status by region, based on the CEN and on information compiled by ICMP and MPI on estimated numbers of human remains identified using traditional methods. Among regions, there are considerable variations in the proportion of identifications based on DNA versus early identification efforts using traditional methods.

The Table also indicates the regional status of DNA sample submissions, of DNA testing outcomes, DNA identifications and the family matching rate of DNA profiles. The family DNA matching rate refers to the frequency of DNA profiles from human remains⁹⁰ matching family reference DNA profiles. Overall, some 48,000 samples from human remains have been submitted to ICMP for DNA testing, which has resulted in obtaining DNA profiles from 17,222 individuals. Of those, 14,571 have been identified by DNA.

The DNA matching rate for mortal remains varies greatly by region and event. By far the highest matching rate is found with cases related to the fall of the UN Safe Areas in 1995, where DNA has been virtually the sole means of identification and where the representation of missing persons by family reference samples is very high. The lowest DNA matching rate, less than 49%,

⁹⁰ Such profiles are also referred to as “unique” DNA profiles, meaning that they are attributable to a single person, regardless of how many different body parts from that same person have been tested.

is found with cases from Western Bosnia, also the Central Bosnia, Sarajevo, Northeast Bosnia regions and samples without locality documentation (“Unknown”) have matching rates of approximately 50%.

Table 13

Region/Event	Submitted samples	DNA profiles obtained	DNA extraction rate %	Unique profiles obtained	Individuals by DNA matches	Reassociations	Non matched unique bone profiles	Matching rate %
Krajina	6,982	5,256	75.28	2,939	2,569	2,195	370	87.41
Posavina	1,538	1,085	70.54	805	532	218	273	66.09
Central Bosnia	1,910	1,201	62.88	846	429	143	417	50.71
Sarajevo	1,503	1,169	77.77	861	488	212	373	56.68
Northeast Bosnia	570	397	69.65	276	160	71	116	57.97
Lower Podrinje	5,612	3,377	60.17	2,092	1,857	1,168	235	88.77
Upper Podrinje	3,599	2,576	71.57	1,273	998	1,202	275	78.40
Herzegovina	1,241	952	76.71	514	330	321	184	64.20
Western Bosnia	274	235	85.76	163	79	16	84	48.47
Ozren 1995	148	126	85.13	106	96	20	10	90.57
Srebrenica 1995	24,150	17,177	71.12	6,917	6,798	10,130	119	98.28
Unknown	688	546	79.36	430	235	69	195	54.65
Total	48,215	34,097	70.71	17,222	14,571*	15,765	2,651	84.61

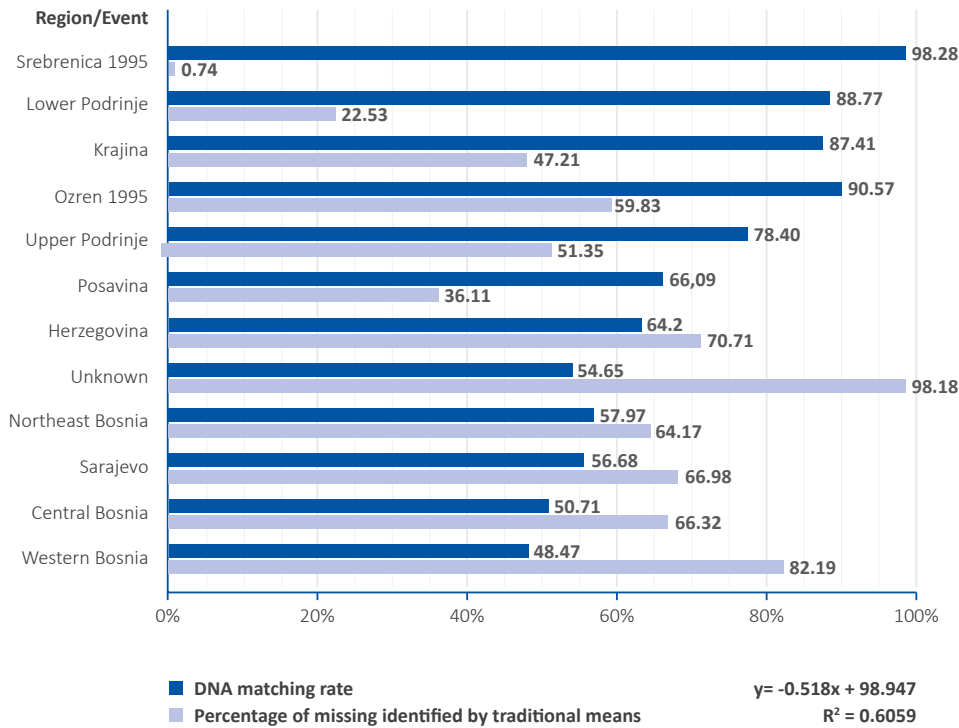
*Regional breakdown of PM samples submitted for DNA testing, the rates of obtaining DNA profiles, as well as finding DNA matches to family reference profiles, “DNA identifications”. “Unique profiles obtained” refers to the number of different individuals represented by their distinct DNA profiles. “Reassociations” refers to the number of times body parts were matched to a unique individual by DNA, after the first unique DNA profile was obtained from the first sample of that individual. *This number includes 11 individuals reported missing in Serbia and 63 reported missing in Croatia.*

Traditional methods of identification can lead to errors that negatively affect DNA matching, as families who have received incorrectly identified mortal remains will likely not have provided the DNA reference samples that would permit later DNA matching with the correct remains. With this in mind, it is worth noting that Western Bosnia has a high proportion of previous traditional identifications (82%), and the lowest DNA matching rate. Conversely, cases related to the fall of the Srebrenica and Žepa UN Safe Areas in July 1995 have a very high DNA matching rate for profiles obtained from PM samples, while virtually no identifications were made by traditional methods.

Figure 25 explores the correlation between the extent of traditional identification work and the DNA matching rate of samples submitted for

DNA testing, based on data from the Table 13. Per region, there is an inverse correlation between the DNA matching rate and the number of identifications by traditional methods. This suggests that misidentifications resulting from the more error-prone traditional methods have a role in the inability to find DNA matches.

Figure 25



Plot of data taken from Table 13, showing the relationship between the DNA matching rate and the percentage of identifications that were made by traditional methods, plotted by region. The overall trend is that the higher the proportion of previous traditional identifications, the lower the DNA matching rate for profiles obtained from the region.

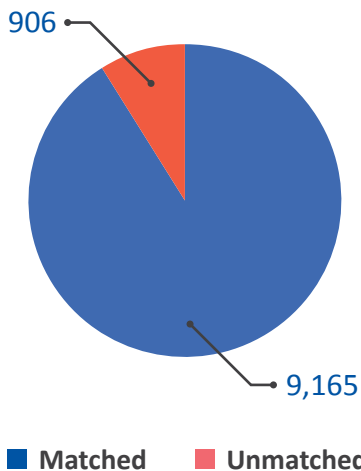
However, there are many variables that can affect DNA matching, and the correlation suggested below is neither large nor uniform and is moreover particularly influenced by data from Srebrenica, where virtually no traditional identifications were made. The general condition of the human remains from Srebrenica almost completely precluded attempts at traditional identifications and thereby eliminated the effect that mis-identifications would have in lowering the DNA match rate. However, the high DNA match rate is also related to a high availability of DNA reference samples, because the killings targeted almost exclusively men that were separated from their families. Both effects likely play a role in the uniquely high match rate for Srebrenica, but the relative

magnitude of each is uncertain.

Another factor that is significant in accounting for unmatched DNA profiles from exhumed remains is the possibility that remains are not from individuals reported as missing. As a result of both conflict and displaced populations in BIH, many human remains may be encountered that belong not to individuals whose fate is unknown. Possibly individuals were buried as known, but records of the burial were not kept. Additionally, human remains from past conflicts have been unearthed in a number of instances and some unmatched remains may relate to the two World Wars.⁹¹ In many regions, exhumations have taken place in cemeteries where unidentified bodies are known or suspected to have been buried. A significant problem regarding these exhumations in cemeteries, however, is that burial records are often inadequate and exhumations can unwittingly uncover remains that were buried as known individuals. Many cemeteries have been in use for many decades or even centuries and exhumations in cemeteries have a high chance of encountering remains that are not conflict related.

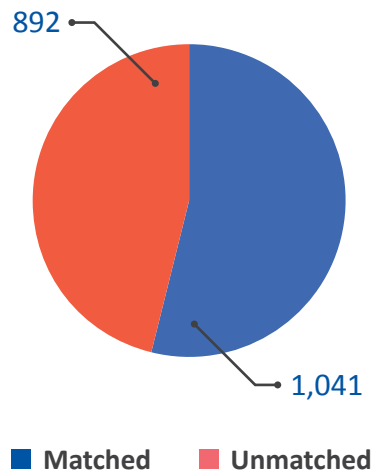
The figures below show the DNA matching rate from mass graves of conflict-related missing persons, and the matching rate of remains located in cemeteries, where there is a high chance of confusion with remains that are not of persons missing from the conflict.

Figure 26a



DNA match rate of DNA profiles from human remains recovered from **mass graves**, 91.0%

Figure 26b



DNA match rate of DNA profiles from human remains exhumed in **cemeteries**, 53.85%

91 For example, artifacts and personal effects from some remains recovered from Lake Perućac indicated clearly that they came from the Second World War.

While the aforementioned problems are significant, it is important to note that for all regions, the main cause of persons reported missing not being identified to date is that their remains have not been recovered. While many of the large mass graves associated with the fall of the UN Safe Areas in 1995 were located using aerial imagery taken in 1995, most information relating to other locations has been provided by witnesses. Today, fewer witnesses are forthcoming and their accounts are often imprecise. It is hence necessary to combine sources of information to pinpoint locations of illicit graves. Alternative means of discovering graves are being applied, including predictive geospatial analysis and analysis of existing satellite and aerial imagery.

VI. The Political Discussion of Missing Persons Numbers

Following the cessation of hostilities in the former Yugoslavia, painstaking efforts have been made to build law-based institutions and to employ modern scientific methods to account for the missing in a non-discriminatory fashion. Despite these efforts, the issue continues to be misused for political ends. Newspapers in the region often contain inflammatory stories stating that the process of accounting for the missing is biased against one group or the other, and politicians often resort to manipulating numbers of missing persons for political gain.

The data collected on missing persons from the conflict by both local and international institutions is possibly the most extensive ever collected in relation to missing persons. The CEN, comprises data from 12 different sources, including material provided by the Entity governments. It documents the names of missing persons, if they have been located and identified and if so, by what method (DNA or non-DNA). This data has made it possible to determine the rate of identification by region in BiH and by location (for example, cemeteries or mass grave sites). The data has also been useful in determining if the missing persons issue is being addressed in a non-discriminatory fashion.

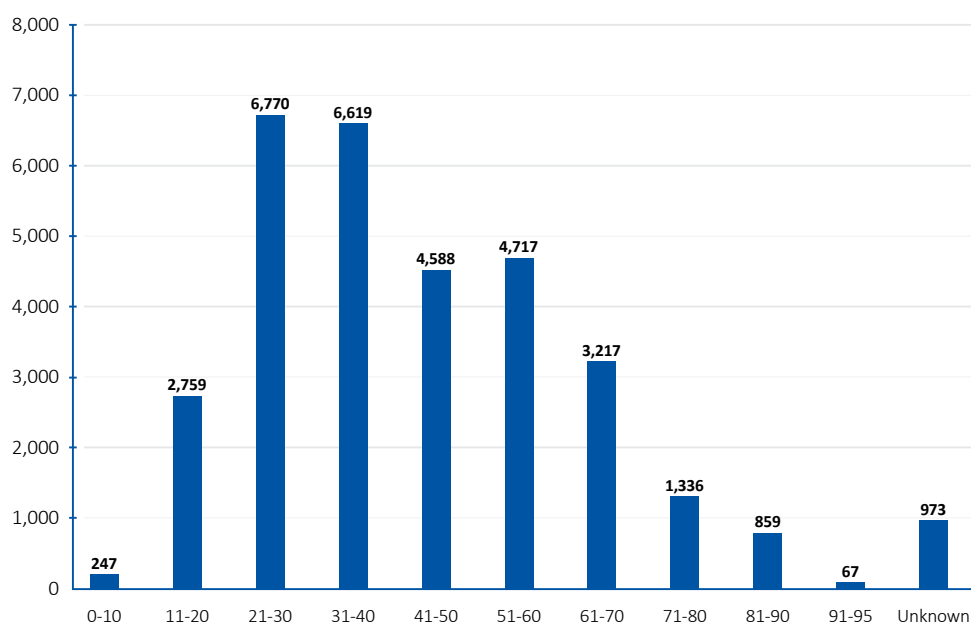
ICMP works without regard to the ethnic affiliation of missing persons and does not maintain missing persons statistics by ethnic or other group characteristics. However, the CEN records indicate that there is no significant difference in the identification rate of individuals reported missing by either the FBiH or the RS. For missing persons reported by the RS 72.18% have been identified, and regarding missing persons reported by the FBiH 74.83% have been identified.

There are, however, notable differences with regard to the proportion of cases that were identified by DNA as opposed to traditional or non-DNA methods. For individuals reported as missing by the RS the proportion of cases in which traditional methods of identification were used is approximately twice that of the FBiH. Traditional methods were applied to 49.92% of cases in the RS, as opposed to 21.67% in the FBiH. The reason for the more prevalent use of non-DNA methods in the RS is that many exhumations and identifications were performed at an earlier stage when the DNA-led system had not yet been introduced.

VII. Demographic Distribution of Missing Persons

The vast majority of missing persons are men (86.98%), most of them aged between 21 and 60 (70.58%), which highlights the disproportionate burden shouldered by women in post-war BIH as single heads of households and often sole breadwinners.

