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**Consideration of reports submitted by States parties
under article 40 of the Covenant**

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Bosnia and Herzegovina

Addendum

**Replies from the Government of Bosnia and Herzegovina to the list of
issues (CCPR/C/BIH/Q/2) to be taken up in connection with the
consideration of its second periodic report (CCPR/C/BIH/2)***

[9 August 2012]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited.

Constitutional and legal framework within which the Covenant is implemented (art. 2)

Reply to the issues raised in paragraph 1 of the list of issues (CCPR/C/BIH/Q/2)

1. With regard to applying the International Covenant on Civil and Political Rights, the Constitutional Court of Bosnia and Herzegovina (BiH Constitutional Court) took in case no. 9/09 dated 26 November 2010 a view that the BiH Constitutional Court had jurisdiction to investigate alleged violations of international agreements listed in Annex I to the Constitution of Bosnia and Herzegovina (BiH Constitution) also in cases when the appellant did not invoke discrimination in the application. Before taking this position the BiH Constitutional Court reviewed alleged treaty human rights violations only if the appellant invoked discrimination involving rights protected by this treaty. Under the new jurisprudence the Constitutional Court has jurisdiction over alleged violations of these treaties themselves. So, in case number 9/09 the Constitutional Court examined the compatibility of provisions of the Election Law of Bosnia and Herzegovina with article 25 (b) of the International Covenant on Civil and Political Rights. After taking the position in this case, while exercising appellate jurisdiction in four cases, the Constitutional Court adjudicated on alleged violations of rights under the Covenant themselves: in two cases on article 14, in one case on article 26 and in one case on article 25 (b) and (c) in conjunction with article 2 of the International Covenant on Civil and Political Rights. In addition to these four cases, the Constitutional Court adjudicated one case of discrimination under article II / 4 of the Constitution of BiH and article 14 of the European Convention relating to the right of access to public services under article 25, paragraph 3 of the International Covenant, finding no violation. When it comes to discrimination under article 14 of the European Convention on Human Rights and Fundamental Freedoms, the BiH Constitutional Court has found a violation of this right in four cases since its inception.

2. Implementing the recommendation contained in paragraph 14, of the concluding observations of the Committee on the Elimination of Discrimination against Women (CEDAW/C/BIH/CO/3), the Agency for Gender Equality (the Agency) and entity Gender Centres have organized a series of training for judges and prosecutors. Training topics were gender mainstreaming, the Law on Gender Equality of BiH, the Convention on the Elimination of All Forms of Discrimination against Women, the observations and recommendations of the Committee on the Elimination of Discrimination against Women for BiH etc. In cooperation with the entity Judicial and Prosecutorial Training Centres, the training programmes for judges and prosecutors included modules on the Law on Gender Equality of BiH and domestic violence. Gender mainstreaming is included in other training topics, which is consistent with recommendation 26, of the above-mentioned Committee (CEDAW/C/BIH/CO/3).

3. The practice has made gender mechanisms' cooperation with the Judicial and Prosecutorial Training Centres an ongoing obligation with a view to better enforcing the international and local legislation governing the area of gender equality, through the cooperation and training.

4. Organized by the Agency and the EUPM, a project was implemented to train teachers and instructors of police academies. There were three courses of training for teachers of the Police Academy of the Federation of BiH and the RS Police Academy and one course of training for teachers of the Agency for Education and Training of BiH. The courses were attended by a total of 48 teachers / instructors.

5. Within the joint project, which was implemented by the Agency and entity Gender Centres and supported by UNDP and UNFPA in BiH, titled "Preventing and Combating Sexual and Gender-Based Violence in BiH", training needs of entity ministries of the interior were identified and existing procedures, legislation, policies and strategies were

mapped and analysed. Based on the needs assessment, courses of training for civil servants employed in the ministries of the interior were held and a training plan for police officers in the Federation and RS was made, which has been implemented since 2011. Preliminary agreements on the inclusion of training modules in their induction and specialized training curricula have been reached with the police academies in both entities.

Reply to the issues raised in paragraph 2 of the list of issues

Communications registered by the Committee under the Optional Protocol to the Covenant

6. Bosnia and Herzegovina (BiH) has become a full member of the Optional Protocol to the International Covenant on Civil and Political Rights by virtue of ratification on 1 March of 1995.

7. In accordance with article 1 of the Optional Protocol to the International Covenant on Civil and Political Rights, BiH has recognized the mandate of the Committee on Human Rights to receive and consider communications from individuals who fall under jurisdiction of BiH, claiming that they are victims of Bosnia and Herzegovina violating any right under the Covenant. The requirement for an individual's filing a communication directly to the Committee is that s/he has exhausted all available remedies.

8. In accordance with provisions of the Optional Protocol to the International Covenant and on the basis of communications pending before the Committee for Human Rights, the Ministry of Human Rights and Refugees is responsible for submitting observations of relevant BiH institutions on behalf of BiH. So far, the observations have been submitted in 26 cases in accordance with the Rules of Procedure of the Committee.

Reply to the issues raised in paragraph 3 of the list of issues

The reform of the Constitution of Bosnia and Herzegovina and the Election Law

9. The Constitution of Bosnia and Herzegovina has established the status of the constituent peoples (Bosniaks, Croats, and Serbs) and other citizens in Bosnia and Herzegovina in terms of guaranteeing the constitutionality and all rights in the entire territory of Bosnia and Herzegovina without any form of discrimination.

10. After the tragic war in Bosnia and Herzegovina, in practice, for a quite long time, a problem of national exclusion and minorization of certain ethnic groups or Bosniaks or Croats or Serbs or others in relation to the numerical representation in the legislative, executive and judicial bodies has been present. All this resulted in a decision of the Constitutional Court of Bosnia and Herzegovina ordering amendments to the Constitutions of entities and cantons and their alignment with the Constitution of Bosnia and Herzegovina.

11. Owing to the violation of the right to be elected and discrimination against "Others", who are not members of any of the three constituent peoples of Bosnia and Herzegovina according to the Constitution, an application was filed with the European Court of Human Rights in Strasbourg by representatives of Roma and Jews. It is the case of Dervo Sejdic and Jakob Finci against Bosnia and Herzegovina. On 22 December 2009 the Grand Chamber of the Court of Human Rights in Strasbourg rendered judgment No. 27996/06 in favour of the applicants, ordering BiH to bear legal costs of applicants and to proceed with constitutional changes that will be compatible with the European Convention on Human Rights and Fundamental Freedoms.

12. With the aim of introducing the relevant constitutional and legislative amendments, the Council of Ministers adopted an action plan on 4 March 2010 and appointed a Working Group to draft them. The Central Election Commission adopted the Action Plan on 18 February 2010, stating in details provisions which should be adopted and possible steps to

be taken if the amendments were not adopted before the scheduled general election by the end of May the same year.

13. The Council of Ministers appointed a Working Group which did not meet the deadline set to reach an agreement on proposed constitutional amendments because the leading politicians had a disagreement on substantive issues. After that, on 22 April 2010, the Council of Ministers considered the report of the Working Group responsible for the preparation of constitutional and legislative amendments and gave it a new deadline for discharging the task. This means that also the October election in Bosnia and Herzegovina passed without Bosnia and Herzegovina having complied with the judgment of the European Court of Human Rights.

14. However, on 20 October 2011 a joint committee of the Parliamentary Assembly was appointed to prepare amendments to the Constitution of BiH by 30 October and amendments to the Election Law by 31 December in order to fully implement the judgment of the European Court of Human Rights of Strasbourg. Despite these efforts Bosnia and Herzegovina has not implemented the judgment. The Council of National Minorities has been closely involved in drafting proposals for amendments to the Constitution by proposing amendments.

Reply to the issues raised in paragraph 4 of the list of issues

The Ombudsman for Human Rights of Bosnia and Herzegovina

15. The Ombudsman for Human Rights of Bosnia and Herzegovina (hereinafter: Ombudsman) is an independent national human rights mechanism, which is A status accredited by the International Coordinating Committee (ICC) for the accreditation of national human rights mechanisms based in Geneva and one of obligations that this status carries is independent interaction with other United Nations bodies and international human rights monitoring mechanisms.

16. Throughout 2011 the Ombudsman faced difficulties in operation, caused by a failure to adopt the 2011 budget of BiH institutions. This fact caused difficulties in further human resources capacity building and greater presence of the Ombudsman in the field. The Ombudsman had an intention to increase its presence in the field in 2011 and get closer to the people establishing new regional and field offices. The intention was to open offices in Tuzla, Zenica, Bihac and Trebinje. Unfortunately, owing to a lack of funds, it was not possible to implement this plan.

17. An additional problem in the operation of the Ombudsman in 2011 was the inability of hiring people to vacant positions of Assistant Ombudsman in the Head Office of the Ombudsman in Banja Luka and Regional Offices of Mostar and Sarajevo. This problem proves to be very serious particularly when the fact that the number of cases received by the Ombudsman remained the same as in 2010 is taken into account, while the number of employees who work directly on these cases was reduced. As of 31 December 2011 the total number of employees with the Ombudsman was 56, which is less by two employees than in 2010.

18. In 2011, as all other institutions at the state level did, the Ombudsman operated without an adopted 2011 budget, i.e. it operated within the approved 2010 budget on the basis of Decisions on Interim Financing and the Decisions on Operational Measures for the Implementation of Decisions on Interim Financing. The approved funds were insufficient for the normal and smooth operation of the Ombudsman in all segments, because the 2011 budget appropriated more funds than the 2010 budget, since the Ombudsman took over the entity Ombudsmen with all employees in 2010, which required higher 2011 budget. It can be concluded from this that in 2011 there was a significant lack of financial resources that were provided from other sources of funding.

19. The 2011 budget amounted to BAM 2,707,376 and the adopted 2012 budget is BAM 2,388 million, i.e. the 2012 budget was reduced and without appropriation of funds to implement the additional mandates established by the Anti-Discrimination Law of BiH.

20. In 2011 the Ombudsman received 3,067 complaints, so together with complaints received in 2010 and still pending in 2011 (1,683 complaints), there were 4,750 cases altogether pending in 2011. The number of complaints received in 2011 was close to the number of complaints received in 2010, when a total of 3,298 complaints were received. The registered complaints were assigned by type of violations in the departments. The largest increase in the number of complaints compared with previous year was recorded in the Department for the Elimination of all Forms of Discrimination (41.5 per cent) and the Department Monitoring Rights of Detainees / Prisoners (19.8 per cent).

21. In 2010 the Department Monitoring Political and Civil Rights received 1,851 complaints; 983 complaints were not closed in 2010 and were pending in 2011, while 1,815 complaints were received in 2011.

22. According to the number of complaints received in 2011, in comparison with 2010 and in relation to the territorial organization of the Ombudsmen, the highest growth was registered in the Office of Brčko where in 2011 the Office took in 445 cases or 31 per cent more than in previous year. One of the reasons was a huge influx of complaints from Tuzla, where the Office of Brčko takes in complaints on certain working days.

Non-discrimination and equality (arts. 2, paragraph 1, 3, 7, 20, 26 and 27)

Reply to the issues raised in paragraph 5 of the list of issues

23. Racial discrimination as well as other forms of discrimination are directly prohibited by the BiH Constitution (and by the constitutions of the entities) and it is criminalized through several elements of crimes under the Criminal Codes of BiH, entities and Brčko District which clearly expresses the commitment of BiH authorities for the respect of human rights of all citizens living in it as well as foreigners who were granted permanent or temporary residence in the territory of BiH while respecting the principle of tolerance.

24. Bosnia and Herzegovina implements a policy of eliminating racial discrimination both in the general legal framework and through promotion and recognition of equal status for all in legislative, judicial, administrative and other measures; the right to return and repossession of property of citizens; and organization of cultural activities and the situation of Roma, as the largest and most vulnerable minority (among 17 national minorities exhaustively enumerated in the Law) in Bosnia and Herzegovina.

25. The fact that the Law on Prohibition of Discrimination based on and designed in accordance with European standards was passed in 2009 is definitely a positive shift. Provisions of the law protect citizens of Bosnia and Herzegovina against discrimination in all spheres of life and work, including: employment, health and social protection, judiciary and administration, housing, public information, education, sports, culture, science, economy, etc, then, from all forms of harassment, sexual harassment, mobbing, incitement to segregation or discrimination. Under this law, all public bodies and authorities have an obligation and duty to fight against discrimination and to refrain from it, removing obstacles that may directly or indirectly result in discrimination. These institutions also have a duty to actively design and create conditions for equal treatment. They must work to amend and adopt laws, policies and procedures in accordance with the Law on Prohibition of Discrimination.

26. The Rulebook on Discrimination Cases Data, which provides for the establishment of a single database of discrimination cases by the Ministry of Human Rights and Refugees of BiH, is being drafted.

27. Regarding measures to ensure gender equality, we can conclude that the Prosecutor's Office is responsible for prosecution of offences under the Law on Gender Equality.

28. Additionally, to ensure the right to freedom from discrimination and to equality guaranteed by the International Covenant on Civil and Political Rights, article 145a of the Criminal Code of Bosnia and Herzegovina (BiH CC) provides for a criminal offence of "Provoking ethnic, racial and religious hatred, conflicts and intolerance", sanctioning intolerance among the constituent peoples and others, as well as among other people living or residing in Bosnia and Herzegovina. Similarly, the criminal offence is prescribed in the Entity Criminal Codes and Criminal Code of Brcko District, where jurisdiction over the offence is limited to the respective territory of entities/Brcko District. The BiH CC defines a criminal offence of "Infringement of the Equality of Individuals and Citizens" in article 145.

29. The information about these cases in the Prosecutor's Office is as follows: in the period 2006-2012, a total of 30 complaints involving crimes under articles 27 and 29 against 41 suspects were received. In the same period there were 12 orders for investigation of cases involving crimes under articles 145 and 114a against 17 suspects. Five indictments were filed against seven suspects and five judgments were rendered involving seven suspects. In one case a plea agreement was signed.

Reply to the issues raised in paragraph 6 of the list of issues

Representation of women in political life

30. The Election Law of BiH has retained the provision that relates to the order of less represented gender in candidate lists.

31. Implementing the recommendation contained in paragraph 30, of the concluding observations of the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW/C/BIH/CO/3, annex V), the Commission for Gender Equality of BiH Parliamentary Assembly proposed amendments to the BiH Election Law, with the aim of closing the candidate lists. The Agency for Gender Equality (the Agency) for the Commission made a comparative analysis of solutions in electoral systems that have different systems for ensuring women's representation in legislative bodies with models and impact assessments on the electoral system of BiH. This analysis showed that the solution proposed by the Commission would ensure participation of members of less represented gender in the percentage of at least 35 per cent. Although they were two times considered in the House of Representatives of the Parliamentary Assembly, the amendments were not passed after discussion.

32. As one of the measures to increase the number of women in legislative bodies in accordance with Recommendation (2003) 3 of the Committee of Ministers of the Council of Europe, on the Agency's proposal, the Parliamentary Assembly of BiH adopted the Law on Amendments to the Political Party Financing Law ("Official Gazette" No. 102/09), which in Article 10 provides¹:

33. Action plan for implementation of Security Council resolution 1325 (2000) puts a special emphasis on enforcement activities that target women's participation in public and political life and the goals of (1) political participation of women, (2) participation of

¹ Funds appropriated for parliamentary groups represented in the Parliamentary Assembly of BiH are distributed so that 30 per cent of the funds shall be equally distributed between all parties in parliament, that 60 per cent shall be distributed proportionately in accordance with the number of seats held by each parliamentary group and that the remaining 10 per cent shall be distributed to the parliamentary groups in proportion to the number of seats held by the less represented gender."

women in the police and army, (3) women's participation in peacekeeping missions and gender-sensitive training.

