



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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**Committee against Torture**

**Consideration of reports submitted by States  
parties under article 19 of the Convention  
pursuant to the optional reporting procedure**

**Sixth periodic reports of States parties due in 2014**

**Bosnia and Herzegovina<sup>\*,\*\*,\*\*\*</sup>**

[Date received: 1 April 2016]

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\* The combined second to fifth periodic reports of Bosnia and Herzegovina is contained in document CAT/C/BIH/2-5; it was considered by the Committee at its 961st and 962nd meetings, held on 4 and 5 November 2010 (CAT/C/SR.961 and 962). For its consideration, see the Committee's conclusions and recommendation (CAT/C/SR.978).

\*\* The present document is being issued without formal editing.

\*\*\* The annexes to the present report are on file with the secretariat and are available for consultation. They may also be accessed from the web page of the Committee against Torture.

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## **Answers to the CAT's List of issues prepared by BiH institutions (the sixth periodic report of BiH)**

### **Articles 1 and 4**

#### **Question 1**

1. The Parliamentary Assembly of Bosnia and Herzegovina (hereinafter: BiH) passed the Law on Amendments to the BiH Criminal Code (BiH OG 87/12) in May 2015. The Law amends Article 190 bringing the definition of the offense in line with the definition under Article 1 of the Convention. Given the gravity of the offense, punishment for the offence is made stricter at the same time.

2. Article 190 reads:

Torture and other forms of cruel and inhuman treatment

(1) An official person in the institutions of BiH or any other person, acting in an official capacity in the institutions of BiH, by order, upon the instigation of or with the explicit or implicit approval by a public official in the institutions of BiH or any other person acting in an official capacity in the institutions of BiH, inflicts physical or mental pain or severe physical or mental suffering in order to obtain from him or a third person information or a confession, or in order to punish him for the crimes committed by him or a third person or intimidates or coerces him for any reason grounded on discrimination of any kind, shall be punished by imprisonment of at least six years.

(2) The punishment referred to in paragraph (1) of this Article shall be imposed on an official person in the institutions of BiH or any other person acting in an official capacity in the institutions of BiH who orders or instigates the commission of the crime or gives explicit approval or knowingly tacitly agrees to the commission of the offense referred to in paragraph (1) of this Article.

3. Article 168 of the Law on Amendments to the RS Criminal Code (RS OG 67/13) is amended to read as follows:

(1) Whoever abuses or treats another in a way that offends human dignity shall be punished with imprisonment up to two years.

(2) Whoever inflicts severe pain or suffering on another by force, threats or in another illegal way in order to get confession, statement or information from him or any other person, or in order to intimidate or unlawfully punish him or any other person or does this for any reason based on discrimination of any form, shall be punished with imprisonment from six months to five years.

(...)

(1) When the offense referred to in paragraphs 1 and 2 of this Article is committed by an official in line of duty, he shall be punished for an offense referred to in paragraph 1 of this Article with imprisonment from six months to five years, and for the offense referred to in paragraph 2 of this Article with imprisonment of one to ten years.

4. The crime of torture, as defined in Article 1 of the Convention, is not included in the Criminal Code of Brcko District of BiH (hereinafter: BD) and the Criminal Code of Federation of Bosnia nad Herzegovina (hereinafter: FBiH).

**Question 2**

5. The Law on Amendments to the BiH Criminal Code, which was passed in May 2015, amends Article 172 (1)(g) and Article 173(1)(e), which brings the definition of war crimes of sexual violence in line with international standards, so that part of the text reading “force or threat of immediate attack” is deleted from the definition in accordance with recommendations of the Committee.

6. The provisions read:

In Article 172(1)(g), words “by force or by threat of immediate attack on her life and limb or life and limb of a person close to” are deleted.

In Article 173(1)(e), words “by force or by threat of immediate attack on her life and limb or the life and limb of a person close to” are deleted.

7. The definition of war crimes of sexual violence is set forth in BiH Criminal Code and the definition of war crimes of sexual violence is not set forth in Criminal Codes of Entities and BD.

**Article 2****Question 2 (A)**

8. Article 5 of the BiH Criminal Procedure Code sets out rights of persons deprived of their liberty and the provision reads:

(1) A person deprived of liberty must, in his native tongue or any other language that he understands, be immediately informed about reasons for his apprehension and instructed on the fact that he is not bound to make a statement, on his right to a defence attorney of his own choice as well as on the fact that his family, consular officer of the foreign state whose citizen he is, or other person designated by him shall be informed about his deprivation of liberty.

(2) A person deprived of liberty shall have a defence attorney appointed upon his request if according to his financial status he cannot pay for defence the expenses.

9. The provisions are contained in FBiH Law on Criminal Procedure (FBiH OG 35/03, 37/03, 56/03, 78/04, 28/05, 55/06, 27/7, 53/07, 9/09, 12/10, 8/13) (Article 5), RS Criminal Procedure Code (RS OG 53/12) (Article 5) and BD Criminal Procedure Code (BD OG 10/03, 48/04, 06/05, 12/07, 14/07, 21/07, 27/14).

**Question 2 (B)**

10. Article 63 of the BiH Law on Execution of Criminal Sanctions, Detention and Other Measures provides for an obligation to ensure a medical examination and the provision reads:

(1) Immediately upon admission in the correctional facility each detainee or prisoner shall be examined by a qualified nurse and a detailed medical examination shall be carried out by a physician within 24 hours.

(2) Medical findings shall be entered into the medical records of the detainee or prisoner.

11. Article 34 of the FBiH Law on Execution of Criminal Sanctions provides for an obligation to provide a medical examination and the provision reads:

In the admission ward the convicted person shall be entered in the prison register, an offender file shall be opened and his health status shall be established.

12. Article 11 of the Detention Facility Rules determines:
- Upon admission, on the first business day, a general medical examination of detainee shall be carried out.
- The medical findings shall be entered into the medical records of detainee.

*The RS Law on Execution of Criminal Sanctions*

13. Article 173:
- Immediately upon admission into the Correctional Facility, a medical examination of the convicted person shall be carried out and the medical findings shall be entered into the medical records of detainee.

*The BD Law on Execution of Criminal Sanctions, Detention and Other Measures*

14. BD has no facilities for execution of criminal sanctions, detention and other measures and Article 3(2) of the BD Law on Execution of Criminal Sanctions, Detention and Other Measures provides:

A convicted person sent by the court to serve a prison sentence shall serve the sentence in a facility for the execution of prison sentences or a facility for the execution of custodial correctional measures of his choice in FBiH or RS in accordance with their laws.

15. Article 3, paragraph 5 of the Law provides:

A convicted person who is in pre-trial detention or serves a sentence of imprisonment or long-term imprisonment, a security measure or a correctional measure in appropriate Entity facility shall have conditions and rights as other persons who are in pre-trial detention or serve a sentence, a security measure or a correctional measure in the facility so that they shall be treated pursuant to provisions of the respective Entity laws on the execution of criminal sanctions respecting: accommodation, hygiene, dress code and nutrition, health care, restriction of movement and the right to communicate, work and remuneration, rights and privileges, the disciplinary responsibility; correctional facility rules and other provisions governing the operation and functioning of the facilities for the enforcement of sentences, security measures and correctional measures.

**Question 2 (C)**

16. Article 13 of the BiH Criminal Procedure Code provides for the right to be tried without delay and the provision reads:

- (1) The suspect or accused shall be entitled to be brought before the Court in the shortest reasonable period of time and to be tried without delay.
- (2) The Court shall also be bound to conduct the proceedings without delay and to prevent any abuse of the rights of any participant in the criminal proceedings.
- (3) The duration of custody must be reduced to the shortest necessary time.

17. The RS Criminal Procedure Code provides that, in the course of taking measures and actions against persons deprived of liberty, all police officers shall advise the persons about the rights specified above. In addition to the verbal information about the rights of persons deprived of liberty, it is given to persons deprived of their liberty in written in the form of certificate of detention, records of statements taken and the like. We also note that the provision under c) is from 2003 CPC and amendments to the Criminal Procedure Code does not provide for persons deprived of their liberty to be brought before a judge, but

before the competent prosecutor, and then, in the case of proposing the custody, the person is brought before a judge.

18. According to the Federation Ministry of the Interior, in order to prevent acts of torture, police officers of the Cantonal Ministries of the Interior and the Federation Police act in accordance with Articles 5.6.7. and 153 of FBiH CPC, Articles 7 and 8 of the Law on Minor Offences of the FBiH and the regulations enacted by each of the Cantonal MoI individually and the Federation Police of the Federation Ministry of the Interior. In fact, all of the cantonal Ministries of the Interior and the Federation Police enacted the Instructions on the Treatment of Persons Deprived of Their Liberty.

19. The Instructions govern admission and placement of persons deprived of their liberty, sanitary and other conditions in the accommodation of persons deprived of their liberty, meals and visits to persons deprived of their liberty, behaviour of persons deprived of their liberty, obligations of officials at the premises provided for the accommodation of persons deprived of their liberty, surrender of persons deprived of their liberty to the competent court and their release.

20. The BiH Criminal Procedure Code and the BD Criminal Procedure Code (BiH CPC and BD CPC) provides for the rights of persons deprived of liberty (Article 5 of BD CPC) in BD.

21. The BD Police enacted the Instructions on the Treatment of Persons Deprived of Their Liberty (number 14.05/1-02-13145/11 dated 10 February 2012), which all police officers are obliged to apply and which regulate the manner of admission of persons deprived of liberty in police premises, accommodation of the persons, health and hygiene conditions, accompanying documentation, treatment of the persons, obligations of police officers and police officers' treatment of the persons.

22. A medical examination is prescribed in the Instructions on the Treatment of Persons Deprived of Their Liberty.

23. Persons deprived of their liberty are brought before a court or prosecutor immediately and without delay in accordance with the BD Law on Minor Offences (Article 8) and the Criminal Procedure Code applicable in the territory of BD (BiH CPC and BD CPC), depending on whether it is misdemeanour or criminal proceedings.

### **Question 3**

24. The structure of the Ombudsman for Human Rights includes the Department for the Protection of Rights of Detained / Imprisoned Persons, which, admittedly, is not part of the National Preventive Mechanism for the Prevention of Torture (NPM), but visiting persons deprived of their liberty it examines how they are treated, with the aim of increased protection of such persons from torture.

25. The Department reviews objections and complaints of detainees and prisoners carries out *ex officio* investigations in cases when it suspects violations and problems in exercising their rights arising out of international instruments and national legislation.

26. The Department notes the valid rules and regulations governing the position and status, i.e. rights and obligations of detainees / prisoners and the manner of treatment by employees in the relevant services in correctional facilities, analyses and identifies the key causes of non-performance of governmental authorities dealing with issues related to detainees/prisoners; removes barriers to consistent implementation of the international conventions ratified by BiH; informs and instructs detainees / prisoners about their rights in a suitable manner; gives an opportunity to detainees / prisoners to raise their grievances individually and in privacy; directly observes the premises where persons deprived of their liberty stay, inspects the relevant documents, monitors work of the administration and

custodial staff, all in order to fulfil the requirements of humane treatment, absence of all kinds of discrimination, protection of physical and mental integrity of detainees / prisoners, taking also into account the need to maintain order, discipline, safety, treatment, re-socialization and correction in the correctional facility as well as the future social reintegration of such persons in civil society.