Figure 27



Age groups of missing persons (32,152 persons).

VIII. Srebrenica

In July 1995, the UN Safe Areas of Srebrenica and Žepa fell to Bosnian Serb armed forces. A column of thousands of men left Srebrenica on 11 July 1995 and made their way toward Tuzla. In the following days they were repeatedly ambushed, separated into groups and captured. Hundreds were killed and left in the forested area of Western Bratunac Municipality, many more died along the route to the territory of the FBiH and thousands were captured and executed. Men and older boys who stayed behind in Srebrenica were detained by Serb forces at the UNPROFOR “Dutchbat” base in Potočari and many were subsequently executed.

ICMP calculates that just over 8,000 men and boys went missing following the fall of the UN Safe Areas. Of this number 7,043 have been recovered from mass graves and other locations scattered throughout eastern Bosnia. In attempts to conceal evidence, perpetrators and others returned between September and November 1995 and exhumed large primary graves, removing thousands of bodies and body parts and re-burying them in dozens of secondary graves.

Forensic investigations of these events began in 1996 and the ICTY began conducting forensic excavations and autopsies to determine the cause and manner of death of the thousands of victims in 1996. The initial investigations focused on locating clandestine graves. Many of Srebrenica’s mass graves were located through the use of aerial imagery taken in 1995.⁹²

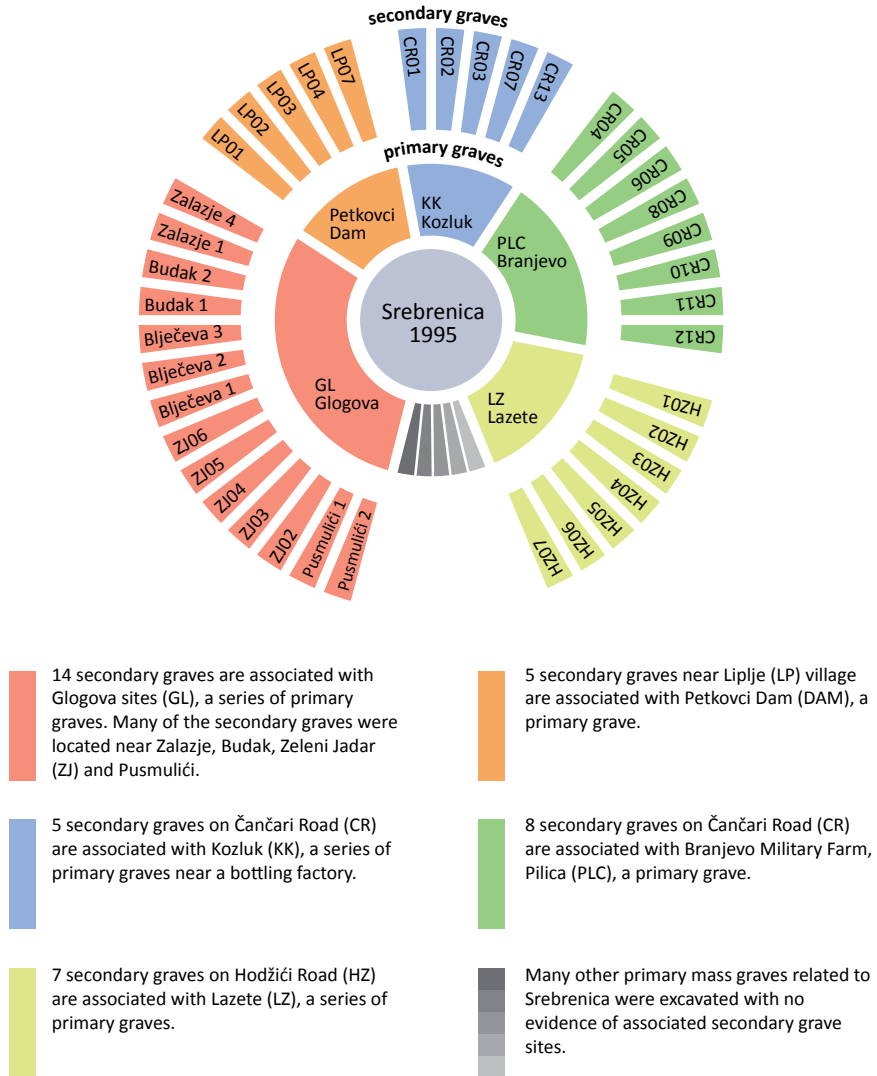
After locating sites using imagery, witness information and analysis, some 30 suspected secondary graves were probed by the ICTY forensic team in 1998.⁹³ In due course, this expanded to more than 40 grave sites consisting of primary and secondary graves, many of which were later excavated by the Federation Commission on Missing Persons, MPI and with assistance from ICMP. Between 1996 and 2001, the forensic field teams of the ICTY were able to excavate five main grave sites, which included 23 separate primary graves. They also excavated numerous smaller primary graves, as well as nine secondary grave

92 Netherlands Institute for War Documentation (Nederlands Instituut voor Oorlogsdocumentatie; NIOD): *Srebrenica A ‘Safe’ Area - Reconstruction, Background, Consequences and Analyses of the Fall of a Safe Area*, NIOD, April 10, 2002, 277-312. <<http://www.niod.knaw.nl/en/srebrenica-report>>. NIOD is now known as the Netherlands Institute for War, Genocide, and Holocaust Studies.

93 Richard Wright, “Exhumations in Eastern Bosnia 1998,” unpublished ICTY evidential report, 1999. ERN: 0084-8214-0084-8395.

sites, and recovered human remains from execution and other surface sites.

Figure 28



Graphic representation of the demonstrated linkage between five main primary mass graves known from aerial imagery to have been created after 11 July 1995, and the series of associated secondary graves from which thousands of cases of human remains were recovered.

Initially, forensic experts were able to track the movement of bodies by identifying evidence from the scenes of detention and execution to the primary and then the secondary grave sites.⁹⁴ Connections between primary

94 Dean Manning, 2007, "Srebrenica Investigation. Summary of Forensic Evidence – Exhumation of Mass Graves Srebrenica," unpublished ICTY evidential report, 2007. ERN: 0614-8656-0614-8822.

and secondary sites were demonstrated by comparing and matching items of common origin which came to be deposited in multiple locations, including cartridge casings fired by the same weapon; textile materials in restraints and blindfolds; pollen and soils, geological rock, archaeological artifacts and severed plastic water pipes which had been cut and moved between burial sites. Later, DNA matching of body parts conclusively established the linkage patterns between the graves. Figure 28 shows the linkage between the main, large primary mass graves (Glogova, Petkovci Dam, Kozluk, Branjevo Military Farm and Lazete) and the associated secondary graves from where bodies and body parts originally buried *en masse* in the primary graves were later recovered by forensic teams. The geographic distribution of the primary and secondary graves is illustrated in Figure 29.

A primary element in this process has consisted of families reporting missing persons to ICMP; 7,739 persons have to date been reported missing as a result of the fall of the UN Safe Areas. ICMP has obtained 17,177 DNA profiles from 24,150 skeletal samples taken from their remains. These DNA profiles represent 6,917 different persons, with many having been sampled multiple times due to the fragmentation of remains. 6,873 individuals have been DNA-matched to families who had reported them missing.⁹⁵ On the basis of DNA matching rates, the number of persons killed as a result of the fall of Srebrenica is estimated as just over 8,000.⁹⁶

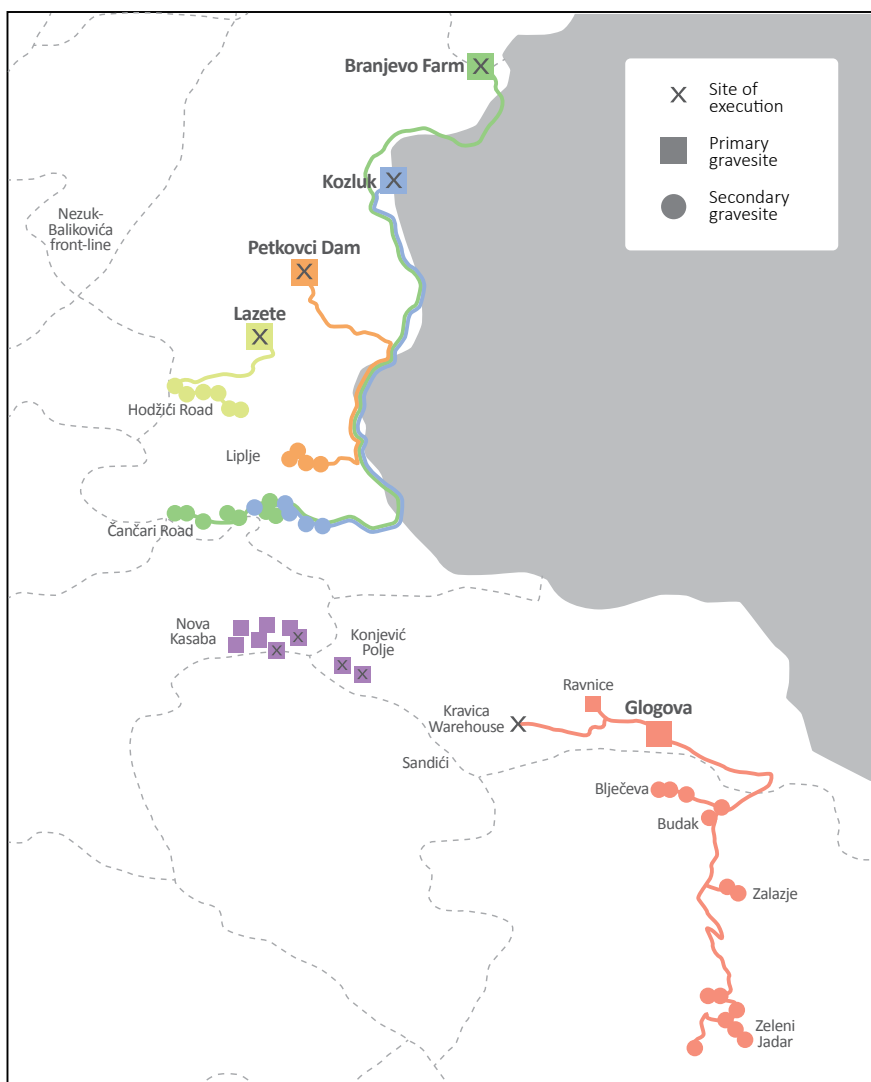
The construction of secondary graves by perpetrators and others, and the ensuing fragmentation of human remains, has caused additional trauma to families and made the identification process considerably more complex. If DNA testing were conducted only on single skeletal elements, for example femurs or skulls, many individuals could be identified, but releasing only very partial sets of mortal remains to families would often exacerbate their pain and fail to serve justice. At the Podrinje Identification Project (PIP), in approximately 300 cases in which DNA identifications have been issued, families have refused to accept the remains of their loved ones, as being insufficiently complete. Therefore, a systematic integration of anthropological examination and sampling for DNA was established to reassemble, as much as possible, disarticulated human remains. Reassociation of fragmented skeletal elements was a major effort of the Lukavac Reassociation Center (LKRC), which submitted samples for “mini-amplicon” DNA testing, using a DNA-testing system specifically designed for the direct reassociation of body parts.⁹⁷

95 This figure includes 22 individuals missing from Srebrenica but located in Serbia and 53 individuals identified through DNA analysis provided by third parties.

96 Testimony of Dr. Thomas J. Parsons, *The Prosecutor v. Vujadin Popović et al.*, ICTY, 1 February 2008.

97 Laura Yazedjian and Rifat Kešetović, “The Application of Traditional Anthropological Methods

Figure 29



Geographic location of Srebrenica-related large primary and secondary mass graves. In most cases each primary grave was situated at the place of execution, with the exception of Glogova, where the primary execution site was the Kravica Warehouse.

in a DNA-Led Identification Process,” in Bradley J. Adams and John E. Byrd eds., *Recovery, Analysis and Identification of Commingled Human Remains* (Totowna, NJ: Humana Press, 2008) 271-284; and, Thomas J. Parsons, René Huel, Jonathan Davoren, Cheryl Katzmarzyk, Ana Miloš, Arijana Selmanović, and Lejla Smajlović “Application of novel ‘mini-amplicon’ STR multiplexes to high volume casework on degraded skeletal remains”, *Forensic Science International: Genetics* 1 (2007):175-179.

One particular mass grave assemblage consisted of two disturbed primary grave sites and 14 related secondary graves distributed over 30 square kilometers. The disturbance of the graves resulted in some 400 bodies being divided among two or more graves. One individual was identified from body parts found in five separate graves. This type of DNA matching among scattered body parts has made DNA a primary method to confirm links between grave sites.⁹⁸

98 Dušan Janc, (2010), "Srebrenica Investigation. Update to the Summary of Forensic Evidence – Exhumation of the Graves and Surface Remains Recoveries Related to Srebrenica and Zepa", unpublished ICTY evidential report, 2010. ERN: X019-5972-X019-6050.

IX. Bosnia and Herzegovina: Mortuary Facilities and Status of Unidentified Human Remains

During the war, PM examinations and identifications were primarily conducted at various locations including 11 local mortuaries and commemorative centers (funeral homes), temporary field locations, such as abandoned warehouses and hospitals, by a total of only six or seven local pathologists. All identifications at this time were based on non-DNA evidence. There are now 11 mortuaries holding unidentified human remains located in Banja Luka, Nevesinje, Travnik, Istočno Sarajevo, Modriča, Visoko, Odžak, Tuzla, Mostar, Goražde and Sanski Most municipalities.