34. In cooperation with the European Union Police Mission (EUPM) in BiH, the Agency prepared and printed "Women in Police" publication, which is a comprehensive study on the situation, opportunities and obstacles for the participation of women in police forces. EUPM in BiH contributed to increasing the participation of women in police forces and peace-building through numerous projects supporting the institutions. In 2006, with the support of the United Nations Development Programme (UNDP) and the Organization for Security and Co-operation in Europe (OSCE), the Agency organized a regional conference on Advocacy and Importance of Networking with an Emphasis on the Implementation of Security Council resolution 1325 - Women, Peace and Security. The objectives of the workshop were the understanding of importance of the implementation of resolution 1325, cooperation and coordination of regional gender mechanisms, the importance of building coalitions and networks of women from different political parties.

35. As a follow-up to this event a regional conferences on Action Plan for Implementation of the Declaration on Regional Cooperation amongst Institutional Mechanisms for Gender Issues and Monitoring of Counsel resolution 1325 was organized in 2009. In accordance with the recommendations of this conference a seminar for women members of political parties in BiH was organized in 2010 on How to Increase the Number of Women in Decision-making Positions. This seminar was particularly important in the context of the forthcoming general election in Bosnia and Herzegovina and the establishment of the so-called coordination of women - members of different political parties in BiH.

36. The Agency carried out a study on "Women Politicians in the Media during Election Campaigns – An Image That Is Missing". This research on the presentation of women politicians in the media during election campaigns in the 2010 General Election showed that there was still no significant progress in equal participation of women and men in political and public life and that the possibility of political participation of women and their political influence in the public and the media sphere is still very limited.

Reply to the issues raised in paragraph 7 of the list of issues

37. In New York on 30 June 2009, BiH signed the Convention on the Rights of Persons with Disabilities and Optional Protocol thereto. BiH ratified the Convention on the Rights of Persons with Disabilities and the Optional Protocol on 12 March 2010 (without reserves or declarations). The Convention entered into force on 11 April 2010, on the thirtieth day of deposition of its instrument of ratification while the deadline for the initial report of Bosnia and Herzegovina's progress in implementing the Convention was 11 April 2012, two years after ratification. Due to the complexity of the report on this subject, the deadline has been extended to the end of 2012.

38. In order to carry out activities related to awareness-raising, promotion and improvement of the implementation of Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention, at 135th session held on 19 November 2010, the Council of Ministers carried the Decision on the Establishment of the Council of People with Disabilities of BiH. This decision determines that the Council of People with Disabilities of BiH shall have 20 members, representatives of state, entity and Brcko District of BiH institutions and representatives of associations of persons with disabilities. So far four sessions of the Council were held and covered by the media, with the aim of promoting the rights of persons with disabilities..

39. At the State level, "Disability Policy in BiH" was adopted by the Council of Ministers at the 46th meeting held on 8 May 2008 ("Official Gazette of BiH" 76/08), giving the recommendation that while developing strategies and action plans concerning people

with disabilities and planning the budget for their preparation and implementation, contents and principles of this document should be accepted.

40. In July 2010 the Republika Srpska (RS) Government adopted a strategy of improving the social status of persons with disabilities in RS in the period 2010-2015.

41. The Policy and the Strategy are documents that incorporate attitudes of persons with disabilities and government institutions on the basis of inclusive United Nations Standard Rules for the Equalization of Opportunities for Persons with Disabilities and the United Nations Convention on the Rights of Persons with Disabilities.

42. The RS Government appointed Inter-Ministerial Body for Assistance to and Protection of Persons with Disabilities with an aim to monitor needs of persons with disabilities in the RS and to analyze activities in protecting and improving the social status of all categories of persons with disabilities in the RS.

43. According to the Ministry of Labour, Veterans and People with Disabilities Protection of Republika Srpska, for the time being there are no programmes in place to raise awareness and inform disabled people about their rights and how they can claim them in the field of vocational rehabilitation and employment. However, they pointed to the significant cooperation that is achieved with the NGO sector in the process of creating a normative framework for the implementation of reforms in the field of vocational rehabilitation and employment of disabled people in the RS, which is an important factor in raising awareness and to inform disabled people about their rights.

44. In RS, vocational rehabilitation of disabled persons is governed by the Law on Vocational Rehabilitation, Training and Employment of Disabled Persons ("Official Gazette of RS" 37/12) and is implemented through the Fund for Vocational Rehabilitation and Employment of Disabled Persons. The process of passage of this law involved public consultations where people with disabilities participated, too. The enforcement of this Law is reviewed once a year, which is one of the ways of raising awareness of the rights of disabled people in the area of vocational rehabilitation, training and employment.

Reply to the issues raised in paragraph 8 of the list of issues

Position of LGBTIQ persons in Bosnia and Herzegovina

45. There are no official statistics on discrimination based on sexual orientation and gender in Bosnia and Herzegovina. Despite the fact that the Law Against Discrimination of Bosnia and Herzegovina establishes the framework for achieving equal rights and opportunities for all persons in Bosnia and Herzegovina, the state structure for the protection of human rights and the promotion of equality have not received any complaints of discrimination based on the sexual orientation or gender.

46. The Agency for Gender Equality of Bosnia and Herzegovina which examines violations of provisions of the Gender Equality Law in Bosnia and Herzegovina at the request of individuals or groups of citizens or ex officio. This procedure will help in researching violations of provisions of the Law, and these violations have no reported cases involving discrimination based on gender and sexual orientation.

47. The Institution of Ombudsman for Human Rights of Bosnia and Herzegovina has received one case related to discrimination against persons based on sexual orientation. Specifically, it is about an attack on Lesbian, gay, bisexual and transgender (LGBT) persons in Bosnia and Herzegovina in 2008, during the Sarajevo Queer Festival during which visitors of the festival were assaulted.

48. This event was accompanied inter alia by numerous examples of hate speech both by many individuals and by the mass media.

49. Given the competent institutions failed to respond to this event, on 2 March 2011 an appeal was filed against the State with the Constitutional Court of Bosnia and Herzegovina by "Vaša prava" Office for Legal Aid as a legal representative which sought from the Sarajevo Cantonal Prosecutor's Office to institute criminal proceedings and adequate compensation from the Federation of Bosnia and Herzegovina.

50. The Communications Regulatory Agency of BiH has found a violation of article 4 - Hate Speech of the Broadcasting Code of Conduct and imposed a fine on the broadcasters.

51. In the period 2005 – 2011 the Press Council of BiH received 8 complaints about sexual discrimination. In 4 cases, complaints were sustained and violations of articles 1, 3, 4, 4a and 15 of the Code were found.

52. A small number of recorded cases of harassment and discrimination are in direct connection with the openness of the community. In the current legislation LGBT persons are not entitled to conclude marriage and adoption.

53. The Bosnia and Herzegovina's legislation does not allow a possibility of medical sex reassignment. In the entity of the Republika Srpska, the Law on Registers, which provides for a possibility to change personal data in the registers when the change is due to a sex change, has been passed. In the entity of Federation of Bosnia and Herzegovina a new Law on Registers is in process of enacting, while a new Law on Registers of the Brcko District of Bosnia and Herzegovina does not provide for that option.

54. Legally, discrimination based on sexual orientation and gender identity is prohibited and the role of the Ombudsmen for Human Rights of BiH is clearly defined.

The legal and institutional framework governing hate crimes

55. The 2010 Amendments to the BiH CC ("Official Gazette of BiH" 8/10) introduced a criminal offence of "Provoking ethnic, racial and religious hatred, conflicts and intolerance" (Chapter XV- Criminal Offences Against Freedom and Rights of Individuals and Citizens, article 145a) which is defined as follows:

"(1) Whoever publicly provokes or inflames national, racial or religious hatred, conflicts or intolerance among the constituent peoples and others, as well as among other people living or residing in Bosnia and Herzegovina, shall be punished by a prison sentence ranging from three months to three years.

(2) Whoever perpetrates the criminal offence referred to in paragraph (1) of this Article by abusing his office or official authority, shall be punished by a prison sentence between one and ten years."

56. Most of today's criminal legislation does not criminalize such acts because the starting point is that solving these problems should give a priority to other, above all, political means. A small number of countries, including Bosnia and Herzegovina, still favour the criminal law, especially when it comes to serious forms of assault and undermining of relations among ethnic and religious groups.

57. The criminal laws of the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brcko District of Bosnia and Herzegovina have provisions defining "Provoking ethnic, racial and religious hatred, conflicts and intolerance" as a criminal offence (article 163 of FBiH CC, article 390 of RS CC, and article 160 of DB CC).

58. In terms of institutional framework we emphasize that the prosecution of criminal offences prescribed by the CC of BiH is under jurisdiction of the Court of BiH, while the Prosecutor's Office is in charge of investigating the offences under jurisdiction of the Court of BiH and prosecuting the offenders before the Court of BiH, in accordance with the Criminal Procedure Code (BiH CPC).

59. The ordinary courts in the Entities and Brcko District have jurisdiction over trying of criminal offences prescribed by laws of the Entities and Brcko District, while investigation and prosecution of perpetrators of these acts are under jurisdiction of cantonal or district prosecutor's offices and Prosecutor's Office of Brcko District. It is evident from the above that in BiH there is a legal and institutional framework for the punishment of crimes motivated by hatred on national, racial or religious grounds, while provoking or inciting hatred against LGBT populations has not been criminalized as a separate offence in criminal laws of BiH.

Right to life and prohibition of torture and cruel, inhuman or degrading treatment, remedies and administration of justice (arts. 6, 7, 2, para. 3, and 14)

Reply to the issues raised in paragraph 9 of the list of issues

60. With regard to the implementation of the National War Crimes Prosecution Strategy (hereinafter: the Strategy), the High Judicial and Prosecutorial Council (HJPC) pointed out that in its report the Supervisory Body for monitoring the implementation of measures contained in the National War Crimes Prosecution Strategy for the period 1 January – 30 September 2011 noted that expected results of certain strategic measures were not achieved and that, to develop an impartial, independent, effective and accountable justice system in line with European standards, the implementation of the Strategy should be expedited.

61. In order to monitor the implementation of the Strategy, the Supervisory Body held a meeting on 23 February 2012 and adopted an Action Plan for the implementation of the Strategy, which provides for the possibility of monitoring the implementation of strategic objectives, i.e. strategic measures which are envisaged by the Strategy, and of proposing measures for better implementation of strategic goals. Measures are proposed in order to complete sooner the strategic measures that are not implemented or are under implementation.

62. Please note that some progress was made in the implementation of the Strategy, especially when it comes to transfer of cases from the state level courts on entity and Brcko District level courts.

63. With regard to statistics on prosecution of war crimes, we can reach the following conclusion:

2010:

- Complaints – there were 683 complaints altogether against 5,204 suspects.
- Investigations - a total of 1,150 cases involving 6,391 suspects were investigated.
- Indictments - a total of 53 indictments against 82 suspects were brought.
- Convictions – a total of 17 convictions against 26 suspects were handed down.

2011:

- Complaints – there were 668 complaints altogether against 4,088 persons.
- Investigations - a total of 810 cases involving 3,852 suspects were brought.
- Indictments – a total of 63 indictments against 93 suspects were brought.
- Convictions – a total of 26 convictions against 32 suspects were handed down.

64. According to the updated information of the Prosecutor's Office of BiH about investigation and prosecution of 1992-1995 war crimes, in the period between 2004 and 31 March 2012, 153 indictments were confirmed against 240 suspects. Two indictments were dismissed: one in 2008 and one in 2011. In the period between 2005 and 31 March 2012, 63 cases against 174 suspects were closed by issuing an order not to conduct investigation in

the Prosecutor's Office. In the period between 2005 and 31 March 2012, the Prosecutor's Office suspended investigation in 101 cases against 237 persons. In the period between December 2008, when the Strategy was adopted, and 31 March 2012:

- Prosecutor's Office of BiH filed with the Court of BiH 82 indictments against 130 suspects;
- Prosecutor's Office of BiH suspended 67 investigations against 169 suspects,
- Prosecutor's Office of BiH issued 48 orders not to conduct investigation against 139 suspects.

65. Compared to previous years, in 2011, the number of indictments in the most complex cases increased and, of 28 indictments altogether brought in 2011 against 43 suspects, 17 indictments can be considered as the most complex war crimes cases.

66. According to the updated information about progress made in the implementation of the Strategy, please find below an overview of statistics on assignment of war crimes cases between the state, entity and Brčko District judiciary, given that the Strategy identified the too high workload of the Prosecutor's Office of BiH and the Court of BiH to be a ballast that slowed down the effective prosecution of these cases, which should be reduced by distribution of cases in a way that only the most complex cases were prosecuted before the State Prosecutor's Office and Court, and the remaining ones before prosecutor's offices and courts having territorial jurisdiction.

67. The legal grounds for the transfer of cases to the courts and prosecutor's offices having territorial jurisdiction are found in article 27, article 27a and article 449 of BiH CPC.

68. In accordance with article 27a of BiH CPC (transfer of a case under investigation), in the period from 15 February 2010 to 18 June 2012, the Prosecutor's Office of BiH:

- Filed 362 proposals altogether in 330 cases (against more than 633 unknown suspects)
- A total of 240 proposals were sustained (against more than 425 unknown suspects).
- A total of 78 proposals were overruled (against more than 121 unknown suspects).
- A total of 3 proposals were dismissed (against three suspects).
- One proposal was recalled (against five suspects).
- The number of repeated proposals was 32 in 30 cases.
- 40 proposals (against more than 79 unknown suspects) are pending before the Court.

69. The Court of BiH sustained 240 proposals of the Prosecutor's Office against more than 425 unknown suspects, issued procedural decisions (*rjesenje*) and transferred the cases to entity and Brčko District Prosecutor's Offices in the chronological order by years when the Court issued the decisions.

70. In accordance with article 27 of BiH CPC, after indictments had been filed with the Court, in the period from 24 January 2010 to 18 June 2012, the Prosecutor's Office of BiH submitted 20 proposals for transfer of cases to entity courts. Since 31 October 2011 no proposals in pursuance of 27 of BiH CPC has been made.

71. Of the number above, the Court of BiH sustained the Prosecutor's Office's proposals in 12 cases and the cases were transferred to entity prosecutor's offices, while 8 proposals were overruled by the Court. Of the number above, the Prosecutor's Office of BiH filed proposals in six cases in pursuance of article 27a BiH CPC, i.e. while they were under investigation.

72. According to the decisions of the Court of BiH, cases were transferred to the following entity and Brčko District Prosecutor's Offices: Tuzla Cantonal Prosecutor's Office - one case, Mostar Cantonal Prosecutor's Office - four cases, Sarajevo Cantonal Prosecutor's Office - one case, Livno Cantonal Prosecutor's Office - 1 case, Banja Luka District Prosecutor's Office - three cases, Doboj and Trebinje District Prosecutor's Office - one case each. There were 12 sustained proposals altogether.

