



Ministry for Human Rights and Refugees
Bosnia and Herzegovina

**APPLICATION OF THE LAW ON MISSING
PERSONS OF BOSNIA AND HERZEGOVINA**

GUIDE FOR FAMILIES OF MISSING PERSONS

Sarajevo, 2006

**Ministry for Human Rights and Refugees in
cooperation with**

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ICRC – International Committee of the Red Cross
OHCHR – Office of the High Commissioner for
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APPLICATION OF THE LAW ON MISSING PERSONS OF BOSNIA AND HERZEGOVINA

GUIDE FOR FAMILIES OF MISSING PERSONS

INTRODUCTION

This Guide has been prepared to facilitate access to information and justice, as well as the realization of guaranteed rights to the families of missing persons.

Since the missing persons' family associations in Bosnia and Herzegovina have been registered with the objective of promoting and enforcing the rights of missing persons' family members, and particularly the fundamental right – to know the fate of the missing family member - this is the opportunity for all associations to directly take part in distributing the Guide and thus contribute to better implementation of the Law.

The questions raised by missing persons' family members and representatives of family associations during the public debates held in April 2006 in Brcko, Prijedor, Sarajevo and Travnik have been used as a basis for creating this Guide.

Particular attention has been paid to explaining the definitions in the Law on Missing Persons so as to avoid possible dilemmas in their interpretation. We believe that missing persons' family members and representatives of their associations can use this Guide to advocate for the implementation of the Law on Missing Persons and thus contribute to more efficient enforcement of their rights.

The representatives of the Ministry for Human Rights and Refugees, in cooperation with the International Commission on Missing Persons, the International Committee of the Red Cross, the Center for Free Access to Information and the Office of the High Commissioner for Human Rights in BiH participated in the preparation of the Guide. The Working Group for the Implementation of the Law on Missing Persons established by the Ministry for Human Rights and Refugees also contributed to the creation of the Guide.

In the Guide, following the structure of the Law on Missing Persons, we attempted to answer the questions presented by the representatives of the missing persons' family associations.

HOW TO IMPROVE THE APPLICATION OF THE LAW ON MISSING PERSONS

In order to facilitate an understanding of the notion of “missing person” and its meaning in Bosnia and Herzegovina to the families of missing persons, the definition of a missing person, as determined by the Law on Missing Persons of Bosnia and Herzegovina will be explained in several stages in the following text. As mentioned in the introduction, the explanations are given as answers to questions presented in the aforementioned workshops.

EXPLANATION OF THE DEFINITION OF WHO MAY BE CONSIDERED A MISSING PERSON

Who is considered a missing person in Bosnia and Herzegovina?

The definition stipulated by the Law on Missing Persons of Bosnia and Herzegovina (hereinafter: the BiH Law) states:

“A missing person is a person about whom his family has no information and/or, based on reliable information, is reported as missing as a consequence of an armed conflict that happened in the territory of the former SFRY.

This Law pertains to persons who disappeared in the period between 30 April 1991 and 14 February 1996”.

The following sources have been used in determining the definition in the BiH Law:

International law uses various definitions that have been used as a basis in creating the Law on

Missing Persons in BiH. Among others, the definitions from the UN Declaration on the Protection of All Persons from Enforced Disappearances¹, ICRC² and Geneva Protocols I-IV on Protection of Victims of War.

Explanation:

The definition of the term “missing person” in the BiH Law **includes both missing civilians and missing soldiers** who disappeared during the armed conflicts in Bosnia and Herzegovina.

The fundamental conditions for a person to be considered missing are that:

- the family has no news of the missing relative,
- they reported the disappearance, and
- there is no reliable information as to the fate of the missing person.

In order to consider a person missing all three conditions must be fulfilled.

¹ “persons arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law”

² The working definition used by ICRC where “missing persons” or “persons unaccounted for” are defined as persons “whose families have no news of and/or who have been reported based on reliable information as persons missing as a consequence of an armed conflict (international or non-international) or internal violence (internal unrest (internal struggle) and situations demanding particularly neutral and independent institutions and mediators)”.

A person shall **not be considered missing** if s/he died of natural causes or due to war activities, and if there is **reliable information** of his/her death, i.e. **information with official organs (the Ministry of Interior, court, hospital, civil protection unit, burial company, etc.)**, meaning that the mortal remains are known to exist at a given place of burial.

There have been cases when the family reported a person as missing during the war due to lack of information about the person, which is why such persons may be found in the lists of missing persons.

Earlier records of persons missing during the war and afterwards have been subject to permanent checks, so a number of persons registered as missing during the war have been removed from the records of missing persons as resolved cases.

In accordance with international standards, persons have been removed from the records of missing persons if they have been found alive, as well as the persons who have been identified based on the official records determining that the person died of natural causes or that death resulted from war activities and the mortal remains have been buried in a marked grave site.

Who is considered to be a missing person's family member?

"A **missing person's family member** is a child born in or outside marriage, adopted child, as well as a step child supported by the missing person, marital or extramarital partner, parents (step father, step mother), adoptive parent, sister and

brother of a missing person **supported by the missing person.**

A missing person's family member shall be considered to have a need for **support** if s/he does not enjoy any rights for support such as: rights based on social welfare, pension-disability insurance, veteran-disability insurance, income from work, individual performance of economic or independent activity and other income that can be considered support in accordance with the current legislation.

The missing person's family comprises persons related to a degree stipulated in the BiH Law on Missing Persons, which is relevant for the enforcement of rights established by this Law.

The condition for realization of these rights is that the family members lived in a common household with the missing persons, were economically dependent, and have a need for support (presenting a pre-war housing list or another document).

HOW TO INFLUENCE BIH AUTHORITIES TO FULFILL THEIR RESPONSIBILITIES

How is *the right to know* realized?

The Law on Missing Persons establishes the right of family members to **know the fate of their missing family members** and relatives, including:

- 1) if they are alive - their (temporary) residence
- 2) if they are dead – the circumstances and cause of death and burial site;

The right to know also includes the right of missing person's family members to receive the mortal remains of the missing person.

The right to know is realized by submitting a tracing request for a missing person.

It is the obligation of all levels of government of Bosnia and Herzegovina to establish such processes as will facilitate clarification of the circumstances of disappearance and discovery of the sites of burial of missing persons.

The missing persons' families should demand from relevant institutions the fulfillment of this obligation and concurrently should file complaints regarding those institutions not meeting this obligation.

In order for this right to be implemented the families are entitled to request court enforcement and, as a part of the court's decision, a determination of the responsibility of the relevant organ or institution.

How is *the right to information* realized?

The right to know and *the right to information* are two different rights.

These two rights are closely associated and inter-supportive, but there are differences regarding the mode of enforcement.

The right to know means the right of missing persons' family members to request from state authorities answers regarding the status of a missing person, i.e. whether the person is dead or alive and his/her whereabouts.

The right to information is the right of missing persons' family members to address, at any time, BiH institutions at all levels and request answers to all questions **regarding the tracing process and resolution** of the missing persons' cases.

The right to know = to know the results of the tracing and resolution process

The right to information = to request information regarding the tracing and resolution process itself.

In accordance with the provisions of the Law on Missing Persons, the BiH organs and institutions at all levels are obligated to **furnish available information** to the families of missing persons and institutions for tracing missing persons.

The missing persons' family members may realize the right to information:

- a) **directly** with relevant institutions (when a missing person's family member directly

and on his/her own behalf sends a request for information to a BiH organ or institution); or

- b) **through the Missing Persons Institute** (when a missing person's family member sends his/her request to the Missing Persons Institute, who forwards it on behalf of the Institute to a BiH organ or institution along with other requests or individually).

If the organ or institution requested to furnish information has no reason to delay the submission of the information, the organ/institution must furnish the information within 30 days of submission of the request.

Should an answer not be provided within the deadline (30 days), after the expiration of the deadline, the right to appeal against 'silent administration' may be invoked.

The right to file an objection may be invoked due to an unsatisfactory answer.

Can the Freedom of Access to Information Act be used?

Aside from the Law on Missing Persons, there is a Freedom of Access to Information Act in BiH that allows the missing persons' family members as individuals, institutions, associations, etc. to request any information in possession of public organs and institutions.

The missing persons' family members, using the Freedom of Access to Information Act, have the right to request, *inter alia*, both information **regarding the circumstances of**

disappearance and information regarding the **tracing process itself**.