To store these mortal remains, temporary mortuary facilities were established and abandoned buildings and other types of facilities were used. A large number of PM examinations were performed by ICTY pathologists and anthropologists who focused on victim demography, including age, sex, and cause and circumstances of death.⁹⁹ Additionally, the UNFET provided expert assistance in Tuzla by examining and documenting 350-400 sets of human remains.¹⁰⁰

The ICTY used a facility known as the Visoko Reassociation Center (VRC) to store and examine recovered remains, including a large proportion of cases relating to Srebrenica. The VRC was housed in a privately-owned funeral home and cemetery complex in the city of Visoko. In 2006, cases related to the fall of the UN Safe Areas were transferred to a new facility on the outskirts of Tuzla in the town of Lukavac (LKRC) that was operated under the auspices of the PIP.

9.1. Mortuary Facilities Receiving Special Assistance from ICMP

Approximately a dozen pathologists from BIH have participated in forensic examinations and identifications during the war and throughout the post-conflict process. These court-appointed pathologists have the authority to issue official death certificates and to determine cause and manner of death, consistent with the normal role of pathologists/medical examiners in death investigations. However, forensic pathologists do not typically have training or expertise relative to the condition of human remains usually encountered in the

99 Ewa Tabeau and Jan Bijak, "War-related Deaths in the 1992-1995 Armed Conflicts in Bosnia and Herzegovina: A Critique of Previous Estimates and Recent Results," *European Journal of Population*. 21 (2005):187-215.

100 J Rainio, K Lalu, A Penttilä (2001), "Independent forensic autopsies in an armed conflict: investigation of victims from Racak, Kosovo," *Forensic SciInt* 116:171-185.

region that require larger reliance on forensic anthropology, osteology and the effect of trauma on skeletal remains. In particular a lack of anthropologists in BiH has led to extensive assistance from ICMP. The most sizable projects have aided the identification effort in areas with the largest numbers of missing persons, i.e. the PIP in Tuzla, focusing on the fall of the UN Safe Areas in 1995 and the Krajina Identification Project (KIP) in Sanski Most, focusing on the missing from Krajina, mostly from 1992.

Forensic anthropology has played an important role in establishing biological profiles of the missing including sex, age-at-death and stature estimation; establishing the minimum number of individuals present; recording ante-, peri- and post-mortem osteological characteristics or injuries; as well as other individual markers of individuation.¹⁰¹ The resulting indicators are compared to available AM information to complement DNA-based identifications, but also to help surviving family and friends to accept a positive identification of the remains of their loved ones.

9.1.1. Podrinje Identification Project and Lukavac Reassociation Center

After the ICTY had carried out exhumations of Srebrenica grave sites, bodies were eventually moved to the tunnels of salt mines north of Tuzla. The Podrinje Identification Project (PIP) has used a facility that was built by ICMP in 2000 on land donated by the city of Tuzla next to a funeral home, specifically to move human remains from the tunnels to a refrigerated facility where they would undergo a process of examination and identification.¹⁰² Associations of Families of the Missing from Srebrenica had also lobbied for the establishment of PIP and by means of a letter read on the floor of the House of Peoples of the BiH Parliamentary Assembly calling on the authorities to overcome obstacles presented by local authorities and to construct the building in Tuzla.¹⁰³

When PIP opened, 4,600 body bags stored in the tunnels north of Tuzla and in containers outside Sarajevo were transferred to the facility.¹⁰⁴ The PIP continues to examine and close missing persons cases relevant to Srebrenica and Žepa. Over 16,000 body parts have been recovered from graves and examined at PIP. By July 2014, 6,873 individuals had been identified through DNA analysis, in addition to 51 by traditional means. Pictures of the rows of white bags marked

101 Laura Yazedjian, Rifat Kešetović, "The application of traditional anthropological methods in a DNA-Led Identification Process," in Bradley J. Adams and John E. Byrd eds., *Recovery, Analysis and Identification of Commingled Human Remains* (271-283).

102 Ibid.

103 Letter addressed to Mevlida Kunosić-Vlajić, Member of Parliament, dated 1 March 2000.

104 "Podrinje Identification Project Forensic Facility is Completed in Tuzla," Activity Update for March 2000, ICMP internal document.

with case numbers, notably the images of Sarajevo-based photographer Tarik Samarah, have become emblematic of the task of identifying Srebrenica's missing.¹⁰⁵

The number of Srebrenica-related graves eventually created a need for more storage space. Also the reassociation of skeletons from secondary graves required additional room to examine disarticulated skeletal remains. To meet these requirements the LKRC was opened in January 2006 to deal specifically with remains from Srebrenica-linked graves related to the Petkovci Dam and Kravica warehouse execution sites.

The reassociation strategy pursued in Lukavac represented a scientific process never before attempted on such a large scale. The LKRC conducted DNA-led reassociation of more than 10,000 disassociated bones where there were no reliable anatomical links. While not all isolated skeletal elements or sets of bones could be tested for DNA, LKRC used a DNA sampling strategy that would enable the reassociation and return of almost complete sets of remains to families of the missing. Most of the DNA reassociations at LKRC were made through the application of a novel set of STR markers that had been specifically developed for the purpose¹⁰⁶ and which were substantially less expensive than standard tests. The LKRC was not an identification facility, as identifications were still carried out by court appointed pathologists at the PIP. Having achieved its primary goals, LKRC was closed in January 2010.

9.1.2. Krajina Identification Project

In 2001, with the assistance of ICMP, the BIH State authorities and the local authorities in Sanski Most established the KIP in Šejkovača. This mortuary is tasked with examining human remains uncovered primarily in the Krajina Region of north-western Bosnia. ICMP provided anthropological support to KIP to assist in mortuary management, forensic examinations and DNA sampling throughout this period. ICMP assisted the authorities in establishing forensic facilities also in Lukavica, Mostar and Banja Luka.

The KIP received cases recovered during the early years of identification efforts, which did not conform consistently to uniform standards of excavation and examination. Additionally, unlike PIP, KIP has a legacy of many identifications

¹⁰⁵ Tarik Samarah's work can be found at <<http://tariksamarah.com/>> and <<http://galerija110795.ba/>>.

¹⁰⁶ Thomas J. Parsons, René Huel, Jonathan Davoren, Cheryl Katzmarzyk, Ana Miloš, Arijana Selmanović, and Lejla Smajlović, "Application of novel 'mini-amplicon' STR multiplexes to high volume casework on degraded skeletal remains," *Forensic Science International: Genetics* 1 (2007): 175-179.

by traditional means prior to the use of DNA methods. In 2008, the standard scientific processes of anthropological examination and DNA sampling developed at PIP and the LKRC were systematically introduced to re-examine cases stored at KIP since 2001. As a result, 44% of those cases were closed, while the majority of the remaining cases either did not yield a DNA match to family references or related to earlier armed conflicts. The re-examination process developed at KIP has since been adopted as a standard process for all 11 mortuary facilities in BiH, with similar results.

9.2. Other Mortuaries in Bosnia and Herzegovina

Case management, anthropological examination, pathology examination, DNA sampling and inventory have been less systematic at the ten other mortuaries in BiH where human remains are currently being held. Over the years, each facility has submitted samples for DNA analysis that have resulted in DNA-based identifications. However, current inventory, examination and DNA sampling efforts, a process that began in June 2013 following an agreement with the State Prosecutor, must be completed at each facility. Table 14 lists the estimated number of cases currently held in these facilities, based on MPI's assessment of unidentified cases held in mortuaries and ICMP's inventory of cases at PIP and KIP. The values from PIP and KIP are well known, other facilities are currently in the process of examining their inventories.¹⁰⁷

Mortal remains are usually stored in numbered body bags, the number representing one case. However, commingling of remains due to the nature of the exhumation site or, in some instances, substandard exhumation methods, result in body bags containing remains of sometimes multiple persons. As a consequence, the case status can change over time through the iterative process of examination, DNA sampling, and reassociating remains based on DNA matching and anthropological assessments. At the PIP and KIP facilities these processes have been conducted in a consistent manner, but quite variably at other mortuary facilities. Estimates of the number of cases stored at the other facilities should therefore be considered overall as minimum estimates. On the basis of MPI records of facility inventories, ICMP estimates that there are at least 3,081 unresolved cases, i.e. mortal remains of different persons, stored in mortuaries other than KIP and PIP.

¹⁰⁷ The term "case" is used by prosecutors to describe one body bag, which is one reason why the values can only be considered an estimate.

9.3. DNA Profiles from Mortal Remains in Mortuaries

ICMP often receives multiple samples of the remains of the same missing person, a situation that is particularly common in commingled cases from secondary mass graves where DNA is used to reassociate different body parts. In such cases, DNA results indicate that the samples come from the same person, as there is an exact match between DNA profiles. ICMP refers to this pairing or identification, as a “unique” profile, i.e. unique to a single person, regardless of the number of samples that the profile represents.

Currently, in BIH there are 2,664 such unique DNA profiles that cannot be matched to family reference DNA profiles. This represents a minimum number of the remains of unidentified individuals in the different BIH mortuaries. However, examination and sampling for DNA have not been completed in facilities other than PIP and KIP. It is therefore certain that additional unique DNA profiles will be produced as this effort continues. Table 14 below indicates the number of samples for which unmatched DNA profiles have been obtained (“unmatched bone profiles from different samples”) and the number of individuals represented by these unmatched profiles (“unmatched ‘unique’ profiles from mortal remains”), listed by mortuary.

Table 14

Mortuary	Unmatched bone profiles from different samples	Unmatched “unique” profiles from mortal remains
Banja Luka	488	416
Goražde	120	93
Istočno Sarajevo	214	189
Modriča	13	12
Nevesinje	71	51
Orašje	121	111
Sanski Most	383	256
Sutina	290	159
Travnik	147	110
Tuzla 1992*	508	352
Tuzla 1995*	251	119
Visoko	1,157	796
Total	3,763	2,664

Status of unmatched DNA profiles from mortal remains held in BIH mortuaries.

**The mortuary in the Commemoration Center in Tuzla contains remains of the missing from hostilities in 1992 but also from fall of the UN Safe Areas in 1995.*

9.4. Process of Examination of Unidentified Human Remains and Inventory of Mortuaries and Ossuaries in Bosnia and Herzegovina

The presence of a large number of unidentified human remains in mortuaries is a central unresolved problem in BiH and is not limited to any particular mortuary. In recognition of the scale and importance of the issue, in May 2013 the POBiH initiated a process of examination of unidentified human remains and inventory of mortuaries and ossuaries in BiH, often referred to as the “NN Working Group” (NNWG). Participants in this process include State, Cantonal or District Prosecutor’s Offices, as well as the Brčko District Prosecutor’s Office, MPI, expert witnesses for legal medicine, the Ministries of Interior, the Republic Center for Researching War, War Crimes and Searching for Missing Persons and ICMP. The primary goal of the process is to investigate the scale of the problem and its underlying causes, and to determine next steps to resolve as many cases as possible. Resolving cases is particularly challenging given the fact that most remains in mortuaries are listed as having been tested for DNA, and in many cases, while a DNA profile is listed in ICMP’s DNA database, no match has been found to family reference samples to date .

NNWG participants agree on the fundamental reasons why human remains for which DNA profiles have been established cannot be identified:

- The remains are those of persons reported missing as a consequence of the war, but there are insufficient family reference samples to enable DNA matches, because:
 - Families who could provide DNA reference samples cannot be located or contacted;
 - Families do not wish to contribute DNA reference samples;
 - No surviving family members exist to provide suitable reference samples;
 - Families have not contributed reference samples because remains have already been misidentified as their missing family member(s).
- The remains are not those of persons reported missing as a consequence of the war, because:
 - Although the cases are related to the war, families are not seeking to resolve the fate of the deceased family member;
 - The remains do not date from the conflicts of the 1990s.

An important outcome of the NNWG process was acknowledging the need to coordinate between local authorities, including forensic experts, courts, prosecutors, MPI and with families of the missing. Many fragmentary remains will not be identified in the foreseeable future, for example because they do not yield DNA profiles and because there are no resources available to apply DNA

testing to every isolated skeletal element. Such 'ossuary' material is stored in all facilities and should be permanently housed in purpose built ossuaries (with the potential for future retrieval) in agreement with families of the missing, MPI and POBIH.

Many cases currently held in the mortuaries are unrelated to the conflicts of the 1990s war. Suitable review processes, including further scientific testing, to deal with these remains in conjunction with relevant national authorities (including those outside the Balkans) should be established and administrative mechanisms devised to permit case closure. For example, in over 200 cases the prosecutor's offices have determined that the remains were those of soldiers who had died in the Second World War.

X. Prosecutions and Establishing the Truth

10.1. Forensic Evidence at the ICTY

In November 2006, ICMP and the ICTY Chief Prosecutor agreed on safeguards ICMP requires for the use of personal and confidential information relating to missing persons and their families. In particular, ICMP would not release genetic and other sensitive personal information without the consent of family members who had provided such information. Since 2006, ICMP has provided the parties in trials before the ICTY with regular summary updates on DNA and exhumation work, analytical reports relative to specific events, case reports on exhumations and individual DNA identifications, subject to the consent of family members concerned, as well as expert witness statements and testimony relative to these submissions. Concerning BIH, forensic evidence was made available in the cases of Slobodan Milošević, Momčilo Krajišnik, Jadranko Prlić et al., Vujadin Popović et al., Radovan Karadžić, Zdravko Tolimir, Momčilo Perišić, Mićo Stanišić and Stojan Župljanin, Milan Lukić and Sredoje Lukić, and Ratko Mladić.¹⁰⁸

In the case of *The Prosecutor v. Zdravko Tolimir*, the Trial Chamber stated that it was “satisfied that the reports generated by ICMP on the basis of the DNA analysis can be fully relied upon for the purposes of the present Judgment.”¹⁰⁹ However, in 2009, in the case of *The Prosecutor v. Radovan Karadžić*, the accused requested that he be provided with ICMP’s entire database of genetic and associated information concerning persons missing as a consequence of the fall of the UN Safe Areas.¹¹⁰ ICMP advised that the length of time that the accused would require to review this amount of data called into question whether the data would be put to a useful purpose. Rather, it was suggested to the accused that he select a random and representative sample.¹¹¹

108 Provision of forensic evidence has been considered of high importance for both the prosecution and the defense as it may reveal the connection between the accused and the crime. ICMP has provided extensive expert witness testimony on the DNA-based identification processes and related submissions in the cases of Popović, Tolimir, Karadžić and Mladić. The Tribunal used, to a significant extent, DNA-based data for the purposes of its findings and considered it reliable information. This is particularly evident in the trials relative to the fall of Srebrenica such as the cases of Tolimir and Popović.