27. The Department for the Protection of Detained / Imprisoned Persons has two (2) employees while material and budgetary resources are included in the budget of the Ombudsmen.

28. The Institution of Ombudsman for Human Rights monitors the human rights situation continuously and comprehensively in the institutions for execution of criminal sanctions and makes periodic special reports and the last such a report is available on website ombudsmen.gov.ba.

29. In the reporting period since the last report, the Ombudsman has acted on 469 complaints of people who serve their sentence in one of the 15 correctional facilities in BiH and 412 complaints involved alleged police misconduct.

30. In comparison to 2010, when they received 92 complaints from prisoners and 72 complaints against police officers, in 2011 they received 118 complaints about prisons and 117 ones about police work.

31. In 2012 the number of complaints from prisoners was 169 and 123 complaints were against the police, while in the first nine months of 2013 they received 90 complaints filed by convicts and 100 complaints alleged the police's violating human rights.

32. The position of Republika Srpska is that this paragraph should end with the following added sentence: "Having passed the Law on the Ombudsman (BiH OG" 32/00, 19.2, 35/04 32/06, 38/06), BiH has fulfilled all its commitments."

33. However, the Ministry of Human Rights and Refugees in its capacity as coordinator of activities, together with representatives of the institutions of BiH, drafted the Law on Amendments to the Law on Ombudsman for Human Rights, which regulates the issue of the establishment of the National Preventive Mechanism, an obligation ensuing from the ratification of the Optional Protocol the UN Convention against Torture and Inhuman or Degrading Treatment or Punishment. The Draft Law on Amendments to the Law on Ombudsman for Human Rights was agreed on by the Council of Ministers in April 2014 and after deliberation in the BiH Parliament it failed in the House of Representatives of the BiH Parliamentary Assembly in July 2014.

#### **Question 4**

34. The most important reform activity to ensure the independence of the judiciary in BiH and rule of law was the establishment of the BiH High Judicial and Prosecutorial Council in 2004 with the following responsibilities: selection, appointment and dismissal of judges and prosecutors in BiH, approval and monitoring of performance and performance standards of the judiciary in BiH.

35. HJPC undertook a number of measures for improving the process of selection, appointment and dismissal of judges and prosecutors in BiH, including the introduction of written examination for the candidates who were not sitting judges or prosecutors.

36. The implementation of the Justice Reform Strategy has revealed a need for amendments to the Law on HJPC to improve the process of selection, appointment and dismissal of judges and prosecutors in BiH and improve the tools which appointments of judges and prosecutors in BiH will make more objective and more transparent.

37. Sitting judges are appointed by the BiH High Judicial and Prosecutorial Council (hereinafter: HJPC), as an autonomous body consisting mostly of judges and prosecutors elected by their peers. Unlimited tenure for judges and prosecutors, requirements and procedure for their appointment, terms and conditions for holding and terminating their office, as well as disciplinary offenses and disciplinary responsibilities are defined by the Law on HJPC.

38. The Law on HJPC was passed in 2004 by the BiH Parliamentary Assembly and was slightly amended on two occasions.

39. In 2012 HJPC prepared a proposal for amendments to the BiH Law on HJPC guided by efforts to strengthen professionalism and accountability by establishing an appropriate balanced composition and setting up mechanisms to prevent conflicts of interest.

40. The establishment of separate judicial and prosecutorial departments within a single Council has been proposed so that they could separately address certain issues concerning only judge or prosecutors, respectively. Such an internal structure of the Council is an attempt to ensure consistent implementation of the principle of judicial independence and to avoid a possible conflict of interest in a way that a majority of the appointment panel should be judges while actors who appear before the court as a party to the proceedings should be excluded.

41. Amendments to the chapters that regulate requirements, term of office and appointment procedure (Chapters IV and V) are aimed at improving the existing solutions in order to make the appointment process more expeditious and objective, introducing standardized procedures that will allow selection of the best candidates for judicial and prosecutorial positions. In this context proposals are defined to improve the interview process (the contents of interview is defined), to introduce a mandatory written test, to elaborate in detail the criteria of appointment and promotion, emphasizing the importance of past performance. The scoring system is so developed that that the greatest number of points is awarded for objectively measurable criteria such as success in the written test and past performance. Further, the amendments sought to ensure expediting and rationalization of vacancy public advertising and has expanded the scope of rights of candidates in the appointment procedure have been expanded by introducing an obligation to publish the results of open competition procedures and the right to appeal.

42. The proposed solutions are improvements of the provisions governing disciplinary responsibility in terms of fine tuning of standards and different regulation of certain issues based on past experience in the application of the Law on HJPC. So, subsidiary application of the Law of Criminal Procedure and greater participation of the judiciary in the judicial disciplinary commission are proposed and a different statute of limitations, i.e. the reduction of the time limit for instituting disciplinary proceedings, is provided for.

43. The provisions governing the term of office of sitting judges and prosecutors, the provisions governing the issue of their performance appraisal are defined precisely. As a novelty, also the issue of legal associates is included in the manner that HJPC extends its jurisdiction that it has over judges and prosecutors over this group of employees in the courts and prosecutor's offices in BiH.

44. The proposals for amendments to the Law on HJPC made by HJPC are evaluated as a rational initiative in the Opinion on Legal Certainty and Independence of the Judiciary in BiH by the Venice Commission.

45. The proposed amendments of HJPC have been submitted to the BiH Ministry of Justice, which is preparing the draft law that will be submitted to the Parliament for deliberation.

**Question 5**

46. Statistics on prosecution of violence against women and children in the period from 2011 to 2013 are shown in Annex 1. In this regard, we note that HJPC does not have data on the age and ethnicity of victims.

47. Statistics on prosecution of trafficking in persons in the period from 2011 to 2013 are shown in Annex 2.

**Question 6**

48. The Draft Law on Amendments to the BiH Criminal Code, prepared by the BiH Ministry of Justice, provides for amending of Article 186 (Trafficking in Human Beings), as a result of finding solutions to problems having arisen in investigations and prosecutions of crimes of trafficking and related offenses, because of mutual non-conformity of various Criminal Codes in BiH.

49. The Criminal Codes of RS and BD have been amended by introducing a new crime of trafficking in compliance with the most recent amendments to the BiH Criminal Code.

50. The position of the Republika Srpska is that the following text should be added in the Report:

Further, when it comes to information regarding the measures taken, we note that there is no obligation to bring in line Criminal Codes of the Entities and BD with each other or the Entity and BD Criminal Codes with the BiH Criminal Code. While drafting the Law on Amendments to the RS Criminal Code (RS OG 67/13), the RS Ministry of Justice consulted the United Nations Convention against Transnational Organized Crime and the Council of Europe Convention on Action against Trafficking in Human Beings, so that it incorporates new crimes of human trafficking, trafficking in minors and organizing a group or criminal association for the commission of the crime of trafficking and trafficking in minors.

51. Individual data provided by the Prosecutor's Offices are in Annex to the Report-HJPC Tables.

**Question 6 (A)**

52. In early 2010 the BiH Parliamentary Assembly passed amendments to the BiH Criminal Code. These amendments amended Article 186 relating to human trafficking. The new Article is now fully compliant with the Council of Europe Convention on Action against Trafficking in Human Beings. The definition of the crime was changed. The amendments have introduced a number of aggravating circumstances for perpetrators of the crime, and provided for punishment of those who use services of victims of trafficking. It should also be noted that mechanisms for confiscation of proceeds of this type of crime have been improved and the closure of establishments used in the commission of the offense is provided for, too. The amendments to this Article have increased the fine for the aforementioned offense and the statutory minimum for the basic form of the offense has been increased from one to three years.

53. In 2013, with the support from the OSCE Mission to BiH, the State Coordinator for Combating Trafficking in Human Beings continued drafting of amendments aimed at harmonization of provisions relating to trafficking in all four criminal codes so that they could comply with international standards. A key step in this process was a high-level conference hosted by the OSCE Mission and the State Coordinator for Combating Trafficking in Human Beings in the Parliamentary Assembly on 23 January 2013. Representatives of the Commissions on Human Rights, representatives of the BiH Parliamentary Commissions, the State Coordinator for Combating Trafficking in Human



Beings, the Head of the OSCE Mission to BiH, the Ambassador of the United States, the Head of the Council of Europe in BiH and the Head of Home Affairs and Public Security Section of the EU Delegation to BiH -EUSR took part in the conference. The participants agreed that there was a need for improvement and harmonization of all four criminal codes.

54. Amendments to the Criminal Codes were adopted in the RS and Brcko District. Although similar, the amendments to the FBiH Criminal Code were not adopted in September 2013 and they are currently before Parliament.

55. In March 2013 the BiH Council of Ministers adopted the 2013 – 2015 Strategy to Counteract Trafficking in BiH and action plans for the implementation of the Strategy. The new Strategy was built on a review of the successful previous 2008-2012 Action Plan for Combating Trafficking in Human Beings. The Strategy contains the following strategic objectives: support, prevention, prosecution, protection and partnership. Measures to be taken in the next three years are defined within the objectives.

56. The 2012-2015 Strategy for Migrations and Asylum and Action Plan adopted by the Council of Ministers at the 10th session held on 12 June 2012 sets forth Strategic Objective 5: “Contribute to reducing human trafficking in BiH”.

#### **Question 6 (B)**

57. The Law on Amendments to the Law on Movement and Stay of Aliens and Asylum (BiH OG 87/12) has amended Article 54 of the Law, which prescribed that an alien who has been granted temporary residence on humanitarian grounds as a victim of human trafficking whose stay in the country is necessary for cooperation with the competent authorities for investigation in the detection and prosecution of the crime of trafficking in human beings, have the right to: adequate and safe housing, access to emergency medical care, psychological support, information on the legal status, legal assistance in criminal and other proceedings in which he exercises other rights, access to the labour market under the conditions that apply to an alien, as well as access to professional training and education. A child who has been granted a temporary residence permit as victim of trafficking is entitled to education.

58. The Rulebook on the Protection of Victims of Human Trafficking (BiH OG 49/13) sets forth rules and standards and other matters related to the admission, recovery and repatriation of foreign victims of trafficking.

59. This Rulebook provides that foreign victims of trafficking may be granted a temporary residence permit for humanitarian reasons in accordance with Article 54 (1)(a) in conjunction with Article 52 (5) of the Law on Movement and Stay of Aliens and Asylum.

60. Article 14 of the Rulebook provides that, in order to provide special protection and assistance to a victim of trafficking in connection with the admission, recovery and return, the victim of trafficking that is housed in a shelter shall be provided with the following:

- Adequate and safe housing
- Health care
- Information on his/her legal status and advising him/her about his/her rights and obligations in language he/she understands
- Legal assistance in criminal and other proceedings in which the victim exercises his/her rights
- Information on access to diplomatic and consular missions of the country of origin or habitual residence trafficked
- Information about the possibilities and procedures of repatriation
- Different types of training and education depending on their financial capabilities

61. The BiH Ministry of Security has signed the Protocol on cooperation with “BiH Your Rights/ Vasa Prava BiH” NGO, which provides foreign victims of trafficking with necessary legal assistance.

#### **Question 6 (C)**

62. According to the BiH Ministry of Security, agreements on police cooperation to prevent and improve the fight against human trafficking have been signed with countries concerned, including neighbouring countries.