In accordance with the Freedom of Access to Information Act, the request for information should contain as much detail as possible, and at a minimum:

- the name, surname, and address of the person submitting the request,
- precise description of the requested information,
- time and place of the event,
- circumstances of the event, if they are known,
- signature of the person submitting the request

The person submitting the request does not have to cite the reasons for requesting the information.

Public organs are obliged to furnish the information within 15 days of the day of submission of the request.

In case the requested information is not received within the legal deadline, the persons requesting the information have the right to appeal to the second-instance organ of the institution or to initiate an administrative dispute. Assistance in realizing this right may be requested from the Ombudsman Institution and legal aid may be requested from the Center for Freedom of Access to Information or non-governmental organizations which offer free legal aid.

When a person submitting the request doesn't receive any information (so-called "silent administration") within the 30 day deadline, the party may initiate an administrative dispute with the relevant court.

MISSING PERSON STATUS

As already emphasized in the definition of a missing person, one of the conditions to consider a person missing is that the person has been reported as missing and registered as such in the official records of missing persons in accordance with BiH Law.

To whom can new tracing requests be submitted?

For those missing persons who had never been registered with the entity bodies or ICRC, the tracing request for missing persons is submitted to the BiH Missing Persons Institute.

There is no time limit for submitting tracing requests.

Tracing requests for persons who disappeared before 30 April 1991 or after 14 February 1996 will not be accepted.

It is important to note that the tracing request **does not initiate the procedure for establishing the circumstances of disappearance.** The investigation into the circumstances of disappearance is subject to criminal proceedings that may be initiated by the missing persons' family members and also *ex officio* by the relevant prosecutor and all other officials.

Who can submit a tracing request for a missing person?

The tracing request may be submitted by any missing person's family member or other persons

or institutions if they can present minimum data on the identity of the missing person.

What does a tracing request contain?

The tracing request should contain minimum data on:

- the name and surname of the missing person,
- the name of one parent,
- JMBG (citizen's unique identification number) (if known),
- place and date of birth, or year of birth,
- the presumed place and date, or year, of disappearance and circumstances of disappearance.

The person submitting the request should cite precise and credible data, insofar as possible. Upon receiving the request, the BiH Missing Persons Institute will check the credibility of reported data, verify the request and initiate the tracing process.

All tracing requests submitted to ICRC or one of the relevant bodies (State Commission for Tracing Missing Persons, Federation Commission for Tracing Missing Persons, RS Office for Tracing Missing Persons) shall be considered valid and family members do not have to repeat the procedure following the establishment of the Institute.

Can a foreign citizen submit a request?

A foreign citizen has the right to submit a request for tracing a **missing citizen** of Bosnia and Herzegovina under the same conditions applicable to BiH citizens submitting requests.

A foreign citizen has the right to submit a request for tracing a **foreign citizen** in cases:

- where a missing foreign citizen had (temporary) residence in Bosnia and Herzegovina; or
- where the missing person did not have registered (temporary) residence in BiH, but the person submitting the request can provide reliable information that the disappearance occurred on the territory of BiH.

Registering a missing foreign citizen grants solely the right of the family members to know the fate of the missing person, their (temporary) residence or, if they are dead, the circumstances, cause of death and burial site, if such site is known, and to receive the mortal remains.

Foreign citizens do not have access to the right to financial support and other rights regulated by Article 18 of the BiH Law on Missing Persons, unless this is explicitly regulated by means of a specific agreement between their state of origin and Bosnia and Herzegovina.

When does the status of a missing person cease?

The status of a missing person ceases on the **day of identification** by relevant organs, after which the tracing process is concluded.

The cessation of the status of a missing person **shall not mean the cessation of rights of missing person's family members** derived from this Law.

The tracing process shall not cease when the missing person has been proclaimed dead but his/her mortal remains have not been found.

When is a missing person considered identified?

A missing person is considered identified when it is reliably established within the identification process by an authorized forensic pathologist that the found mortal remains match a particular person's physical, hereditary, or biological characteristics, or when a missing person is located alive.

QUESTIONS RELATING TO THE RIGHTS OF FAMILY MEMBERS OF MISSING PERSONS

What are the rights of family members of missing persons?

The family members of missing persons have a right to financial support, a right to temporarily dispose of the property of the missing person, expenses of the burial/funeral, priority in employment and education for children, health protection, marking the site of burial and exhumation, and a right to financial support for associations of families of missing persons.

How and from what date is the right to financial support enforced?

The right to financial support attaches to the missing person's family members from the day of entry into force of the Law on Missing Persons or from the day of submission of the tracing request, if it was submitted after the entry into force of the Law.

Persons who had not submitted a tracing request prior to entry into force of this Law will have the right to support **from the moment of submitting the tracing request for the missing person.**

All other missing persons' family members will exercise this right from the day of entry into force of the Law on Missing Persons, i.e. **from 17 November 2004.**

The right to financial support is a personal right, which means it cannot be inherited or otherwise transferred to another person.

This right cannot be exercised alongside another right granted in BiH or any other state:

- pension
- rights based on social welfare
- rights based on veteran disability insurance
- income from work
- "individual performance of economic or independent activity"
- and other income that can be considered support.

The beneficiary may choose to use a financially more favorable right at any moment, even after the conclusion of the identification process or declaration that the missing person is deceased.

Right to payment in arrears

Persons who submitted a request and **did not exercise the right to financial support on other grounds** are entitled to payment in arrears from the moment of the entry into force of the Law.

Persons who **enjoyed the right to financial support on other grounds** are entitled to be paid the difference, should the support stipulated by this Law be higher than the support paid on other grounds. The organ in charge of calculating the difference is the Fund for Support to Families of Missing Persons.

How is the base amount for calculation of financial support determined?

The base amount for calculation of financial support is 25% of the average paid wage in BiH for the previous quarter.

How is the amount of financial support determined?

- A) **The base amount** is used exclusively as a base for calculation of granted or stipulated rights for each individual beneficiary.

This means that the sum of granted individual rights of all beneficiaries within a family may be higher or lower than the determined base amount.

According to the Law, only a child (marital / extramarital / adopted / stepchild) and marital or extramarital partner are entitled to the base amount. This means that if a missing person has more than one child or has a partner and children, for each of them individually the right for support shall be granted in the full base amount (e.g. if the missing person had a partner and two minor children, it means that each of them is entitled to support in the amount equal to the base amount, which totals 3 individual base amounts)

- B) **One half of the base amount** belongs to the parents, brother and sister of a missing person. The calculation is performed identically to the family members who are entitled to support in the base amount, which means that each of these persons has an individual right to financial support in the amount of one half of the base amount. This allows for the total support to family members of a missing person to be higher than one base amount.

The adoptive parents of a missing person, in case of **full adoption**, are also entitled to one half of the base amount.

- C) **One quarter of the base amount** belongs to the stepfather and stepmother, if the missing person lived in a common household with them.
- D) **Increased amount** of financial support belongs to parents with two or more missing children (including adopted and step children). The one half of the base amount granted to the mother and father will be increased by 15% of the base amount.

When does the right to financial support cease?

The right to financial support ceases:

- a) upon completion of regular education, or by marriage, of a child, adopted child, stepchild, brother, or sister
- b) upon a partner's entry into a marital or extramarital partnership
- c) upon the death of beneficiary
- d) upon employment
- e) upon selecting to exercise a more favorable right.

What organ is in charge of payment of financial support?

The Fund for Support to the Families of Missing Persons of BiH is the institution in charge of calculating and disbursing the financial support. The Fund is established by the Council of Ministers, and the funds for its work are provided in the budgets of BiH, the Federation of BiH, the RS and Brcko District. The Fund may also have other sources of income.

Procedure for obtaining financial support

The request for financial support is submitted to the relevant municipal organ of social protection in the municipality of (temporary) residence, or to the relevant institution of Brcko District.

The Fund will issue an instruction regulating the form of the request/decision and determine the list of appropriate documents to be submitted with the request.

The municipal institutions **only forward** the request to the relevant organ of the Fund which makes and issues a formal decision.

The decision regarding the request for financial support is passed by the Fund within 60 days.

The person filing a request who is not satisfied with the decision of the Fund has the right to appeal to the Appellate Council of the Council of Ministers of Bosnia and Herzegovina, within 15 days of receiving the formal decision.