73. In 2011 and until 18 June 2012, 116 cases submitted by cantonal, district and Brčko District the Prosecutor's Offices were pending an adjudication of complexity before the Prosecutor's Office of BiH in accordance with article 449 of BiH CPC.

74. Pursuant to article 449(2) of BiH CPC, 44 very complex cases involving 358 suspects were transferred to the Prosecutor's Office of BiH by entity Prosecutor's Offices.

75. Pursuant to article 449(2) of BiH CPC, firstly the Prosecutor's Office of BiH and then the Court of BiH found that 50 cases among the cases above were less complex cases and they were transferred to entity and Brčko District Prosecutor's Offices.

76. In terms of measures taken to address shortcomings in witness protection and support, in light of the recommendations by the Council of Europe Rapporteur and the Commissioner for Human Rights of the Council of Europe, the Prosecutor's Office of BiH notes that it is included in the enforcement of the Law on Protection of Witnesses Under Threat and Vulnerable Witnesses during criminal proceedings and that it has institutional capacities for law enforcement, unlike other prosecutor's Offices in BiH, which is implemented through a UNDP project and monitored and coordinated by HJPC. In this connection the Prosecutor's Office of BiH is very active in a working group appointed within the Ministry of Security of BiH to draft a law on the witness protection programme of Bosnia and Herzegovina. The Draft Law was prepared and forwarded to the relevant committees of the Council of Ministers for review.

77. The Prosecutor's Office is responsible for exhumations under provisions of the BiH CC and the BiH CPC. When required by associations of missing persons in BiH, meetings are regularly held with family members of missing persons and also representatives of the Prosecutor's Office inform them about its activities and responsibilities. Most of the cooperation is achieved with the Institute for Missing Persons, which is primarily responsible for enforcement of the Law on Missing Persons of Bosnia and Herzegovina. With regard to steps taken by the State in order to inform regularly families of missing persons about exhumations and to provide psychological support, the Missing Person Institute is in contact with families of missing persons regarding the course of exhumation through its investigators.

Statistical information on the investigation and prosecution of war-related crimes committed during the 1992–1995 conflict, including war-time rape and other crimes of sexual violence

78. So far the Court of BiH has rendered a total of 84 final judgments in war crimes cases involving 115 defendants. This number includes rape cases and cases of other forms of sexual violence. More specifically, the Court of BiH has rendered final decisions and closed a total of 29 cases involving acts of sexual violence and two more cases are pending (only the first instance judgment has been rendered), which makes a total of 31 cases of war crimes of sexual violence before the Court of BiH. The figure does not include sexual violence cases at the stage of trial or preliminary proceedings.

Information on the progress made in implementing the National War Crimes Processing Strategy

79. The National War Crimes Strategy (hereinafter: the Strategy) expressed a clear commitment of the State of BiH to prosecute the most complex war crimes cases before

the Court and the Prosecutor's Office of BiH and those qualified as less complex cases to prosecute before entity courts and the Court of Brcko District. Therefore, one of the key strategic objectives is to ensure an effective mechanism of distribution of war crimes cases between the State-level judiciary and judiciaries of the entities. Annex A of the Strategy outlines Case Complexity Criteria based on which cases will be distributed between the Court/Prosecutor's Office of BiH and other courts/prosecutor's offices and provides for an obligation of all prosecutors' offices to submit to the Court of BiH reports on cases pending before them so that the Court of BiH can have an insight into the number and degree of complexity of these cases.

80. In order to fulfil obligations under the Strategy in full and ensure a uniform court practice when evaluating cases, in March 2011 a permanent Panel of Judges sitting on Section I of the Court of BiH was established and mandated to examine all the information about war crimes submitted to the Court in accordance with the Strategy, with a view to applying the criteria set forth in annex A of the Strategy and:

(a) Identifying less complex cases which are prosecuted at the State level and could be transferred to the entity judiciary;

(b) Identifying more complex cases before entity prosecutor's offices with a view to their taking over by the Court and Prosecutor's Office of BiH.

81. So far the Panel has reviewed data of a total of 859 cases pending before Prosecutor's Offices and has also started reviewing tables that contain data on war crimes prosecutions initiated before 1 March 2003.

82. From the adoption of the Strategy until 31 May 2012, the Court of BiH issued a total of 250 decisions on transfer of less complex cases to entity courts and the Basic Court of Brcko District and 78 decisions on taking complex cases over by the Court and Prosecutor's Office of BiH. So, according to the data of BiH HJPC, a total of 592 (47%) are currently pending before entity and Brcko District Prosecutor's Offices and 679 (53%) war crimes cases are currently pending before the Prosecutor's Office of BiH.

83. Given the provision of data by the Prosecutor's Office was one of the key prerequisites for fulfilling the strategic commitments above relating to distribution of war crimes cases which was met only on 18 October 2011, there has been a significant progress for the short period of time, i.e. since October 2011, of which the best indicator is the number of decisions on transfer rendered in the past seven months.

84. In accordance with strategic measure II-12 which provides for regular meetings between the Court and Prosecutor's Office of BiH with a view to ensuring a uniform application of agreed upon criteria, in November 2011 consultations, representatives of the Court of BiH, the Prosecutor's Office of BiH, entity prosecutor's offices and the Prosecutor's Office of Brcko District generally agreed on criteria for assessing the complexity of cases. In this way, efficiency of the process of assessing the complexity of cases was further enhanced.

85. When it comes to the implementation of strategic measures II-6 and II-11 relating to the betterment of valid provisions of the BiH CPC that regulate the process of case transferring/taking over, necessary amendments were adopted as early as in 2009. In this context, the BiH CPC incorporated article 27a which describes in details the process of transferring the cases under Title XVII of the BiH CC (Crimes against Humanity and International Law) i.e. the provision of article 449 of BiH CPC was supplemented so to give particulars of the criteria which should guide the Court in making decisions on transfer of cases.

86. In terms of measure II-14, which envisages joint sessions of the Court of BiH, the Supreme Courts of FBiH and RS and BD Appellate Court in order to harmonize jurisprudence in war crimes cases, since the adoption of the Strategy, three joint informal

meetings have been held, given there are still no legal grounds for holding joint sessions. HJPC took some activities trying to make war crimes cases jurisprudence more consistent, including the 4 November 2011 conference on *Jurisprudence in the Application of Substantive Criminal Law in the Prosecution of War Crimes in BiH and the Region*.

87. When it comes to measures relating to the collection of data on war crimes cases, the Strategy provides for an obligation of the Court of BiH to establish and regularly an updated centralized record of the number of indictments confirmed and first instance and final verdicts in war crimes cases rendered by courts in Bosnia and Herzegovina as of 1 March 2003. Based on data supplied by entity courts and the Court of Brcko District, the Court of BiH has established a central record. However, when it comes to its update, the Court of BiH faces certain difficulties. Specifically, given that there is no precise definition of what is an obligation of "continuous reporting", the courts rarely send reports on war crimes cases. Moreover, as the strategy has not specified the manner in which data are reported, the submitted reports often happen not to contain all information necessary to update the centralized record.

Comments on reports that the justice system lacks the capacity and resources to effectively investigate and prosecute those crimes

88. Bearing in mind the large number of cases pending before competent prosecutor's offices, it is evident that there is a need to further build personnel and material resources of courts and prosecutor's offices in BiH, as well as for providing specialized training for judges and prosecutors sitting on entity courts in international humanitarian law in order to prosecute war crimes smoothly and close the cases within deadlines.

Reply to the issues raised in paragraph 10 of the list of issues

Witness protection

Witness support situation related to the two reports

89. The reports referred to in this document state several points related to witness support and protection. It is necessary to clarify at the outset that the Court of BiH has in its structure a Witness Support Unit which is primarily concerned with psychological support given to witnesses in criminal cases, while the witness protection programme issues are addressed in a Witness Protection Unit under SIPA. Certainly, the Court itself applies in its proceedings witness protection measures under the Criminal Procedure Code (CPC).

90. The Witness Support Unit of the BiH Court was established in 2005 with the primary mission to provide psychological, logistical and administrative support to witnesses who testify before the Court of BiH. Given standing as a witness is a very stressful and intense experience for witnesses who were mostly victims of war, ever since the Court has provided psychological support to victims / witnesses before, during and after testifying. The department employs professional staff, psychologists and social workers with experience in dealing with victims of torture. So far, the Witness Support Unit has provided support to more than 5,900 witnesses who testified in cases of war crimes and organized crime.

91. As the system of witness support used by the Court of BiH has proved to be efficient, helpful and supportive to witnesses, an initiative has been launched to try to organize a similar system of witness support in entity courts. Thus, the UNDP project "Support to Processing of War Crimes Cases in BiH" opened 6 Witness Support Units in courts and prosecutor's offices in Sarajevo, Banja Luka, Istocno Sarajevo. Preparations for four additional units are in progress. Along with this project, the Prosecutor's Office has opened its Witness Support Unit.

92. The Court of BiH has played an active role in the establishment of the Units and in training not only of professional staff, but also of judges and prosecutors in witness support and in some aspects of witness protection, which is consistent with the role that is assigned to the Witness Support Unit of the Court of BiH under the Strategy. The units provide support to all witnesses who need it. Further, the establishment of these units opens an opportunity to strengthen communication and cooperation between the witness support units at courts and prosecutor's offices in the local community with the authorities for social care, support and mental health and non-government sector that is primarily concerned with psychosocial support and mental health. Also, in some communities, where there are no witness support units at courts and prosecutor's offices, some non-governmental organizations dealing with psychosocial support provide support to witnesses / victims. Such examples show that it is possible in local communities to use existing resources to assist witnesses/victims to go through testifying with as few consequences for the mental, health and physical condition as possible.

93. It is important to note that in recent years significant efforts have been made to improve conditions for testifying in courts. Some basic conditions, such as waiting rooms for witnesses, a separate entrance for witnesses in the courtroom and separate rooms for protected witnesses to testify in the courtroom, have been identified as a minimum.

94. The position of witnesses in courtroom was also challenged; given in courtrooms of entity courts the witness was located in the middle of the courtroom facing the panel of judges. The experience of the Court of BiH, where a witness sits on the side, not in the middle of the room, has proved an efficient solution for the witnesses, because such a position gives a full view of the courtroom to the witness and this reduces the first impression while entering the courtroom, which is usually very stressful. These issues and general capabilities of courts to, for example, open another entrance to the courtroom are still under consideration. What has been achieved through the above-mentioned UNDP project is that the waiting rooms were equipped for witnesses, where witnesses stay before, during breaks and if necessary, after giving testimony with expert support, in those courts where Witness Support Units have been established.

95. Regional cooperation of Witness Support Units is at a very high level. The most usual type of cooperation is when witnesses testify via video-conference link. The system of support has been working very well for several years now.

96. The Court of BiH has appropriate facilities for examination of protected witnesses. Ensuring adequate protection and care of witnesses while giving testimony in accordance with the Law on Protection of Witnesses under Threat and Vulnerable Witnesses and the CPC is regulated by internal rules of the Court of BiH on witness protection that were enacted in September 2008. Until now, 787 witnesses have given testimony under protective measures in the courtroom in war crimes cases, which is slightly more than 16 per cent of the total number of witnesses who have testified before the Division I since 2005. As for the psychological support given to these witnesses, the Witness Support Unit of the Court of BiH works closely with the Witness Protection Unit of SIPA.

97. It is often said that the witnesses are left to themselves after giving testimony, after the testimony is completed. However, the mandate of the Witness Support Unit is closely linked to court proceedings. However, the professional staff of the Unit remains available to the witness for any questions, concerns and needs that s/he has. In this so-called 'post' stage cooperation of the Witness Support Unit with governmental and non-governmental sector in the local community becomes most important and they should together respond to the needs of witness after giving testimony. The past experience of the Witness Support Unit is that after testifying, most witnesses asked for help in preparing damages claims and various psychosocial support programmes where professional staff referred them to appropriate governmental and nongovernmental organizations dealing with this matter.

*Reply to the issues raised in paragraph 11 of the list of issues**Missing Persons Institute of Bosnia and Herzegovina*

98. While Bosnia and Herzegovina is still searching for 8,500-9,000 missing persons, the Government makes efforts to implement recommendations from the 2010 report of the United Nations Working Group on Enforced or Involuntary Disappearances (WGEID), which inter alia states that:

- (a) Institute should be supported, human resources and other capacities should be strengthened and especially the independence of the Institute should be guaranteed;
- (b) More resources should be made available to the Institute in order to enable its operation;
- (c) All existing technology that is needed to discover the whereabouts of missing persons and for their exhumation should be provided to the Institute;
- (d) The Council of Ministers also needs to strengthen the independence and autonomy of the Institute by enacting a law to regulate this in details;
- (e) More independence and autonomy should be given to the Institute by amending the appropriate law;
- (f) Vacant positions of members of the Governing Board of the Institute should be filled;
- (g) More practical and financial support is necessary to give to the Institute;
- (h) The Institute should be supported more by RS authorities.

99. WGEID also recommended that a fund for families of missing persons should be set up, which is provided by the Law on Missing Persons and that all relatives of missing persons are entitled to social assistance and other measures of social support, no matter where they live.

100. A law on the issue of monuments / memorials at the State level should be passed and criteria and procedures for erecting monuments should be determined.

101. With regard to the judiciary, WGEID recommended that the Court of BiH should interpret the definition of enforced disappearance as a crime against humanity, which is defined in article 172(1)(i) of BiH CC, in accordance with a more suitable definition under Article 2 of the 2006 International Convention for the Protection of All Persons from Enforced Disappearance or that the BiH Parliament should adopt amendments to this law for this purpose.

102. In accordance with the Declaration and the Convention, the Criminal Code should be amended to criminalize enforced disappearance as an independent crime, so that its commission could be punished even in situations when it cannot be qualified as a crime against humanity.

103. WGEID invited the Council of Ministers to submit, within 90 days of the date of presenting the report, to WGEID a work plan, which will show time lines and activities that it intends to take in order to implement the recommendations.

104. In general, politicization of the process of searching for missing persons is still present. In the future it is necessary to take measures to prevent that.

105. Regarding the financial situation of the Institute, there has been a continuous trend of budget cuts, although the Institute is still searching for 8,500-9,000 missing persons, which is not the case with countries in the region. For example, Croatia is searching for 1,500-1,800 missing persons, but their budget does not reduce but increases despite the

economic crisis, because the resolution of the issue of missing persons is a priority for all political entities and a prerequisite for the process of regional reconciliation. (annex, table 1: An overview of the budget of the Institute in the period since its establishment).

106. It is also important to note that the Institute does not own its own premises and the Institute's headquarters; five regional and 10 field offices are leased.

107. It is obvious that it is necessary to amend the Book of Rules on Organizational Structure and Description of Jobs and to increase the total number of employees. Currently, the Institute employs 48 employees and three members of the Governing Board, which is insufficient, because laws and regulations are constantly amended and it must follow European trends.

108. Central Record of Missing Persons of BiH (CENBIH or CRMPBIH) has been set up. It consists of 34,964 names. All names are in the process of verification. So far, about 10,000 missing persons have been verified. The persons who have not been verified are not deleted from the records of CEN but are transferred to the register of unverified persons and their verification is an ongoing process.

109. The CEN Department faces inadequate space, insufficient, inappropriate and obsolete equipment and insufficient number of employees, who need to verify a very large number of files. Besides administrative work, verification includes extraordinary physical effort, given the scope of the necessary documentation involved in the process of verification.