109 ICTY Trial Chamber Judgment in the case of *The Prosecutor v. Zdravko Tolimir*, 12 December 2012, 19-20.

110 See also section 5.3. Protecting Genetic and Other Personal Data.

111 The sample consisted of every 44th case in order of case number out of a total of 6,530 individual DNA identifications that had been made at the time related to the fall of Srebrenica, beginning with a starting case to be chosen by the accused.

The accused accepted the proposal,¹¹² which involved seeking the express permission of more than 1,000 relatives of the missing and compiling more than 9,000 pages of genetic and associated data. Over 95% of the family members in the sample provided permission for their personal data to be used in criminal trials and, as a consequence, a total of 286 DNA case files were submitted. In the remaining 14 cases, the relatives could either no longer be contacted or declined to agree to their personal data being used as evidence in the trial. The accused nevertheless filed a motion for a binding order to disclose genetic and other personal data irrespective of data subject consent. The Trial Chamber denied that motion on 4 March 2013;¹¹³ a subsequent motion by the accused to exclude all DNA evidence was denied on 16 April 2013.¹¹⁴

The Chamber reiterated its earlier position that the accused had been provided with what the Chamber considered to be a large enough sample of cases for the purpose of testing ICMP's results. Additionally, disclosing the 14 outstanding cases would not materially assist the accused or provide substantial assistance to his case. Accordingly, the Chamber did not find a violation of the accused's right to a fair trial. More specifically, the Chamber stated that "in giving the accused the opportunity to retest a large number of ICMP DNA identifications [...] the Chamber has done its absolute utmost to ensure that the accused is able to exercise his right under Article 21(4)(e) of the Statute."¹¹⁵

In a separate decision (5 September 2012), the Trial Chamber also addressed the confidentiality of other ICMP submissions, including routinely submitted updates. The Chamber examined the classification of several exhibits, and reconfirmed the confidentiality of exhibits that contained the protected genetic information of the alleged victims and their family members. In this case it was also recognized that one of the main reasons for treating certain routinely submitted updates as confidential was a concern that if they were made public for the purposes of the trial, applicable domestic procedures, including those administered by mortuary facilities, MPI and domestic courts for closing cases and notifying families, would be undermined. In particular, updates to the list of DNA match reports that ICMP issues to the authorities could, if made public, interfere with the authorities' efforts to discharge their legal obligations and accountability to families of the missing.

ICMP also provided evidence at the request of the Prosecution in war-crimes

112 Letter from the accused to ICMP dated 18 May 2011.

113 Prosecutor v. Karadžić, Decision on the Accused's Motion for Binding Order to ICMP, 4 March 2013.

114 Prosecutor v. Karadžić, Decision on the Accused's Motion to Exclude DNA Evidence, 16 April 2013.

115 Decision on the accused's motion to exclude DNA evidence, 14 April 2013.

trials in BIH in the cases of *The Prosecutor v. Milorad Trbić, Momir Pelemiš and Milan Perić*, and *Željko Ivanović aka Arkan*. In addition, ICMP provided expert testimony before the State Court in the case of *The Prosecutor v. Zoran Babić et al.* ICMP has monitored and assisted over 3,000 exhumations and excavations through locating evidence, establishing archaeological records, and providing standardized recovery and examination protocols, as well as summary reports on archaeological and anthropological site work.¹¹⁶

10.2. Commissions of Enquiry

10.2.1. Palić Commission(s)

Efforts by survivors to use legal remedies to compel domestic authorities to investigate missing persons cases helped push the issue to the fore. The Human Rights Chamber of BIH, set up under Annex 6 of the Dayton Peace Agreement, was the primary venue for instituting such proceedings, until it was closed in 2003.¹¹⁷ The Human Rights Commission and the BIH Constitutional Court have since become responsible for the issue and, some cases have been brought before the ECtHR.¹¹⁸

The first missing persons legal action to draw significant attention was that of *Esma Palić*, the widow of *Avdo Palić*, a colonel in the Army of the Republic of BIH who disappeared in the UN Safe Area of *Žepa* in 1995.¹¹⁹ In 1999, after many attempts to obtain information about her husband, Ms. Palić petitioned the Human Rights Chamber to require the RS to provide information about her missing husband and to pay reparations. In 2000, the Chamber ruled that Palić had been subject to an enforced disappearance, in violation of Articles 2, 3 and 5 of the European Convention on Human Rights, with regard to Col. Palić, and Articles 3 and 8 of the Convention with respect to the applicant. The Chamber ordered the RS to conduct a full investigation from the date Col. Palić went missing, to release him or make his remains available, and to pay 65,000 BAM in non-pecuniary damages. The damages were promptly paid.¹²⁰

116 A selection of Summary Reports is available at <www.ic-mp.org>.

117 See also Timothy Cornell and Lance Salisbury, "The Importance of Civil Law in the Transition to Peace: Lessons from the Human Rights Chamber for BIH," *Cornell International Law Journal* 35 (2002): 389-426.

118 *Case of Palić v. BIH*, Application 4704/04, European Court of Human Rights, Judgment 15 February 2011. A number of applications have been lodged before the same court. The non-governmental organization TRIAL (Track Impunity Always) has brought many cases before the ECtHR on behalf of Bosnian citizens; see <<http://www.trial-ch.org/index.php?id=827&L=5>>.

119 For instance the film *Esma* dir. Alen Drljević, (Bosnia and Herzegovina: 2007).

120 European Court of Human Rights, *Case of Palić v. BIH*, Application 4704/04, Judgment, Strasbourg, 15 February 2011.

The RS investigation proceeded in fits and starts, prompting the formation of two *ad hoc* commissions to deal with the case. In November 2001, the RS government admitted that Col. Palić had been held in a military prison in Bijeljina, Vanekov mlin. It determined that Dragomir Pećanac, an officer of the Army of Republika Srpska (VRS) had removed him from the prison a month later. Employees of the prison were later questioned.¹²¹ In 2005, the Human Rights Commission, which had replaced the Chamber, determined that while the damages had been paid, the main decision had not been enforced. In January 2006, at the request of the OHR, the RS government established an *ad hoc* commission to further investigate the disappearance of Col. Palić. It produced a report several months later that found that Col. Palić was held in a private flat in Rogatica before he was sent to Vanekov mlin and later handed over to General Zdravko Tolimir in the town of Han Pijesak. Zdravko Tolimir was later arrested and transferred to the ICTY, which amended his indictment to include crimes surrounding Col. Palić's disappearance.¹²²

A second *ad hoc* commission was established in December 2006 to investigate the case further, leading to international arrest warrants for Dragomir Pećanac and Željko Mijatović, and establishing that Col. Palić had been buried in a mass grave in Rasadnik, near Rogatica.¹²³ In August 2009, Col. Palić's remains were identified and buried with military honors.

The long delay in identifying the remains of Col. Palić prompted an inquiry by ICMP concentrating on its own processes, because ICMP had been in possession of a PM sample for Col. Palić since 2001 and family reference samples since 2005. While thousands of bone samples from around the country were received for testing in 2001, ICMP found¹²⁴ that the bone sample with case number 9100507, taken from mortal remains exhumed at a site in Vragolovi, did not produce a profile that could be matched to any family reference on ICMP's databases. This information became available in 2009 during a routine quality management review of all unmatched DNA profiles that had been generated during the period 2001-2004. As a result of this review, certain samples were identified as potentially benefiting from re-extraction of DNA using improved extraction methods. Among these was sample 9100507 from the Vragolovi site.

121 Ibid.

122 The Prosecutor v. Zdravko Tolimir, Third Amended Indictment, IT-05-88/2PT, International Criminal Tribunal for the former Yugoslavia, 4 November 2009, <<http://www.icty.org/case/tolimir/4>>.

123 European Court of Human Rights, Case of Palić v. BiH, Application 4704/04, Judgment, Strasbourg, 15 February 2011.

124 Ingo Bastisch, Cecelia Crouse, Niels Morling and Mechthild Prinz, "Comprehensive Independent Review of Technical Processes Related to DNA Processes at the International Commission on Missing Persons."

The new DNA extraction resulting in corrected DNA profiles was completed in July 2009. Upon comparison with family reference profiles, a match was found identifying the sample as belonging to Col. Palić.

In the interim, Esma Palić had submitted her case to the ECtHR, naming the State of BiH as a respondent. In February 2011, The Court concluded by a majority that there had been no violation of Articles 2, 3 and 5 of the Convention.¹²⁵ The dissenting opinion of Judges Bratza and Vehabović argued that, regarding the authorities' responsibilities the "very substantial periods of delay would of themselves call into question whether the investigation satisfied the requirements of promptness in Article 2."¹²⁶ The view of Judges Bratza and Vehabović was that the authorities did not promptly discharge their procedural obligations under Article 2 to conduct a prompt and independent investigation into the circumstances of the disappearance of Avdo Palić. In their dissenting opinion, Judges Bratza and Vehabović were unable to ignore the authorities' "serious delays which had occurred in the investigation in the years prior to 2006, which may well have prejudiced the possibility of bringing those responsible to justice." The circumstances of Col. Palić's disappearance have not been clarified to this day.

10.2.2. Srebrenica Commission

More than 1,800 family members of Srebrenica's missing persons filed motions with the Human Rights Chamber of BiH between November 2001 and March 2002 demanding information about "the fate and whereabouts of their missing loved ones."¹²⁷ In March 2003, in a case that considered only the first 49 applicants, the Chamber ruled in favor of the applicants, ordering the RS government to pay 4 million BAM in total in reparations for the collective benefit of all the applicants and the families of the victims of the Srebrenica events and immediately reveal the location of the graves containing Srebrenica victims.¹²⁸ The awarded funds were earmarked for the Srebrenica-Potočari Memorial Foundation.¹²⁹

The March 2003 decision found that the RS authorities had been woefully

125 Article 2, Right to Life, Article 3, Prohibition of Torture and Article 5, Right to Liberty and Security.

126 Case of Palić v. BiH. 22.

127 The Srebrenica Cases, Selimović (CH01-8365) and 48 Others, Decision on Admissibility and Merits, Human Rights Chamber for BiH, 7 March 2003, <www.hrc.ba>.

128 Amnesty International, "Bosnia-Herzegovina: Human Rights Chamber decision on Srebrenica – a first step to justice", press release, EUR 63/007/2003, March 7, 2003.

129 The Srebrenica Cases, Selimović (CH01-8365) and 48 Others, Decision on Admissibility and Merits, Human Rights Chamber for BiH, 7 March 2003, <www.hrc.ba>.

negligent in their responsibility to search for Srebrenica's missing and that they had failed to disclose places of detention, conduct investigations of previously unknown grave sites, prosecute individuals allegedly involved in the massacres, and assist organizations (such as the ICTY and ICMP) working on the issue.¹³⁰

The 2003 decision also included an instruction to the RS government to prepare a report about the events that took place in Srebrenica in July 1995. In September 2003, the Documentation Center of the RS Bureau for Relations with the ICTY published a report in which it argued that "the number of Bosnian Muslim soldiers who were executed by Bosnian Serb forces for personal revenge or for simple ignorance of international law [...] would probably stand at less than 100."¹³¹ A second report, submitted in 2003, reportedly reiterated that assessment¹³² and led to the formation of the Commission for the Investigation of the Events in and around Srebrenica between 10 and 19 July 1995, established by the RS government at the insistence of the Office of the High Representative, and which became known as the "Srebrenica Commission." The new Commission, involving RS government members, representatives of survivor groups and international observers completed its report in June 2004. This report included an admission that large-scale massacres took place in July 1995, the location of more than 30 mass graves, and other information that aided locating the missing.¹³³

In June 2004, RS President Dragan Čavić acknowledged that large-scale violations of human rights had taken place: "After all of this, first as a man and a Serb, then as a father, brother and son, and only then as the president of RS, I have to say that these nine days of July of the Srebrenica tragedy represent a black page in the history of the Serb people."¹³⁴

Čavić's statement was regarded as significant since politicians representing the RS had never before acknowledged the scale or the scope of the crimes committed. The admission was followed by an apology that accompanied the submission of the Commission's Final Report several months later. The Final Report included a list of over 7,000 persons missing and killed in Srebrenica and concluded that "several thousands of Bosniaks were executed, in a manner that represents severe violations of International Humanitarian Law and that the perpetrators undertook measures to cover up the crime by reallocating the

130 Ibid, 42.

131 Ibid, 18.

132 Lara J. Nettelfield and Sarah E. Wagner, *Srebrenica in the Aftermath* (New York: Cambridge University Press, 2014): 96-97.

133 See for example, Beth Kampschror, "First Mass Grave Released by Srebrenica Commission Exhumed", *Southeast European Times*, 22 June 2004.