A dissatisfied party can initiate an administrative dispute before the Court of BiH against the decision of the Appellate Council of the Council of Ministers. If an administrative dispute is initiated, the missing persons' family members will have to seek legal assistance.

How is the right to temporarily dispose of property enforced?

In cases where a missing person left behind property which s/he owned or was in possession of, and the proceedings for proclaiming the missing person deceased have not been completed, the family member, or, if they do not exist, the

“actively legitimate” person (the person exercising the right to disposal of property on other grounds) or institution has the right to seek to temporarily dispose of the property of the missing person.

An “actively legitimate” person is a person who has the right to initiate proceedings to temporarily dispose of the property, pursuant to the Law on Inheritance, on the condition that no closer family members of the missing person exist.

An “actively legitimate” person can also be an institution. Most often this role is assumed by the Social Welfare Services who carry out affairs in relation to the custody of minor children and incapacitated family members of missing person.

The request for temporary disposal of property is submitted to the territorially competent court, i.e. the court in the territory where the property is located.

The right to free burial of missing persons

The missing persons’ families are entitled to a free burial of the identified missing person, based on an order from the Missing Persons Institute.

Realization of other rights in the Law on Missing Persons

The children of missing persons have the right to priority in education and employment, all else being equal. When a child of a missing person meets the same criteria as other candidates, s/he will have an advantage in admission to educational institutions or employment. When submitting a request for priority in employment or admission to an educational institution, the child of a missing

person should attach a certificate of disappearance of a parent issued by the Missing Persons Institute.

In case this request is not accepted, the child of a missing person is entitled to appeal to the institution to which the request was submitted.

Realization of the right to health protection

Realization of the right to health protection under this Law requires changes and amendments to the entity and Brcko District laws on health protection.

Support to associations of missing persons

The relevant authorities in BiH at the level at which the missing persons' family association was registered are obliged to, **on a priority basis, consider** requests for financial and technical assistance to the missing persons' family association, and grant assistance in accordance with financial capabilities if the proposed programs or projects **fulfill the stipulated criteria** for assistance.

By establishing the Fund, all missing persons' family associations can also request assistance from the Fund in accordance with the criteria to be proposed by the Director of the Fund and approved by the Distribution Board to be nominated by representatives of missing persons' family associations.

Marking the sites of burial and exhumation of missing persons

The Rulebook on Marking the Sites of Burial and Exhumation of Missing Persons regulates the manner in which these sites are marked. This

Rulebook is adopted by the BiH Council of Ministers.

Who can submit a request for marking the sites of burial and exhumation?

The request for marking the sites of burial and exhumation can only be submitted by:

- a) missing persons' family members, or
- b) associations of families of missing persons.

How is the marking of sites of burial and exhumation financed?

- a) In accordance with the Law on Missing Persons, the funds for **marking** the sites of burial and exhumation and for maintenance come from the Fund for Support to Missing Persons' Families;
- b) Alternatively, those families/associations who wish to mark the place of exhumation/burial with a marker / commemorative plaque outside the standard design (larger plaque, etc.) may fund these markers individually.

What can be the design of a marker/commemorative plaque?

The design of a marker/commemorative plaque is determined by the Rulebook on Marking the Sites of Burial and Exhumation of Missing Persons that is adopted by the BiH Council of Ministers.

This Rulebook determines a standardized method of marking sites of burial and exhumation of missing persons, determines the standard design of the marker/commemorative plaque and regulates issues regarding the work of the

Commission for Selection of the Preliminary Design.

Can a place where the missing person was killed or a primary mass grave be marked?

The Law on Missing Persons only envisages marking sites of burial and exhumation of missing persons, so these are the only sites that can be marked from the resources of the Fund for Support to Missing Persons' Families. However, the Law does not prohibit other places (the place where the missing person was killed, a primary mass grave, etc.) from being marked from private funds, after permits have been issued by relevant town planning/urban development authorities.

What is the procedure for submitting the requests for marking sites of burial and exhumation?

- a) the procedure begins with the submission of a request to the Missing Persons Institute to issue a certificate that on a specific site the exhumation was carried out of the person to whom the request for marking the site pertains.
- b) this certificate and the request for marking the site of burial and exhumation is submitted to the Fund for Support to Missing Persons' Families, who will obtain all relevant documentation regarding the marking of the site in cooperation with relevant state institutions.

Should the construction be funded from resources outside the Fund, the person/association funding the construction will, after obtaining the certificate from MPI, **individually** obtain all necessary permits from the relevant state organs.

QUESTIONS RELATING TO MISSING PERSONS RECORDS

What is the goal of establishing the Central Records of the Missing (CEN)?

The purpose of establishing the CEN is to register all missing persons in one record. The CEN data will be used as basic data for issuing a certificate of disappearance which is the basis for realization of rights under the Law.

What records are going to be used in creation of CEN and how is the data verified?

In the creation of CEN, the records of the entity bodies will be used, as well as data received from family associations, other citizens' associations, Red Cross tracing departments in BiH and international organizations (the International Committee of the Red Cross and the International Commission on Missing Persons).

"The verification comprises the procedure of checking the credibility of the submitted report on disappearance or taking a new statement or identification, i.e. checking the identity of a missing person within all known official records that are/were kept in Bosnia and Herzegovina."

The data verification procedure for missing persons begins by entering the data into the Central Records of Missing Persons that is being established in the BiH Missing Persons Institute.

Institutions and organizations in charge of tracing missing persons to whom the families submitted tracing requests, during and after the war, are obliged to submit information to MPI.

The submitted information is used as a basis in determining the status of a missing person.

There is a difference between **verification** and **identification**, the latter meaning the final resolution of the cases of disappearance. After identification the person shall no longer be considered missing.

If the missing person's dossier cannot be verified, it will be transferred to a special record of unverified dossiers, so that if information becomes available, it may be verified and transferred to CEN.

What is the final deadline for the establishment of CEN?

The process of establishing CEN must be completed within a year from the establishment of the BiH Missing Persons Institute, i.e. by 1 March 2007.

How is data protected in CEN BiH?

The method of data protection is regulated by a Rulebook to be adopted by the Institute.

The staff involved in the management and use of data related to confidential biological, hereditary, physical, genetic or medical data of missing persons are obliged to uphold the confidentiality of the data and treat the information in accordance with data protection rules.

Exchange of other data from CEN is regulated by means of specific agreements between the Institute and other interested organizations.

QUESTIONS RELATING TO OVERSIGHT

Oversight of the implementation of this Law is performed by the BiH Ministry for Human Rights and Refugees.

The Fund for Missing Persons reports annually to the House of Representatives and the House of Peoples of the BiH Parliamentary Assembly.

QUESTIONS RELATING TO PENAL PROVISIONS

Initiating and prosecuting misdemeanors

The Law on Missing Persons defines misdemeanors for which the family of the missing person or the Institute can raise charges before the competent misdemeanor court in the jurisdiction of the alleged misdemeanor.

In order to ensure the continuance of the proceedings without undue stress on the families, it may be in their best interest to report the misdemeanor via the Institute who will then raise the charges.

QUESTIONS RELATING TO INTERIM AND FINAL PROVISIONS OF THE LAW

Can foreign citizens exercise these rights in BiH?

The right of a foreign citizen to submit a tracing request for a missing foreign citizen has already been explained. The family members of a missing foreign citizen can only exercise other rights determined by this Law on the basis of a bilateral agreement concluded by their country with BiH.

The lack of such agreement renders it impossible for foreign citizens to exercise such rights as determined within this Law.

Entry into the official registry of deaths

Three years from the date of entry into force of the Law on Missing Persons (i.e. 17 November 2007) all **registered** missing persons will be considered dead and officially recorded in the registry of death.

Before this deadline the missing person's family members who are attempting to realize some other rights (e.g. the rights from the veteran-disability insurance) must initiate the proceedings for declaring a missing person deceased, if so required by the law regulating that right.

After 17 November 2007, the Institute will issue an official notification requesting the entry into the official registry of deaths in the municipality where the missing person had residency. By way of exception, the families may request the entry into the official registry of deaths in the new place of (temporary) residence of the family, with justification.

Although the relevant organs have not harmonized the laws regulating this matter with the Law on Missing Persons, the missing persons' family members have the right to address the *Request for the entry into the official register of deaths in the new place of (temporary) residence* to the relevant municipal services (registrar's office), with the possibility to simultaneously inform to the Ministry for Human Rights and Refugees that such a request has been filed.