### **Article 3**

#### **Question 7**

63. In order to harmonize the national legislation with the European legislation respecting migration and asylum, BiH passed the Law on Amendments to the Law on Movement and Stay of Aliens and Asylum, published in BiH OG 87/12 and entered into force on 13 November 2012. This Law amended the 2008 Law on Movement and Stay of Aliens and Asylum (BiH OG 36/08).

#### *The reasons behind the Law on Amendments to the BiH Law on Movement and Stay of Aliens and Asylum*

64. The current Law on Movement and Stay of Aliens and Asylum was substantially in compliance with the European legislation at the time of passage. Development of the EU acquis calls for amendments of a significant number of provisions of the Law and their harmonization with the EU acquis. An obligation to harmonize laws of BiH with the EU acquis is determined by the Stabilisation and Association Agreement between the European Communities and their Member States, on the one hand, and BiH, on the other hand.

65. The Ministry of Security was a beneficiary of the Twinning Project funded by the European Commission. A review of the compliance of the Law on Movement and Stay of Aliens and Asylum with certain directives and regulations of the EU Council was made during the implementation of this project. The review ultimately resulted in recommendations to amend certain provisions of the valid law to comply with EU legislation.

66. In addition, the review, which was carried out through the practical application of the Law, revealed some problems in the application of certain provisions. Certain provisions proved to be vague and that certain situations in practice are not regulated at all or that certain provisions are obsolete.

#### **Question 8 – please find it in Annex 1**

#### **Question 9**

67. Regarding paragraph 9, in the reporting period from 2011 to 2013, BiH expelled one individual, a citizen of Iran, because the individual remained to reside in BiH after the expiry of accreditation period in the diplomatic mission and the Ministry of Foreign Affairs arranged for his reception in the country of origin and obtained guarantees of the country of return.

**Question 10**

68. The BiH system of international protection (asylum) is very efficient and, as such, meets the standards and principles laid down in the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, as well as in the largest part of regulations, directives and decisions of EU in this area. Such a well-regulated system allows any individual found in the territory of BiH unrestricted access to international protection (asylum) through clearly defined procedures and competences of appropriate authorities, as per the Law on Movement and Stay of Aliens and Asylum, the Rulebook on International Protection (asylum) in BiH and the Rulebook on Operating Standards and Other Issues Relevant to the Operation of the Asylum Centre.

69. Paragraph 10 requires the information on individuals whose citizenship has been revoked by the State Commission for the Revision of Decisions on Naturalization of Foreign Nationals. All the individuals wishing it were enabled to file application for asylum.

70. After a decision rejecting the application for asylum, 7 people were returned to their country of origin, of which 2 people were nationals of Tunisia, two people were Algerian nationals, one individual was a national of Bahrain, one individual was a national of Egypt and one individual was a national of Yemen. There are two more such individuals, nationals of Iraq and Syria, in the Immigration Centre of Sarajevo as interim orders prohibiting their expulsion to the country of origin have been issued by the Human Rights Committee and the European Court of Human Rights.

**Articles 5, 7 and 8****Question 11**

71. HJPC requested from the Court of BiH the information on the number of extradition proceedings pending before the Court of BiH in the period from 2010 to 2013, initiated on the basis of arrest warrants issued by the Office for Cooperation with Interpol in accordance with international warrants issued by requesting States or based on requests of foreign states for the extradition of suspects against whom war crimes indictments had been confirmed before the Court. It also requested the information on whether the Court of BiH issued in the extradition proceedings a decision establishing the fulfilment of requirements for extradition or a decision refusing extradition.

72. According to the 22 May 2014 information of the Court, in 2011, proceedings for extradition of a person against whom a war crimes indictment was confirmed before the Court of BiH was suspended in one (1) case. The Court of BiH confirmed a war crimes indictment in this case and it was at the trial stage of the time of this report. There were no cases in which the Court issued a decision establishing the fulfilment of requirements for extradition of a person against whom the indictment for war crimes was confirmed before the Court.

**Article 10****Question 12**

73. The FBiH Law on Execution of Criminal Sanctions determines that the professional training of staff in correctional institutions is carried out in the correctional institutions on the basis of an annual training curriculum for the staff of correctional institutions. The Federation Ministry of Justice organizes seminars which provide training and professional development of all employees in correctional institutions of the Federation.

74. All newly recruited staff, the staff of the Department of Correction and Treatment and the Security Department in particular, are required to take a corrections officer exam or a detention officer exam before a panel appointed by the Federation Minister of Justice, after a course of practical training in the correctional institution.

75. The RS Minister of Justice issued memorandum 08.030/240-27/12 dated 13 March 2012 prescribing the Professional Training Programme of employees of correctional institutions. This Programme, which sets forth a curriculum with syllabi and teaching units, regulates the issue of training and professional development of all employees in correctional institutions of the RS.

76. The aim of training and professional development is to ensure continuous improvement of knowledge and professional capacity of staff working in direct contact with prisoners and detainees. In addition to the general training for staff working with special categories of prisoners, such as women, minors, foreigners, mentally ill and high-risk prisoners, the correctional institutions are obliged to provide special training, which will be professional training and further training in specialized work.

77. In addition to general and specialized training for all staff of correctional institutions, in order to carry out training and professional development, it is necessary to continuously hold training in international instruments and human rights standards, in particular the European Convention on Human Rights, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the European Prison Rules.

78. It is important to note that this document provides for a knowledge assessment of the theoretical and practical part of the training at the end of training.

79. Further, bearing in mind provisions and content of the RS Rules of Procedure and Criteria for the Staff Performance Appraisal in Correctional Facilities (RS OG 19/14), it can be concluded that there are mechanisms established to assess the impact of training and educational programs.

80. According to the RS Ministry of the Interior - the Criminal Police Administration, the curriculum of Police College includes and studies the United Nations Convention against Torture and Other Inhuman or Degrading Treatment or Punishment (CAT) in the following courses: Constitutional Law, Criminal Substantive Law, International Criminal Law, Criminal Procedural Law, Fundamentals of International Law, Criminology and Penology and Police Ethics, Culture and Communication.

81. The Curriculum of Basic Police Training Level 1 in the Basic Training Unit - Police Academy includes and studies the UN Convention against Torture and Other Inhuman or Degrading Treatment or Punishment in the following courses of study: Police Officers (Rights, Obligations and Duties), Criminal Substantive and Procedural Law and Human Rights and Police Ethics. In addition to these courses, this Convention is studied in the following modules: The Use of Police Powers and The Use of Force and Suppression of Crimes.

82. The Curriculum of Basic Police Training Level 2 in the Basic Training Unit - Police Academy includes and studies the UN Convention against Torture and Other Inhuman or Degrading Treatment or Punishment in the following courses of study: Policing and Code of Conduct, Criminology, Constitutional Arrangement and Public Administration System, Criminal and Misdemeanour Law, Criminal Procedural Law and Human Rights.

83. Currently, the Police College and the Basic Training Unit - Police Academy do not have special programmes nor do they hold special training in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

84. At the same time we inform you that, in cooperation with the European Commission and the “Ludwig Boltzmann” Institute for Human Rights of Vienna, as well as with TAIEX, in June 2014, a workshop was held as the first stage of training for police officers in “Prevention of Torture” including our police officers and other law enforcement agencies in BiH.

85. The BD Police design an annual Programme of Professional Training of Police Officers on a yearly basis. The Convention has not been included in its entirety in the professional development programme for police officers, but some annual programmes addressed provisions of the Code of Ethics that included “the prohibition of commission, causing or tolerating of any act of torture or inhuman or degrading treatment or punishment under any circumstances”. In the next period the Convention is going to be included in the Professional Training Programme of the BD Police as an independent topic.

86. In BD Police there is no methodology in place for assessing the impact of training in and educational programmes of reducing cases of torture and ill-treatment.

87. The Police officers of Cantonal Ministries of the Interior and the Federation Police have been made aware of the ban on torture of detainees by introducing them to the instructions under previous answer their attention has been drawn in particular to their obligation to treat persons deprived of their liberty in a humane manner that will not harm their health and not to subject the persons deprived of their liberty to physical and verbal abuse and unpleasant situations.

### **Question 13**

88. Under the supervision of HJPC, the Entity Judicial and Prosecutorial Training Centres (JPTCs) are obliged to ensure that training programmes for judges and prosecutors are so designed and implemented that they meet the criteria of openness, competence and impartiality, which are characteristics of the judicial and prosecutorial performance.

89. In the reporting period the JPTCs held several seminars on various issues in the prosecution of criminal offenses that are somewhat related to torture, such as “International Humanitarian Law – Wartime Sexual Violence”. However, none of the seminars or training explicitly addressed the issue of detecting and documenting the physical and psychological consequences of torture nor did they include training in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

90. According to the 16 May 2014 information from FBiH JPTC, the process of need assessment for the development of the 2015 Judicial and Prosecutorial Training Programme will soon begin. In the process, a call to relevant institutions, including *inter alia* MHRR, to suggest topics for the judicial and prosecutorial training will be sent. The outcome of the consultation for the development of the Programme will dictate whether training in the Istanbul Protocol will be included in the 2015 program. RS JPTC has not provided a reply yet and the reply will be forwarded after HJPC has received it.

## **Article 11**

### **Question 14**

91. The legislation respecting criminal procedure and enforcement of criminal sanctions in the FBiH is in line with Article 11 of the Convention.

92. The House Rules of institutions for pre-trial detention include provisions that govern treatment of persons who are in pre-trial detention, which includes the issue of admission and placement of prisoners, health and hygiene provisions and food, work and conduct of

detainees, maintaining of order and discipline, visits, correspondence, receipts of shipments and the press, proceeding in the case of escape or death of a detainee, release procedure, rights of detained persons and supervision of the execution of pre-trial detention and other matters relating to the conditions and manner of detention in the correctional facilities.

93. The legislation respecting criminal procedure and enforcement of criminal sanctions in RS is so in line with Article 11 of the Convention, as well as with other international human rights standards, that the current RS Criminal Procedure Code and the RS Law on Execution of Criminal Sanctions (RS OG 12/10, 117/11, 98/13) and the delegated legislation in this area – House Rules of institutions for pre-trial detention (RS OG 35/11) – contain provisions for treatment of persons who are in pre-trial detention, which includes the issue of admission and placement of prisoners, health and hygiene provisions and food, work and conduct of detainees, maintaining of order and discipline, visits, correspondence, receipts of shipments and the press, proceeding in the case of escape or death of a detainee, release procedure, rights of detained persons and supervision of the execution of pre-trial detention and other matters relating to the conditions and manner of detention in the correctional facilities.

94. The RS Ministry of the Interior has not amended the procedures concerning the admission of persons deprived of liberty since the previous report in 2010 and the only change that was introduced was electronic records of persons deprived of their liberty introduced with a view to better and easier superiors' supervising procedures after arrest.

*The Federation Ministry of the Interior provides here answers to questions 14, 15, 16 and 20 of the list of issues of the UN Committee against Torture and they are as follows:*

95. As for rooms for detention of persons deprived of their liberty and the number of detained persons in the period 2010 to 2013 in the Cantonal Ministries of the Interior and the Federation Police Administration, we can say that they meet the minimum technical requirements in accordance with international and national standards. Any person deprived of liberty has the right to know the content of the instructions above while supervision over the implementation of the instructions above and the investigation of complaints of detainees against police officers is carried out by the Professional Standards Unit of cantonal police or Federation Police within the Ministry of the Interior.