134 Nettelfield and Wagner, *Srebrenica in the Aftermath*, 252.

bodies.”¹³⁵

10.2.3. Sarajevo Commission

The fate of Sarajevo’s missing persons remains a contentious issue. Between 11 January 2002 and 29 December 2003 Vesna Šehovac, B.Ž. and Nada Samardžić filed applications with the Human Rights Chamber against BIH and the FBiH claiming that their relatives of Serb origin had gone missing in Sarajevo in the early months of the war.¹³⁶ The Human Rights Commission found that the FBiH was in violation of Articles 3 and 8 of the ECHR. It ordered the FBiH government to pay 5,000 BAM to each plaintiff and to disclose the information requested by the applicants about the fate of their missing family members. It also ordered the FBiH “to conduct a full, meaningful, thorough, and detailed investigation into the events giving rise to the established human rights violations.”¹³⁷

In 2004, the BIH Parliamentary Assembly tasked the BIH CoM to create a commission to investigate the fate of Serbs who went missing during the war. On 25 May 2006 the CoM adopted a decision to establish the commission subject to the condition that its mandate address the suffering of all of Sarajevo’s inhabitants during the war.¹³⁸ The commission comprised ten members, three representatives each of the Bosniak, Serb and Croat people, and one additional member representing “others”. Decisions of the commission were to be reached by consensus, or, if no consensus was achieved, by a minimum of two positive votes by the representatives of each of the Constituent Peoples.¹³⁹

The CoM’s decision mandated the commission to pursue the truth concerning killings, incarcerations, rapes, expulsions and missing persons in Sarajevo during the period 1992-1995 and to elaborate in detail, through a scientific research project, the scope of the research that the commission would conduct. There were divergent opinions about the proper focus of the commission’s work; Bosnian Serb representatives were of the opinion that the commission should focus on Serb victims in Sarajevo, whereas Croat and Bosniak representatives

135 Final Report of the RS government Commission for Investigation of the Events in and Around Srebrenica between 10 and 19 July, 41.

136 Case nos. CH/02/8677, CH/02/10495, and CH/02/12332, Vesna Šehovac, B.Ž. and Nada Samardžić v. the FBiH and Case nos. CH/03/15110, CH/03/15111, and CH/03/15112 and Case Nos. CH/03/15110, CH/03/15111, and CH/03/15112 Ljubica Gojković, Svetlana Knežević, and Nenad Gojković v. the FBiH and BIH.

137 Ibid.

138 Decision on the Establishment of the State Commission for Investigating the truth about sufferings of Serbs, Croats, Bosniaks, Jews and others in Sarajevo between 1992 and 1995, (Official Gazette of BIH, No. 42/06).

139 Humanitarian Law Center, “Transitional Justice in Post-Yugoslav Countries”, (Belgrade, 2006), 24.

argued that it should not discriminate against victims on the basis of nationality but include all victims, as well as fact finding on damage done to material property in the city as a result of shelling from hillside positions surrounding Sarajevo.

The commission completed a proposal for the research project in December 2006. The project would have lasted two years and involved as many as 1,500 persons at a cost of 3.5 million BAM. At the last CoM session in 2006 the research project was rejected.¹⁴⁰ Although the commission was not formally dissolved, it did not undertake any further activities.

140 "Pessimistic assessment of what has been achieved by the commission set up to establish the truth about crimes against civilians in Sarajevo during the 1992-5 siege," Transcript of FBiH TV programme 60 Minutes on 15 January, edited and translated by *BBC Monitoring (European)*, 18 January 2007, <http://www.bosnia.org.uk/news/news_body.cfm?newsid=2247>; Jasna Dragović-Soso and Eric Gordy, "Coming to Terms with the Past: Transitional Justice and Reconciliation in the Post-Yugoslav Lands," in Dejan Djokić and James Ker Lindsey, eds. *New Perspectives on Yugoslavia: Key Issues and Controversies* (New York: Routledge, 2011): 205.

XI. Societal Impact of the Search for Missing Persons

11.1. Attitudes in Bosnia and Herzegovina: Survey Results

The search for the missing in BiH affects the lives not just of the immediate families but of the entire population of four million people. Those responsible for setting up the network of institutions –international and domestic – that locate and identify the missing believe that this process was essential to forging a lasting peace in the country. However, more than 15 years after the end of the war there had been no comprehensive research on how BiH citizens as a whole view the effort to find missing persons.

In 2011, to fill this gap, ICMP commissioned a survey of attitudes about the missing persons issue.¹⁴¹ The survey was conducted among the general population, as well as among surviving family members. It covered numerous topics, including knowledge of the numbers of missing identified until then, attitudes toward ICMP and similar organizations, and views about the broader role of contributing to a lasting peace in BiH and the region. The survey's findings represent the first quantitative picture of the relationship between the missing persons issue and issues such as reconciliation and peace-building.¹⁴²

A computer aided telephone interview (CATI) surveyed a random sample of 1,015 individuals in both BiH Entities and the Brčko District. There were 617 respondents in the FBiH, 358 in the RS and 40 in the Brčko District.¹⁴³ Almost 8%

141 The survey was carried out by Prism Research, a Sarajevo-based company with a long history of conducting research for international institutions in BiH. See:

<<http://www.prismresearch.ba/en-index.php?id=en-u-sindic1>>.

142 For additional research which addresses this relationship, see Jeremy Sarkin and Erin Daly, *Reconciliation in Transitional Societies: Finding Common Ground*, (Philadelphia, PA: University of Pennsylvania Press 2007) and Laurel E. Fletcher and Harvey M. Weinstein, "Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation", *Human Rights Quarterly* 24 (3) (2002): 573–639; for research which utilizes quantitative methods to measure attitudes about transitional justice mechanisms, reconciliation and peace-building in Southeastern Europe, see: Eric Stover and Harvey M. Weinstein, eds., *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity* (Cambridge: Cambridge University Press, 2004); James Meernik, "Justice or Peace: How the International Criminal Tribunal Affects Societal Peace in Bosnia," *Journal of Peace Research* 42 (2005): 271–290; John Hagan and Sanja Kutnjak, "The Politics of Punishment and the Siege of Sarajevo: Toward a Conflict Theory of Perceived International (In)Justice", *Law and Society Review* 40 (2) (2006): 369–41; Lara J. Nettelfield, *Courting Democracy in Bosnia and Herzegovina: The Hague Tribunal's Impact in a Postwar State* (Cambridge: Cambridge University Press, 2010).

143 When reported by ethnicity, there were 494 Bosniak, 147 Croat, 311 Serb and 37 "other"

of respondents reported a family member missing as a result of the wars.¹⁴⁴

Face-to-face interviews with 155 family members of the missing were also conducted in key regions.¹⁴⁵ Just under 80% (79.1%) of respondents whose family members had been identified (N=91) had buried them, while 14.3% were still waiting for additional remains to be recovered. Of this grouping, 76.9% of identifications had been made through DNA-assisted techniques while 6.6% had been made through traditional methods; 3.3% reported that identifications relied on both, while 13.2% did not know which method was used.

This grouping, in general, was not actively engaged in the civil society organizations that work on this issue. Only 6.5% of respondents were members of non-governmental organizations that lobby on behalf of the missing. Just over 40% of respondents (40.6) in this grouping agreed that politics influenced these organizations a great deal (21.9%), or a fair amount (18.7%).¹⁴⁶

11.1.1. No Discrimination Sought

BIH citizens believe that as far as the missing are concerned ethno-religious origin should not be taken into consideration. Out of all survey respondents, 96% believe that the search for and identification of missing persons should be conducted without any regard to religious or national origin.¹⁴⁷ This finding was the same among all the Constituent Peoples. When analyzed by Entity, 96.6% of all respondents in the FBiH, 95.7% of respondents in the RS and 94.4% in the Brčko District agreed with the statement. Attempts to return to a segregated approach to the missing are not supported by the vast majority of citizens in either Entity.

11.1.2. Perceived Bias

Despite a desire for a neutral process, BIH citizens believe that current efforts are biased. Out of the general population, 54.2% felt that the process was either somewhat or very biased toward one ethnic group or another. When analyzed

respondents; 26 respondents declined to provide an ethnicity. The calls were made to landline phones.

144 7.8% of all respondents in the general population (N=1015).

145 CATI and face-to-face (F2F). N= the number of respondents. The CATI survey was conducted from 4 to 8 November 2011. The F2F survey was conducted from 1 to 4 December 2011. CATI respondents were over 18 years of age and were the last person in the household to have celebrated a birthday. The names of family members were provided to Prism Research by ICMP with the potential respondent's permission. When reported by ethnicity, there were 128 Bosniak, 3 Croat, 13 Serb and 9 "other" respondents; 2 respondents declined to provide an ethnicity.

146 N=155.

147 CATI: 96.3; F2F 95.5.

by ethnicity, this figure included 46.8% of Bosniak respondents, 48.2% of Croat respondents and 67.5% of Serb respondents. Interestingly, this sentiment was lower among family members of the missing. Here, only 42% agreed with the statement. Overall, 37.7% of Bosniaks, 25.6% of Croats and just 16.2% of Serb respondents felt the process was not biased at all. It should be noted that there was a high number of “don’t know” responses to this question, including 14.7% of Bosniaks, 26.1% of Croats and 15.2% of Serbs.

Bias may be attributed to the perceived influence of nationalist politics on recovery and identification efforts. Just over half (53.3%) of all respondents and 48.4% of family members felt that nationalist politics influenced the process somewhat or very negatively. Conversely, almost a quarter (24%) of the general population respondents, and 18.1% of family members, felt that it had a somewhat or very positive influence. Analyzed by Entity, attitudes were roughly the same. In the FBiH, just over half (53.7%) of all respondents felt it had a detrimental impact, an opinion which was shared by respondents in the RS, where 51.9% of respondents felt that nationalist politics influences the process somewhat or very negatively.

BiH citizens are reasonably confident about the information they receive through press sources. Asked “To what degree do you think that media reports on the missing persons issue are based on accurate and verified information?” 64% of the general population, and 54.8% of families, felt it was either a great deal or a fair amount. This belief is not universal, however: 14.2% of respondents in the general population, and 11.6% among family members, answered “not at all.” This suggests that a small segment of the population either does not trust the institutions distributing information or the media reporting on them.

11.2. What Has Been Done?

In BiH, about 70% of those who went missing have been accounted for. This is an achievement not seen in any other post-conflict country. Few BiH citizens, however, know about this accomplishment. When asked how many of the missing in BiH had been accounted for, just 17% gave the answer of two-thirds, closest to the real percentage at the time, of 72%.¹⁴⁸ Just under a third of all respondents¹⁴⁹ answered that a third of all missing persons had been accounted for, while 45.9% in the general population, and 38.7% of family members, said they did not know. In the FBiH, 18.2% of all respondents answered that two-thirds had been accounted for. The number was 13.1% in the RS, and 20.1% in

148 CATI 16.5%; F2F 16.8%.

149 CATI 26.6%; F2F 32.9%.

the Brčko District. The number of people who did not know how many had been accounted for was higher in the RS (51.6% of respondents) than in the FBiH (40.6%) or the Brčko District (52.8%).¹⁵⁰ There is clearly a need to spread the news more effectively about the country's success in identifying unprecedented numbers of missing persons. This applies especially in the RS and the Brčko District.

Many citizens have unrealistic expectations of the institutions that search for the missing. When asked when they would judge the missing persons process in BIH to have succeeded, almost 60% of all respondents said that success would have been achieved when every missing person had been accounted for.¹⁵¹ Fewer than 4% of those surveyed believed that success could be said to have been achieved when two-thirds were accounted for.¹⁵²

When the question was phrased differently, citizens responded more favorably. Asked whether "accounting for more than two-thirds of the missing is an important achievement for BIH," more than three quarters answered in the affirmative.¹⁵³ In the FBiH, 82.2% of respondents believed this to be at least a somewhat important achievement. The figure was 72% in the RS and 76.6% in the Brčko District.

Similarly, respondents said they believe that locating and identifying the mortal remains of missing persons contributes to reconciliation. More than 80% (80.1) of respondents in the general population, and 73.5% of families of the missing believe that "resolving the majority of missing persons cases from the wars of the 1990s contributes to the process of reconciliation."¹⁵⁴ In the FBiH, 82.1% believed that it contributed to reconciliation at least "a little." This was echoed by 74.5% of respondents in the RS, and 77.2% in the Brčko District.¹⁵⁵ Citizens of BIH clearly believe that this process is integral to the normalization of relations.

More than 70% of BIH citizens feel the search for the missing contributes to a better future for BIH society.¹⁵⁶ This included 72.2% of respondents in the FBiH, 66.3% in the RS, and 79.5% in the Brčko District. There is however a small

150 All respondents N=1015 (CATI) and N=155 (F2F).

151 CATI 59.2%; F2F 58.7%.

152 Only 1 respondent (0.6%) of the family members of missing said this would be a success. Of the general population 17% and 23.9% of the families said they did not know.

153 CATI 78.9%; F2F 74.8%.

154 This includes respondents who answered "a little", "a fair amount" and "a great deal."

155 The response categories were: "a great deal", "a fair amount", "a little", "not at all", and "does not know".

156 The wording of the question was: "In your opinion does the search for missing persons preserve the atmosphere of living in the past, or does it contribute to a better future for society?" (CATI: 73.0%; F2F 71.0%).

segment of the population that does not support the search. In the FBiH, 14.5% of respondents responded that it “preserves the atmosphere of living in the past,” an opinion shared by 17.5% of respondents in the RS, and 6.2% in the Brčko District.

As to the broader aspirations of the search for the missing, an overwhelming majority of respondents – 92.5% of the general population and 85.3% of families – said benefits of the identification of the missing include alleviating family suffering, contributing to justice and prosecutions, and discovering the truth about past events.¹⁵⁷

11.3. Institution-Specific Questions

11.3.1. The Role of ICMP

Respondents reported a high level of familiarity with ICMP. Almost 80% of all respondents in both the general population and among the families of the missing had heard about the organization.¹⁵⁸ Of those respondents who were familiar with ICMP, 69% in the general population and 81.3% of family members reported either a positive, or somewhat positive, attitude toward it.