INSTITUTIONS ESTABLISHED BY THE LAW

MISSING PERSONS INSTITUTE

The BiH Missing Persons Institute was formed as a result of the need for the State of BiH to fulfill its obligations towards the families of missing persons. Establishing the Institute and transferring authority from the entity commissions is a requirement for elimination of possible discrimination in the exhumation and identification process, and for the improvement and acceleration of the tracing process for missing persons and their identification.

The co-founders of the Missing Persons Institute are the BiH Council of Ministers and ICMP (International Commission on Missing Persons). The final deadline for the Institute to become operational and entity bodies dissolved is 29 September 2006.

The BiH Missing Persons Institute:

- collects, processes and systematizes the information on missing persons, as well as individual and mass graves;
- establishes a central, unified database on missing persons, keeps records, and provides notification to families of missing persons, including the issuance of certificates on disappearance and identity of victims;
- finds, verifies, and marks locations of mass and individual graves;
- participates in excavations and exhumations of mass and individual graves, collection of visible surface remains, autopsies, anthropological examinations, identifications, inspections on

- sites, and in other activities and procedures pertaining to missing persons;
- cooperates with relevant authorities, including judicial bodies and other organisations, and the International Criminal Tribunal for the Former Yugoslavia (ICTY); cooperates with international and domestic organisations and institutions engaged in resolving the issue of missing persons, notably with the ICRC and the Red Cross Society of Bosnia and Herzegovina in accordance with their mandates;
 - provides support to families of the missing and their associations, including projects proposed by the Advisory Board;
 - undertakes research and other projects relevant to missing persons, organises and provides training in areas of appropriate professional expertise, safeguards mortal remains until the handover of bodies to the family members or burial, provides support to families of the missing in organising funerals of their relatives;
 - secures funds from the budget and donations;
 - cooperates with relevant authorities of the Republic of Croatia, Republic of Serbia, Republic of Montenegro and other countries in accordance with the laws in force in Bosnia and Herzegovina and international agreements;
 - supplies available information to relevant bodies and institutions in accordance with current legislation and regulations, informs the public about the outcomes of investigations and established facts, raises public awareness of the human aspect of the issue of missing persons and their families; and
 - undertakes all other activities relevant to tracing and identifying missing persons.

Governing bodies of the Institute

The governing bodies of the Institute are: the Board of Directors, the Steering Board, and the Supervisory Board.

Role of family associations of missing persons in the work of the Institute

For the purpose of protecting the interests of missing persons' families, there is an Advisory Board within the Institute, comprised of six (6) representatives of missing persons' families appointed by the Steering Board in accordance with national representation and gender equality, and based on nominations received from registered family associations of missing persons, for a period of four years with no possibility for reappointment.

The Advisory Board follows the Institute's activities, advises the governing bodies of the Institute, promotes the issue of missing persons, and proposes projects and initiatives relevant to the Institute's work. Representatives of the Advisory Board can attend sessions of the Steering and Supervisory Boards as observers. The Advisory Board reaches its decisions by consensus.

FUND FOR SUPPORT TO FAMILIES OF MISSING PERSONS

The Fund is established by a decision of the BiH Council of Ministers. The location of its head office, mode of funding and managing of funds, as well as other issues relevant to the work of the Fund, are regulated by an Agreement signed by the BiH Council of Ministers, entity Governments and the Brcko District Government. The Fund is an independent administrative organization in charge of securing funds in order to realize the rights of

missing persons' family members, such as the right to financial support, health protection, assistance to missing persons' family associations, marking the sites of burial/exhumation and other rights in accordance with the Law on Missing Persons.

The Fund is managed by a Director appointed by the Council of Ministers. Supervision of the work of the Fund is carried out by the BiH Ministry of Finance and Treasury and the Office of the General Auditor of Financial Affairs of BiH Institutions.

The Fund's resources that are not earmarked for disbursement of financial support are distributed and utilised based on the Criteria and Priority List for Distribution of Fund Resources.

These Criteria are proposed by the Director and approved by the Distribution Board, which is appointed upon proposal of the BiH family associations of missing persons.

Official Gazette of Bosnia and Herzegovina
No. 50/04; 9 November 2004

Pursuant to Article IV 4a) of the Constitution of Bosnia and Herzegovina, at the session of the House of Representatives held on 12 October 2004 and the session of the House of the Peoples held on 21 October 2004, the Parliamentary Assembly of Bosnia and Herzegovina adopted the:

LAW ON MISSING PERSONS

CHAPTER I - GENERAL PROVISIONS

Article 1 (Subject of the Law)

The Law establishes the principles for improving the tracing process, the definition of a missing person, the method of managing the central records, realization of social and other rights of family members of missing persons, and other issues related to tracing missing persons from/in Bosnia and Herzegovina.

This Law recognises:

- The Convention on the Prevention and Punishment of the Crime of Genocide (1948),
- The Geneva Conventions I - IV on Protection of War Victims (1949),
- Additional Protocols I-II (1977),
- The European Convention on the Protection of Human Rights and Fundamental Freedoms (1950) and 13 Additional Protocols
- The General Framework Agreement for Peace in BiH (Annex 7, Articles III and V)
- The Convention on the Rights of the Child (1989)

- The International Covenant on Civil and Political Rights
- The UN Declaration on the Protection of All Persons from Enforced Disappearance (1992)

Article 2 (Definitions)

In the context of this Law:

1. A missing person is a person about whom his family has no information and/or is reported missing on the basis of reliable information as a consequence of the armed conflict that happened on the territory of the former SFRY.

The Law applies to persons who disappeared in the period from 30 April 1991 to 14 February 1996.

2. A family member of a missing person is a child born in or outside marriage, an adopted child, as well as step-children who were supported by the missing person, spouse or extramarital³ partner, parents (step-father, step-mother), adoptive parent, a brother or sister who were supported by the missing person

3. Reliable information is information from which it can be credibly concluded that a specific person is missing.

4. Minimum data consists of the name and surname of the person, name of one parent, place and date, or only year, of birth, supposed date and place, or only year, of disappearance and circumstances of disappearance.

³ “izvanbračni”

5. Verification is the procedure of checking the authenticity of previously submitted tracing requests or new statements, or checking the identity of a missing person against all known official records that were or are kept in Bosnia and Herzegovina.

6. The procedure for rejecting invalid requests is defined as the submission of an official notification containing an explanation of the reasons that led to the inability to verify the tracing request for a missing person by the body competent to verify the tracing requests.

7. An identified missing person is a person for whom, during the process of identification, it has been reliably determined that the mortal remains correspond to the specific person's physical, hereditary, or biological characteristics, or if the missing person appears alive. The process of identification shall be conducted in accordance with the laws applicable in Bosnia and Herzegovina.

8. The relevant institutions for tracing missing persons are those organisations or institutions, local or international, which have a specific mandate or the authority to trace missing persons in/from Bosnia and Herzegovina in accordance with current regulations of Bosnia and Herzegovina and international treaties.

9. The need for financial support is found to exist where a missing person's family member is not benefiting from any rights based on which s/he is supporting him/herself, such as: the rights of social protection, pension-disability insurance, veteran-disability protection, work related income, individual performance of economic or independent activity, and other income that can be considered support under applicable legislation.

CHAPTER II – RESPONSIBILITY OF AUTHORITIES IN BOSNIA AND HERZEGOVINA

Article 3 (The right to know)

Families of missing persons have the right to know the fate of their missing family members and relatives, their place of (temporary) residence, or if dead, the circumstances and cause of death and location of burial, if such location is known, and to receive the mortal remains.

Article 4 (Obligation to provide information)

Pursuant to Article 3 of this Law, the bodies and institutions of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, the Republika Srpska and Brčko District of Bosnia and Herzegovina, that are in charge of defence, justice, internal affairs and other bodies in charge of tracing missing persons, in Bosnia and Herzegovina and other entity, cantonal, and municipal bodies that in accordance with their authority resolve cases related to the disappearance of persons in/from Bosnia and Herzegovina (hereinafter referred to as: the relevant authorities of BiH), are obliged to provide families of the missing and relevant institutions in charge of tracing missing persons with available information and to give all necessary assistance to improve the tracing process and the process of resolving cases of disappearances of persons in/from Bosnia and Herzegovina.