96. In the reporting period, there were no deaths, i.e. cases of detained persons having died.

97. Police officers of the Cantonal and Federation Ministries of the Interior (FMoI) take all measures in accordance with the instructions above to prevent suicide or other violent deaths of prisoners in detention.

98. In the period since 2010 there have been no recorded cases of torture and ill-treatment of persons deprived of their liberty by the police officers of Cantonal Ministries in the rooms for the detention of persons deprived of their liberty.

99. With regard to matters related to independent and external control mechanisms for unlawful actions by police officers and other law enforcement officers, the facilities where the police are placed have visibly marked mailboxes for written complaints against the police officers. Except for the above-mentioned method, all citizens can lodge any complaints about the work and activities of police officers verbally in police stations or directly to the Professional Standards Unit of the Ministry of the Interior by phone, fax or mail.

100. All complaints lodged against police officers are submitted to the Citizens' Complaint Board in the cantonal Ministries of the Interior and the Federation Ministry of the Interior, which gives approval to the Professional Standards Unit to open an

investigation. After an investigation and assessment of the merits of the complaint, the Professional Standards Unit transmits the appeal to the Citizens' Complaint Board, which provides an assessment and an opinion on the investigation.

101. The applicant is notified of the outcome of the complaint. Procedures of the Professional Standards Unit (PSU) are regulated in detail in the Instruction on Procedures of the Professional Standards Unit and the Rules of Procedure of the Citizens' Complaint Board. In case of finding a complaint grounded PSU submits a proposal to the Police Commissioner or the Disciplinary Prosecutor (depending how serious the misconduct is) for disciplinary action, and if there are reasonable grounds to believe that the police officer has committed a crime, the report is submitted and the Criminal Police for action.

102. The 2010 statistics of detained persons are the following: male - 168, female - 3, totalling to 171 persons deprived of their liberty in 2010. The 2011 statistics of detained persons are the following: male - 41, female - 6, totalling to 47 persons deprived of their liberty in 2011. The 2012 statistics of detained persons are the following: male - 83, female - 10, totalling to 93 persons deprived of their liberty in 2012. The 2013 statistics of detained persons are the following: male - 37, female - 7, totalling to 44 persons deprived of their liberty. The aggregated data for the period 2010-2013 of persons kept in custody in the detention facilities of FMOI is the following: male - 329 and female - 26.

103. All documentation of the persons deprived of their liberty about their stay in the detention facilities is stored in personal files and neatly archived in a metal vault which is located in the facilities of the Federation Police Administration within the FMOI.

104. With regard to exceeding power related to the treatment of persons deprived of their liberty, one case was registered in the Federation Police Administration, which case involved an internal investigation against a police officer of the Criminal Police for exceeding police powers during arrest when he allegedly used unjustified means of coercion. The disciplinary proceedings were completed with an acquittal in a decision on appeal, because the allegations in the complaint were not proven.

*Unified answers to Questions 14 and 15 provided by BD Police*

105. The BD Law on Execution of Criminal Sanctions (BD OG 08/00, 01/01, 19/07, 36/07) entrusts BD Police with detention of people in the territory of the BD. Complying with Article 140 of the BD Criminal Procedure Code (BD OG 44/10)<sup>1</sup> and the BiH Law on Execution of Criminal Sanctions, Detention and Other Measures (BiH OG 12/10)<sup>2</sup>, the BD Police repeatedly sent notices that there was a need for harmonization of legislation in this regard and for respect for the fundamental principles that govern issues concerning the detention of persons in BD. Following the entry into force of the new BD Law on Execution of Criminal Sanctions, Detention and Other Measures (BD OG 31/11) on 24 October 2011, the BD Police stopped the execution of detention in the territory of BD.

106. Article 11 of the BD Law on Police and BD the Rules of Procedure of the Professional Standards Unit of the Police provide for complaints against the police, as well as complaints of persons deprived of their liberty. With regard to the complaints, BD has established three independent institutional mechanisms whose jurisdiction is defined in

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<sup>1</sup> Which provides that detention is executed in the institutions so designated by the Judicial Commission of Brcko District of Bosnia and Herzegovina in cooperation with the competent authorities of the Entities;

<sup>2</sup> Which provides that detention is executed in a special unit of a correctional facility or in a special detention facility and that the CPC and the relevant law are applied to detention and that the Entities and BD are ordered to bring their laws governing this matter with the state-level law.

relation with *inter alia* complaints against the police: the BD Office for Citizens' Complaints in the Mayor's Office, the BD Commission for Public Security and Oversight of the Police within BD Assembly (formed from members of the Assembly), the Independent Committee for the Selection and Appointment of the Chief and Deputy Chief of Police and the Assessment of the Chief's of Police Performance, which was formed as an independent parliamentary body, and the Professional Standards Unit of the BD Police having jurisdiction over investigation into complaints against police for all police officers except the Chief of Police and his deputy. The establishment of the above-mentioned bodies has set up mechanisms of internal and external oversight, which, together with judicial oversight, are independent mechanisms for *inter alia* complaints of persons deprived of their liberty. In addition, the BD Law on Police Officials provides for mandatory records of persons deprived of their liberty and the treatment of persons deprived of their liberty is governed in the Instructions of BD Police on the Treatment of Persons Deprived of Their Liberty 14.05/1-02-13145/11 dated 10 February 2012.

107. Furthermore, the detention facilities were covered by video surveillance, only video monitoring being carried out without archiving the videos.

108. Establishing effective mechanisms to, *inter alia*, protect the rights of people during detention, transportation, etc., in the nine official police vehicles (mostly vehicles that are used for interventions, transport of persons and other interventional procedures), in accordance with the available budget resources, systems for audio-video recording of police actions, both in front of the vehicles and inside of the vehicles have been installed.

#### **Question 15**

109. The Federation Ministry of Justice is making significant efforts to improve the financial, technical and sanitary conditions in places of deprivation of liberty.

110. All convicts and detainees have the opportunity to submit complaints to the relevant institutions without any restrictions.

111. According to the RS Ministry of Justice, competent institutions in RS, primarily the Ministry of Justice, are constantly making significant efforts to improve the financial, technical and sanitary conditions in institutions for custody.

112. Regarding the prison system that, as noted, "lacks a uniform legislative framework for implementing criminal sanctions", it can be concluded that the current system based on the constitutional responsibilities of the Entities fully meets the needs of criminal sanction execution and that the current practice and cooperation between competent ministries of justice has been at the required level.

113. With regard to his question from the list of issues of the UN CAT, we were informed by the RS Ministry of the Interior – Crime Police Directorate that the RS National Assembly formed the Security Committee which has authority to supervise the RS Ministry of the Interior, as an authority independent from RS MoI.

#### **Question 16**

114. Tables with data required from the RS Ministry of Justice and the Federation Ministry of Justice can be found in Annex to this report.

115. Put together according to the RS Criminal Police Directorate, a table relating to the number of persons deprived of their liberty by the police officers follows below:



<i>Year</i>	<i>2011</i>	<i>2012</i>	<i>2013</i>
Number of persons deprived of their liberty	2,612	3,067	3,219
Because of misdemeanours	823	907	841
Because of crimes	1,789	2,160	2,378

116. A tabular overview provided by the BD Police:

**Number of persons kept in detention or police custody in detention or police facilities in BD, 2010-2013**

		<i>2010</i>	<i>2011</i>	<i>2012</i>	<i>2013</i>
Persons deprived of their liberty	Misdemeanours	82	95	79	68
	Crimes	161	150	107	49
	Wanted person list	14	19	24	33
	Total	257	264	210	150
Persons deprived of their liberty by sex	Male	254	261	205	147
	Female	3	3	5	3
Kept in police custody	Misdemeanours	77	87	74	60
	Crimes	120	101	63	44
	Wanted person list	22	16	6	15
	Total	219	204	143	119
Kept in detention		41	28	0	0

117. According to the BD Law on Execution of Criminal Sanctions, Detention and Other Measures (BD OG, 31/11) dated 27 October 2011, people are kept in detention in competent institutions of Entities.

118. Enforcing the BiH Law on Protection of Personal Data, records of persons kept in detention or police custody do not contain personal data so that we cannot provide information on their structure.

119. Please find the statistics provided by the Immigration Centre of the Service for Foreigners' Affairs in Annex I.

**Question 17**

*Correctional Facilities of the Federation Ministry of Justice*

120. In 2011, in a detention cell of Tuzla Correctional Facility a detainee committed suicide by hanging. It was a Bosniak male, 38 years old and he was placed in detention because of a suspicion that he had committed a murder. Tuzla Canton MoI was informed about the suicide and they conducted an investigation with the Prosecutor of the Cantonal Prosecutor's Office.

121. In 2012 Busovača Correctional Facility one sentenced person died of natural causes.

122. In 2013, one death occurred in Mostar Correctional Facility. The prisoner was a male, 49 years old, a Bosniak. The cause of death was a stroke and he died in the University Hospital of Mostar.

123. In the reporting period, Sarajevo Correctional Facility registered one death of a Croatian convict and it was a natural death.

124. In the reporting period, a total of 9 sentenced persons died in Zenica Correctional Facility. 2011: one person, a male, 70 years old, a Bosniak, death occurred during an interruption of his serving the sentence, owing to natural causes.

125. 2012: 3 persons, all males, Bosniaks, 54, 66 and 64 years old, one person died in hospital, the other died in prison and the third person died during an interruption of his serving the sentence. He died from natural causes. 2013: five persons, all males, four Bosniaks and a Serb, 32, 48, 56, 58 and 57 years old. Four of them died in hospital and one of them died during an interruption of his serving the sentence. 4 cases were cases of natural death and one case was a violent death. The latter died in hospital in 2013 from injuries inflicted by fellow inmates in prison. The Prison has taken necessary measures against the prison staff who were working in the place of incident and the convicted person suspected of having committed the crime has been placed into detention and he is currently in the detention unit. All necessary actions have been taken by the Ministry of the Interior of Zenica-Doboj Canton, in cooperation with the Prosecutor's Office, which is currently conducting the proceedings. The Correction, Treatment and Health Care Departments provide assistance to inmates monitor their physical and mental.

126. In order to prevent convicted persons from committing suicide, preventive measures are taken to include a variety of factors: social, psychic, physiological and cultural, which prevention process includes all prison staff (the Treatment Department, the Health Care Department and the Security Department). To this end, they take preventive measures, such as interviews with different groups of convicts, special treatment tailored for high-risk groups in the form of occupational therapy, sport activities, enhanced individualized work with convicted persons, advisory work to facilitate the acceptance of reality, correctional guidance to change attitudes, intense penological treatment in order to prevent crime recidivism, regular contact with the core family and the availability of religious facilities and practice of religion in order to eliminate negative thoughts and prevent suicidal thoughts.

#### *RS Correctional Facilities*

127. In the reporting period, only one case of death of detainee occurred in correctional facilities in RS and it happened in detention facility of the Correctional Facility of Doboj. Namely, on 24 April 2011, a male detainee, 44 years old, a Serb, died due to suffocation with a piece of dry bread. About the referenced event without delay informed the competent Court, the RS Ministry of Justice, the Ministry of the Interior, the Public Security Centre of Doboj, the family and the lawyer of the detainee were informed about it without delay.

128. An investigation was carried out on the spot by the RS Ministry of the Interior and an autopsy was ordered by the competent prosecutor. The autopsy was performed by the duty pathologist of "Holy Apostle Luke" Hospital of Doboj and its findings established that the cause of death was suffocation with a piece of dry bread. In connection with this incident, extraordinary inspection was carried out by the Inspectorate of the RS Ministry of Justice, which found that there were no shortcomings in the work of Security Department.