110. Negotiations and activities related to the appointment of new Governing Board members are in progress, after which, a new Governing Board will be appointed and convened. New members of the Advisory Committee were appointed at the 68th meeting of the Governing Board, which was held on 6 May 2012.

111. The Prosecutor's Office is responsible for exhumations under provisions of the BiH CC and the BiH CPC. In terms of cooperation between representatives of the aggrieved parties (the families of missing persons), meetings are regularly held with them when required by associations of missing persons in BiH and also representatives of the Prosecutor's Office inform family members of missing persons about its activities and responsibilities. However, most of the cooperation is achieved with the Institute for Missing Persons, which is primarily responsible for cooperation and giving psychological support to families of missing persons provided for in the Law on Missing Persons of Bosnia and Herzegovina.

112. According to data from the Constitutional Court, so far this Court has issued three decisions on non-enforcement of decisions issued in missing persons cases as follows:

- AP-129/04 (the decision involved 108 applications) dated 27 May 2005
- AP-228/04 (the decision involved 14 applications) dated 27 May 2005 and
- AP-1226/05 (the decision involved 374 applications) dated 18 November 2005.

Rights of victims of torture and civilian victims of war

Reply to the issues raised in paragraph 12 of the list of issues

The Draft National Strategy on Transitional Justice

113. Working versions of the 2013-2016 Transitional Justice Strategy of Bosnia and Herzegovina and Action plan for the implementation of the 2013-2016 Transitional Justice Strategy of Bosnia and Herzegovina have been made. In April 2012 a draft was presented to the Joint Commission for Human Rights, Child Rights, Ethics, Immigration and Asylum

of the Parliamentary Assembly. In June a roundtable - consultations were held, where the Transitional Justice Strategy and a report titled "A View of the Past as a Path Toward the Future" were presented. Round tables in local communities will continue to be organized. A media campaign containing video materials will be carried out together with TV stations in BiH.

114. There is a plan to submit the Strategy and Action Plan for its implementation to the Council of Ministers for consideration and adoption by the end of this year.

The 2013-2016 Programme for Improving the Situation of Women Victims of War Rape, Sexual Abuse and Torture of Bosnia and Herzegovina

115. In July 2010 the Council of Ministers adopted the Action Plan for the Programme for Bosnia and Herzegovina between the Council of Ministers and the Population Fund of the United Nations and in August of the same year the Ministry of Human Rights and Refugees signed a Memorandum of Understanding between the Ministry and UNFPA for the implementation of the Annual Work Plan approved in Programme for Bosnia and Herzegovina, for the period 2010 - 2014.

116. A working version of the 2013-2016 Programme for Improving the Situation of Women Victims of War Rape, Sexual Abuse and Torture of BiH was made, consultations were conducted in ten cities in BiH with the aim of gathering information, suggestions and proposals related to the needs of all victims in Bosnia and Herzegovina, which suffered war rape or other forms of torture during the war. Participants of the consultations were representatives of relevant institutions from the State, entities, cantons, municipalities, NGOs, associations of women victims of war, associations of civilian victims of war. In July there will be consultations in Trebinje and Bijeljina. There are also plans to hold a meeting at the ministerial level with the aim of presenting decision makers with the text of this programme. The plan is to send the Programme to the Council of Ministers for consideration and adoption by the end of this year.

The Law on Victims of Torture and Civilian Victims of War of Bosnia and Herzegovina

117. In 2008 the Ministry of Human Rights and Refugees received from the Council of Ministers a programming task to draft a new law on victims of torture and civilian victims of war of BiH that will uniformly address the issue of victims of torture at the state level. However, after public consultations this 2008 draft, as the 2006 draft did, failed to get support from the relevant ministries of BiH and entities and governments of entities, making it impossible to send it to the Parliament for passage.

118. At 197th meeting held on 11 November 2010, after considering the information paper on the Draft Law on the Protection of Victims of Torture and civilian war victims in Bosnia, the RS Government carried a conclusion that they did not agree with the Draft Law on the Protection of Victims of Torture and Civilian War Victims of BiH and expressed the opinion that the status of victims of torture could be solved by enacting a Framework Law at the BiH level, if the RS Government agreed with the text of the draft law or through appropriate amendments to the Law on the Protection of Civilian Victims of War of RS.

119. The FBiH Government submitted an opinion emphasizing that the existing Law on Social Protection, Protection of Civilian Victims of War and Families with Children adequately ensures rights and benefits of civilian victims of war and their families, victims of torture and families of missing persons in FBiH and did not support the Draft Law on the Protection of Victims of Torture and Civilian victims of war in BiH, suggesting that the process of agreeing on a common and acceptable draft of this law among relevant entity ministries and the Brcko District of BiH authorities with the coordination of the Ministry of Human Rights and Refugees should continue.

120. In their failure to support the draft the entity Governments especially emphasized the fact that in Entities there are evident differences in approach and method of resolving the issue of rights for civilian victims of war. In the 2011 programming task the Ministry of Human Rights and Refugees re-initiated activities to develop a legal framework to ensure protection of the rights of victims of torture and civilian victims of war in BiH. A new working group was established to develop legislation and meetings with representatives of governmental and nongovernmental sectors were held. Meetings of the Inter-ministerial Working Group concluded that the new law should be titled "The Law on Victims of Torture in Bosnia and Herzegovina" and that it should comprehensively resolve the matter of victims of torture in BiH.

121. Following these activities there was a meeting of the Ministry for Human Rights and Refugees and the Vive zene Association of Citizens of Tuzla Vive which is implemented a two-year project titled "Together against Torture in BiH Network". The network consists of a number of nongovernmental organizations with a tendency to include into the network all other non-governmental organizations that exist in Bosnia and Herzegovina and are involved in providing support to victims of torture in terms of identification, recognition, promotion and protection of this group. "Together against Torture in BiH Network" Project is funded by the European Union and activities are carried out within the project to develop a legal framework to regulate the status of victims of torture.

122. The meeting adopted a conclusion that the Council of Ministers, entity governments and the Government of the Brcko District of BiH should be informed about all activities taken so far to draft a law on victims of torture of Bosnia and Herzegovina and should give an opinion on how the problem could be solved.

123. The rights of civilian victims of war (CZR) in the F BiH are provided for in the Law on Social Protection, Protection of War Victims and Protection of Families with Children ("Official Gazette of BiH" no. 36/99, 54/04, 39/06 and 14/09)

124. According to the Constitution of the Federation of BiH, social protection is divided responsibility of cantons and FBiH, i.e. the federal level of government designs policies and laws and the cantonal level of government ensures the implementation. That was the reason why the F BiH citizens were discriminated against territorially in the exercise of legal rights, because a number of cantons did not ensure statutory rights under the pretext that they had no financial resources. Therefore, in 2005 amendments to the then Law on Social Protection, Protection of Civilian Victims of War and Families with Children were prepared and new legal provisions, under which the rights of civilian victims of war were funded from the budget of the FBiH in the amount of 70 per cent, while 30 per cent of the funds necessary for these purposes were provided in cantonal budgets, were passed. In this way all civilian victims of war in F BiH have equal status and position in the exercise of rights.

Violence against women (arts. 3 and 7)

Reply to the issues raised in paragraph 13 of the list of issues

125. Victims of domestic violence have recently come into the focus of interest of and protection by the society due to amendments to legislation, training of competent officials and improved practices of institutions protecting the victims, which have strengthened their capacities for effective law enforcement and improvement of cooperation between institutions and NGOs, as required in the recommendation contained in paragraph 26 of the concluding observations of the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW/C/BiH/CO/3).

126. In 2008 the Parliamentary Assembly adopted "Resolution on the fight against violence against women" ("Official Gazette of BiH", No. 15/08) confirming that any form

of violence against women, including domestic violence, is violation of rights and fundamental freedoms and that it prevents or encroaches on the rights and fundamental freedoms. This resolution shows commitment of the legislator in BiH to fight domestic violence.

127. The Law on Gender Equality in BiH recognizes domestic violence as a form of gender based violence, and in Article 6 explicitly states that gender-based violence includes violence that occurs within the family or household. In accordance with general recommendation No. 19 of the Committee on the Elimination of All Forms of Discrimination against Women and the Council of Europe Recommendation (2002)5, the Law defines “sexual violence” as “any activity which causes or may inflict physical, psychological, sexual or economic harm or suffering, as well as threats of such actions that impede a person or group of persons to enjoy their human rights and freedoms in the public and private life”.

128. Entity laws on protection from domestic violence: the Law on Protection from Domestic Violence of the Federation of BiH² and the Law on Protection from Domestic Violence of Republika Srpska³, define the measures and mechanisms of protection in cases of domestic violence. According to figures supplied by the competent courts in BiH, in the period 2006-2010, there were a total of 600 cases a year related to domestic violence. In about 98 per cent of the perpetrators of these crimes were men and only 2 per cent were women. In considering the sanctions imposed to offenders of crimes of domestic violence in the FBiH, it may be noted that suspended sentences dominated, imposed in 75 per cent of the total number of criminal sanctions imposed for these offences. The following were fines with a share of 10.50 per cent, followed by prison sentences with a share of around 10 per cent. Other criminal sanctions made about 5 per cent.

129. The National Strategy for Prevention and Combating Domestic Violence in BiH for the period from 2009-2011 was adopted. A multi-sect oral working group was drafting the Strategy. The Strategy includes activities that are being implemented at the level of Bosnia and Herzegovina, as well as coordination and implementation of the entity strategic and action plans for their efficient implementation.

130. In the territory of BiH there are nine safe houses with 173 available places. In the territory of the Federation of BiH there are six safe houses with 116 places available for accommodation of victims of domestic violence. They operate within the framework of non-governmental organizations: Foundation for Local Democracy-Sarajevo, Medica-Zenica, Vive Žene-Tuzla, Žene sa Une-Bihać, Žena BiH-Mostar and Caritas-Mostar, Budućnost“-Modriča, „Udružene žene“-Banja Luka and „Fondacija za obrazovanje, razvoj i socijalnu zaštitu djece“(the Foundation for Education, Development and Social Protection of Children) -Prijedor.

131. The manner of financing the safe houses in RS is regulated by the Law on Protection from Domestic Violence of RS (Official Gazette of RS, 17/08). In accordance with article 4 this Law, 70 per cent of funds for this accommodation shall be provided from the entity budget and 30 per cent from the budget of the local communities. The new proposed Law on Protection from Domestic Violence of FBiH, which is in the parliamentary procedure, provides legal basis for passing of a by-law on establishing criteria for funding of shelters, in such manner that a portion of funds is allocated from the federal budget, and a portion from the cantonal and municipal budgets.

132. In RS, in 2005 single emergency telephone number 1264 was set up for the entire territory of RS while the Gender Centre F BiH established single emergency telephone

² “Official Gazette of FBiH” 22/05, 51/06.

³ “Official Gazette of RS” 118/05, 17/08.

number 1265 to help victims of domestic violence in the territory of the Federation of BiH in 2008.

133. The Agency and entity Gender Centres conduct the international campaign of "16 days of activism against gender-based violence" every year.

134. Detailed information on the issue of violence against women and domestic violence can be found in the fourth and fifth periodic reports submitted to the Committee on the Elimination of Discrimination against Women in June 2011.

135. BiH HJPC stressed that violence against women can include the offences of "domestic violence" and "rape". With regard to statistics on prosecution of these offences in 2010 and 2011, we can reach the following conclusion:

136. The offence of domestic violence cases, indictments and convictions are set out below.

2010:

- Investigations - a total of 1,043 cases involving 1,145 suspects.
- Indictments - a total of 733 indictments against 749 suspects were brought.
- Convictions – a total of 615 convictions against 621 suspects were handed down.

2011:

- Investigations - a total of 1,158 Investigations - a total of 1,207 suspects.
- Indictments - a total of 753 indictments against 774 suspects were brought.
- Convictions – a total of 588 convictions against 593 suspects were handed down.

137. The offence of rape cases, indictments and convictions are set out below.

2010:

- Investigations - a total of 64 cases involving 73 suspects.
- Indictments - a total of 23 indictments against 27 suspects were brought.
- Convictions – a total of 22 convictions against 22 suspects were handed down.

2011:

- Investigations - a total of 82 cases involving 89 suspects.
- Indictments - a total of 28 indictments against 31 suspects were brought.
- Convictions – a total of 25 convictions against 28 suspects were handed down.

Liberty and security of the person and treatment of prisoners (arts. 7, 9 and 10)

Reply to the issues raised in paragraph 14 of the list of issues

138. According to the Federation Ministry of the Interior, all its organizational units (all ten cantons) treat persons deprived of liberty in accordance with national and international legislation regarding the protection of human rights and protection of human dignity and take all measures and actions to prevent torture and inhuman behaviour towards the specified group of persons.

139. Interrogation and detention of persons deprived of liberty is carried out professionally and lawfully, respecting human rights, which excludes inhuman and inhumane treatment of persons deprived of their liberty.

140. While arresting and putting persons in custody on the basis of civil and criminal liability, officers comply with applicable legal standards. This is reflected in the fact that the persons deprived of their liberty and kept in official premises are examined by a physician in the relevant medical institutions, are informed about the reasons for detention and their rights, which are regularly recorded in the records of persons deprived of their liberty.

141. Every day we improve conditions in premises where persons deprived of liberty are kept. Reconstruction or refurbishment of these premises is an ongoing activity to meet the minimum requirements laid down by international standards.

142. Furthermore, regarding the physical condition of the official premises accommodating persons deprived of liberty, regular inspections are carried out and defects or omissions that would indicate violations of human rights of persons deprived of their liberty have not been found.

143. In the period between 2005 and 2010, no complaints were received from citizens, nor were disciplinary proceedings against police officers conducted or decisions issued on the disciplinary responsibility of police officers involving violations of human rights of persons deprived of their liberty, i.e. no conduct characterized as verbal and physical abuse of persons deprived of their liberty was registered. Every year programmes of professional training of police officers include the theme of "The treatment of persons deprived of liberty."

144. Also, the 2012 annual training plans and programmes envisage lecturing on the topics of human rights and freedoms with an emphasis on the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the consistent application of Guidelines on the treatment of persons deprived of their liberty.

145. According to the Federation Ministry of Justice, in Tuzla Prison, in 2011, there were two complaints of torture or ill-treatment of convicted persons and inmates in the Educational Correctional Facility by prison officers. Following the procedure the relevant disciplinary committee imposed on the prison officers fines (15 per cent and 40 per cent of base salary) to be paid over a period of two and six months.

146. In Zenica Prison, there were a few reports, lawsuits or complaints about alleged abuse of prisoners submitted to the competent courts. After checks and investigations carried out all the complaints were dismissed as ungrounded and the competent court issued a decision rejecting the complaint.

147. In 2011 there were no complaints from prisoners and detainees about torture or abuse by officers of prisons in RS.

Reply to the issues raised in paragraph 15 of the list of issues

Protection of aliens' rights

148. Article 91 of the Law on Movement and Stay of Aliens and Asylum, BiH Official Gazette 36/08 in Chapter Protection of Aliens (the principle of non-refoulement) provides that aliens shall not be returned or expelled in any manner whatsoever to the borders of territories where their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion, regardless of whether or not they have formally been granted international protection. The prohibition of return or expulsion (non-refoulement) shall also apply to persons in respect of whom there is a reasonable suspicion for believing that they would be in danger of being subjected to torture or other inhuman or degrading treatment or punishment. Aliens may not be sent to a country where they are not protected from being sent to such a territory either.