BiH citizens see ICMP’s involvement as integral to the completion of the search for the country’s missing. To the question: “What would most likely happen if ICMP stopped helping BiH?” a majority of respondents in the general population (55.9%) and among family members (52%), felt that local institutions would not have been able to carry out the work.¹⁵⁹ Just under a third of all respondents felt that local institutions would be able to carry on their work recovering and identifying missing persons.¹⁶⁰

BiH citizens also believe that government resources – at the state level – should continue to be dedicated to the missing persons issue. In response to the question, “To what degree do you support continued funding for the resolution of the missing persons issue by the BiH government?” 91.9% of the general population and 86.4% of the families of the missing answered positively. Continued funding at the state level enjoys the support of all of the country’s ethnicities; 93.1% of Bosniaks, 92.7% of Croats, and 87.9% of Serb respondents

157 Some respondents identified one of these individual factors while others checked “all of the above.”

158 The difference was negligible. CATI: 78.9%; F2F: 79.4%.

159 Only respondents who had heard of ICMP answered this question, which was N=800 in the general population and N=123 among family members of the missing.

160 CATI: 29.8%; F2F: 32.5%.

somewhat or strongly support continued funding.¹⁶¹

11.3.2. Public Involvement and Transparency

ICMP has made extensive efforts to ensure that families of the missing are involved in the search process and to increase its overall transparency. To that end, in February 2011, ICMP created on its web page an “Online Inquiry Center” to provide information about the missing.¹⁶² The Center allows families of the missing and others to access up-to-date information on missing persons cases through a search engine. This tool enhances the transparency of the overall process, allowing families to determine if ICMP has reported DNA matching information on their missing relative to the MPI. It also informs families if sufficient family reference samples have been collected to permit a DNA match. Additionally, authorities involved in the identification process can track the status of PM samples submitted for DNA testing and by the grave site or other location where the remains were recovered.

While reaction to the Online Inquiry Center has been very positive, its most significant limitation is that it is not directly accessible to most BIH citizens as the level of Internet penetration throughout the country is low. Additionally, more outreach about the Center is clearly needed. Of the family members of the missing surveyed, just 32.2% were familiar with the online function.

11.4. The Role of the Missing Persons Institute

As outlined earlier in this report, the competencies of the Entity-level commissions were transferred to the state-level MPI by 2008. According to the 2011 survey, MPI enjoys a high level of recognition in BIH. Just over 79% in both segments, i.e. general population and families of the missing, had heard about it.¹⁶³ Of those respondents who were familiar with MPI, 76.3% had a positive, or somewhat positive, opinion of it. This number was echoed in the support of 77.2% of respondents who had missing family members. When analyzed by Entity, support translated into 83.1% of respondents in the FBiH, 65% in the RS, and 69.9% in the Brčko District. These findings suggest that support for domestic institutions is high, even if BIH citizens are concerned about the domestic authorities’ ability to manage the process without the assistance of ICMP.

Despite familiarity with MPI, the work of state institutions on the missing is

161 All respondents.

162 ICMP On-Line Inquiry Center can be found at: <<http://www.ic-mp.org/fdmsweb/index.php?w=intro&l=en>>.

163 Only respondents who had heard of MPI were asked to give their opinion of it. They included 807 respondents in the general population and 123 among family members of the missing.

otherwise unknown to most BIH citizens. Asked if “the government works to find and identify missing persons,” 69.8% of respondents in the FBIH, and 59.6% in the RS, answered “a great deal,” “enough” or “a little.” In the FBIH, 21.9% of respondents answered “not at all”, a number that was 30.8% in the RS. In the FBIH, 7.3% said they didn’t know, while. 9.6% of those surveyed in the RS said they didn’t know.

11.5. Rule of Law Issues

As noted above, the missing persons issue is now addressed within the framework of war-crimes prosecutions in the country. The POBIH has the authority to issue an authorization for an exhumation. Grave sites are then considered crime scenes. Only then can exhumations begin. There is, however, little agreement in BIH society about what this means for the efficient recovery and identification of the remaining missing. In general, most of the population believe that it will aid in the recovery and identification process. Just over half of all respondents (55.8% in the general population, and 46.5% of family members) felt that the prosecution of war crimes makes the process of finding missing persons easier.¹⁶⁴ Still, just over a quarter of respondents in each group felt it would make the process more difficult.¹⁶⁵

When analyzed along Entity lines, most respondents believe that the process of locating, exhuming and identifying missing persons should be done for both the purpose of identification and for the collection of evidence for war-crimes prosecutions. This is believed by 82.3% of respondents in the FBIH, 73.1% in the RS and 57.1% in the Brčko District.¹⁶⁶

11.6. Law on Missing Persons and Related Fund

Only a narrow majority of BIH citizens are familiar with the Law on Missing Persons and the rights of families established in the law. In the general population, 53.8% of respondents said they were very familiar, or somewhat familiar, with the law. Of these, 50.6% said they were only somewhat familiar. This figure was, predictably, higher among families of the missing, but not by a significant margin. In this population, 56.1% were somewhat or very familiar. Only 9% of respondents said they were “very familiar.”

As noted above, although the Law on Missing Persons envisages a fund for the

¹⁶⁴ For additional research which addresses a similar theme, see Guy Elcheroth and Dario Spini, “Public Support for the Prosecution of Human Rights Violations in the Former Yugoslavia” *Peace & Conflict: Journal of Peace Psychology* 15(2)-(2009): 189-214.

¹⁶⁵ CATI: 25.9%; F2F: 25.8%.

¹⁶⁶ Only family members of the missing were asked this question. N=155.

families of the missing, this has yet to be created.¹⁶⁷ Among other things, the fund would provide assistance to families who have no other social benefits, support the activities of FAs in a way that would reduce the influence of political actors, and facilitate families' efforts to mark grave sites. Among the family members of the missing, 61.3% were not at all familiar with the fund, indicating that efforts to spread information about the fund are needed as this would boost activities to lobby for its creation.

11.7. Providing Personal and Genetic Data to Prosecutors

Courts, both local and international, increasingly rely on the testimony of forensic experts to support criminal prosecutions. ICMP has provided DNA reports to the ICTY in numerous trials. This has required the consent of those who have provided DNA reference samples.

The survey that was conducted on attitudes toward processes dealing with the missing asked citizens how they felt about providing genetic information to courts for the purpose of criminal prosecutions. In the FBiH, 58.3% of respondents said they would feel confident doing so, for either local or international courts. This percentage was 59.6% in the RS and 28.6% in the Brčko District. Approximately a quarter of all respondents in both Entities and in the Brčko District, said they would not feel confident about doing so.¹⁶⁸ At the same time, when ICMP sought the consent of over 1,500 family members to provide such data in the trial of Radovan Karadžić under Rule 70b,¹⁶⁹ consent was provided in 95% of all cases concerned.

11.8. Joint Memorials

BiH citizens support the dedication of memorials and days of commemoration that are not based on ethnicity. In answer to the question "To what extent do you support the position that joint memorials and days of commemoration should be dedicated to all missing persons from the wars in the former Yugoslavia, and not to separate ethnicities?" 87.1% of respondents in the general population, and 83.3% of family members of the missing, somewhat or strongly supported the statement. When analyzed by ethnic affiliation,

¹⁶⁷ For discussion of the law, including the fund, see Blumenstock, Legal Protection of the Missing, 773-793.

¹⁶⁸ FBiH: 27.1%; RS: 23.1%; the Brčko District: 28.6%. This question had a high number of "does not know" responses: FBiH: 13.5%; RS 17.3%; the Brčko District: 42.9%.

¹⁶⁹ According to Rule 70(B) of the ICTY Rules of Procedure and Evidence, if the Prosecutor has been provided with information on a confidential basis and which has been used solely for the purpose of generating new evidence, that information and its origin shall not be disclosed by the Prosecutor without the consent of the person or entity providing the initial information.

the numbers broke down to 85.5% of Bosniaks, 87.1% of Croats and 89% of Serb respondents. The numbers of respondents who strongly supported this statement included 70.5% of Bosniaks, 73.9% of Croats and 75.9% of Serbs.¹⁷⁰

170 NB: Of all respondents in the general population and among families of the missing.

XII. Families of the Missing

12.1. Introduction

Generally, a missing person is someone who is missed by others. It is those that remain behind who experience the anguish of uncertainty, and who turn to State authorities for answers and resolution. With more than 31,500 missing persons in BIH, the issue has had a direct impact on hundreds of thousands of family members. This constituency includes large numbers of women.¹⁷¹ Generally, recent studies have found that the indirect and long-term consequences of armed conflict on survivors has a greater detrimental effect on women.¹⁷² Among other issues, the life expectancy of women is reduced, especially in ethnic conflicts characterized as civil wars.¹⁷³ Seeking answers regarding missing persons is hence particularly important to guarantee the rights of women, including their political, social and economic rights.

During the conflict, relatives of missing persons had sought information from wartime authorities, such as the commissions for the exchange of prisoners of war and civilians, which had been established in various parts of the country. Relatives also gathered in informal groups, offering encouragement, solidarity and assistance to each other. Following the Dayton Peace Agreement, some of these groups became formal associations of citizens. Later, these family associations formed unions. In this respect the search for missing persons may be seen as an important element in the development of post-war civil society in BIH.

More than 100 associations of familymembers are registered as local non-governmental organizations in BIH, Croatia, Serbia, Montenegro, and Kosovo today. There are 35 such organizations in BIH alone.¹⁷⁴ Family associations have also lobbied for justice, specifically for the punishment of perpetrators. They have sought financial redress and participated in the dedication of memorials to ensure that commemorative events are held in accordance with their wishes. They have also played an important role as points of contact for families

171 Of the 104,732 casualties, 91.9% were male. Jan Zwierzchowski and Ewa Tabeau, "The 1992-1995 War in Bosnia and Herzegovina", 16.

172 Thomas Plümper and Eric Neumayer, "The Unequal Burden of War: The Effect of Armed Conflict on the Gender Gap in Life Expectancy," *International Organization* 60, (2006): 723-754.

173 *Ibid.*, 748. The war in BIH was determined to have had an international character, however.

174 ICMP's records list 35 active FAs; this does not include all of the branch offices of the Banja Luka-based Republic organization.

confronting socio-economic and administrative problems, including the issuance of death certificates for missing husbands and relatives, and the distribution of pensions; and they have contributed to institution building, crafting legislation, and raising awareness of the plight of the missing. Most significantly, in BIH, the families of the missing were instrumental in participating in the creation of MPI and the Law on Missing Persons.

12.2. Bosniak Union

The Bosniak Union of Associations of Families of Missing Persons was formed in February 2001 by eleven FAs. The Union's purpose is to "facilitate coordination and cooperation among Bosniak FAs with the aim of improving the access to rights for family members of missing persons and the provision of adequate solutions to address the missing persons issues."¹⁷⁵ The Bosniak Union also seeks to "coordinate, develop and improve the work of member FAs in terms of searching for missing persons, locating potential grave sites, and conducting excavations, identifications and burials of identified victims."¹⁷⁶ In January 2013, after a hiatus of several years, the Union organized a general assembly, elected new office-holders and adopted a broad plan of activities designed to expedite the missing persons process.

12.3. Serb Union of Families of Missing Persons and the Republic Board of Killed and Missing Serb Soldiers and Civilians

Twenty-five associations of families from the RS established a Union of Serb Families of Missing Persons in February 1996 in Doboj. It was formally registered the following year in Banja Luka. The purpose of the Union was to search for missing family members. Its founders felt that "many institutions had failed in the process of searching, so the families believed that by establishing the union they could better advocate for their rights."¹⁷⁷ In 2003, differences of opinion within the leadership of the Union led to a split in the organization. The splinter union was officially registered in Banja Luka in February 2004. Today membership of the new Union of Serb Families of the Missing comprises 23 Family Associations.¹⁷⁸

The Union of Serb Families of the Missing became the Republic Board of Killed and Missing Serb soldiers and civilians in December 2007.¹⁷⁹ The purpose was

¹⁷⁵ Interview with Ahmet Grahić, President of the Bosniak Union of FAs, on 3 December 2012.

¹⁷⁶ Ibid.

¹⁷⁷ Interview with Smilja Mitrović, President of the Union of Serb Families of Missing Persons, 3 December 2012.

¹⁷⁸ Ibid.

¹⁷⁹ Interview with Nedeljko Mitrović, President of the Republic Board of Killed and Missing Serb

“to unite the associations of Serb families of the missing and killed soldiers in one organization.”¹⁸⁰ Today it gathers 32 active and 2 non-active municipal boards of Serb families with missing persons and killed soldiers and aims “to develop and promote justice, fairness, transparency and openness.”¹⁸¹ The Republic Board of Killed and Missing Serb Soldiers and Civilians has the status of an association of special public interest in the RS, and as such receives annual allocations from the RS budget.

12.4. Croat Union

In February 2011, seven associations of families of missing defenders and civilians from Mostar, Tuzla, Orašje, Bugojno, Kupres, Posušje and the Brčko District founded the Union of Croat Associations of Families of Missing Defenders and Civilians. Its purpose is to facilitate improved networking among the associations, and to accelerate and improve the process of searching and identifying missing persons and to pursue justice. It comprises nine associations with a total of 1,820 members. Its activities fall into three areas: a) coordinating among the Croat associations to implement activities that contribute to the process of searching for missing persons and distributing information about this process; b) advocating for more efficient excavation and identification processes, and campaigning to eliminate the differential access to rights for different categories of victims; and c) participating in developing solutions regarding the missing persons issue with governmental institutions and with the Regional Coordination.¹⁸²

12.5. ICMP’s Engagement with Families of the Missing

ICMP’s engagement with the families of the missing began in 1997. A first conference of FAs took place in the Fall of 1998.¹⁸³ ICMP has assisted FAs through its small-grants programs and other programs of short-term support.