Article 5
(Method of exchange of information)

The relevant authorities in BiH, at all levels, shall, within 30 days from the date of this Law's entry into force, designate relevant institutions and officials that shall cooperate with: relevant institutions and organs in charge of tracing missing persons, family associations and members of families of the missing, and provide assistance in the realization of the rights of family members of missing persons in accordance with this and other applicable laws in Bosnia and Herzegovina.

The relevant authorities in BiH, on the basis of previous and new requests for information, are responsible for: collecting and verifying all relevant information and facts, quoting all sources that have been checked in the process of establishing such information concerning the disappearance of a missing person, and consulting all official documents and materials within their respective institutions and submitting a written notification of the documents consulted and the findings to both the claimant and relevant institutions in charge of tracing missing persons.

The provisions of the Law on Administrative Procedure in Bosnia and Herzegovina ("Official Gazette of BiH", No: 29/02) shall apply to information requests, including the provisions on deadlines for lodging a complaint in case of an unsatisfactory answer or initiation of an administrative dispute in the case of "silent administration"⁴.

⁴ "šutnja administracije"

All new information that can facilitate the tracing or identification of a missing person must be subsequently noted and investigated.

Officials with duties related to the tracing of missing persons cannot carry out this duty if they are members of steering and other boards, or executive bodies, of political parties, or if they are politically engaged representatives, and must not follow political party instructions.

Article 6 (Obligation to exchange and cooperate)

The relevant authorities in BiH are mutually obliged to exchange information pertaining to the tracing process and determining the fate and identity of missing persons.

In order to improve the tracing process, the relevant authorities in BiH shall cooperate particularly, but not solely, with the International Committee of the Red Cross (ICRC), the International Commission on Missing Persons (ICMP), the Missing Persons Institute and the Red Cross Society of BiH, in accordance with their respective mandates.

Article 7 (Missing Persons Institute)

In order to improve the process of tracing missing persons and expedite identifications of mortal remains of missing persons, the Missing Persons Institute of Bosnia and Herzegovina (hereinafter referred to as MPI) shall be established as an independent institution for tracing missing persons in/from Bosnia and Herzegovina.

The co-founder of MPI may be an international organisation.

The method of establishing MPI and assuming the role of co-founder and the definition of its detailed competencies and manner of financing, in accordance with this Law and other laws in BiH, shall be regulated by an agreement on its establishment concluded by the co-founders.

In accordance with this Law and other applicable laws, MPI shall be a legal entity registered as an institution of Bosnia and Herzegovina, to which shall be transferred, in accordance with this Law, the administrative authority to carry out duties related to the process of tracing missing persons and to issue appropriate documents.

The working relation⁵ of MPI employees shall be regulated in accordance with the labour law which is applicable to the Institutions of Bosnia and Herzegovina.

CHAPTER III - MISSING PERSON'S STATUS

Article 8 (Submitting tracing request)

A tracing request for / registration of a missing person (hereinafter referred to as: request) is submitted to MPI in accordance with this Law.

A request for a missing citizen of Bosnia and Herzegovina may be submitted by any family member of the missing person as well as by other persons or institutions, if they can provide the minimum information about the identity of the

⁵ “radni odnos”

missing person, as stipulated in Article 2 of this Law.

Requests for tracing foreign citizens, according to this Law, may also be submitted by foreign citizens under the same conditions as citizens of Bosnia and Herzegovina if the missing person:

- a) did not have citizenship of Bosnia and Herzegovina, but had registered (temporary) residence on the territory of Bosnia and Herzegovina;
- b) did not have registered (temporary) residence in the territory of Bosnia and Herzegovina, but the applicant is able to provide reliable information that the person disappeared on the territory of BIH.

All requests pertaining to the disappearance of any persons submitted prior to the enforcement of this Law shall be considered valid and submitted in accordance with the provisions of this Law, provided that they consist of minimum required data.

If the minimum required data has not been provided, the applicant shall be contacted within a reasonable period to provide additional information.

Article 9 (Termination of status)

The status of missing person is terminated on the date of identification, and the process of tracing the missing person is concluded.

In the event that a missing person is proclaimed dead, but the mortal remains have not been found, the process of tracing shall not be terminated.

CHAPTER IV - RIGHTS OF FAMILY MEMBERS OF MISSING PERSONS

Article 10 (Prohibition of discrimination)

The relevant authorities in BiH shall ensure that the rights of family members of missing persons under this Law and other laws in BiH are realized on equal conditions, regardless of whether a missing person had been a member of the armed forces or a civilian, exclusive of any form of discrimination, including sex, race, skin colour, language, religion, political or other beliefs, national or social origin, inclusion in a national minority group, property status, age, mental or physical disability, status acquired by birth, or any other status.

Article 11 (Right to financial support)

In accordance with this Law, the family members of missing persons, as defined in Article 2, Paragraph 2 of this Law, who were supported by the missing person and who are in need of support⁶, are entitled to monthly financial support⁷ (hereinafter referred to as: financial support).

Article 12 (Criteria for financial support)

Financial support is a personal non-transferable right.

This financial support cannot be received concurrently with support based on other grounds.

⁶ “izdržavanje”

⁷ “potpora”

In accordance with this Law beneficiaries may choose the more favourable right.

The beneficiary retains the right to choose the more favourable right, even after the identification process has been completed or the missing person proclaimed dead.

The right to financial support commences from the date of the coming into force of this Law. Individuals who did not submit tracing requests prior to the coming into force of the Law, can claim this right from the date of submission of the request.

Article 13

(Determining the amount of financial support)

The base for calculating the amount of monthly financial support is 25% of the average salary paid in Bosnia and Herzegovina during the previous quarter, calculated individually for each beneficiary (hereinafter referred to as: the base amount).

The amount of financial support shall be determined by the following criteria:

- a) each child (marital/extramarital/adopted/step-) shall be entitled to the base amount;
- b) the spouse or extramarital partner shall be entitled to the base amount;
- c) each parent of a missing person shall be entitled to $\frac{1}{2}$ of the base amount;
- d) parents with two or more missing children (including adopted and step-children) shall be

entitled to a 15% increase of the base amount of financial support;

e) adoptive parents realize the right for financial support in the same way as parents under (c) and (d) and to the exclusion of the biological parents;

f) the step-parent shares $\frac{1}{2}$ of the base amount with the other parent to whom they are married only if they lived in a common household with the missing person and at the same time the biological parent is entitled to the other half of the base amount of financial support;

g) a brother and/or sister shall be entitled to $\frac{1}{2}$ of the base amount.

Article 14

(Termination of the right to financial support)

The right to financial support is terminated when:

- a) the child, adopted child, step-child, brother, or sister complete their regular education or enter into marriage;
- b) the spouse enters into marriage or common-law marriage⁸;
- c) the beneficiary dies;
- d) the beneficiary finds employment;
- e) the beneficiary selects another more favourable right.

Article 15

(Establishment of the Fund for Missing Persons)

With the purpose of providing funds and realizing the rights of family members of the missing, the Fund for Support to the Families of Missing Persons

⁸ “bračna ili vanbračna zajednica”

of Bosnia and Herzegovina is established (hereinafter: the Fund).

A decision on the establishment of the Fund shall be issued by the Council of Ministers of Bosnia and Herzegovina within 30 days of the date of the coming into force of this Law.

The headquarters, method funding, governance, and other issues related to the work of the Fund shall be regulated by an Agreement to be signed by the Council of Ministers of Bosnia and Herzegovina, the Government of the Federation of BiH, the Government of the Republika Srpska and the Government of Brčko District of BiH within 30 days of the date of the coming into force of the decision referred to in paragraph 2 of this article.

In addition to budgetary funds, the Fund may be financed through donations, gifts, endowments and other forms of support provided by domestic and/or international juridical or physical persons, in a manner to be precisely defined by the Agreement stipulated in paragraph 3 of this article.

Article 16

(Procedure for regulating the right to financial support)

The request for financial support shall be submitted via the competent authority for social welfare in the municipality of residence (hereinafter: the competent municipal authority) or Brcko District of Bosnia and Herzegovina, who shall in accordance with this Law, within no more than 30 days, process the requests, complete the files and submit them to the Fund for decision and confirmation.

For the purpose of monitoring the implementation of this Law and exchange of information, the summary list of the processed cases shall be forwarded by the competent municipal authorities to the competent entity or cantonal ministry for social welfare.

In accordance with this law, the Fund shall within 30 days of its establishment latest, enact an instruction that will stipulate the form of request and decision and establish a list of appropriate documents to be submitted for the purpose of realization of the right to financial support.