149. Article 91 is an absolute principle, i.e. a non-refoulement rule, protecting each and every foreigner who comes in the territory of BiH.

Reply to the issues raised in paragraph 16 of the list of issues

150. When it comes to information regarding the existence of violence among inmates, the Federation Ministry of Justice notes that in 2011, in Tuzla Prison, 11 cases were registered where convicted persons were the subject of disciplinary proceedings for serious disciplinary offences under article 93(4)(8) of the Law on Execution of Criminal Sanctions of FBiH: mutual quarrels and fights and in each case the Disciplinary Commission imposed on the convicted persons appropriate sanctions. At the same time, in 2011, the Juvenile Educational and Correctional Ward had seven cases of juveniles who were the subject of disciplinary proceedings for serious disciplinary offences under Article 105(1)(9) and (10): physical assault on another person and mutual quarrels and fights and disciplinary sanctions were imposed for these offences.

151. In 2011, in Bihac Prison a convicted person physically attacked another convicted person in the prison yard and inflicted grievous bodily harm on him with fatal consequences. According to information from the hospital the cause of death was a heart attack. Investigative actions were carried out and reported to the Cantonal Prosecutor's Office and the prosecution of the offender started and is still pending.

152. In 2011, in Zenica Prison 183 convicted persons were the subject of disciplinary proceedings for disciplinary offences (mutual quarrels and fights: 164 cases, racketeering: 15 cases and 4 cases of indecent acts). All the cases were heard by an independent disciplinary commission for convicted persons and, in cases where the behaviour and actions contained elements of criminal responsibility, they were reported to the appropriate prosecutors and law enforcement agencies in accordance with the CPS.

153. There were no cases of possible negligence of prison staff in the cases above.

154. In 2011, there were cases of prison violence that were characterized as disciplinary offences of commission of "violent behaviour toward other inmates" and "mutual quarrels and fights" defined in the Law on Enforcement of Criminal Sanctions of RS (RS Official Gazette 12/10, and 117/11) but also cases involving attacks on officials.

155. The accompanying tables give overviews of the type and number of disciplinary offences, the total number of disciplinary proceedings and the type of disciplinary penalties imposed, the number of used special measures for maintaining order and discipline, the number and type of the use of force, reasons for the use of force and the number of conflicts between prisoners. Appendix: Tables 2, 3, 4, 5, 6 and 7

156. According to the Ministry of the Interior of RS, in terms of establishing an independent mechanism for monitoring and investigation of allegations of illegal acts committed by police officers, within the organizational structure of the Ministry, the Ministry established the Bureau for Citizens' Complaints And Petitions (Bureau) with a mandate to deal with citizens' petitions relating to the conduct of members of this Ministry, to keep a register of complaints and petitions received accordingly and transmit them to the Professional Standards Unit to act.

157. Among other responsibilities, Bureau considers all petitions against police officers and submits by-yearly and annual reports to the National Assembly of Republika Srpska.

Reply to the issues raised in paragraph 17 of the list of issues

158. According to the Federation Ministry of Justice, in all prisons, persons awaiting trial are separated from those who are serving a prison sentence. When it comes to juveniles, we can conclude that juveniles in the Educational and Correctional Home of Tuzla are completely separated from adult prisoners. Inspectors of the Department for the Execution

Of Criminal Sanctions in the Ministry carried out inspections in the Educational and Correctional Home of Tuzla regarding abuse of juveniles and on the basis of the investigation they found that the use of physical force by members of the Security Department in cases of mutual fighting, self-harm, refusing orders employing passive and active resistance to the officers, was in compliance with the valid legislation. Disciplinary proceedings were instituted against an officer for unauthorized taking in the facility of ink and needles for tattoos that were used by juveniles.

159. Juvenile offenders serve sentences of juvenile imprisonment in Zenica Prison in a separate wing of the facility (pavilion) in which adult convicted persons are housed. Once the Educational and Correctional Home of Orašje is built, juveniles from Tuzla Prison will be transferred. In the coming period Zenica Prison will provide a facility exclusively for juveniles, so they will be completely separated from adult convicts. It is necessary to emphasize that the Federation has the Law on the Protection and Treatment of Children and Minors in Criminal Proceedings as a comprehensive solution to the juvenile delinquency at the adoption stage.

160. The total capacities of pre-trial units in FBiH are 330 inmates (meeting the standard of 4 square meter or 10 cubic meters). Sarajevo Prison has a pre-trial unit with capacity of 110 inmates, Tuzla Prison: 70 inmates, Zenica Prison: 42 inmates, Bihać Prison: 36 inmates, Mostar Prison: 32 inmates, Orašje Prison: 26 inmates and Busovača Prison: 14 inmates.

161. Detention units within all prisons are physically separated from the imprisonment wards. A significant number of wards has been renovated and now in every respect meet the latest requirements for persons awaiting trial. In 2011 the existing capacities of pre-trial detention met the need for placement of persons in custody. Only at certain intervals, some of the detention units had more detainees than the planned capacity.

162. As required by article 7 of the Law on Execution of Criminal Sanctions of RS, correctional facilities in RS have completely separate wards for pre-trial detention and for serving prison sentences. Female detainees are completely physically separated from male detainees in detention units within penitentiaries and special rooms that are so equipped to fully meet the specific needs of women are designated to them.

163. When juveniles are kept in detention, they are placed in special rooms designed for juveniles. In prisons where it is not possible, the governor takes care of placement of juveniles with adult detainees who may have the least negative influence on the juveniles.

164. Women serve prison sentences in a special ward of Istocno Sarajevo Prison, which consists of two buildings: a new one with the capacity of 26 inmates and an old one with the capacity of 22 inmates. Sentences of juvenile imprisonment are served in a special ward of Istocno Sarajevo Prison with the capacity of 20 inmates.

165. The correctional measure of committal to a correctional home is served in a special ward of Banja Luka Prison with the capacity of 20 inmates.

166. With continuous and planned adaptation and reconstruction of existing and construction of new facilities for the execution of prison sentences, prison capacities in the RS were not called into question. The actual capacity is 1,365 convicted and detained persons: 1095 convicted persons and 270 detained persons. Compared to the previous years the capacity is larger by 280 convicted and detained persons.

167. With regard to juveniles, the RS passed the Law on the Protection and Treatment of Children and Juveniles in Criminal Proceedings (RS Official Gazette 13/10) that came into force as of 1 January 2011 and the Decree on the Implementation of Correctional Recommendations to Juveniles (RS Official Gazette 10/10) was enacted.

168. Other by-laws were enacted as required by the Law on the Protection and Treatment of Children and Juveniles in Criminal Proceedings and they are: the Rulebook on the Implementation of Correctional Recommendations to Juvenile Offenders, the Rulebook on Disciplinary Responsibility of Juveniles Serving Custodial Correctional Measures and Juvenile Imprisonment, the Rulebook on the Execution of Correctional Measure of Particular Obligation to Juvenile Offenders and the Training Programme for the persons working on juvenile delinquency and juvenile justice to acquire specific knowledge and continuously develop professionally.

Reply to the issues raised in paragraph 18 of the list of issues

Recommendations made by the Institution of the Human Rights Ombudsman of Bosnia and Herzegovina to the authorities

169. In 2011 the Institution of Ombudsman for Human Rights in BiH (the Ombudsman) issued 221 recommendations in cases where human rights violations were found. According to the type of violated rights, the breakdown of recommendations is as follows: the area of labour relations (33); proceedings before administrative bodies (32), suppression and prevention of discrimination (26), governmental, ministerial and other appointments (25), administration of justice (20) and freedom of access to information (17).

170. Indicators in Ombudsmen's possession show that, of the total number of issued recommendations, 71 ones were implemented, while in 60 cases cooperation was developed with the competent authority, but the recommendations were never implemented. These were cases in which the authorities expressed interest in cooperation with the Ombudsmen to eliminate the causes that had led to the violation of human rights, but they also presented certain obstacles that hinder the implementation of recommendations issued. In five cases partial implementation of the recommendations was registered, while the competent authorities did not respond to the Ombudsmen within the deadline after receiving the recommendation even in 57 cases. 28 recommendations were found not to have been complied with, by the competent authorities.

171. In 2011, two special reports and an analysis of the situation were made and they are: a special report relating to the protection of children's rights in criminal proceedings, a special report regarding appeal Ž-BL-05-717/11 and an analysis of children's rights and their exercise in preschool education. Given that the special reports and the analysis provide recommendations to the competent authorities to remedy human rights violations found, they were registered in the records of recommendations.

172. The Ombudsmen deemed it necessary to assess the situation in social care institutions in which mentally handicapped persons were placed in Bosnia and Herzegovina (hereinafter: institutions). Due to the situation in these institutions, because of the importance and urgency of issues and the need for a broader insight into the problem and urgent intervention by the authorities, the Ombudsman of BiH decided to make a special report. In September 2009 a Special Report on institutions for care of mentally disabled persons in BiH was released.

173. For a complete assessment of the situation, BiH Ombudsmen formed a team that visited the following institutions for the accommodation of mentally disabled persons: the "Pazarić" Institute for the Protection of Children and Youth, the "Bakovići" Institution for Care of Mentally Disabled Persons, the "Drin" Institution for Care of Mentally Disabled Persons of Fojnica, the "Jakes" Institute for the Treatment, Rehabilitation And Social Care Of Chronic Mental Patients of Modrica; the "Visegrad" Institute for Protection of Female Children and Adolescents; the "Prijeđor" Home for Children and Youth with Developmental Disorders, the "Duje" Centre for the Reception Of Old And Infirm Persons and Homeless of Doboj Istok Municipality.

174. Given the specific status of the institution but also because of the condition found, the situation of the "Jakes" Institute for the Treatment, Rehabilitation and Social Care of Chronic Mental Patients of Modrica will be the subject of a separate special report.

175. Some of the competent authority responsible for the implementation of recommendations gave to the Ombudsman their opinion of actions taken and obstacles related to the implementation of recommendations. In late 2009 the Ministry of Human Rights and Refugees, in cooperation with representatives of governmental and non-governmental organizations, appointed a team to develop an action plan for promoting the full participation of persons with disabilities in society, 2010-2015. Some of the relevant ministries have not fully implemented recommendations of the Ombudsman for Human Rights of BiH.

Prohibition of slavery and forced labour (art. 8)

Reply to the issues raised in paragraph 19 of the list of issues

An overview of the situation and statistical indicators of the trafficking situation in Bosnia and Herzegovina, 2010

176. According to the statistics collected by prosecutor's offices, police agencies, centres of social welfare and non-governmental organizations, which are necessary for drawing up annual reports on the situation of trafficking in Bosnia and Herzegovina, the fact was found that, in 2010, a total of 25 people were identified as potential victims of human trafficking / procuring for prostitution / trafficking for begging.

177. Of the total number of victims of human trafficking in 2010, there were five adults and 20 juveniles.

178. Of the 25 potential victims of trafficking, 21 were women and among them seven cases involved sexual exploitation and 14 cases involved begging, while four victims were males – three cases involved begging (two persons were juveniles and one person was adult), one case involved sexual exploitation (one adult man was a victim of sexual exploitation).

179. The records show that 21 victims of human trafficking were women: two cases of sexual exploitation involving adults, five cases of sexual exploitation involving juveniles, 13 cases of begging involving juveniles and one case of begging involving an adult.

180. Of the total of 25 victims, eight cases involved sexual exploitation and 17 cases involved begging.

181. Of 25 victims of trafficking, four victims were foreign nationals, while the remaining 21 victims of trafficking were nationals of Bosnia and Herzegovina. Countries of origin of these victims were: 2 victims from Serbia (one juvenile and one adult), one juvenile was from Croatia, one adult was from Germany. 21 victims of trafficking were nationals of Bosnia and Herzegovina: 18 juveniles and three adults.

182. The Centres for Social Work assisted in 21 cases (involving both foreigners and nationals). Their assistance in these cases included only the appointment of temporary guardian and possibly escorting to the border in cases of foreign victims of trafficking during the process of repatriation.

183. In 2010, five persons were returned to the country of origin, repatriated and they were:

- Three victims who were assisted in shelters in 2009 were repatriated and all the three persons were returned into Serbia (two juvenile victims and one adult victim)

- Two juvenile victims who were assisted in shelters in 2010 were repatriated into Serbia and Croatia.

184. In 2010 five foreign victims of trafficking in BiH were granted a temporary stay for humanitarian reasons.

185. An overview of the situation and statistical indicators of the trafficking situation in BiH, 2011- According to the statistics collected by prosecutor's offices, police agencies, centres of social welfare and non-governmental organizations, which are necessary for drawing up annual reports on the situation of trafficking in Bosnia and Herzegovina, it was found that, in 2011 a total of 35 people were identified as potential victims of human trafficking / procuring for prostitution and / or sexual exploitation / trafficking for begging/ selling, i.e. for forced marriage.

186. Of the total number of victims of human trafficking in 2011, 16 were adults (all woman), 19 juveniles (12 women and 7 men). Of the 35 potential victims of trafficking, 28 were women and seven were men.

187. Of the registered 28 women victims of human trafficking,

- 16 victims were adults and 13 victims were sexually exploited, 2 victims were exploited for forced labour/begging and 1 victim whose travel documents were destroyed and movement was restricted.
- 12 victims were juveniles, including four victims who were sexually exploited, three victims who were exploited for forced labour/ begging, five victims were sold for the purpose of concluding a forced marriage.

188. Of seven men victims of trafficking recorded, all were juveniles, six of whom were exploited for forced labour/begging and one victim was sexually exploited.

189. Of a total of 35 victims, 18 victims were sexually exploited, 11 victims were exploited for forced labour/begging, five victims were sold for the purpose of concluding a forced marriage, one victim whose travel documents were destroyed and movement was restricted.

190. Of the 35 victims of human trafficking, six victims were foreign nationals, while two unusual cases were recorded. One case is a boy who was born in Germany and his parents were BiH citizens and we do not have information on whether he was registered as BiH national and the other case is an adult foreign woman with refugee status, which means that there were a total of eight foreign nationals. Countries of origin of the foreign victims were: two victims from Serbia, one victim from Macedonia, Croatia, United States and Kosovo (Serbia) each. The remaining 27 victims of trafficking are nationals of BiH.

191. In 2011 the shelters assisted 22 potential victims of trafficking, while 13 potential victims were not provided with assistance in shelters, and 1 juvenile potential trafficking victim was housed elsewhere.

192. In 2011, two persons were returned to the country of origin/ repatriated and they were: 1 was returned to Croatia and 1 was returned to Macedonia.

193. In 2011, one adult woman was returned from Croatia into Bosnia and Herzegovina, although she is a citizen of the Republic of Serbia, on the basis of recognized refugee status in BiH.

194. In 2011 temporary stay for humanitarian reasons was granted to four (4) aliens - victims of trafficking in BiH.

195. Prosecution of trafficking in human beings and related offences, 2010 - According to the Task Force of the Prosecutor's Office of Bosnia and Herzegovina, they received in 2010 a total of 22 complaints for criminal offences involving human trafficking. At the end

of the reporting period a total of nine complaints were still under investigation by the Prosecutor's Office, whereas we have no information on pending complaints in the entity prosecutor's offices and the prosecutor's office of Brcko District of Bosnia and Herzegovina at the end of the reporting period. Orders for investigation were given in 15 cases, which, together with 29 investigations pending from the previous period, made a total of 44 investigations that were conducted in the reporting period. A total of 16 indictments was brought and confirmed. A total of 19 suspects were convicted and 4 suspects were acquitted.