Since 2000, when ICMP began awarding small grants and short-term support, FAs have implemented hundreds of projects, including gathering data on families of missing persons, organizing information-sharing sessions on the role of DNA in the missing persons process, organizing commemorations, and preparing reports, publications, roundtables and workshops on various aspects of the missing persons process, as well as lobbying for legislation on missing

Soldiers and Civilians, 3 December 2012.

180 Ibid.

181 Ibid.

182 Interview with Zvonimir Kubinek, member of the Croat Union of Associations of Families of Missing Defenders and Civilians, 7 December 2012.

183 The conference received financial support from Freedom House.

persons and the establishment of a state-level MPI. FAs decisively supported ICMP's large-scale collection of DNA reference samples from their members and others. They committed themselves to disseminating information on the DNA-based process and encouraged families' participation. Not least because of the endeavors of the FAs, 91,162 family members voluntarily provided reference samples to help identify their missing loved ones.

ICMP facilitated the inclusion of FAs in the policy initiative to establish the MPI. At the Fifth Networking Conference of the Families Associations of Missing Persons from Croatia, BIH and FRY, hosted by ICMP in late September and early October 2000 in Vogošća the FAs concluded that the issue of missing persons needed to be addressed at the state level "because the [Entity] commissions do not have proper mandates to solve the missing persons problem."¹⁸⁴ At the Seventh Regional Conference on the issues of missing persons in the former Yugoslavia in May 2003 in Sarajevo, the FAs from BIH emphasized that they were cooperating on an initiative to strengthen the work of the MPI.¹⁸⁵ At the Eighth Regional Conference "Networking on missing persons in the former Yugoslavia," in Novi Sad in November 2005, the FAs agreed to send a "request to the government of Bosnia and Herzegovina to ensure that the conditions are made for the MPI to become operational in order to accelerate the process of exhumation and identification and to adopt by-laws in order to quickly implement the Law on Missing Persons."¹⁸⁶

Throughout this period, the associations supported and built momentum for the creation of an Advisory Board within the MPI whose role would be to ensure that the families of missing persons would have a measure of influence on the work of the MPI and to convey information regarding the missing persons process to the FAs represented by the Advisory Board. As a result of their advocacy efforts, a six-member Advisory Board was established within the MPI, which enables the interests of the families to be represented in the work of the Institute, and ensures an enhanced degree of transparency in its operations. In addition to their active participation in elaborating the law on missing persons, the associations have been lobbying strongly for the implementation of the fund for the families of the missing.

184 Conclusions of the discussion of the Group for BIH, Fifth Networking Conference of the Associations of Families of Missing Persons from Croatia, BIH and FRY, 28 September to 1 October 2000.

185 Unpublished Report from the Seventh Regional Conference on the issues of missing persons in ex-Yugoslavia for the Family Associations of missing persons, organized by ICMP, 16-19 May 2003, Sarajevo.

186 Unpublished Report from the Eighth Regional Conference, "Networking on missing persons in the former Yugoslavia", Novi Sad, 10-13 November 2005.

12.6. Regional Coordination of Associations of Families of Missing Persons

FAs from the countries in the Western Balkans have recognized the need for cross-border cooperation and joint action to ensure that the authorities remain engaged in the issue. At the international “Family Association Networking and Planning Conference” in September 1999 in Neum, BIH, FAs established a four-member regional coordination team. Its stated purpose was “to coordinate information exchange between all FAs; keep families of the missing up-to-date on the identification and exhumation process; promote exchange of experience between all FAs; plan for future meetings; and cooperate with international organizations addressing the missing persons issue.”¹⁸⁷

From the outset it was expected that the coordination team would “play an increasingly important role in the future activities of the FAs from Croatia, BIH and Serbia.”¹⁸⁸ At the Sixth Regional Networking Conference Association of Families of Missing Persons, in Sarajevo in November 2001, the families of the missing reaffirmed their commitment to regional cooperation. At that conference they committed to “share and exchange information; mutually support each other and to organize joint efforts toward governments; and networking.”¹⁸⁹ At subsequent regional conferences, families of the missing have repeated the importance of strengthening regional cooperation through the coordination body of FAs in order to resolve the issue of missing persons and surviving family members. Today, the Regional Coordination of Associations of Families of Missing Persons from the former Yugoslavia brings together 17 associations and Unions of FAs from BIH, Croatia, Montenegro and Serbia. It was formally registered as a human rights organization with the Ministry of Justice in BIH in September 2011.

12.7. Joint Commemorations

Families of the missing share a common pain, a common experience of loss, and a pervasive sense of being subjected to the arbitrariness of authorities. They also share a degree of mutual understanding – no one else can better understand the sense of loss experienced by those who have a relative or relatives missing. Shared loss can find expression in common remembrance and joint commemoration. For a number of years, efforts have been made by some leaders of FAs to pay joint tribute to the missing. By 2003, joint commemorations of certain dates had become a tradition, so that 30 August,

187 Interim Report, “Promoting Associations for Civic Engagement”, a project of Freedom House, funded by ICMP, Reporting Period: 16 June-15 October 1999.

188 Ibid.

189 Conclusions of the Sixth Regional Networking Conference Association of Families of Missing Persons, Sarajevo, 10 November 2001.

International Day of the Victims of Enforced Disappearances and 10 December, International Human Rights Day, are commemorated in all areas.¹⁹⁰

ICMP has been facilitating dialogue on memorialization and organizing conferences on remembrance, memory and memorials. It has also organized international commemorative culture study tours and a series of consultation meetings with FAs from across BIH and the region. While many representatives of FAs support a process that aims at joint commemorations of all missing persons, irrespective of ethnic, religious or political affiliation, a number of vocal representatives argue that such a process should only begin after all missing persons have been located. However, as outlined above, more than 80% of BIH citizens surveyed support the dedication of memorials and days of commemoration not based on ethnic affiliation.

190 Unpublished Report from the Seventh Regional Conference on the Issues of Missing Persons in former Yugoslavia for the Family Associations of Missing Persons, organized by ICMP, 16-19 May 2003, Sarajevo.

XIII. Recommendations

BIH witnessed a shift in approach to the missing persons issue, from one governed by a humanitarian rationale, to one firmly placed within a rule of law framework, in which the resolution of missing persons cases is addressed by BIH's rule of law institutions, including its criminal justice system. The BIH Human Rights Chamber significantly contributed to an understanding of the missing persons issue as a human rights issue. The Palić, Srebrenica, Šehovac and other cases all argued that the lack of resolution violated articles of the ECHR, and that the lack of information about the location of missing relatives constituted a violation of survivors' human rights. In 2004, the BIH Parliamentary Assembly adopted the Law on Missing Persons, and a state-level MPI was created in 2005. This legislation also earmarked state resources for a still-to-be created fund that would provide much-needed economic support for the families of the missing.

Criminal trials or retributive justice are just one aspect of what has come to be known as "transitional justice."¹⁹¹ Transitional justice encompasses trials, truth commissions and lustration or vetting procedures, mechanisms that include both retributive and restorative forms of justice.¹⁹² In BIH, there has been an emphasis on judicial efforts to come to terms with the past. This emphasis has enjoyed public support.¹⁹³ A comprehensive attempt to account for missing persons is arguably the newest form of transitional justice, and one that surviving family members have come to view as a right, as part of the right to truth. It is the primary objective of most FAs in BIH.¹⁹⁴ Local civil society groups have proved to

191 There is now a large literature on transitional justice. A few of the important works include: Ruti G. Teitel, *Transitional Justice* (New York: Oxford University Press, 2002); Martha Minow, *Between Vengeance and Forgiveness: Facing History After Genocide and Mass Violence* (Boston: Beacon Press, 1998); Neil Kritz, ed., *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, 3 vols. (Washington, DC: United States Institute of Peace Press, 1995); and Naomi Roht-Arriaza and Javier Mariezcurrena, *Transitional Justice in the Twenty- First Century: Beyond Truth versus Justice* (Cambridge: Cambridge University Press, 2006).

192 For a comparative look at different approaches used in three different countries in the aftermath of political violence, see Jeremy Sarkin, "Achieving Reconciliation in Divided Societies: Comparing the Approaches in Timor-Leste, South Africa and Rwanda," *Yale Journal of International Affairs* 3(2) (2008): 11-28.

193 For an overview of the various transitional justice and truth-telling mechanisms utilized in BIH, see: Graeme Simpson, Edin Hodžić, and Louis Bickford, "Looking Back, Looking Forward: Promoting Dialogue Through Truth-Seeking in Bosnia and Herzegovina," United Nations Development Programme (UNDP 2012) <<http://www.undp.ba/index.aspx?PID=36&RID=141>>.

194 See Nataša Kandić, "The ICTY Trials and Transitional Justice in Former Yugoslavia," *Cornell International Law Journal* 38 (38) (2005): 789-92.

be eager consultative partners in the development of public policy in this area.¹⁹⁵ Survey research cited in this report indicates that there is broad support for the continued dedication of state resources to solving the fate of the missing. BIH citizens view their country's progress in this area as a success.

While the process of dealing with missing persons has achieved a great deal in BIH, much work remains to be done. Some of this involves finding common ground and consensus on resolving problems that impede progress. Ensuring the sustainability of efforts to locate mass graves is crucial to progress, as is ensuring that bureaucratic processes within and between organizations are efficient. In this regard, the State should take full responsibility for the professional institutions whose function it is to address the issue within its rule of law context.

The recommendations contained in this document aim to serve as a strategy to move the missing persons process forward, safeguard the rights of families of the missing and contribute to a lasting peace in the Western Balkans through advancing the rule of law.

13.1. The Missing Persons Institute

The authorities of BIH should continue to bolster the MPI's effectiveness in BIH's volatile political environment. MPI should be an independent, sustainable, professional institution that has a coherent strategy as part of the overall process of building social cohesion in the country. The survey results cited in this report show a high level of awareness of citizens about MPI, and their positive opinion about it. MPI should continue to be given the financial and other resources essential to its continuing work and thus maintain its positive public profile.

It is essential that the MPI centralizes and coordinates all efforts to resolve the fate of the missing. MPI should therefore work to improve its engagement with civil society and continue to support the criminal justice process. In particular the cooperation and the unimpeded flow of information between the MPI and the POBIH should be enhanced. The success of the missing persons work by the POBIH depends on a strong relationship with MPI.

MPI should also continue to play an important role in collecting, classifying and preserving documents related to missing persons. To bolster the prosecutor's

¹⁹⁵ Iavor Rangelov and Marika Theros, "Transitional Justice in Bosnia and Herzegovina: Coherence and Complementarity of EU Institutions and Civil Society", in Kai Ambos, Judith Large and Marieke Wierda, eds, *Building a Future on Peace and Justice: Studies on Transitional Justice, Peace and Development* (Berlin: Springer, 2008), 357-392.

capacity in the field of exhumations, and to enhance cooperation and the flow of information between the prosecutor and MPI, an investigative liaison officer should be appointed to assist the exhumations prosecutor. This would facilitate the process by assisting and keeping POBIH apprised of MPI investigations and other fieldwork. It would help to coordinate joint investigations between MPI and the SDWC, ensuring that MPI investigators provide sufficient information to the prosecutor, and vice-versa. It would also facilitate coordination with investigative staff attached to other prosecution teams, ensuring that all leads on illicit grave locations are channeled to the exhumations prosecutor, and it would help to ensure that SDWC's investigative leads on grave locations are conveyed to MPI.

13.2. Prosecutor's Office of BIH

The authorities need to assist and support the POBIH in carrying out its role effectively and efficiently in the search for missing persons, and in establishing accountability for disappearances. The appointment of a prosecutor to focus exclusively on exhumation matters was a welcome development and created the potential to maintain and further enhance the capacity of the POBIH. The exhumations prosecutor should meet with senior MPI personnel regularly, and should be included in expert groups and high-level meetings on the subject of missing persons.

The various prosecutors' offices maintain a large amount of documentary and evidentiary records that have at various times been transferred between offices. There is currently no central registry of the location and nature of these records, which impacts the ability to access them when needed. It is recommended that the POBIH conduct a strategic assessment on how disparate and heterogeneous records could become more readily available. This would include conducting an inventory of records, prioritizing their relevance to the prosecution, and determining who should hold them, and how access should be granted. It would also include digital scanning of key records and establishing a secure, cataloged electronic archive. To conform to existing data processing and protection systems, this effort should be coordinated with the High Judicial and Prosecutorial Council.

13.3. Law on Missing Persons

The Law on Missing Persons has still not been fully implemented. In particular, the fund for families of missing persons has not been established and the CEN has not yet been fully verified. Also, education and employment benefits for children of missing persons are being implemented only in some parts of

the country. Healthcare benefits for family members of missing persons are still not fully implemented. The MHRR, as the State body tasked to oversee implementation of the Law, should be awarded sufficient funds and personnel to work proactively toward its implementation. In cooperation with other stakeholders, the Ministry should also raise awareness of the Law among the public.

13.4. Fund for Support to the Families of Missing Persons

The Fund for Support to the Families of Missing Persons has not been fully implemented. Establishing the Fund would significantly promote transparency in the provision of financial assistance to families of the missing and diminish their dependence on political party allegiances. Once implemented, the fund would also allow implementing provisions on the marking of places of burial and exhumation.¹⁹⁶

13.5. The Central Records

The establishment of a single, comprehensive record of missing persons in BIH is an important element to advancing justice and the right to the truth. It will also strengthen MPI's capacity to locate the missing, allow families to register missing relatives in accordance with the Law on Missing Persons, as well as to exercise their social and economic rights. In this regard, it is important that all institutions that hold information on missing persons supply these records to MPI. Doing so is particularly important where reported missing persons have been located and identified by non-scientific methods. A fully verified CEN is also a prerequisite for establishing a regional list of missing persons from the conflicts, including Serbia, Croatia, Kosovo and Montenegro.