Article 17

(Decision on establishing the right to financial support)

A decision on granting or denying the right to financial support shall be passed by the appropriate authority of the Fund within a time limit not to exceed than 60 days.

The material and procedural provisions of the Law on Administrative Procedure of Bosnia and Herzegovina ("Official Gazette of BiH", No: 29/02) shall apply to decisions denying or granting financial support, including, but not limited to, provisions on deadlines for lodging a complaint in case of an unsatisfactory answer or initiation of an administrative dispute in case of silent administration.

The dissatisfied party shall lodge a complaint with the Complaints Council of the Council of Ministers of Bosnia and Herzegovina within 15 days of receiving the decision.

The dissatisfied party may initiate an administrative dispute before the Court of Bosnia

and Herzegovina against a second instance decision of the authority referred to in paragraph 3 of this article.

In accordance with the Law on Administrative Procedure of Bosnia and Herzegovina, the dissatisfied party may lodge extraordinary legal remedies before the Appellate Council of the Court of Bosnia and Herzegovina.

Article 18
(Other rights of members of families of the missing)

In the event that the proceedings of proclaiming a missing person dead are not concluded, with respect to the property owned by or in possession of a missing person, a family member of the missing person, or if there are not any, then the actively legitimate person or institution⁹, may claim the right to temporarily dispose¹⁰ of the property of the missing person in accordance with the legislation in force in BiH.

The necessary/basic cost of burials/funerals of identified and unidentified persons shall be borne by the competent authorities of the Federation of Bosnia and Herzegovina, the Republika Srpska and Brčko District of BiH, as in accordance with applicable regulations.

Children of missing persons shall have priority in the realization of the rights to education and employment, on an equal basis. Adherence to this principle shall be supervised by the competent inspection authorities of the Federation of BiH, the Republika Srpska and Brčko District of BiH.

⁹ “aktivno legitimirana osoba”

¹⁰ “privremeno upravljanje”

Supported family members of a missing person who do not realize the right to health protection on any other basis shall be entitled to health protection and other rights concerning health insurance, with the same coverage as employed individuals.

For the purpose of realizing the right to health protection, within 90 days of the date of the coming into force of this Law, the Federation of BiH, the Republika Srpska and Brčko District of BiH shall determine the method of realization of this right in accordance with applicable regulations.

The rights determined in accordance with this Law shall be realized from the date of coming into force of this Law.

Article 19

(Associations of families of missing persons)

In accordance with this law the competent authorities in BiH shall give priority to the processing and considering of requests for financial and technical support submitted by unions/associations of families of missing persons and shall, according to their financial abilities, provide assistance if the proposed programs or projects meet the criteria for allocation of funds.

Article 20

(Marking the place of burial and exhumation of missing persons)

Families of the missing or their associations may request that locations of burials and exhumations (individual or joint) are marked, regardless of the number of victims, i.e. missing persons.

The locations of burials or exhumations shall be marked only when the competent authority for tracing missing persons issues a certificate that confirms that an exhumation took place or a grave existed in the location proposed for marking.

On the basis of the document from paragraph 2 of this article, the competent municipal authority shall issue adequate permission to allow the erection of a memorial plaque or another appropriate mark.

In accordance with the Law, the design of the mark or memorial plaque, its funding and other issues shall be regulated by a Book of Regulations on Marking Places of Burial and Exhumation of Missing Persons (hereinafter: the Book of Regulations).

The Ministry for Human Rights and Refugees of Bosnia and Herzegovina, in consultation with the relevant ministries of the Federation of BiH, the Republika Srpska and Brčko District of BiH and representatives of family associations of missing persons, shall agree upon a draft Book of Regulations, within 60 days of the date of coming into force of this Law, and shall submit it to the Council of Ministers of Bosnia and Herzegovina for adoption.

CHAPTER V - RECORDS OF MISSING PERSONS

Article 21 (Creation of the Central Records)

The Central Records of Missing Persons in BiH (hereinafter: CEN BiH) shall include all records that were or are kept at local or entity levels, by associations of families of missing persons and

other associations of citizens and Tracing Offices of the organizations of the Red Cross in BiH, according to their mandate.

The data on missing persons kept by international organizations working in accordance with their respective mandates, applying the principle of confidentiality, shall be included in the CEN BiH on the basis of an agreement concluded between MPI and the organisation.

By unifying the records, as stated in paragraphs 1 and 2 of this article, the CEN BiH shall be established and completed.

Within the Missing Persons Institute of Bosnia and Herzegovina, a competent expert authority shall be designated to maintain the CEN BiH and provide measures to secure data, which will be defined in more detail by an agreement on the establishment of MPI.

Article 22 (Collection and usage of data)

CEN BiH is a collection of individual records of missing persons from/in BiH that includes relevant information concerning the identity of a missing person, place and circumstances of disappearance, and other information important for tracing and determining the identity of a missing person.

All data entered into CEN BiH is subject to verification that includes checking the validity of the request and cross-checking with all official records that were or are kept in BiH.

The request for checking the data on a missing person and cross-checking with other official records, with the purpose of verification, has a

priority in receiving a response from the competent authority.

Verification and entry of previously collected data on missing persons into CEN BiH should be completed by the competent authority within a year of the date of the establishment of the MPI.

Only a verified request/report can serve as basis for realization of rights based on this Law.

Article 23 (Protection of data)

The data from CEN BiH shall be made available to all levels of authority in compliance with established regulations and standards on data protection.

The regulations/manner of managing the database, entering data, exchange and usage of data, particularly the verification, is regulated in detail by the CEN BiH Book of Regulations (hereinafter: the Book of Regulations on CEN BiH).

The Book of Regulations from paragraph 2 of this article shall be passed by the MPI with the consent of the founders of MPI, within 30 days of the establishment of MPI.

Cooperation with other competent authorities in BiH that have data relevant to tracing missing persons is regulated under a special agreement that defines the mode of cooperation and all other important issues.

Persons who are engaged in managing and handling personal information related to confidential data on biological, hereditary, physical, genetic properties and medical data on a missing

person shall have the obligation to keep the information confidential and handle them in accordance with established rules for protection of such information, i.e. in accordance with the Law on Protection of Personal Data (“Official Gazette of BiH”, No: 32/01).

The rules on the protection of data shall be regulated in detail by the Book of Regulations, as referred to in paragraph 2 of this article.

CHAPTER VI – OVERSIGHT

Article 24 (Oversight)

The BiH Ministry for Human Rights and Refugees shall oversee the enforcement of this Law.

The Fund for Missing Persons shall report annually to the House of Representatives and the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina.

CHAPTER VII - PUNITIVE PROVISIONS

Article 25

A fine in an amount between 200.00 KM and 1,000.00 KM shall apply to:

- (1) an official¹¹ who blocks access to information to a family member of a missing person or to an institution in charge of tracing missing persons (Article 5),
- (2) an official who, without justified cause, delays or hinders making available the requested information to a family member

¹¹ “službenik”

of a missing person or to an institution in charge of tracing the missing persons (Article 5).

- (3) an official who delivers incorrect or outdated information which hinders or renders impossible the tracing process of a missing person (Article 5).

A fine in an amount between 500.00 KM and 5,000.00 KM shall apply to an institution or competent authority which:

- (1) does not allow access to information to a family member of a missing person or to an institution in charge of tracing missing persons (Article 4),
- (2) enables any form of discrimination against family members of a missing person (Article 10).

Any violation of this Law, and particularly those violations relevant to abuse, manipulation of data, disclosure of protected data, etc. is subject to sanctions, in accordance with the Criminal Laws, the Laws on Misdemeanours, the Laws on Administration, the Law on Free Access to Information and other laws that are in force in the territory of BiH.

CHAPTER VIII - INTERIM AND FINAL PROVISIONS

Article 26

(Realization of the rights of foreign citizens)

Family members of missing foreign citizens are entitled to realize their rights by virtue of disappearance only in accordance with a bilateral agreement that their countries of origin conclude with Bosnia and Herzegovina.

Article 27
(Entry into the Register of Deaths)

Three years after the date of the coming into force of the Law, persons registered as missing in the period from 30 April 1991 to 14 February 1996 whose disappearance has been verified within the CEN BiH, shall be considered dead and this fact shall be officially entered in the Register of Death.