196. Prosecution of trafficking in human beings and related offences, 2011 - According to the statistics collected from Prosecutor's Offices in BiH, (Prosecutor's Office of BiH, Cantonal Prosecutor's Offices of the Federation, District Prosecutors of Republika Srpska and the Brcko District of BiH Prosecutor's Office) about trafficking in human beings and related offences in 2011, they received 19 complaints for criminal offences against 38 suspects, 10 cases involving 19 suspects were investigated, six indictments were brought against 19 suspects and a total of four verdicts were rendered against seven suspects (all of them imposing prison sentences and, in one case, a fine in addition). No orders for confiscation of proceeds of crime were given.

197. When it comes to access to effective remedies we want to emphasize that trafficking victims are entitled to can obtain legal assistance from the NGO "Your rights BiH", and that victims of trafficking by civil action for the purpose of exercising the right to compensation.

198. The overall report on the implementation of the Action Plan to Combat Trafficking in BiH, 2008-2012, has not been made, but reports on the situation of human trafficking are made each year separately, so the 2008, 2009 and 2010 reports are posted on the website of the Ministry of Security and the 2011 report will be posted after the Council of Ministers' adoption.

199. The Ministry of Security Anti-Trafficking Department, in cooperation with the Strike Force for Combating Human Trafficking and with support from the OSCE Mission to BiH, established a working group, which consisted of prosecutors of all prosecutors' offices in BiH. The task of the working group was to make a proposal of amendments to criminal code that would harmonize the entire criminal legislation in this area and simultaneously bring the criminal legislation in the area of human trafficking with international standards, particularly the United Nations Protocol on the Prevention and Punishment of Trafficking, the Council of Europe Convention on Action Against Trafficking, as well as the EU Directive on Combating Trafficking and Protecting Victims. The proposed amendments to the four criminal codes, which are related to the crime of trafficking, have been drafted and agreed upon and sent for comments and to follow further procedures in the Ministries of Justice and the Judicial Commission.

200. The section of the 2008-2012 National Action Plan for Combating Trafficking in Human Beings respecting victims and witnesses protection identifies a need to design guidelines and procedures for repatriation of victims of trafficking. Therefore, in collaboration with Catholic Relief Services (CRS), the SUSTAIN project developed procedures of returning BiH victims of trafficking into BiH and procedures of voluntary return of foreign victims of trafficking. The procedures were designed in line with national and international legislation. The procedures relate and apply to all situations in which nationals of Bosnia and Herzegovina, foreign nationals victims of trafficking and / or foreign nationals who were granted permanent residence in Bosnia and Herzegovina were identified as victims of human trafficking in other countries, i.e. when personally or through the competent authority of another state or NGO seek help for safe return to permanent residence in BiH and / or country of habitual or permanent residence.

201. In accordance with the National Action Plan (2008-2012), capacity building of regional monitoring teams to combat human trafficking continued in 2011. Accordingly, regional monitoring teams were appointed in Sarajevo, Mostar, Banja Luka and Tuzla.

202. The purpose of establishing regional teams was to establish additional capacities to improve effective relationship between the competent institutions in BiH participating in activities to prevent trafficking in human beings.

203. Please find enclosed updated information about criminal cases in the Prosecutor's Office, the offences of slavery and transport of slaves from article 185, trafficking in persons under article 186 and organized crime in connection with the crime of trafficking in violation of article 250 in conjunction with article 186 Criminal Code of Bosnia and Herzegovina (annex, tables 8, 9 and 10)

204. As for the question about measures adopted to ensure that victims of human trafficking have access to effective remedies and reparation, the BiH Prosecutor's Office concludes that prosecutions involving trafficking under Article 186 of BiH CC were effectively completed with convictions by the Court of Bosnia and Herzegovina, which provides legal grounds for civil actions to be brought by the victims of the crime. In a number of cases, during the criminal proceedings the victims claimed accurate amounts of damages, so the Court of BiH awarded damages in these convictions, advising the victims to pursue additional damages in a lawsuit.

205. The Prosecutor's Office does not keep statistics of victims of these crimes disaggregated by age, gender and ethnicity of the victims.

206. The High Judicial and Prosecutorial Council of BiH stressed that the offences relating to the prohibition of slavery and forced work include the following crimes: trafficking in persons, establishment of slavery and transport of slaves, international procuring in prostitution, unlawful withholding of identity papers and smuggling of persons, trafficking in persons for prostitution.

207. In the context of statistical indicators of the overall processing of the offences above we can reach the following conclusions:

2010:

- Investigations - a total of 73 cases involving 168 suspects were investigated.
- Indictments - a total of 26 indictments against 38 suspects were brought.
- Convictions - a total of 24 convictions against 34 suspects were handed down.

2011:

- Investigations - a total of 49 cases involving 117 suspects were investigated.
- Indictments - a total of 13 indictments against 27 suspects were brought.
- Convictions - a total of 18 convictions against 28 suspects were handed down.

Freedom of movement (art. 12)

Reply to the issues raised in paragraph 20 of the list of issues

Situation analysis

208. During the period from 1992 to 1995, apart from devastation of nearly 500,000 homes that were either partially or completely destroyed or almost half of all housing units in the country, 2.2 million persons, which was more than half of the pre-war population

domiciled in the country, fled their homes in Bosnia and Herzegovina. Among them over a million left the country to seek refugee protection abroad in more than 100 countries world-wide whilst approximately million persons were displaced within the country.

209. The war ended in December 1995 with the signing of the Dayton Peace Agreement leaving a long road ahead in resolving the urgent, yet complex, displacement issue across the country. Since then great strides have been made: More than one million refugees and internally displaced persons have returned to date, including almost half a million so called "minority" returns; 220,000 properties have been repossessed by its pre-war owners and tenancy rights holders, which makes the implementation rate of property law by 99 per cent; Over 330,000 housing units have been re-built along with rehabilitation of communal and social infrastructure; Representation of minorities in the public sector has increased; Freedom of movement is today enjoyed by everybody and the safety of returnees has been significantly improved.

210. Approximately half a billion Euros had been invested between 2003 and 2011 towards these goals amounting to €200 million invested in housing reconstruction and more than €250 million invested in complementary sustainability measures.

211. There can be no doubt that great and tangible progress has been achieved in implementing annex VII of the General Framework Agreement for Peace (GFAP). Nevertheless, despite substantial achievements significant challenges do remain.

212. More than half of refugees and displaced persons have not returned to their homes. There are urgent needs of more than 100,000 of internally displaced persons, refugees and other conflict-affected persons of concern, each one deprived of a solution. Many of them are extremely vulnerable and traumatized, living in inhumane conditions in displacement and require special attention due to their difficult situation. Unfortunately, around 2,700 families continue to live in collective centres in BiH.

213. Many persons are unable to return because their pre-war property is destroyed and is on the list of 45.000 housing units of returnees awaiting reconstruction or because landmines have not been cleared from their pre-war villages. There are many persons who never owned property before the war and have not had the opportunity to benefit from any project to lead towards a durable solution for them. At the same time many people who have already returned face conditions that threaten their ability to remain in the place of return. Economic opportunities are scarce, often there is no infrastructure, including electricity, and their access to rights and services, such as health care, education, social protection and pensions, is limited. In other cases the primary obstacle to return is changed social environment where many persons, particularly younger ones, seek higher education and employment opportunities in larger towns instead of rural communities.

214. As guaranteed by the BiH Constitution as well as by international standards, displaced persons and returnees are entitled to the same rights as all other BiH residents. However, today, more than 17 years since signing the GFAP, many challenges remain to be overcome in order to ensure access to human rights for many displaced persons and returnees, particularly the most vulnerable persons who need additional financial and social support.

215. To respond to these challenges, the Ministry for Human Rights and Refugees of Bosnia and Herzegovina together with the United Nations High Commissioner for Refugees (UNHCR) initiated a consultative process which involved nearly 150 representatives of more than fifty institutions and organizations of domestic authorities at all administration levels, including public companies, NGO sector and civil society, as well as relevant representatives of international community in BiH.

216. Following an in depth situation analysis within the scope of 10 working groups, problems have been identified and recommendations to remove the primary obstacles to a

closure of the protracted displacement have been set out, with measures to improve the situation of refugees and IDPs provided, with full respect of their individual rights freely to return to their homes of origin and to be compensated for any property that cannot be restored to them. The equal right to choose another place of residence is to be respected too.

217. In 2010, the BiH Parliamentary Assembly adopted a Revised Strategy of Bosnia and Herzegovina for the Implementation of annex VII of the GFAP.

218. It is evident that the huge efforts undertaken by the government of Bosnia and Herzegovina, at all levels, along with the valuable contribution of the international community have brought real and meaningful results. However, needs continue to far exceed the available assistance and the major problem that remains is a huge discrepancy between financing capacities and urgent needs of refugees, IDPs and returnees.

Concrete steps undertaken

219. Along with adopted strategic directions for the legal reform aiming equal access to all rights under annex VII of the GFAP, the Framework Programme for the Return of Refugees and Displaced Persons has been developed and adopted as an Appendix to the Revised Strategy Paper. The Concept Note for Addressing the Issue of Damage Compensation for Property Which Cannot be Restored to Refugees and Displaced Persons in Terms of the Rights Ensured in annex VII of the Dayton Peace Agreement, has been adopted as an additional appendix.

220. Costs of the implementation of the Framework Return Programme alone are estimated to €650 million, with both obligation and commitment of BiH authorities at all levels to secure missing funds for a substantial completion of return process by 2014.

221. Regarding the Strategic recommendation to ensure funds for durable and sustainable solutions for refugees and IDPs, with priority given to the most vulnerable persons, budgets of all-level authorities have been increased; international and domestic donor community have been actively approached and activities on purposeful credits withdrawal have been performed.

222. Over the years domestic budgetary allocations are prevailing international funding and are in constant growth with participation of domestic institutions amounting to approximately 75 per cent and financing by international donors shared by 25 Per cent.

223. As part of on-going efforts to find durable and sustainable solutions for refugees and internally displaced persons nationally and regionally, Bosnia and Herzegovina has established close cooperation with the governments of Croatia, Montenegro and Serbia. In fact Bosnia and Herzegovina has undertaken the coordinating role between the four governments; and with the guidance and support of UNHCR, our cooperation is starting to yield results.

224. At a Donors Conference held in April, 2012 a Joint Regional Multi-Year Programme on Durable Solutions for Refugees and Internally Displaced Persons, which encompasses a Regional Housing Programme that provides the housing solutions to an estimated 27,000 households or 74,000 individuals, had been presented. The Programme would be implemented in parallel in the four Partner Countries (Bosnia and Herzegovina, Montenegro, Republic of Croatia and Republic of Serbia), over a five-year period beginning in autumn 2012.

225. According to initial estimates, the total investment cost of the Regional Housing Programme should amount to 584 million Euros, of which the Partner Countries have committed to providing 83 million Euros.

226. Representatives of almost 50 countries met to pledge their support to the Joint Programme. More than 260 million Euros had been registered at the Donors Conference in firm pledges towards the Regional Housing Programme to be released over the estimated five-year implementation period. All donors expressed their strong intention to continue with their contributions beyond the current budget cycle of their respective governments, until the end of the implementation of the Regional Housing Programme.

227. With the aim to resolve the issue of displacement across the region and a few of the most vulnerable IDPs, the Joint Regional Program which should ensure 101 million Euros for the respective Project implementation in Bosnia and Herzegovina will contribute considerably to Annex VII of the GFAP implementation. However, issues pertaining to return of the BiH refugees from other countries and of increasing concern to authorities, the considerably larger population of internally displaced persons which could not be included in the Regional Programme need to be addressed through other initiatives.

228. With this regard, in parallel to the regional initiative and pursuant to a conclusion of the BiH Parliament passed to ensure necessary credits amounting to 200 million Euros for Annex VII of the GFAP implementation, the Ministry for Human Rights and Refugees has designed specific projects and undertakes further procedural steps with several international financial institutions for granting loans.

229. Finding durable solutions for 2,700 families, altogether 8, 500 IDPs in collective centres is one of the Bosnia and Herzegovina's top priorities. To this end, a respective project to support the vulnerable IDPs will soon be submitted to the Council of Europe Development Bank (CEB) for loan that should amount to approximately 80 million Euros trusting to be approved for financing.

230. Further, OPEC Fund for International Development (OFID) provided the loan for reconstruction of 700 housing units (approx. 6 million Euros) and Saudi Fund for Development (SFD) provided loan for reconstruction of 1,000 housing units aiming sustainable return of refugees and IDPs in BiH (approx. 11 million Euros).

231. Next steps - Coordination and cooperation among all relevant stakeholders is a mandatory precondition in both determining proper solutions and implementation of unanimously agreed and accepted goals to be achieved. To this end, the implementation of Revised Annex VII Strategy requires an inclusive, consultative approach.

232. With this view, the Ministry for Human Rights and Refugees of Bosnia and Herzegovina will lead the implementation Task Force soon to be constituted with authority backing of highest levels of government.

233. Implementation Task Force will consist of all stakeholders, in particular relevant Entity line Ministries, representatives of civil society to provide for participation of IDPs and Returnees, as well as international agencies and periodic donor participation.

Freedom of expression and association and right of peaceful assembly (arts. 19, 21 and 22)

Reply to the issues raised in paragraph 21 of the list of issues

Freedom of expression and opinion - legal framework

234. The right to hold an opinion and expression set out in the Universal Declaration on human rights (Article 19) and the European Convention for Human Rights and Fundamental Freedoms (Article 10) is guaranteed by the Constitution of Bosnia and Herzegovina (BiH) and is enshrined in a number of laws and bylaws which directly deal with practicing of these rights and freedoms. Legal framework primarily consists of the Law on free access to information, the Law on protection against defamation and the Law

on communications, which is implemented by the Communications Regulatory Agency (Agency).

235. The Law on free access to information stipulates that every physical and legal entity has a right to access information held by a public institution. An exception is possible only upon conducting a public interest test, i.e. when determined that revelation of particular information may, as reasonably expected, cause significant damage for legitimate goals of Bosnia and Herzegovina.

236. The Laws on protection against defamation of FBiH and RS are also devised in such a way that the application of their provisions is aimed to provide in full for protection of freedom of expression. More specifically, it is stipulated that, while determining the responsibility in the sense of the Law, a need to restrict the right to freedom of expression must be clearly determined in accordance with Article 10.(2) of the European Convention on protection of human rights as well as the court practice of the European Court for human rights. Furthermore, by adoption of these laws, defamation has been decriminalized. These Laws set out acceptable restrictions to the freedom of expression in terms of civic responsibility for the damage inflicted to the reputation of the legal or physical entity by making untruthful assertions, at the same time confirming that: “the right to freedom of expression, guaranteed by the BiH Constitution and European Convention for protection of human rights and fundamental freedoms is a foundation of the democratic society, especially concerning the issues of political and public interest”.