Regarding the rules for verifying CEN entries, and the contentious issue of including additional data fields, the MPI should take an approach concentrating on the primary purpose of the CEN. That purpose is to enable families of missing persons to realize their rights through registering missing persons with MPI as mandated by the Law on Missing Persons. Neither the families nor MPI's Verification Commission should be required to produce or verify data that is not material to this objective, such as ethnic or religious affiliation, combatant status, or cause and manner of death. ICMP strongly urges MPI to complete this process, which has lasted for almost 10 years, without further delay.

¹⁹⁶ A Book of Rules on marking places of burial and exhumation was passed on 27 July 2006 (Official Gazette 83/2006). However because the fund has not been established, there are no resources for marking sites.

13.6. NN Working Group

According to estimates by MPI, approximately 3,500 unidentified mortal remains are stored in 12 mortuaries in BIH. ICMP's DNA analysis has shown that these remains represent at least 2,653 different individuals. The NNWG process was established in 2013 to address this problem of large numbers of unidentified human remains. It should also allow for the collection of new samples for DNA testing, which could result in identifications and establish improved mortuary management structures.

Regarding the first objective of determining why there are such large numbers of unidentified human remains, and correspondingly unmatched family reference profiles, two hypotheses should be examined in particular: 1) Whether the remains represent persons missing from the conflicts of the 1990s, and 2) to what extent misidentifications occurred when identifications were made through non-DNA means.

Regarding the second objective, the POBIH, MPI and other local authorities should undertake all measures to enable the NNWG to complete its inventory and case status assessment for all mortuaries. This would include:

- a. Examinations with a particular emphasis on anthropological assessments, sampling for DNA analysis and re-examinations;
- b. Designation of case managers responsible for ensuring that records are kept up to date within a suitable database that can be monitored, and that cases properly progress through the identification process;
- c. Evaluation of the impact of past errors, including incorrect traditional identifications.

The NNWG and MPI should also work with families and other stakeholders to develop an understanding of the forensic issues associated with case resolution, including:

- a. The development of practicable policies for investigating misidentifications, which may involve exhumations of remains, and the collection of DNA reference samples from families that have already received remains when the accuracy of identifications is in doubt;
- b. Determining the proper disposition of unidentified human remains that cannot be identified.

13.7. Dealing with Misidentifications, NNs and Dissociated Body Parts

The POBIH and MPI should take the lead in addressing the complicated issues

of 1) large numbers of skeletal remains belonging to already identified and buried individuals, and 2) potentially significant numbers of misidentifications that occurred prior to the use of DNA. In this regard, a review mechanism should be established that would consist of technical and legal experts, as well as representatives of families of the missing. The review mechanism should produce guidelines for the eventual removal to ossuary facilities of dissociated body parts that cannot be identified.

13.8. Strengthen the Expert Group within MPI

Obtaining new DNA identifications is dependent on obtaining new DNA profiles from mortal remains and, hence, on the discovery of additional illicit grave sites. The MPI Expert Group, as a coordination mechanism of the MPI, should place an emphasis on archival research and the cross-indexing of various types of information, such as disappearance events/occurrences, witness reports, and spatial patterns of known graves. As a result, a prioritized list of defined sites to be investigated could be established on the basis of pre-defined criteria to avoid an *ad hoc* or political basis for site reconnaissance and recovery.

13.9. New Technical Avenues for Locating Potential Grave Sites

New technical avenues for locating potential grave sites should be sought. This would include extending cooperation with experts in satellite and aerial imagery to understand and access existing resources of historical imagery. Such imagery has proven an important means to locate illicit graves in BIH. Additionally, there have been recent developments in aerial and satellite imagery, to include hyper-spectral analysis, for example, that may prove useful in targeting sites for further investigation.

13.10. Institute of Legal Medicine

There is a need to strengthen the field of forensic medicine in BIH, both structurally and in terms of breadth of scientific expertise. Currently, forensic archaeology and anthropology, for instance, are not listed as expert disciplines. An institute for legal medicine exists in the RS, but not in the FBiH, which should be redressed. Eventually the establishment of a state-level Institute for Legal Medicine should be considered. This would ensure consistent work practices and facilitate the integration of the various forensic disciplines.

13.11. Recognizing 30th August as the International Day of the Disappeared

The marking of the International Day of the Disappeared in BIH should become

a mainstream societal event to ensure that the missing are commemorated, without regard to nationality, ethnicity or religious affiliation. To this end, BIH should accord the 30th August recognition at the level of the State, thereby creating the opportunity for all communities in BIH collectively to commemorate the missing.

13.12. Bilateral Agreements

The armed conflicts that took place between 1991 and 2001 in the former Yugoslavia led to significant population movements across political borders. In many cases, persons reported missing from one region were killed or disappeared in another. Therefore, locating the missing depends upon cross-border cooperation. Croatia and Serbia have signed an agreement to cooperate on the issue of the missing. However, no such agreement exists yet between BIH and Croatia or Serbia. An agreement proposed by the government of Serbia in March 2012 is still under consideration by the CoM. A draft agreement with Croatia is pending the formation of a negotiating team. BIH should conclude these agreements as soon as possible. These agreements should include adequate provisions for joint investigations, the exchange and protection of data, and timelines for field activities, in addition to ensuring the effective participation of civil society.

13.13. Regional List

In 2011, ICMP initiated a process of establishing a single, unified regional list of persons missing in the Western Balkans. The Regional List, which represents a joint effort of BIH, Serbia, Croatia, Kosovo and Montenegro, would provide a definitive answer to the number of persons missing as a result of the conflicts. It would also make data kept in one country available regionally, and allow for the removal of duplicate records. In addition, it would significantly facilitate resolving jurisdictional issues over missing persons cases. The Regional List could also increase public access to missing persons data more broadly.

The initiative to establish the Regional List has been welcomed by all countries in the region, especially in BIH. To make progress on this initiative, it is important that the MPI expedites the verification of the CEN for its inclusion in the list. To this end, the CoM, as MPI's co-founder, should undertake all necessary measures to remove impediments to completing the process of verifying the CEN.

13.14. Regional Meetings between Governments and Civil Society

From 1998 until 2008, ICMP hosted annual regional conferences of family

associations to facilitate their networking efforts and to strengthen cooperation between the participating countries. For the authorities that participated, the regional conferences provided an opportunity to report on progress and future plans on the missing persons issue. The regional conferences came to an end in 2008 following Kosovo's declaration of independence. The need for information-sharing, for continued networking and strengthening regional cooperation has not diminished, however.

The CoM, MPI and others should call on governments in the region to resume the regional conferences on missing persons. Given the lacuna of 5 years, themes to be discussed comprise the NNWG process, new approaches to locating mass graves, the regional list on missing persons and implementing the Law on Missing Persons.

13.15. International Legal Instruments

On 30 March 2012, BIH ratified the International Convention for the Protection of All Persons from Enforced Disappearance, thus becoming the 32nd State Party to the Treaty. BIH should without delay enact the necessary measures to adapt its domestic legal framework in the fields of criminal, civil and family law to the obligations undertaken by ratifying the Convention, including among others by codifying enforced disappearance as a separate and autonomous crime under domestic criminal legislation.

Since 1996, ICMP has worked to define more closely the principles that ought to guide all missing persons processes globally. They relate to the role of the international community, the national authorities and civil society. They stress the importance of the use of modern forensic methods to locate and accurately identify the missing. They also emphasize the importance of efficient data management systems to store large volumes of ante- and post-mortem information. They underscore the important role of pathologists and prosecutors in the process and the importance of addressing the missing persons issue on a rule of law basis. ICMP has gathered these principles in a declaration of best practice.¹⁹⁷ On 29 August 2014, in the City Hall of Mostar, the Chairman of the Presidency of Bosnia and Herzegovina Bakir Izetbegović, President of the Republic of Croatia Ivo Josipović, President of Montenegro Filip Vujanović and President of the Republic of Serbia Tomislav Nikolić signed the Declaration on the Role of the State in Addressing the Issue of Persons Missing as a Consequence of Armed Conflict and Human Rights Abuses. The signatory states and ICMP invite others to join in the Declaration.

¹⁹⁷ Declaration on the Role of the State in Addressing the Issue of Persons Missing as a Consequence of Armed Conflict and Human Rights Abuses.

DECLARATION ON THE ROLE OF THE STATE IN ADDRESSING THE ISSUE OF PERSONS MISSING AS A CONSEQUENCE OF ARMED CONFLICT AND HUMAN RIGHTS ABUSES

Considering States' obligations stemming from principles embraced by instruments such as the Charter of the United Nations, the Universal Declaration of Human Rights, the Geneva Conventions on Protection of Victims of War (1949) and their Additional Protocols (1977), the International Convention for the Protection of All Persons from Enforced Disappearance, international covenants and other instruments safeguarding the dignity and human rights of all persons;

Recognizing that many persons missing as a consequence of armed conflict and human rights abuses will not be found alive, but that their mortal remains are hidden, often in remote locations;
Recognizing that survivors of armed conflict have suffered severe hardship and often injustice, and that large numbers of missing persons can prolong the trauma of a painful past, exacerbate the fragility of peace and reconciliation processes and may be an impediment to the development of democratic society through accountable and just institutions;

Considering that the failure to provide answers on the fate and whereabouts of missing persons to their families prolongs their suffering and threatens their human rights and needs to be redressed through efficient, reliable and transparent processes;

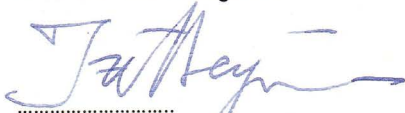
Recalling that the largest effort to systematically locate and reliably identify persons missing as a consequence of armed conflicts and human rights abuses has been undertaken in Bosnia and Herzegovina, Croatia, Montenegro and Serbia, and wishing to encourage other States to address the problem of missing persons through similar processes that are based on fundamental human rights principles and the rule of law, which characterize a just and peaceful society;

Aiming to promulgate basic principles and practices in addressing the issue of missing persons, We, the Representatives of States joining in this Declaration, herewith affirm and declare:

1. A commitment to addressing the issue of missing persons as a consequence of armed conflict and human rights abuses as a responsibility of the State to ensure a lasting peace and to promote cooperation and reconciliation within democratic societies that uphold and protect human rights. We recognize that resolving the fate of the missing in a manner that is commensurate with human rights and the rule of law is an integral part of these objectives.
2. Our determination to uphold a profound commitment to the rights of survivors, including the right of families of the missing to know the fate and whereabouts of persons missing as a consequence of armed conflict and human rights abuses.
3. A commitment to strengthen domestic capacities to effectively address the problem of missing persons, to ensure access to information on the whereabouts of missing persons, and to enable the participation of civil society in these efforts, and especially that of survivors of armed conflict and human rights abuses, first of all the families of missing persons.

4. Our conviction that cooperation between governments is necessary and that the exchange of information is encouraged and is often a necessary condition for establishing efficient, reliable and transparent processes of locating and identifying the missing, and that such cooperation ought to be based on adequate agreements incorporating, *inter alia*, the principles of this Declaration. In this regard, the cooperation with international and other organizations engaged in this human rights issue is also desired and encouraged.
5. In recognition of the problem of missing persons as a significant human rights concern, we affirm that all efforts to redress the problem ought to conform to the requirements of human rights obligations and the rule of law, including the requirement to protect the dignity and privacy of individuals, and to locate, recover, examine and identify the missing by methods that are accurate, reliable and commensurate with standards of justice, including those of criminal justice.
6. Our determination to work towards establishing the truth about the circumstances of persons missing as a consequence of armed conflict and human rights abuses, and to facilitate all processes that aim to counter any enduring sense of impunity.
7. Our strong commitment to fully assist the role of the judiciary, in particular that of the criminal justice system, in addressing the problem of missing persons through the prosecution of perpetrators of crimes that have caused persons to disappear or to remain missing, and to foster international and regional judicial cooperation to that end.
8. Our commitment to pursuing legislative measures as part of domestic legislation to implement the principles set forth in this Declaration and to advance their universal recognition, *inter alia*, through international instruments to this effect.
9. This Declaration shall not derogate from obligations to protect the rights and freedoms recognized or existing pursuant to law, conventions, and regulations or custom on the pretext that the present Declaration does not recognize such rights or that it recognizes them to a lesser extent.
10. In signing this Declaration, the Parties encourage others to follow suit. This Declaration is hence open to others to join the Signatory Parties to this Declaration in supporting the principles and commitments contained herein.
11. This Declaration is originally drafted and signed in the English language and may be translated into other languages. In case of a conflict between the English text and that of any translation, only the English text shall be considered authoritative.
12. The International Commission on Missing Persons, as the organization that throughout its work has led the effort of expounding the principles set forth herein, shall notify the Signatory Parties of others joining in this Declaration.
13. The International Commission on Missing Persons shall transmit certified copies of this Declaration to all Signatories of this Declaration.
14. This Declaration shall take effect on the date of signature.

For Bosnia and Herzegovina



Bakir Izetbegović
Chairman of the Presidency of Bosnia
and Herzegovina

At **MOSTAR**, On **29/8/2014**


For the Republic of Croatia



Ivo Josipović
President of the Republic of Croatia

At **MOSTAR**, On **29/8/2014**

For Montenegro



Filip Vujanović
President of Montenegro

At **MOSTAR**, On **29/8/2014**

For the Republic of Serbia



Tomislav Nikolić
President of the Republic of Serbia

At **MOSTAR**, On **29/8/2014**

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