Based on official information from MPI, the death of a missing person shall be recorded in the Register of Death in the municipality where the person had registered place of residence until the beginning of the war.

As an exception, the family may request this recording to be in the place of residence of the family, citing reasons for such action.

The competent authorities of the Federation of Bosnia and Herzegovina, the Republika Srpska and Brčko District of Bosnia and Herzegovina, as stipulated in paragraph 1 of this article shall, within 90 days of the date of the coming into force of this Law, alter relevant laws in order to enable entering the persons who disappeared in the period defined under this Law in the Register of Death.

Article 28
(Submission of requests until the establishment of
MPI)

Until such time as the MPI is established, tracing requests for missing persons shall be submitted to relevant institutions for tracing missing persons, in accordance with their respective jurisdictions and mandates.

Article 29
(Issuance of certificates on the status of a missing
person)

Issuance of certificates¹² on the status of a missing person to be used for the purpose of realizing the right to financial support, until such time as the MPI and CEN BiH are established, shall be regulated by a temporary instruction from the Ministry of Human Rights and Refugees.

Article 30
(Prevalence in application)

This Law shall supersede other laws in force in BiH, which shall in no way limit the application of this Law.

Article 31
(Entry into force of the Law)

The Law enters into force eight days after its publication in the "Official Gazette of BiH".

PS BiH No. 109/04
21 October 2004
Sarajevo

Chairman of the House of
Representatives of the
Parliamentary Assembly of
BiH

Martin Raguž
(signature)

Chairman of the House of
the Peoples of the
Parliamentary Assembly of
BiH

Goran Milojević
(signature)

¹² "potvrda ili uvjerenje"



icmp

**AGREEMENT ON ASSUMING THE ROLE OF CO-
FOUNDERS OF THE MISSING PERSONS INSTITUTE
OF BOSNIA AND HERZEGOVINA**

**COUNCIL OF MINISTERS OF BOSNIA AND
HERZEGOVINA
and
INTERNATIONAL COMMISSION ON MISSING
PERSONS
(hereinafter: "the Signatory Parties")**

RECALLING the obligations of relevant authorities of Bosnia and Herzegovina under the General Framework Peace Agreement for Bosnia and Herzegovina,

ACKNOWLEDGING the necessity of resolving the fate of missing persons without discrimination on the basis of ethnic affiliation, gender, race, language, religion, political or other beliefs, social origin, financial status, or their roles in armed conflicts or other hostilities, or the like,

RECOGNIZING the urgency of adopting and enforcing political and legal solutions to accelerate the process of providing families of the missing with relevant information,

IDENTIFYING the necessity of raising the awareness of the human dimension of the tragedy of the missing and thus to foster understanding of the human values on which society is founded,

CONTRIBUTING to strengthening professional institutions that will assist in improving the searching process and resolving the fate of missing persons,

CREATING a basis for developing the Missing Persons Institute of Bosnia and Herzegovina, as a body for networking and partnership in Bosnia and Herzegovina and in the region, and

RESPECTING the Law on Missing Persons, and

AIMING AT resolving the fate of missing persons from Bosnia and Herzegovina and in Bosnia and Herzegovina who disappeared during the period 30.04.1991. – 14.02.1996. (the time limit set under the Law on Missing Persons in Bosnia and Herzegovina) through more efficient: locating of missing persons, exhumations, safeguarding of mortal remains, examination and identification, collecting, processing and protection of information, keeping records and notification, and also financing the requirements of the Missing Persons Institute, the Signatory Parties AGREE AS FOLLOWS:

Article 1

The Signatory Parties to this Agreement, the Council of Ministers of Bosnia and Herzegovina and the International Commission on Missing Persons become the Co-founders of the Missing Persons Institute of Bosnia and Herzegovina (hereinafter referred to as: "the Institute") having equal rights and responsibilities unless otherwise provided herein.

Article 2 (Seat)

The Signatory Parties agree that the seat of the Institute be in Bosnia and Herzegovina in Sarajevo.

The Institute has legal personality and shall have its stamp and seal whose look and design shall be determined by a special decision of the relevant Institute body.

For the stamp and seal, the name and coat of arms of Bosnia and Herzegovina shall be used in accordance with relevant legislation of Bosnia and Herzegovina.

Article 3 (Registration)

The Signatory Parties agree that the Institute registered at the Cantonal Court Sarajevo be re-registered in accordance with current legislation of Bosnia and Herzegovina and this Agreement under the name of the Missing Persons Institute of Bosnia and Herzegovina as an independent, autonomous and professional institution of general interest, that is entrusted with competencies established under the Law on Missing Persons of Bosnia and Herzegovina and this Agreement.

Article 4 (Jurisdiction)

The Signatory Parties agree that the Institute engage in the activities as follows:

- collects, processes and systematise the information on missing persons, individual and mass graves;
- establishes central and unique database on missing persons; keeps records and notifies families of missing persons, including issuing certificates on disappearance and identity of victims, as established in the Law on Missing Persons (Official Gazette of BiH No. 50/04);
- finds, checks and marks locations of mass and individual graves;

- participates in excavations and exhumations of mass and individual graves;
- participates in the collection of visible surface remains;
- participates in autopsies;
- participates in anthropological examinations;
- participates in identifications;
- takes part in inspections at sites and in other activities and procedures pertaining to missing persons;
- cooperates with relevant authorities, including judicial bodies and other organisations, and the International Criminal Tribunal for the Former Yugoslavia (ICTY);
- cooperates with international and domestic organisations and institutions engaged in resolving the issue of missing persons, notably with the ICRC and the Red Cross Society of Bosnia and Herzegovina in accordance with their mandates;
- provides support to families of the missing and their associations, including projects put forward by the Advisory Board;
- undertakes researches and other projects relevant to missing persons;
- organizes and provides training in the appropriate fields of professional expertise;
- safeguards mortal remains until handover of the bodies to the family members or burial;
- provides support to families of the missing to organise the funerals of their relatives;
- secures funds from the budget and donations;
- cooperates with relevant authorities of the Republic of Croatia and the State union of Serbia and Montenegro and other

- countries, in accordance with the laws in force in Bosnia and Herzegovina and international agreements;
- supplies available information to relevant bodies and institutions in accordance with current legislation and regulations;
 - informs the public about the outcomes of investigations and established facts;
 - raises public awareness on the human aspect of the issue of missing persons and their families; and
 - all other activities pertinent to tracing and identifying missing persons.

The Institute shall contribute to the further development of existing regulations and standards relevant to missing persons which are in effect in Bosnia and Herzegovina.

Article 5 (Organisation of the Institute's work)

The Signatory Parties agree that the Institute be organised as follows:

- a) The Institute is a unitary institution operating in the territory of Bosnia and Herzegovina;
- b) In addition to the Institute's headquarters, there shall be field offices in Banja Luka, Mostar, and Tuzla, and in other places as necessary.

The competencies of the field offices, that shall be defined by a book of rules, are: safeguarding mortal remains until handover of the bodies to the family members or burial, receiving tracing requests, and participating in updating of the central records; taking part in exhumations, examinations, autopsies and

identification; issuing necessary documents to families; providing appropriate assistance to the families of the missing, and other cooperation with families.

- c) The initial staff of the Institute will be taken over from the staff employed in the Federation Commission on Tracing Missing Persons and the Republika Srpska Office on Detained and Missing Persons, on the basis of professional abilities, relevant working experience and in a manner that shall take into account national representation and gender equality, whose final number and composition shall be determined by the Board of Directors of the Institute. (17 B + 12 S + 7 C);
- d) The competencies of the Board of Directors, structure, scope of activities, composition, modus operandi, governance and interrelations between its administrative units and other issues of significance for the Institute's operation, shall be defined by the Statute and the Book of Rules on Internal Organisation.
- e) The number of full time employees of the Institute shall be regulated in the Book of Rules on Internal Organisation and shall be rationally determined.
- f) Salaries and remuneration of Institute staff shall be regulated by work contracts.

The Institute shall have its Statute and other bylaws in accordance with current legislation, for which the co-founders shall give their consent.

Article 6 (Management Bodies of the Institute)

The Signatory Parties agree that the governing, managing and supervisory bodies of the Institute are:

- a) the Steering Board
- b) the Board of Directors, and
- c) the Supervisory Board

The bodies as stipulated in the previous paragraph of this article shall be appointed on the basis of professional qualifications and in accordance with the Constitution of Bosnia and Herzegovina, thus ensuring equal representation of the constituent peoples of Bosnia and Herzegovina.