237. The Law on Communications establishes basic regulatory principles applied in the broadcasting sector, implemented by the Communications Regulatory Agency. The Law on Communications sets out the basic principles applied in the sector of communications (broadcasting and telecommunications) including protection of freedom of expression and diversity of opinion, while complying with generally accepted standards of decency, non-discrimination, fairness, accuracy and impartiality. In accordance with article 4.1 of the Law, regulatory principles of broadcasting are “protection of freedom of expression and diversity of opinion while complying with generally accepted standards of decency, non-discrimination, fairness, accuracy and impartiality”. To hold a Broadcasting License implies an obligation to comply with all Agency’s rules and regulations that, while protecting the independence of the media and the right to freedom of expression, set down broadcasting standards obligatory to the media.

238. As can be concluded from the aforementioned, Bosnia and Herzegovina has a well developed legal framework for protection of freedom of expression in accordance with international standards. However, application of the regulations often shows flaws in practice. Fundamental problems include political and economic pressure on to media and journalists, as well as judicial institutions and Communications Regulatory Agency.

239. Despite the aforementioned situation, the Agency secures a transparent licensing regime and an adequate monitoring of compliance with the terms and conditions of licenses. In 2011, the regulatory framework for audiovisual media services providers and distribution service is fully harmonized with applicable rules and regulations of the European Union, and is broaden to enable the introduction of additional service providers such as video on demand services, etc. Taking into consideration the difficult economic position, the license fees are adjusted to the situation and have been significantly decreased, but as far as the fiscal policy is concerned, media are still lacking adequate support from the government, in terms of decrease of taxes, etc.

240. An issue of concern is also an increased number of threats and attacks on journalists. The public is not paying an adequate attention to such attacks, nor are these attacks appropriately processed.

241. The number of the public media in BiH is extremely high. Financial support to such media varies, and it is reflected on the programme itself. The legal framework does not

favour public media regarding private media when access to information is in question. Furthermore, they have additional set of programme obligations, as well as restrictions in commercial communications. Economic situation aside, public media are exposed to the political pressure as well. This was especially observed during the last elections when cases of political pressure on journalists of these media are noted. The journalists have been making complains to the Agency regarding such pressures and blackmails made by local officials.

242. In the last few years, the BiH public witnessed many cases of jeopardizing freedom of opinion and expression culminating in the worst form of attacks on journalists, endangering their personal safety. In each and every case, the Communications Regulatory Agency, while strongly disapproving it, had emphasized that every assault on the journalists is unacceptable, and represents not only direct threat to achieving journalist' rights and jeopardizing freedom of expression in general, but also presents an attack to democratic process in every society. Many reasons have contributed in creation of worsened situation when freedom of opinion and expression are in question, first of all negative general political and economic situation which is reflecting on the whole society, and media accordingly. Also, there has been a trend of diminished respect of the role that media have in every society, and ignoring the fact that performing public duty implies responsibility towards public and transparency of work which is reflecting in enabling media to report on their work without obstructions and performing the public duty they are entrusted with. There is no respect for the role that independent regulatory bodies have in democratic society, whose main goals is protection of media freedoms which serve the public. In that sense, one of the obstacles to enjoy these rights and freedoms is the constant pressure on political, financial and institutional independence of Communications Regulatory Agency, disabling it to perform its task in full capacity. Communications Regulatory Agency considers every restriction and intimidation of the media to freely report and inform the public on events in our society inadmissible, especially when manifested in direct threat of violence.

243. Considering the relevant provisions of the FBiH CC, the Cantonal Prosecutor's Office of Sarajevo Canton provided statistics only on the complaints received, investigations instituted and suspended and indictments brought and confirmed for a crime of inciting national, racial or religious hatred, discord or hostility under Article 163 of the FBiH CC. Specifically, in contrast to recent amendments to the Criminal Codes of RS and the Brcko District of BiH, in which certain criminal offences explicitly require hatred as a motive for a criminal offence (e.g. murder, rape and in particular property crimes), the FBiH CC does not criminalize specifically crimes of hate. As such a crime, the commission of which is motivated by hatred as a drive for its commission, the FBiH CC provides for a crime of inciting national, racial or religious hatred, discord or hostility under article 163 of the Code. At the same time, in accordance with the provisions of this article, inciting hatred, discord or intolerance includes only hatred motivated by national, racial and religious factors, while the FBiH CC does not criminalize inciting of hatred, discord or intolerance based on sexual orientation.

244. In accordance with a previous understanding, below please find statistics related to the criminal offence of inciting national, racial and religious hatred, discord or intolerance under article 163 of the FBiH CC for the period from 1 January 2010 to 30 June 2012:

245. During this period, the Cantonal Prosecutor's Office of Sarajevo Canton received a total of 17 complaints s regarding this criminal offence. In the reporting period a total of two cases were investigated, in one case an orders was given not to investigate the case because of a lack of grounds for suspicion that the offence was committed, while in two cases, the investigation was suspended because of a lack of evidence that the suspects committed the crime.

246. Generally, a problem in processing this type of crime is that it is difficult to prove hatred as a motive for commission, and national, racial or religious factors inducing it.

247. Anyway, article 163 of the FBiH CC prescribes public inciting of national, racial or religious hatred, discord or hostility among constituent peoples and others who live in the Federation as a basic form of this criminal offence, carrying a punishment of imprisonment for a term between one and five years.

248. Paragraph 2 of the Law prescribes a qualified form of this offence if it is committed by employing duress and abuse, jeopardizing the safety, exposing national, ethnic or religious symbols to **derision**, damaging other people's belongings, desecrating monuments or graves, carrying a punishment of imprisonment for a term between one and eight years.

249. The same punishment is prescribed in case of commission of the criminal offence by abusing official post or authority or if that act resulted in riots, violence and other grave consequences to life of constituent peoples and others who live in the Federation.

250. Further, paragraph 4 of article 163 of the FBiH CC determines that whoever perpetrates this criminal offence employing duress and abuse, jeopardizing the safety, exposing national, ethnic or religious symbols to derision, damaging other people's belongings, desecrating monuments or graves, by abusing his official post or authority or if that act resulted in riots, violence and other grave consequences to life of constituent peoples and others who live in the Federation, shall be punished by imprisonment for a term between one and ten years.

251. With regard to the outcome of the investigation of alleged attacks on journalists of IC Independent Television of Osman Drina of Zenica and alleged threats against journalists of Euroblic daily newspapers, Vesna Tesic, the cases do not fall under jurisdiction of the Cantonal Prosecutor's Office of Sarajevo Canton. In contrast, when it comes to threats against the editor-in-chief of the "60 Minutes" political magazine, Bakir Hadziomerovic, this Prosecutor shall take all necessary actions in order to verify the charges and clarified the relevant circumstances of the event, with a view to making a final prosecutorial decision.

252. In connection with prosecution of violence that occurred in the course of the first Sarajevo Queer Festival, a total of five criminal cases related to the aforementioned event fall under jurisdiction of the Cantonal Prosecutor's Office of Sarajevo Canton. In two cases an order was given not to investigate them, given that there were no grounds to suspect that the reported person committed the crime, while in three cases indictments were filed against persons reported for criminal offences of bullying under article 362, paragraph 2 in conjunction with paragraph 1 of the FBiH CC. Deciding these charges, the Sarajevo Municipal Court rendered convictions in two cases handed down a suspended sentence on the suspects, while in one case an acquittal was rendered which the competent cantonal prosecutor appealed. In addition, there are two more cases pending before the Prosecutor's Office involving the events related to the first Sarajevo Queer Festival and they are at the pre-investigative stage in which prosecutors try to determine whether in the particular cases there are grounds for suspicion that a criminal offence was committed.

253. According to the Cantonal Prosecutor's Office of Zenica-Doboj Canton there no investigations of the events referred by the Committee involving attacks on and threats against the persons. The Cantonal Prosecutor's of Zenica-Doboj Canton will continue taking all legal measures and actions to protect human rights activists, journalists and all other citizens in the event of being subject to any threats, intimidation or violence.

Reply to the issues raised in paragraph 22 of the list of issues*Regulatory framework – freedom of expression*

254. As far as broadcasting is concerned, Communications Regulatory Agency's basic goal is to support the development of broadcasting sector in BiH, protect creative freedoms, cultural and political diversity and democratic process, at the same time protecting human dignity, and most importantly developing and protecting one of the most fundamental rights, right to freedom of expression, as the essential precondition for democracy to function. As emphasized earlier, right to freedom of expression presents a basic principle of the Communications Regulatory Agency work, for both traditional broadcasters as well as other non-linear audiovisual media services which are lately significantly emerging on the media scene.

255. The Law on Communications enables the highest degree of compliance with the freedoms guaranteed by international and national applicable rules and regulations, especially in ones pertaining to right to freedom of expression. In 2010, the Agency began the process of harmonization of all broadcasting rules with the provisions of European Union Directive on audiovisual media services. In 2011, this process was set out as a priority for the broadcasting sector, including harmonization of all of the rules and regulations pertaining to this field. Such process resulted in adoption of set of bylaws regulating this field in details, based on provisions of international conventions from the field of protection of human rights, especially right to freedom of expression, including: Code on audio-visual media service and radio media services; Code on commercial communications; Rule 55/2011 on provision of audio-visual media services; Rule 56/2011 on license for distribution of audiovisual media services and radio media services; Rule 57/2011 on public radio and television broadcasters; Rule 58/2011 on provision of radio media services.

256. The aforementioned rules set out in details terms and conditions of licensing process for audiovisual media service terrestrial providers, as well as those not using frequency spectrum as broadcasting platform, distribution of programme, as well as the provision regarding programme content. Those rule introduced a new approach of regulation as a result of harmonizing traditional services of content provision to the new audiovisual environment and services emerging out of new technology development. The reasoning for this is the fact that digitalization of information, increase of speed for data transfer, as well as new distribution platforms development put principle of identifying media services based on technology to second place. Accordingly, the goal of the Agency is for these changes to enable competition amongst service providers, flexibility when financing of audiovisual content is concerned, secure high level of protection of consumers and to create equal conditions for all service providers regardless of technology.

257. As far as broadcasting is concerned, the Agency license audiovisual media service and radio media service providers, as well as distributors of such contents in accordance with the legal and procedures set out by secondary legislations, based on a fair and clear criteria, in efficient and transparent manner. Currently, there are 42 TV stations, 143 radio stations and 6 broadcasters within Public PBS System, 5 licensees broadcasting on short waves, and 3 licensees of special license intended for certain social groups (community radio) in BiH. Additionally, there are 50 licensees registered for distribution of RTV programme.

258. Regulation implemented by Communications Regulatory Agency implies positive approach to establishing and developing professional media in BiH, and, in that respect, all the rules and regulations are including principles of international law on human rights (especially the part pertaining to freedom of expression and information), democratic development, and media free of political or any other pressure or influence.

259. According to provisions of the Law on Communications, Communications Regulatory Agency, also has the responsibility to investigate cases of possible breach of rules and regulations, adopted by the Agency. Compliance with the Agency's rules and regulations is a part of terms and conditions of the license and it is obligatory for all licensees in the field of broadcasting.

260. In accordance with articles 37 and 39 of the Law on Communications and the Code on audiovisual media services and radio media services, the rules and standards pertaining to audiovisual media services and radio media services providers' programme content are defined. The Code, amongst other, defines issues about abetment, presenting and profiling ethnic, national or religious intolerance, hatred and violence, keeping in mind that prevention of such activities is vital to welfare of BiH people.

261. In the reporting period, the Agency received and processed 10 complaints regarding possible "hate speech" provided by the audiovisual media service providers. Only in one case the Agency found a violation of the aforementioned provision, since the content of SMS messages broadcast in the programme was not in accordance with the Code, the TV station was fined in amount of 2 000 km. There were no grounds to pursue the remaining 9 cases involving alleged violations of provisions governing hate speech, and they were subsequently closed.

Independence of Communications Regulatory Agency (RAK)

262. A constant pressure on political, financial and institutional independence of Communications Regulatory Agency for several years is disabling this institution to do its work in full capacity. Namely, the appointment of Director General, has not been confirmed by BiH Council of Ministers, four years after the Council of the Agency made a selection, in accordance with provisions of the BiH Law on Communications which clearly stipulates that Council of Agency makes a selection, and BiH Council of Ministers confirms such selection.

263. The mandate of the Council of Agency expired on 25 April 2009, and therefore, in accordance with the Law on Communications, the procedure for selection of new Council has been followed. A list of candidates, complying with terms and conditions of announced vacancies, has been sent to the BiH Council of Ministers for appointment. Procedure for appointment of the new members of the Council, by the time of submission of this report, has not been finalized.

264. Amendments to the Law on Ministries and Other Administrative Bodies of Bosnia and Herzegovina passed by BiH Parliamentary Assembly (Official Gazette of BiH 103/09) classified the Agency among autonomous administrative organization and due to the fact that Agency is an independent regulator whose work is established by the special law, its independence is additionally jeopardized.

265. After making an initiative to exclude the Agency and other independent institutions out of aforementioned law, Constitutional and legal commission of House of Representatives and House of People of the BiH Parliamentary Assembly submitted conclusions to the BiH Council of Ministers to make amendments to the aforementioned law in the sense of excluding the Agency, Audit Office of the institutions of BiH and Public Procurement Review Body and forward it to the Parliament for passage. By the date of submitting this report, amendments to the aforementioned law were not made or forwarded to the Parliament for passage.

266. The valid Rules on Organizational Structure of the Communications Regulatory Agency envisage 169 employees, while the Agency currently employs 113 employees, out of which 111 are under long-term employment contracts and two employees are under fixed term employment contracts, which is considered unsatisfactory as far as human resources are concerned, especially in the telecommunications sector.

267. Due to current financial restriction and prohibition to hire new staff members until the adoption of 2012 BiH State Institutions budget, and in accordance with the Decision related to interim financing of BiH State Institutions, the Agency stopped all the activities related to employment of new staff. In accordance with the Instruction of BiH Council of Ministers, every potential new employment requires additional approval and explanation related to responsibilities and activities that would be performed by new employees, in accordance with activities envisaged by the 2012 Program Plan of Communications Regulatory Agency, while, as stated, the final decision on the number of newly employees is taken by BiH Council of Ministers. This additionally jeopardizes and burdens the work of the Agency, due to the fact that already insufficient number of employees in the future will depends on BiH Council of Ministers.

268. It is important to note that, according to the Law on Communications, the Agency is funded by license fees, and that it in fact does not depend upon the BiH State Institutions budget. However, the resources collected by the Agency are paid in State budget, so that, regardless of the fact that the Agency is not financed from the budget, it represents s budgetary user, and, as such, falls under a number of laws which directly jeopardize its independence. As an example, the Law on Salaries and Other Compensations of BiH State Institutions Employees, which has been applicable to the Agency since 2008, and which led to significant decrease of salaries which are now lower than the salaries in sectors regulated by the Agency, and here, it is the sector of telecommunications that is particularly noted, since the media, as stated earlier, are in a very difficult position.

269. The election of Director General of the Agency is in progress. Appropriate actions need to be carried out in accordance with standards applicable to operation of an independent regulator with a view to avoiding any kind of politicizing of the matter.

Reply to the issues raised in paragraph 23 of the list of issues.

The right to and the measures taken to ensure a non-discriminatory, expeditious, easily accessible and inexpensive registration process of associations

270. Freedom of peaceful assembly is guaranteed by the Constitution of BiH in article II(3)(i) determining that all persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in BiH, including freedom of peaceful assembly and freedom of association with others.