129. As to the question of taking measures to prevent suicides and other sudden deaths in detention centres, we can state that immediately upon admission into a correctional facility, mandatory medical examination of every detainee and prisoner is performed during which the health condition is determined and, if necessary, further specialist examinations, including psychiatric examinations, are made. While serving the sentence, in addition to continuing health care, actions and procedures are taken to identify any suicidal risk, involving psychologists, doctors and social workers. On the other hand, the Security

Departments have a range of measures stemming from the Law on Execution of Criminal Sanctions relating to treatment of high security risk inmates, regardless of whether they are suicidal or with other risky behaviour, such as, for example, the application of specific measures of intensified surveillance, seizure and temporary retention of things that are permissible, separation in rooms without dangerous objects, placement in a medical room with intensive surveillance, accommodation in a maximum security ward with intensive treatment program.

130. Applying the above-described approaches and treatment of detainees and prisoners, in the reporting period, early actions of security staff prevented suicide attempts of detainees on two occasions (Correctional Facility of Istocno Sarajevo and Correctional Facility of Banja Luka).

131. In the reporting period, no deaths were recorded in the custody of the BD Police or in the Immigration Centre of the Service for Foreigners' Affairs of the BiH Ministry of Security.

### **Question 18**

132. In accordance with statistics of the Federation Ministry of Justice concerning the reporting period, there was a number of cases of violence among detainees and prisoners. All cases involve brawls among inmates which are treated and processed as a disciplinary offense provided for in the Law on Execution of Criminal Sanctions.

133. Zenica Correctional Facility reported the following cases of disciplinary offenses:

- Convicts: 2011: 226 convicts (fight, quarrel, racketeering)
- 2012: 210 convicts (fight, quarrels, racketeering)
- 2013: 56 convicts (fight, quarrels, racketeering)

134. In 2011, four disciplinary proceedings were conducted against prison officers, of which three cases resulted in fines and the proceedings were suspended in one case.

135. In 2012, four disciplinary proceedings were conducted against prison officers, which all resulted in fines.

136. In 2013, three disciplinary proceedings were conducted against prison officers, of which two cases resulted in fines and the proceedings were suspended in one case.

137. All disciplinary proceedings are related to negligence in law enforcement.

138. Bihac Correctional Facility reported the following cases of disciplinary offenses:

- Convicts: - 2011: 40 convicts (fight, quarrel)
- 2012: 25 convicts (fight, quarrel)
- 2013: 38 convicts (fight, quarrel)

139. In Tuzla Correctional Facility, according to available information, in 2011, disciplinary proceedings were conducted against a prison officer for violence against a convict. The disciplinary commission imposed a sentence: termination of employment in the correctional facility. In an appeal procedure the sentence was commuted to a fine in the amount of 40% of salaries of the prison officer in the next six months.

140. In the reporting period Orašje Correctional Facility reported one case of violence among convicted persons occurred on 1 December 2013, when a small-scale prison riot broke out and was successfully resolved without violence involving the prison staff.

141. In 2012, a complaint was filed by a convicted person for misconduct of prison officers, but an investigation was not carried out by the Prosecutor's Office owing to a lack of reasonable suspicion that the reported prison officers had committed a criminal offense.

142. In the reporting period Sarajevo Correctional Facility reported 75 disciplinary incidents involving violence among inmates, where disciplinary proceedings were conducted. No complaints were filed against prison staff. In the reporting period, four disciplinary proceedings were conducted prison staff – prison guards, which resulted in fines.

143. In the reporting period Busovača Correctional Facility reported three cases of violence among convicts (brawls).

144. According to the RS Ministry of Justice, in the reporting period, a number of cases of violence among detainees and prisoners was reported. All cases involved prison brawls, which incidents are treated and processed as a disciplinary offense in accordance with the Law on Execution of Criminal Sanctions, the Rulebook on Disciplinary Responsibility of Prisoners (RS OG 34/11) and the House Rules for Detention Facilities (RS OG 35/11).

145. Bijeljina Correctional Facility reported the following cases of disciplinary offenses involving prison brawls:

- Detainees:
  - 2011: 3 cases
  - 2012: 2 cases
  - 2013:
- Convicts:
  - 2011: 5 cases involving 10 convicts
  - 2012: 5 cases involving 13 convicts
  - 2013: 3 cases involving 7 convicts

146. Doboj Correctional Facility reported the following cases of disciplinary offenses involving prison brawls:

- 2011: 6 cases
- 2012: 12 cases
- 2013: 17 cases

147. In the reporting period Banja Luka Correctional Facility reported 38 cases of disciplinary violations involving elements of violence and they were:

- 2011:
  - 3 cases of prison brawls
  - 1 cases of bullying
- 2012:
  - 11 cases of prison brawls
  - 7 cases of bullying
- 2013:
  - 7 cases of prison brawls
  - 9 cases of bullying

148. In the reporting period Foca Correctional Facility reported 43 cases of prison brawls.

149. According to information received from correctional facilities, negligence on the part of law-enforcement personnel has not been reported. With a view to preventing any form of violence among detainees and prisoners, all measures, actions and procedures prescribed by law and regulations are applied.

150. With regard to paragraph 18 and frequency of violence among inmates in the Immigration Centre: In the reporting period there were 2 cases of self-harming, 1 case of destruction of inventory of the Centre and one case of assault on an official person while engaged in the execution of official duties.

#### **Question 19**

151. With regard to the recommendation concerning paragraphs 116, 117 and 118 of the CPT Report on a visit to BiH carried out in April 2011, which points to the need to take measures to develop alternatives to institutional care, through the establishment of appropriate structures in the community, on the initiative of the Federation Ministry of Labour and Social Affairs, in 2012, FBiH adopted Conclusions which are key initiatives underpinning the reform process of deinstitutionalization and transformation of social welfare institutions in the Federation.

152. According to the conclusion, the FBiH Government suspended investments in expanding the capacity of existing institutions for people with disabilities. The funds are invested in the quality of life of beneficiaries in institutions and the development of services through the “Supported Community Living” Programme. At the *same time*, FBiH Government provides funds to open separate residential communities outside the social care institutions. So far about 60 beneficiaries have been moved from the social care institutions to new housing units. The “Supported Community Living” Programme was implemented, so in this way supported community living is provided to 11 beneficiaries. The implementation and further expansion of this model of supported community living for approximately 30 beneficiaries is in progress.

153. According to the FBiH Government’s conclusions, the Draft Strategy of Deinstitutionalization and Transformation of Social Welfare Institutions in FBiH (2014-2020), aiming at speeding up the reform processes of transformation and deinstitutionalization, has been prepared. It makes the basis for planning a network of social welfare institutions and activities and for defining top priorities in investments in the development of a network of services for supported community living.

154. When it comes to recommendations under paragraphs 119 and 120 relating to a need to take measures to improve the living conditions and the level of staffing in the “Drin” Home, the Federation Ministry of Labour and Social Affairs has issued the Rulebook on Standards for Work and Services in Social Care in the FBiH; which provides for basic quality and lower limits in the provision of service in social welfare institutions (FBiH OG 15/13).

155. The recommendation respecting paragraph 121 relates to enabling the staff at “Drin” to be provided with further training and support in order to fulfil their duties professionally. In relation to this recommendation, we inform you that the training of staff has been intensified so that they have training in different areas several times during a year. Continuous cooperation has also been achieved with an organization of the Netherlands holding training of professionals and caregivers from different spheres.

156. The recommendation respecting paragraph 122 refers to the need for steps be taken at the “Drin” Home to ensure that more residents benefit from psychosocial and occupational therapeutic activities adapted to their mental capacity and physical mobility.

157. In this regard, the number of hired professionals has increased, so three social workers, a sociologist and a psychologist in the psycho-social and occupational therapy activities have been hired and thus the number of beneficiaries who are involved in various therapeutic activities have increased. About 200 beneficiaries are included every month in various occupational activities within and outside the “Drin” Home. New premises have been equipped for the existing workshops, which are held in much better conditions with much more beneficiaries.

158. Paragraph 123 requires comments on the perceived practice of mixing mentally ill residents with beneficiaries with learning disabilities. The professional team of the “Drin” Home works diligently to improve the situation. In the foreseeable future, by opening a newly built residential unit and renting residential buildings by the “Drin” Home, this problem will be completely solved.

159. With regard to the recommendation respecting paragraph 124 the “Drin” Home issued the Rulebook on Seclusion of Beneficiary, which defines the conditions and procedures for seclusion of beneficiaries. While secluding a beneficiary, records of measures and the use of coercive measures are kept in a special list dedicated to these instances, with all the important parameters that are monitored in these circumstances.

160. Regarding the recommendation respecting paragraphs 125 and 126, the social welfare institutions caring of mentally disabled persons provide care and accommodation to mentally disabled people and they are not health care facilities for involuntary detention of persons with severe mental disabilities, in accordance with the Law on the Protection of Persons with Mental Disorders. The basis for the placement of people in a social care institution is a decision of the competent social welfare centre, which refers a person into a social care institution, based on the relevant Law on Social Welfare.

161. Regarding the recommendation respecting paragraph 127, the draft FBiH Strategy for Deinstitutionalization and Transformation of Social Welfare Institutions (2014-2020) highlights the detrimental effects of the guardianship concept protecting these persons. In this sense, it is concluded that there is a need to carry out the revision of guardianship concept by instituting proceedings to restore deprived legal capacity to people with psychosocial disabilities who do not want to be under guardianship.

162. According to the FBiH Ministry of Justice, the Department for Execution of Orders for Compulsory Treatment and Commitment in Medical Facilities, so called Forensic Department, affiliated to Zenica Prison, has been located outside the facility since 2008. The Department, as a separate unit, is housed in a separate building that was adapted so that it could meet basic requirements for patients’ placement, including both medical and technical requirements. We can conclude that the conditions for accommodation are far better than at the time of earlier reports and the situation when the Department was within prison compound. In 2011 the Department had 23 patients and currently there are 17 patients. The patients were placed in 7 three-bedded rooms with cable TV. The patients have available space for walking, sports ground, a TV room and smoking room, dining room and seclusion room under video surveillance, which meet the WHO standards. The ward provides 24 hour nursing care, psychiatrist’s services three times a week and a prison doctor and a specialist physician (internal medicine, dermatology, radiologist, surgeon, dentist, ophthalmologist) are available on a daily basis.

163. The Forensic Department is temporary, i.e. until the conditions for the transfer of patients to the Sokolac Psychiatric Hospital have been met, on the basis of the Decision of the FBiH Government 833/2010 dated 14 October 2010.

164. According to the FBiH Ministry of Health, in 2012 the FBiH Government adopted the “Policy and Strategy for the Protection and Promotion of Mental Health in FBiH (2012-2020)”, which defined, in the context of due governance, goal 4.1.1. “Harmonization and

adoption of legal acts in the field of mental health in line with European directives and standards” including an objective related to the establishment of the Committee for Monitoring the Protection of Rights of Persons with Mental Disabilities. FBiH authorities started amending the Law on the Protection of Persons with Mental Disabilities in terms of creating conditions for the establishment and operation of the Commission.