The Chairpersons of the Steering Board, Supervisory Board and the Board of Directors may not belong to the same constituent people in Bosnia and Herzegovina.

Members of the Steering and Supervisory Boards of the Institute shall be appointed by the Co-founders, following an open competition and its outcomes.

Members of the Steering and Supervisory Boards of the Institute shall be selected based on a public competition. This competition shall be carried out by a Selection Committee appointed by the Co-founders in consultation with the Entity Governments and the Brčko District of Bosnia and Herzegovina.

The Committee shall carry out the selection by way of ranking larger number of candidates than the number needed, in accordance with their qualifications, participation in public and scientific work in the area of human rights and other criteria

determined by the Co-founders during the public competition.

The members of the Steering and Supervisory Boards shall elect their respective chairpersons from within their respective membership.

A minimum quorum of one representative of each constituent people of Bosnia and Herzegovina shall be required for making of any decision by consensus.

Article 7 (Steering Board)

The Steering Board shall be composed of six (6) members. Members shall be appointed for the period of four years, and may not be reappointed.

Members of the Board of Directors may not be members of the Steering Board.

The Steering Board shall reach its decisions by consensus.

The Steering Board of the Institute shall:

- adopt the Statute of the Institute;
- appoint and relieve of duty members of the Board of Directors;
- develop an annual programme of activities;
- adopt a financial plan and annual balance sheet;
- adopt the Book of Rules on the Internal Organisation and job classification and other bylaws pursuant to the Agreement, Statute and other laws of Bosnia and Herzegovina;

- provide guidelines to, supervise and evaluate the performance of the members of the Board of Directors;
- carry out all other activities as in agreement with the law and the Statute of the Institute;
- submits reports to the Co-founders at least annually, and also as requested by the Co-founders.

Notwithstanding Paragraph one of this Article, the three initial Members nominated by ICMP shall be appointed for a period of two years, and the three nominated by the Council of Ministers shall be appointed for a period of four years.

The Co-founders shall come to consensus on all six candidates.

Article 8 (Board of Directors)

The Board of Directors is composed of three (3) members who shall be appointed and relieved of duty by the Steering Board of the Institute on the , on the basis of professional abilities and relevant working experience, for a period of four (4) years.

Members of the Board of Directors shall rotate in holding the position of Chairman every eight (8) months.

The Board of Directors shall manage the Institute, and particularly be responsible for organizing, managing, and representing the Institute, for legality of its work and carrying out the decisions of the Institute's Steering Board.

The Statute and other documents of the Institute shall regulate the manner of management of the Institute.

The Board of Directors shall reach decisions by consensus.

Article 9 (Supervisory Board)

The Supervisory Board of the Institute is composed of three(3) members.

The Chairman and members of the Supervisory Board shall be appointed for the period of four years and may not be reappointed.

The Supervisory Board shall reach its decisions by consensus.

The Supervisory Board of the Institute shall:

- review financial reports of the Institute;
- review the annual report and annual balance sheet;
- review and inspect accounting books, their accuracy and legal validity;
- report to the Co-founders, Steering Board, and Board of Directors on the results of their inspection once a year, and more frequently if deemed necessary.

Article 10 (Establishment of the Advisory Board and other bodies)

The Signatory Parties agree that the Steering Board of the Institute may establish professional and other bodies as in accordance with the

Agreement, the Statute of the Institute and other current laws in Bosnia and Herzegovina.

With the objective to secure the interests of families of the missing, an Advisory Board shall be established within the Institute that shall be comprised of representatives of families of the missing, selected for a period of four (4) years.

Members of the Advisory Board cannot be reappointed.

The Advisory Board shall be composed of six members appointed by the Steering Board based on nominations received from registered associations of families of the missing in Bosnia and Herzegovina in a manner that shall take into account the national representation at the level of Bosnia and Herzegovina, including gender equality.

The Advisory Board shall monitor the activities of the Institute, advise the Management Bodies of the Institute, promote the issue of the missing, and develop projects and initiatives relevant to the work of the Institute.

Members of the Advisory Board may attend meetings of the Steering and Supervisory Boards as observers, in accordance with the Statute and other regulations of the Institute.

Decisions of the Advisory Board shall be made by consensus.

Article 11 (Financing of the Institute)

The Signatory Parties agree to provide funds for the normal operation of the Institute, in accordance with their abilities, regulations and mandate.

Initial funding of the Institute shall be planned on the basis of current funds that the Co-founders provide to the organs whose competencies shall be taken over by the Institute.

The authorities of Bosnia and Herzegovina shall provide funds for the work of the Institute from the budget of Joint Institutions of Bosnia and Herzegovina.

In the event that the Institute commences its work within current budget year, the transfer of available budget funds disposed of by the entity commissions to the Institute's account shall be regulated by an agreement between the Council of Ministers of BiH and the entity governments and the government of Brčko District of BiH.

The International Commission on Missing Persons shall provide initial funds and shall seek to continue to provide funds and other in-kind donations for the future work of the Institute.

The Signatory Parties agree to provide funds on an annual basis on the grounds of a financial plan that is to be approved by the Co-founders for each calendar year.

The Institute may receive funds based on sentences of local and international courts

The Institute may receive additional funds and other kinds of support from other sources as in accordance with the law (donations, contributions, endowments of citizens, legal persons and other bodies, contributions from citizens and other legal persons, incomes from different services rendered to third parties, countries, organisations, physical and legal persons and other sources as in conformity with the Law).

Article 12

(Technical and Expert Assistance from ICMP)

The Signatory Parties agree that the relationships between the Institute and ICMP regarding technical assistance provided by ICMP to the Institute shall be regulated by an agreement, including the participation of the ICMP Chief of Staff as a member *ex officio* of the Board of Directors of the Institute, the rendering of services in DNA laboratories, anthropological and archaeological assistance as well as other kinds of technical assistance, including the provision and/or transfer of equipment and/or other assets.

Such agreements shall not abrogate rights and obligations as set forth in this Agreement, or in any other agreement between the Signatory Parties, nor shall any agreement between the Institute and ICMP be construed to contain a waiver explicit or implicit of such rights and obligations.

Article 13

(Appointment of initial members of the Board of Directors)

Pending the selection of members of the Board of Directors on an open competition pursuant to Article 8, the two co-Chairs of the Federation

Commission on Missing Persons and the President of the Office on Tracing Detained and Missing Persons of Republika Srpska shall be appointed as members of the Board of Directors for a period of two years.

The decision on the appointment of the members of the initial Board of Directors shall be made by the Co-founders within 90 (ninety) days from the date of signing the Agreement.

Article 14 (Transfer of competencies)

In accordance with the Agreement, the Governments of the Entities and Brčko District of Bosnia and Herzegovina shall make necessary alterations and amendments to relevant legislation within six (6) months after this Agreement enters into force, aimed at the transfer of authority from the Entity Commission/Office on Missing Persons and relevant body in the Brčko District of Bosnia and Herzegovina to the Institute.

The Commission/Office shall cease their operation no later than ninety (90) days from entering into force of the changes mentioned in the previous paragraph.

The Decision on the establishment of the State Commission on Tracing Missing Persons shall be declared void by a decision of the Council of Ministers ("BiH Official Gazette 9/96").

ICMP warrants that the Institute registered at the Municipal Court Sarajevo has no liabilities or contractual obligations that can be transferred to the Institute.

Article 15
(Application of the Law on Missing Persons)

The Law on Missing Persons, specifically Article 5, shall be applied to the implementation of this Agreement.

Article 16
(Entry into force)

Considering the Article 7 of the Law on Missing Persons, the Agreement shall not be ratified. The Agreement enters into force on the date of its publication in the Official Gazette of Bosnia and Herzegovina.

The Signatory Parties agree that the Agreement shall remain in force unless cancelled by a written agreement between the Signatory Parties.

Any modification shall be enforced under the same procedure requested for its enforcement.

Either Signatory Party may withdraw from this Agreement by a written notice to the other Party no less than six months prior to the expiration of the current year.

The Agreement is drawn up in Bosnian, Croatian, Serbian and English language, each being equally authentic. If a question of interpretation occurs, the English text will prevail.

For
Bosnia and Herzegovina

Mirsad Kebo
(signed)

For the
International Commission
on Missing Persons

Kathryne Bomberger
(signed)