271. Establishment, registration, internal organization and dissolution of associations and foundations in BiH are governed by the Law on Associations and Foundations of Bosnia and Herzegovina ("BiH Official Gazette" 32/01, 42/03, 63/08, 76/11), while entity laws on associations and foundations that have been brought in line with this law govern the matter in Entities. In order to eliminate any form of discrimination, this Law stipulates freedom of association in accordance with fundamental legal principles, as set forth in the 1948 Convention No. 87 concerning Freedom of Association and the Right to Organise, the European Convention on Human Rights and the Constitution of BiH.

272. According to 2008 recommendations of the International Labour Organization, the Law was amended in order to improve and detail existing provisions thereof, thereby ensuring easier, faster and simpler procedure for registration of NGOs through the shortening of deadlines to decide on the fulfilment of requirements for registration. The 2011 Amendments introduced new instruments reducing influence of authorities only to involvement of the registration authority of first instance with a view to enabling proper pursue of aims and activities of NGOs, while the protection of the public as well as any other interest is secured by the competent court.

273. On the basis of authority under the Law, the BiH authorities enacted the Rules on Keeping the Register of Associations and Foundations of Bosnia and Herzegovina and Foreign and International Associations and Foundations (hereinafter: Rules), which prescribe additional tools which allow quick and easy access to information relating to the entry in the register of NGOs. The Rules and all forms that are an integral part of these Rules are published on the website of the Ministry of Justice, which enables public and transparent access to all information relating to the registration of NGOs, noting that each form contains instructions to fill it.

274. The procedure for determining fees for registration have taken into account practices of other levels of government, so that the administrative fee for registration was determined so that it could be acceptable for non-governmental organizations and also that it could be the lowest amount compared to all other registration bodies.

Rights of persons belonging to minorities (art. 27)

Reply to the issues raised in paragraph 24 of the list of issues

275. In the Decision on the Establishment of the Council of National Minorities of Bosnia and Herzegovina ("BiH Official Gazette" No. 38/06, 93/08, 53/09) the Parliamentary Assembly of Bosnia and Herzegovina established the Council of National Minorities of Bosnia and Herzegovina (hereinafter: BiH CoNM), as a special advisory body to the Parliamentary Assembly of BiH. The Council consists of one representative of each national minority under Article 3 of the Law on the Protection of Minorities ("BiH Official Gazette" No. 12/03, 76/05, 93/08).

276. The Council gives opinions, advice and suggestions to the Parliamentary Assembly on all matters concerning the rights, status and interests of national minorities in BiH. The Council may delegate experts to the Constitution and Legislation Commission and the Joint Commission, when they discuss the rights, status and interests of ethnic minorities. The delegated experts may be members of national minorities, but also independent experts and members of the constituent peoples.

Reply to the issues raised in paragraph 25 of the list of issues

Linguistic and educational rights of the Roma

277. Regarding the measures taken for the exercise of linguistic and educational rights of Roma who are protected under the Law on the Protection of Persons Belonging to National Minorities and the effectiveness of these measures, it is necessary to point out that the Action Plan on the Educational Needs of Roma enumerates nine measures to achieve the aforementioned goal and particularly emphasizes the need for cooperation at the regional level.

278. Donor funds have been given for standardization of the Romany language through regional initiatives and the project is implemented by RIC "Kali Sara" of Sarajevo.

279. In fact, no activities have been taken to design textbooks on history, culture and language of the Roma people. The existing manual on the culture, heritage and traditions of national minorities does not adequately describe history, culture and traditions of the Roma as the largest national minority in BiH.

280. The Romany language as an optional subject is not introduced in any school nor are any adequate alternative solutions for the study of the Romany language ensured nor are persons who want to be trained in teaching the Romany language selected to undergo this type of training.

281. According to the data, 1,188 or 39.30 per cent of Roma children included in primary education speak the Romany language and a number of schools do not have this information. Textbooks for the study of the Romany language in schools in which there are large numbers of Roma children are not provided.

282. The February 2004 Action Plan on the Educational Needs of Roma and Other National Minorities of BiH and its 2010 revised version defines the overarching goal with the purpose of improving access to mainstream education system of BiH for Roma addressing numerous obstacles they currently face, which are practical, systemic wider issues, while enhancing the participation of Roma communities and promoting full inclusion of their children in mainstream education.

283. Representatives of the Ministry for Human Rights, the Ministry of Civil Affairs, the Federation Ministry of Education and Science, the Ministry of Education and Culture of Republika Srpska and the Education Department of the Government of the Brcko District participate in monitoring the implementation of the Revised Plan of Action.

Reply to the issues raised in paragraph 26 of the list of issues

“Two schools under one roof”

284. Based on a query of the Ministry for Human Rights and Refugees about the phenomenon of “two schools under one roof”, the Ministry of Civil Affairs gives the following answer:

“In carrying out its mandate, in the period between 2008 and 2010, the Ministry of Civil Affairs of Bosnia and Herzegovina put the phenomenon of “two schools under one roof” on the agenda of five out of twelve meetings of the Conference of Ministers of Education in Bosnia and Herzegovina. In 2008 a working group was appointed and tasked with preparing a report, a detailed analysis and recommendations for overcoming the phenomenon of „two schools under one roof“. The Conference of Education Ministers of BiH did not adopt the report of the Working Group, finding it to be unsatisfactory and another working group was established, this time led by the OSCE. The new Working Group was tasked specifically to primarily define term of "two schools under one roof" and explain how it connects with the concept of discrimination and segregation in the education system of BiH, because there are many possibilities for the organization of two schools under one roof without segregation and discrimination. For example, there are cases of a primary and a secondary school located in the same building in small towns across the country.

285. However, the Conference of Ministers of Education in Bosnia and Herzegovina did not adopt the report on „two schools under one roof" produced by the new working group led by the OSCE either because the proposed definition did not connect this phenomenon with segregation in schools, nor did it propose appropriate solutions for overcoming the situation.

286. Further, ministers of education from the cantons with this phenomenon strongly denied any form of segregation in „two schools under one roof“. As a matter of fact, they believe that this is one method that protects the fundamental right of children to education in mother tongue. In their opinion, „two schools under one roof" is not a problem and they sought that treating this phenomenon as a political problem should be stopped.

287. Therefore, the conclusion of the eleventh meeting of the Conference of Ministers of Education of BiH, held on 30 March 2010, when the phenomenon of "two schools under one roof" was last discussed, was as follows:

“The Federation Ministry of Education and Science, with the relevant ministries of the Herzegovina-Neretva Canton, Middle Bosnia Canton and Zenica-Doboj Canton, with

the participation of the Ministry of Civil Affairs, should follow up on this issue, starting with redefinition of term “two schools under one roof”. In addition, the competent education authorities undertake to consider all possible forms of discrimination and segregation in education and take strong measures for their removal, in order to meet Council of Europe post-accession requirements and priorities defined in the "European Partnership for BiH." All relevant ministries of education in BiH are obliged to periodically inform the Conference of Education Ministers of BiH on the measures and activities taken in relation to this issue”. It was agreed that ministers of education in the cantons in which these schools operate make performance review and give proposals for unification.

Rights of the child (arts. 7 and 24)

Reply to the issues raised in paragraph 27 of the list of issues

288. The Laws on the protection of children against violence and family laws of entities and Brčko District ban any form of physical punishment of children and any form of lack of care or neglect of children is prohibited and punishable primarily under criminal law applicable in Bosnia and Herzegovina. The Family Law provides specifically for measures of protection of children from all forms of violence, determining parents’ duty and responsibility to care and protect children from neglect or any form of violence.

289. This matter is addressed in more details in the report on the implementation of Optional Protocol on the sale of children, child prostitution and child pornography, which enumerates in details legal arrangements regarding these forms of protection. Explicit protection from violence is defined in the law governing education and preschool upbringing of children.

Dissemination of information relating to the Covenant and the Optional Protocol (art. 2)

Reply to the issues raised in paragraph 28 of the list of issues

290. As stated in the introduction of the Second Periodic Report of BiH, in early 2010 the Ministry of Human Rights established an Inter-ministerial Working Group for the preparation of the second periodic report. The working group members were appointed by relevant ministries at the level of Bosnia and Herzegovina, the entity ministries and departments of Brčko District of BiH. Besides experts from the Ministry of Human Rights and Refugees, in drafting the report, members of the Joint Committee on Human Rights, Rights of Children, Youth, Immigration, Refugees, Asylum and Ethics of the Parliamentary Assembly of BiH, the Court of BiH, the Ministry of Justice, the Ministry of Security, the Office of State Coordinator for Combating Trafficking in Persons, the Communications Regulatory Agency of BiH, the Institute of Missing Persons of Bosnia and Herzegovina, the Agency for Statistics of the Federation Ministry of Justice, the Federation Ministry of Interior, the Federation Ministry of Labour and Social Policy, the RS Ministry of Justice, the RS Ministry of Health and Social Welfare, the Ministry of Internal Affairs of Republika Srpska, Brčko District Police, as well as a number of NGO representatives took part in public consultations.

291. While drafting the report, data and reports from the Institution of Ombudsman for Human Rights in BiH were used and cooperation with this institution is permanent.

292. The second periodic report is posted on the web site of MHRR: www.mhrr.gov.ba available, inter alia, to the civil society and NGOs operating in BiH.

Annexes

Table 1: An overview of the budget of the Institute in the period since its establishment

<i>No.</i>	<i>Year</i>	<i>Approved budget within BiH Budget</i>
1.	2008	BAM 6,455,467.00
2.	2009	BAM 6,069,000.00
3.	2010	BAM 4,358,000.00
4.	2011	BAM 3,156,030.00
5.	2012	BAM 3,066,000.00

Approved Budget of the Institute for Missing Persons, 2008-2012

Tables 2, 3, 4, 5, 6, 7

Type and number of disciplinary offences by adult and juvenile convicts, 2011

<i>Disciplinary offence</i>	<i>Number</i>			<i>Total</i>
	<i>Adult convicts</i>	<i>Juvenile convicts</i>	<i>VPD</i>	
Taking part in riots	-	-	-	-
Assaults on convicts	25	2	-	27
Assaults on officers	2	-	-	2
Total	27	2	-	29
	29			

Number of disciplinary proceedings and structure of disciplinary actions imposed in 2011

<i>Disciplinary action</i>	<i>Number</i>			<i>Total</i>
	<i>Adult convicts</i>	<i>Juvenile convicts</i>	<i>VPD</i>	
Caution	7	2	-	9
Admonition	6	-	-	6
Benefits revocation	56	-	2	58
Ban on disposal of money	-	-	-	-
Solitary confinement up to 10 days	224	-	-	224
Solitary confinement up to 20 days	71	-	-	71
Total	364	2	2	368

Number of special actions to maintain peace and order imposed in 2011

<i>Type of special action</i>	<i>Number</i>				<i>Total</i>
	Adult convicts	Detainees	Juvenile convicts	VPD	
Intensified supervision	56	47	-	-	103
Taking away and withholding of allowed objects	6	-	-	-	6
Placement in a separate room without dangerous objects	78	17	-	-	95
Placement in a maximum security ward and intensified treatment programme	74	-	-	-	74
Handcuffing and shackling, as required	5	1	-	-	6
Solitary confinement	6	-	-	-	6
Contagious diseases and drug testing	17	-	-	-	17
Total	242	65	-	-	307

Use of means of restraining on persons deprived of liberty in 2011

<i>Special actions</i>	<i>Number</i>				<i>Total</i>
	Adult convicts	Detainees	Juvenile convicts	VPD	
Physical force	4	2	-	-	6
Tying	6	2	-	-	8
Police baton	1	-	-	-	1
Use of police dogs	-	-	-	-	-
Use of fire hoses	-	-	-	-	-
Use of chemicals	-	-	-	-	-
Use of fire arms	-	-	-	-	-
Total	11	4	-	-	15

Reasons for the use of means of restraining in 2011

	<i>Destruction of property</i>	<i>Preventing an escape</i>	<i>Assault on officer</i>	<i>Assault on convict</i>	<i>Prevention of conflict</i>	<i>Prevention of self- injury</i>	<i>Other</i>	<i>Total</i>
Adult convicts	-	1	5	1	1	2	2	12
Detainees	-	1	-	-	-	-	-	1
Juvenile convicts								
VPD								
Total	-	2	5	1	1	2	2	13

Conflicts between persons deprived of liberty in 2011

	<i>Number of conflicts</i>	<i>Number of parties to conflict</i>	<i>Slightly injured persons</i>	<i>Seriously injured persons</i>	<i>Police notified</i>
Adult convicts	34	69	11	1	7
Detainees	5	10	2	-	-
Juvenile convicts	1	2	-	-	-
VPD	-	-	-	-	-
Total	40	81	13	1	7

Tables 8, 9, 10 – ART 186

<i>Year</i>	<i>1.Charges filed</i>		<i>2. Orders for investigation</i>		<i>3.Indictments filed</i>		<i>4. Verdicts</i>		<i>5 Plea agreements</i>	
	Cases	Persons	Cases	Persons	Cases	Persons	Cases	Persons	Cases	Persons
2004	3	10	3	9	0	0	0	0	0	0
2005	11	31	3	5	4	10	3	7	2	3
2006	8	25	4	13	2	12	2	5	1	1
2007	5	12	2	2	1	1	1	1	1	1
2008	5	8	4	11	3	9	0	0	0	0
2009	7	15	7	10	0	0	0	0	0	0
2010	6	29	3	13	3	4	4	9	1	1
2011	8	22	2	6	2	2	2	2	2	2
2012	1	1	1	3	1	2	0	0	0	0
TOTAL	54	153	29	72	16	40	12	24	7	8

ARTS.250-186

<i>Year</i>	<i>1.Charges filed</i>		<i>2. Orders for investigation</i>		<i>3.Indictments filed</i>		<i>4. Verdicts</i>		<i>5 Plea agreements</i>	
	Cases	Persons	Cases	Persons	Cases	Persons	Cases	Persons	Cases	Persons
2004	0	0	0	0	0	0	0	0	0	0
2005	2	18	2	18	1	3	0	0	0	0
2006	1	4	0	0	1	10	0	0	0	0
2007	1	4	2	6	0	0	1	10	0	0
2008	1	8	0	0	0	0	0	0	0	0
2009	1	10	0	0	0	0	0	0	0	0
2010	0	0	0	0	0	0	0	0	0	0
2011	1	4	2	15	0	0	0	0	0	0
2012	0	0	0	0	0	0	0	0	0	0
TOTAL	7	48	6	39	2	13	1	10	0	0

ART 185

<i>Year</i>	<i>1.Charges filed</i>		<i>2. Orders for investigation</i>		<i>3.Indictments filed</i>		<i>4. Verdicts</i>		<i>5 Plea agreements</i>	
	Cases	Persons	Cases	Persons	Cases	Persons	Cases	Persons	Cases	Persons
2004	2	3	1	2	0	0	0	0	0	0
2005	0	0	0	0	0	0	0	0	0	0
2006	1	1	0	0	0	0	0	0	0	0
2007	1	1	0	0	0	0	0	0	0	0
2008	1	1	1	1	0	0	0	0	0	0
2009	0	0	0	0	0	0	0	0	0	0
2010	0	0	0	0	0	0	0	0	0	0
2011	0	0	0	0	0	0	0	0	0	0
2012	0	0	0	0	0	0	0	0	0	0
TOTAL	5	6	2	3	0	0	0	0	0	0