165. The Commission was appointed on 13 December 2013 on the basis of a decision issued by the Federation Minister of Health. The Federation Ministry of Health has developed a Manual for the Commission for Monitoring the Protection of Rights of Persons with Mental Disabilities of the Federation, which is based on the UN Convention on the Rights of Persons with Disabilities. The Federation Ministry of Health is continually working to enhance mental health centres in the community and to strengthen the concept of community services in general.

166. The BD Government’s Division for Social Security has sent a reply which states *inter alia* that their preference in the protection of persons in need are non-institutional forms.

167. According to the report of the RS Ministry of Health and Social Welfare, the Modrica Psychiatric Hospital has two wards: Male Acute Unit (capacity of 15 patients) and Female Acute Ward (capacity of 14 patients), the number of patients ranging from 20-31 depending on the needs dictated by the state of the patients’ health. Regarding the rehabilitation of patients, rehabilitation measures are regular hospital activities embedded in the treatment schedule of each patient and after discharge rehabilitation in the community is recommended, which is implemented by Mental Health Centres. The hospital has implemented a policy of information safety and security. Security and confidentiality of medical examinations and findings are also provided following the “Medical Procedure Management” procedure and “Internal Communication” and “External Communication” instructions. This issue is also discussed in detail in the Rulebook on the Rights of Patients, which has been made and accepted as a compulsory internal document of the hospital.

168. In the period 2010-2014, Sokolac Clinical Psychiatric Hospital had a total of 163 persons with psychosocial disabilities and who were deprived of their liberty. Of this number, 141 patients were men and 22 patients were women. As for the offenses committed, the most common offences were homicide (murder and attempted murder) – 41 people, causing serious bodily injury – 10 people, aggressive behaviour – 3 people, Assault on an official person while performing his official duties – 5 people, domestic violence – 33 people, robbery and theft – 26 people, sex crimes (rape, sexual violence against children, sexual intercourse with a child etc.) – 8 people and illicit production and trafficking of drugs and enabling the use of narcotics – 8 people. Other offenses are less common. The average commitment of these individuals in the hospital in the reporting period was 7 months.

169. As to the question of alternative treatment, upon discharge these individuals are referred to the relevant Centre for Mental Health and the Centre for Social Work, which provide rehabilitation and other services. The institution has organized activities within the occupational treatment, where a patient has the opportunity to participate in various workshops, therapy groups, recreational activities etc. Confidentiality of medical examinations and findings of the persons being treated at the facility are respected, complying with the Law on the Protection of Personal Data (BiH OG 49/06), the Law on Amendments to the Law on Protection of Personal Data (BiH OG 76/11), the Rulebook on the Rights of Patients and procedures respecting patients’ rights to privacy and confidentiality.

170. In regards to the medical examinations and findings, the “Dr Miroslav Zotović” Institute of Orthopaedic Surgery, Physical Medicine and Rehabilitation fully respects and

implements the Law on Health Care (RS OG 106/09) relating to the rights of patients and citizens in exercising their right to health care. Based on the Law on Health Care and the delegated legislation, the Institute issued the Rulebook on Rights of Patients, which governs in detail the issue of confidentiality of information on the health condition of patients and all other matters relating to the confidentiality of documents and the rights of patients and service users.

171. In accordance with human rights instruments, the citizens of BiH with mental disorders who have committed criminal offenses receive an order for compulsory treatment and commitment in an appropriate institution. The Sokolac Institute of Forensic Psychiatry was founded in 2010 in a decision of the RS Government (RS OG 07/10). The Institute is registered as an institution of tertiary health care. The RS Ministry of Health and Social Welfare is responsible for organizing and monitoring the work of the Institute. An Agreement on Placement and Reimbursement of Costs for the Execution of Orders for Compulsory Treatment and Commitment Imposed in Criminal Proceedings and any Other Proceedings was signed between the BiH Council of Ministers, the Federation Government, the RS Government and the BD Government (BiH OG 89/09). The Agreement provides for placement and treatment of patients from the whole country on equal footing.

172. The Institute is located in the reconstructed building of the former military hospital of Sokolac and it is the only facility of this type in the entire territory of BiH. After starting work, the Institute will have the capacity and psychiatric treatment for up to 200 persons in BiH, order for compulsory treatment and commitment in an appropriate institution.

173. According to the latest information, in BiH there are currently 176 persons who have received an order for compulsory treatment and commitment in an appropriate institution. These persons are housed in inadequate facilities and should be placed as soon as possible in the Institute, so the opening of the Institute is of utmost importance. With the official opening of the Institute persons with mental disorders who are offenders, will be adequately cared for and in the health and justice systems of the Entities and BD, preconditions for the application of respect for human rights standards of criminal offenders with mental disorders will be created according to the European Convention on Human Rights.

174. The economic crisis in the country and limited public budgets and the lack of funds necessary for the purchase of medical and non-medical equipment prevent the completion of works for the opening of the Institute. In this context, the Swiss Agency for Development and Cooperation (SDC) has supported a project proposal of the RS Ministry of Health and Social Welfare for equipping and training the staff of the Institute and has provided financial support of BAM 2,150,000.00 as a grant. The expected results are:

- The Institute will be equipped with medical and non-medical equipment and preconditions for the official opening and the beginning of the Institute will be created.
- The staff of the Institute will be trained in the operation and proper treatment of potential crisis situations.

175. Answering question 19, the FBiH Institution of Human Rights Ombudsman notes that a lack of institution to house individuals who have committed a crime in a state of mental incapacity is still worrisome. Although some consultations were carried out between the Entity Ministries of Justice and the Ministry of Justice, it has not resulted in a change of the situation in practice.

176. The long-standing problem regarding commitment of prisoners who committed criminal acts in a state of reduced or diminished mental capacity and incapacitated people would finally be resolved by adapting the building of the former Psychiatric Hospital of Sokolac into a facility where forensic patients will be serving their term. However, the



hospital has not become operational yet, and, according to information in the possession of the Ombudsman Institution, the main reason is a lack of resources to hire staff.

177. At the same time, during visits to prisons, the Ombudsman found that there were cases of the mental health of prisoners having been changed for worse, where their continuing to serve the sentence did not make sense and the law did not define who should initiate the procedure for commitment of such persons in an institution for persons with mental disabilities. Frequently, these individuals remain in prison until the end of term when they are released without any further provision of social care.

178. The Ombudsmen concluded that the main characteristics of institutions for persons with mental disabilities were overcrowding, poor conditions and a lack of professional staff.

## Articles 12 and 13

### Question 20

179. HJPC's Statistics on criminal prosecution of prison officers in the period from 2011 to 2013 are shown in Annex 3. In this regard, we note that HJPC has no disaggregated data by age, sex, ethnicity and place of detention of the victims of violence.

180. According to the RS Ministry of Justice's statistics obtained from correctional institutions, in the reporting period there were no cases of torture or abuse reported.

181. After examining the records kept by the Professional Standards Unit of the RS Ministry of the Interior, it was found that in the period from 1 January 2010 to 30 September 2013, the Unit/the Internal Affairs Inspectorate reviewed 269 complaints of citizens involving torture or inhumane treatment by law enforcement officers of the RS MoI. Of that number, 88 complaints were filed in 2010, 85 complaints were filed in 2011, 57 complaints were filed in 2012. In the first nine months of 2013 there were 39 complaints, so it can be concluded that the number of complaints during the reporting period decreased.

182. After the completion of the internal procedures and an approval by the Bureau for Citizens' Complaints and Grievances, the complaints were resolved as follows:

- 33 complaints were found to be sustained, then disciplinary proceedings for determining disciplinary liability were instituted against 81 police officers
- 5 complaints were found to be exonerated (findings of fact show that the allegations and claims about the behaviour and actions of employees are accurate, but the actions were legitimate, reasonable or law abiding)
- 150 complaints were found to be unresolvable (the investigation determined that there were insufficient grounds on which one could confirm or reject the charges, i.e. what was said in complaint or they were found to be unresolvable until the completion of the investigation by the competent prosecutor's office)
- 60 complaints were found to be not sustained (findings of fact show that the allegations of misconduct was inaccurate and that the actions do not constitute unlawful or inappropriate behaviour)
- 2 complaints were resolved informally (the applicant withdrew the allegations after discussions and clarifications by the police officer who received the complaint)
- 19 complaints were not processed (due to the statute of limitations or they did not relate to police officers or allegations in the complaints did not constitute unlawful and unprofessional conduct and behaviour of police officers and the like)

183. Having determined that 33 complaints were well-founded, disciplinary proceedings were instituted against 81 police officers. Of this number 63 cases against the police officer were completed and 18 cases against police officers are still pending.

184. Analysing the outcomes of disciplinary proceedings against 63 police officers, we can see that following disciplinary measures were imposed:

- One police officer received a disciplinary measure of employment termination
- Six police officers received a disciplinary measure
- 40 police officers were acquitted of disciplinary responsibility
- 11 cases of disciplinary proceedings were terminated due to the statute of limitations for disciplinary prosecution
- 5 cases of disciplinary proceedings were terminated due to the Disciplinary Counsel's dismissing the charges

185. As required in the above-cited question, we have provided data about processed complaints and cases of misconduct by police officers of this Ministry in this matter and the final report which states that during the visit the CPT found violations of human rights by police officers of Banja Luka Police Station. With regard to the latter, we are informing you that criminal proceedings are pending before the competent court in Banja Luka against eight police officers Banja Luka Police Station, which were found to have violated most likely human rights of persons deprived of their liberty as stated in CPT's report.

186. The FBiH Ministry of the Interior made inspection of records of the Cantonal Ministries of the Interior and the Federation Police Administration and ascertained that in the reporting period the Cantonal MoIs and the Federation Police Administration recorded six complaints against police officers in the Ministry of the Interior of Zenica-Doboj Canton and all were rejected as unfounded after investigations. Other Cantonal MoIs did not record any cases of ill-treatment of detained persons by the police officers in the reporting period.

187. In the reporting period, according to data from BD, there were no reports of torture or ill-treatment of detainees. The existence and practice of independent external control mechanisms of illegal acts committed by the police and other law enforcement officials are explained in paragraph 14 above.

#### **Question 21 (A)**

188. HJPC's statistics on the prosecution of war crimes, including data on war crimes involving murder, enforced disappearance, rape and other crimes of sexual violence, in the period from 2011 to 2013, are shown in Annex 4.

#### **Question 21 (B)**

189. At the beginning of 2012 the Supervisory Body for Monitoring the Implementation of the National Strategy for War Crimes Prosecution (Supervisory Body) adopted an action plan for the implementation of the National Strategy for War Crimes Prosecution, which provides the ability to monitor the implementation of the strategic objectives and strategic measures defined in the Strategy and to propose concrete measures to improve the efficiency of the implementation of strategic goals.

190. The adoption of the 2012 Action Plan resulted in more intense activities of all stakeholders which brought about an increase in the number of policy measures carried out in relation to the previous period.

191. Taking into account the positive effects of the 2012 Action Plan, the Supervisory Body adopted the 2013 updated action plan for the implementation of the National Strategy for War Crimes Prosecution, resulting in improving the degree of implementation of policy measures in a way that so far a total of 31 (72%) of strategic measures have been carried out, 9 (21%) measure are being carried out while 3 (7%) measures have not been carried. A total of six (6) out of nine (9) strategic goals have been achieved.

192. When it comes to the prosecution of war crimes in the period from 2011 to 2013, the competent courts in BiH issued a total of 220 convictions in war crimes cases, of which 108 verdicts were rendered by the Court of BiH.

193. With regard to harmonization of court practice in war crimes cases, we recall that the 18 July 2013 decision of the European Court of Human Rights in *Maktouf and Damjanovic v. BiH* found that in this case there has been a violation of Article 7, paragraph 1 European Convention for the Protection of Human Rights and Fundamental Freedoms and that in this case the 2003 BiH Criminal Code was erroneously applied instead of the 1976 SFRY CC.

194. In the decision, the European Court of Human Rights has noted that its task is not to review *in abstracto* whether the retroactive application of the 2003 BiH CC in war crimes cases is *per se* incompatible with Article 7 of the European Convention and that the issue must be assessed for each individual case, taking into account the particular circumstances of each case, which law is most favourable to the defendant.

195. In late 2013 the Constitutional Court issued a number of decisions on appeals that were filed against the verdicts of the Court of BiH imposing on the appellants prison sentences for war crimes, such as war crimes against civilians and genocide, which are prescribed in the 1976 SFRY Criminal Code an identical manner as in 2003 BiH Criminal Code.

196. In the particular cases, the Constitutional Court applied the standards of the European Court of Human Rights in *Maktouf and Damjanovic v. BiH* regarding the application of Article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In these decisions, the Constitutional Court overturned the second-instance verdicts, finding them in breach of the appellants' rights and remanded them to the Court of BiH to issue a new decision in accordance with Article 7 of the European Convention.

197. Accordingly, the Court of BiH rescinded verdicts in 9 cases where a violation of Article 7, paragraph 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms were found and quashed the sentences imposed under the 2003 BiH Criminal Code and issued a decision on retrial for a total of 13 persons convicted under the 2003 BiH Criminal Code.

198. BiH HJPC expresses its confidence that the decision of the European Court of Human Rights in *Maktouf and Damjanovic v. BiH* and the BiH Constitutional Court's decision on the appeal in similar cases resolved the legal question of retroactive application of criminal law and that is thereby provided a unique application of the law and the equality of citizens before the domestic courts in war crimes cases.

#### **Question 21 (C)**

199. At the request of HJPC, the BiH Prosecutor's Office has provided information that in the period since 2011-2013 did not have cases involving an offence under Article 239 of the BiH Criminal Code – "Failure to Enforce Decisions of the BiH Constitutional Court, the Court of BiH, the Human Rights Chamber or the European Court of Human Rights",

including cases under Article 239 of BiH CC in conjunction with forced disappearances in the period from 1992 to 1995.

200. When it comes to the information of the Fund to Support the Families of Missing Persons that the BiH Prosecutor's Office opened case KTA-333/06 on the basis of the decision of the BiH Constitutional Court AP 228/04 dated 13 July 2005, BiH HJPC requested additional information regarding this matter from the BiH Prosecutor's Office. According to the additional information, the BiH Prosecutor's Office had cases of failure to enforce decisions of the BiH Constitutional Court. However, in the reporting period 2011-2013, there were no cases (KT, KTA or KTN) or investigations pending involving the offence under Article 239 of BiH CC in relation to enforced disappearances. Given the fact the information provided by the Fund to Support the Families of Missing Persons relates to the case that the BiH Prosecutor's Office initiated in 2006, we assume that the matter was resolved prior to the reporting period for the Sixth Periodic Report of BiH.

#### **Question 22**

201. HJPC's statistics on prosecution of violence against refugees, returnees and displaced persons in the period from 2011 to 2013 are presented in Annex 5.

#### **Question 23**

202. According to the State Investigation and Protection Agency, witness protection is defined in two laws, the Law on Protection of Witnesses under Threat and Vulnerable Witnesses (BiH OG 3/03, 21/03, 61/04, 55/05), based on which procedural safeguards are enforced, and the BiH Law on Witness Protection Program (BiH OG 29/04). The Witness Protection Department of the State Investigation and Protection is authorized to provide protection and support to witnesses when certain safeguards in proceedings before the Court of BiH are ordered.

203. In this regard, it is important to point out that as a consequence of increasing number of war crimes at the cantonal and district courts and prosecutors' offices, the need arose to establish programs for the protection and support to witnesses under threat and vulnerable witnesses.

204. In 2011, BiH HJPC prepared technical specification of audio-visual equipment and videoconferencing system to be used to support legal proceedings, including the application of witness protection measures by hearing witnesses in a separate room of the court or by video-conference link from another court.

205. With the financial assistance of the European Union, through the "Support to the BiH judiciary – IPA 2009" project, in 2013, works and installation of audio-visual systems were completed in 11 cantonal and district courts and the BD Basic Court.

206. When completed, these activities created adequate physical and technical conditions for the application of measures to protect witnesses in war crimes cases. Further, thanks to funding by the Delegation of the European Union, a video conferencing system was set up to connect 19 courts, eight prosecutor's offices and BiH HJPC. The use of video-conferencing in the justice system will lead to savings of time spent on travel of witnesses and experts, reduction of travel and other expenses of witnesses and experts, and then increase efficiency and better communication.

207. The video-conferencing system will be used for the implementation of witness protection measures in the cantonal / district courts, where it is not possible to arrange separate rooms for protected witnesses. Protected witnesses who will testify before these courts will be able to testify via video link, and will be located in a different cantonal / district court.

208. In 2011, HJPC, with the financial support of the British Embassy, implemented the “Support to the BiH Judiciary in the War Crimes Prosecution” project in which the rules of procedure for the protection measures for eyewitnesses and accompanying manual with rules of procedure were drafted. These Rules of Procedure allow courts to use all capacities in the field of witness protection in the best possible way.

209. In 2012, within the “Improvement of the system of application of witness protection measures” project, which was also funded by the British Embassy, “Process witness protection measures” educational module was developed and the module allows establishing a sustainable system of training in the application of measures for the protection of witnesses in the courts and prosecutor’s offices in BiH. Further, specialized training for judges and prosecutors and other stakeholders who are active in the field of application of witness protection measures was held. Judicial police, social workers and non-governmental organizations working in this field were included in this training.

210. Further, in the reporting period, BiH HJPC, in cooperation with UNDP, implemented the “Support to the War Crimes Prosecution” which aimed to provide support to witnesses and victims before and during the investigation and during court proceedings through building the capacity of judicial institutions, namely the establishment of Department for the Support and Protection of Victims and Witnesses in the Prosecution of Crimes by hiring professional staff, i.e. psychologists, who directly assisted protected witnesses.

211. In the period from 2011 to 2013, four cases of threats and harassment of protected witnesses were recorded. In 2011, three such cases were recorded as a direct consequence of their intention to testify in war crimes cases. Two threats and harassment of witnesses were reported immediately during interview with the witness, and one case was reported to the Department via the telephone number that is given to all witnesses upon completion of testimony.

212. In all the three cases, the Acting Prosecutor was informed about it to take measures and actions within his competences and we do not have information on the status of these cases. In the fourth case in 2012 the protected witness reported via the contact telephone harassment by certain neighbours, but an interview with the witness established that the harassment was not a direct result of his testimony in the past. The witness was instructed to report it to the relevant police station.

## **Article 14**

### **Question 24**

213. The BiH Ministry of Justice and the BiH Ministry of Human Rights and Refugees, with support from United Nations Development Programme in BiH (UNDP BiH), is implementing “The Strategy Transitional Justice Drafting” Project. Representatives of relevant institutions of the state, entity and BD level, as well as representatives of civil society and victims from all parts of the country, were included in its development.

214. During the consultations on the working text of the draft Strategy for Transitional Justice, representatives of RS ministries expressed reservations about parts of the proposed strategic objectives, drew from the Expert Working Group, about which they informed the RS Government. The Draft Transitional Justice Strategy and Action Plan for its implementation were completed in April 2012 and submitted to the BiH Council of Ministers, which it has not considered it yet.

215. So, BiH has not made any progress in the adoption of the National Strategy for Transitional Justice. UNDP continued to support the adoption of this Strategy and organized a seminar on transitional justice, which was held in December 2013. In the last contact the UNDP Resident Representative gave a letter to the BiH Chairman of the Council of Ministers and on this occasion he informed that UNDP would provide further technical assistance related to the promotion and implementation of the transitional justice law.

216. Activities to develop a legal framework to ensure victims of torture in BiH legal or any other form of protection started in 2005, after the authorities of BiH had submitted the first initial report on the implementation of the UN Convention against Torture and Other Inhuman and Degrading Treatment or Punishment to the Committee against Torture of the United Nations.

217. The Law governs the fundamentals of protection of victims of torture, rights and forms of protection, the exercise of rights and other issues, as required by international conventions and protocols which BiH is a signatory to. The first draft BiH Law on the Rights of Victims of Torture and Civil Victims of War did not receive the necessary positive opinion of competent institutions and for the same reason it was not sent to the Parliament for deliberation.

218. A new text of the law, the second draft, was put together in 2008 in the form of a proposal and submitted to the Entities, BD and ministries of BiH for opinion. The BiH Draft Law on the Protection of Victims of Torture and Civil Victims of War again did not receive the necessary positive opinion of the competent institution. According to the opinions then given by Entity governments, victims of torture in BiH were accorded the rights in Entity laws and the laws can be enhanced by amendments. Similarly, the Entity governments suggested that the process of developing a common and acceptable legal framework at the state level should continue, for which they will require prior approval. According to the opinions, the BiH Ministry of Human Rights and Refugees has a coordinating role in this process.

219. In 2011, an interagency working group consisting of representatives of the Ministry of Human Rights and Refugees and other relevant institutions in BiH, together with representatives of non-governmental organizations who work with torture victims, gathered in the "Together against Torture in BiH-Network" project, started drafting the third draft Law on the Protection of Victims of Torture and Civil Victims of War of BiH. It was finalized in late 2012.

220. The BiH Ministry of Human Rights and Refugees compiled a detailed information paper on all activities taken in drafting a legal framework to regulate the status of victims of torture in BiH and sent it together with the third version of the BiH Law the Protection of Victims of Torture to the BiH Council of Ministers in April 2013. After sending the information paper to the BiH Council of Ministers, the BiH Ministry of Human Rights and Refugees was informed by the General Secretariat of the BiH Council of Ministers that in May 2013 the BiH Council of Ministers postponed consideration of activities taken in drafting a legal framework to regulate the status of victims of torture in BiH and civilian victims so that it could have additional consultations.

*Protection of Women Victims of War – Program for victims of rape, sexual abuse and torture and their families in BiH from 2013 to 2016*

221. Protecting the human rights of victims of war, especially women victims of rape, sexual abuse and other forms of torture and their families is very complex in BiH. The

existing systems are very uneven, if compared with international standards for the protection of victims of crime<sup>3</sup> that BiH has taken over in its legal system as its international obligations in order to ensure equality, freedom and security and effective legal protection for all citizens, priority and victims of war, especially women as extremely vulnerable category. According to international standards, victims of war have the right to see a fair punishment for war crimes and the right to know the fate of missing family members and to exercise their right to reparation programs, especially rights related to their rehabilitation and reintegration.

222. The program for victims of rape, sexual abuse and torture and their families in BiH 2013-2016 was drafted but it was not approved by all levels of government.

223. A host of experts and representatives of civil society and academia was involved in drafting the document and the problems associated with the current situation and the status of victims were highlighted.

224. The Federation Ministry of Labour and Social Affairs has actively participated in the creation of programs for the empowerment of women victims of rape, sexual violence and torture in BiH and is willing to take part in the enforcement. Further, Article 54 of the Law on Amendments to the Law on Social Protection, Protection of Civilian Victims of War and Protection of Families with Children has introduced a new group of beneficiaries, which is defined as “A special category of civilian war victims are persons who have survived sexual assault and rape” (FBiH OG 39/06). This category of people is entitled to so-called “Monthly personal allowance” that amounts to 70% of monthly personal disability allowance of the first group of disabled veterans, that is, to the amount that is paid to the first group of civilian victims of war. Unlike other beneficiaries whose disability is assessed, in this case, in order to exercise the entitlement it is only the fact that war rape occurred that has to be proved. Thus, in order to exercise the entitlement, bringing an action or having a judgment is not required.

225. The data base contains 784 beneficiaries of the entitlements of victims of rape as of 30 November 2013.

226. With regard to providing support and protection to victims of rape, the Federation Ministry of Labour and Social Policy have continued cooperation with civil society organizations representing interests of this group. Every year the Ministry sets aside a certain amount of money for these organizations.

227. The position of the Republika Srpska is that section “Protection of Women Victims of War – Program for victims of rape, sexual abuse and torture and their families in BiH from 2013 to 2016” should be deleted and the following text be inserted instead:

228. All levels of government in BiH take the necessary measures to protect and support all victims of sexual violence and their families, in accordance with their responsibilities and competences. In this regard, the Protocol on the treatment of victims and witnesses of war crimes, sexual assault and other crimes of gender-based violence, through capacity building and cooperation between institutions and non-governmental organizations, was signed in Banja Luka in August 2013.

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<sup>3</sup> For the understanding of term “victim” (of crime), we take the definition of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power as a starting point.

*Rights of civilian victims of war will be discussed in accordance with the data provided by BD given that the rights (basic and additional) are the same in both Entities and BD).*

229. Rights of civilian victims of war in BD are governed by the Decision on the Protection of Civilian Victims of War, adopted by the BD Assembly at the 71st regular session held on 8 August 2012.

230. Article 4 of the Decision determines rights of civilian victims of war and their family members:

(a) *Basic rights:*

- Civilian disability allowance
- Family disability allowance
- Attendance allowance
- Health care and exemption from out-of-pocket costs of primary and secondary health care
- Orthopaedic allowance

(b) *Reimbursement of funeral costs*

(c) *Additional rights:*

- Right to help with health costs and procurement of orthopaedic aids
- Training for work in the forms of vocational rehabilitation, retraining for a new job, additional training
- Right to special employment projects
- Right to priority housing
- Right to legal aid

231. Therefore, the Decision determines the right to benefits / compensation as the right to permanent allowance, which is paid periodically (once a month) to the beneficiary, starting from the date of finality of the decision according the right (civilian disability allowance and family disability allowance).

232. In order to exercise this right, no judgment/verdict determining responsibility for an act of violence or identification or prosecution of offender(s) in any type of proceedings (criminal, misdemeanour, discipline) is required. Criminal proceedings and proceedings for exercising the right to compensation run independently. Collected evidence in these proceedings and decisions establishing responsibility, however, if available, can be used in the proceedings for exercising the right to civilian disability allowance, but they are not binding. As an exception to this rule, in the proceedings for exercising the rights the Decision determines, persons who have suffered a permanent psychological impairment as a result of sexual abuse and rape, as persons having a special status (where the impairment is not determined in a percentage), can prove the status of victim with a final conviction. In this case it is not necessary to follow the particular assessment procedure in proceedings for exercising the rights and the victim is entitled to a civilian disability allowance beginning from the date of initiation of criminal proceedings. If the victim does not have a final conviction, the status of the right holder can be granted in a separate assessment procedure, where *inter alia* a medical assessment by a competent medical board is performed.



233. The status of right holder was granted to 22 women victims of rape in BD on the basis of earlier decisions despite the fact that the offenders were not identified. The status was granted in one case on the basis of a decision in which the offender was identified and the act of violence was confirmed in a court decision.

234. In addition to rape victims, the status of holder of this right has been confirmed to a number of victims of unexploded ordnance (UXO) and a number of persons who were camp prisoners. According to the competent BD authorities, a total of 97 persons in all categories (rape victims, victims of UXO and former camp prisoners) exercised their right to this kind of permanent benefit.

#### **Question 25**

235. Statistics on the number of claims for compensation for non-pecuniary damage caused by torture suffered during the armed conflict in BiH from 1992 to 1995, then data on final judgments, amounts awarded as non-pecuniary damages in the period from 2011 to 2013, the number of unresolved claims at the end of 2013, provided by BiH HJPC are presented in Annex 7.

#### **Question 26**

236. At the request of HJPC, the BiH Prosecutor's Office provided the information that the Prosecutor's Office regularly informs relatives of missing persons and their associations of the progress made in the processes of exhumation and identification of mortal remains.

237. According to the BiH Missing Persons Institute, the establishment of a central register of missing persons (CEN) in BiH has not been completed yet, although the Institute is taking various steps to this end.

238. Notwithstanding the positive developments in the past, the fact that should be highlighted is that around 50% of people/cases, including the most complex ones, have not been verified yet, so the verification process will have to take at least another two years.

#### *The issue of financial, human and budgetary resources*

239. The BiH Missing Persons Institute lacked financial support in the past, specifically the provision of funds from the BiH budget. In the past 3 years, from 2011 to 2013, the Institute's budget shrank every year as can be seen from the following table:

240. Appropriated funds:

- 2011: BAM 3,156,030.00
- 2012: BAM 3,066,000.00
- 2013: BAM 3,217,000.00

241. No other material resources have been given to the Institute and it works with mostly out-dated equipment that happened to be there. The Institute currently has 52 employees in the following organizational units: Office of the Board of Directors, three departments (of which two have internal organizational units).

242. The question respecting regularly informing relatives of missing persons and their associations of the progress made in the processes of exhumation and identification of mortal remains pertains to the BiH Prosecutor's Office. The Institute also contacts the families on a daily basis.

243. The BiH Missing Persons Institute does not have adequate staff to provide psychosocial support to families, but has participated on several occasions in the programs organized by other institutions, e.g. ICRC, NGOs, some foreign institutions etc.

*Fund in support of missing persons*

244. Article 15 of the BiH Law on Missing Persons (BiH OG 50/04) provides for the establishment of a fund in support of missing persons, which is partly implemented by adopting the Decision Establishing the Fund in Support of Families of Missing Persons in BiH (BiH OG 96/06).

245. Activities aimed at implementing the Agreement on the Funding of the Fund in Support of Families of Missing Persons have repeatedly been initiated by the BiH Ministry for Human Rights and Refugees, but an understanding on the seat/base and funding of the Fund has not been reached by representatives of Entity governments. The key disagreement concerns the percentage of funds that Entities are supposed to provide for funding the Fund at the level of BiH and the provision on the basis of the following criteria: the number of missing persons and places where they went missing.

246. In the meantime, in connection with the enforcement of this legal obligation, the BiH Constitutional Court has issued a number of decisions ordering certain activities to be taken by the BiH Council of Ministers and Governments of the FBH, RS and BD with a view to ensuring the operation of the institutions established under the BiH Law on Missing Persons (BiH OG 50/04) (i.e. BiH Missing Persons Institute, Fund in Support of Families of Missing Persons and the Central Records on Missing Persons, which was established within the Institute).

247. Practically, the BiH Fund in Support of Families of Missing Persons has not become operational to date due to a lack of agreement regarding the manner of its funding and its seat/base.

248. With regard to the measures taken by the BiH Prosecutor's Office to regularly inform relatives of missing persons and their associations of the progress made in the processes of exhumation and identification of mortal remains, it is important to note the following:

249. While prosecuting war crimes, especially the cases involving exhumation, the BiH Prosecutor's Office regularly meets with representatives of associations of families of missing persons to inform them about a progress in the process of exhumation and identification of mortal remains. Further, the acting prosecutor in particular war crimes cases replies to all written and oral questions asked by injured parties, i.e. families of victims.

250. This is a practice in individual cases of exhumation and war crimes where separate records are not kept. Meetings with the associations are held on a regular basis and as required so that we are not able to provide aggregated data on the number of cases where we replied to the questions and the total number of meetings held.

251. The BiH Prosecutor's Office does not keep records of family members of missing persons having been provided with psychosocial support and access to assistance programmes during and after the process of exhumation and identification of mortal remains, nor does the BiH Prosecutor's Office keep records on the number of persons who have received such aid segregated by location.

**Article 16****Question 27**

252. The prohibition of corporal punishment of children in the RS is regulated by numerous laws and regulations. The Law on Protection from Domestic Violence (RS OG 102/12) provides inter alia that domestic violence is any act of violence by a family

member or family which threatens the serenity, mental, physical, sexual or financial integrity of another family member or family.

253. For the purpose of this provision, any act of violence that does not contain elements of a criminal offense is a misdemeanour and they are the following acts in particular:

- A threat to inflict bodily injury on a family member or a person close to him
- A threat to take children away or throw a family member out of the apartment
- Subjecting a family member to exhaustion by work, starvation, deprivation of sleep or necessary rest
- Upbringing children in a degrading manner
- Depriving a family member of means of subsistence
- Denial of the right to economic independence by prohibiting work or holding a family member in a relationship of dependence or subordination by threats or denying means of subsistence or other forms of economic domination
- Verbal abuses, swearing, name-calling or insulting of a family member in another way
- Restriction of freedom of communication of a family member with family members or other persons
- Damaging or destruction or circulation of the common property or property owned or in possession of another family member or attempt to do so
- Stalking of a family member and
- Causing fear, humiliation, inferiority, as well as other acts that do not contain elements of the crime of domestic violence

254. The RS Criminal Code (RS OG 49/03, 108/04, 37/06, 70/06, 73/10, 1/12, 67/13) provides for criminal sanctions for neglect in Article 207 and domestic violence in Article 208.

255. According to the FBiH Ministry of Justice, the issue of a ban on corporal punishment of children in the Federation is governed by numerous regulations. The Law on Protection from Domestic Violence (FBiH OG 20/13) provides *inter alia* that domestic violence is any act which inflicts on a family member physical, sexual or mental pain or suffering, including threats that cause fear of physical, psychological or sexual violence or economic harm to another family member).

Acts of domestic violence or threats of such acts are *inter alia* (Article 7 of the Law):

- 1) Any use of physical force against physical or mental integrity of a family member
- 2) Use of physical or mental violence against children and neglect of children in their upbringing
- 3) Forced seclusion or restriction of free movement of a family member.

256. The FBiH Criminal Code (FBiH OG 36/03, 37/03, 21/04, 69/04, 18/05, 42/10, 42/11) provides for criminal sanctions for conduct relating to issues of neglect and domestic, violence prevention and non-enforcement of measures to protect minors, child desertion, neglect or abuse of a child, Articles 219, 220, 222 and 224 (Annex I).

257. As for the part of the question related to the treatment of juveniles in places of detention, we can say that the RS Law on the Protection and Treatment of Children and Juveniles in Criminal Proceedings (RS OG 13/10, 61/13) and the FBiH Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings (FBiH OG 7/14) provide that juveniles and young adults are treated, at all stages of the proceedings, in the same way regardless of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, birth or other status of the juvenile, his parents, adoptive parents or guardians, as well as other forms of diversity.

258. According to the Law, a juvenile is accorded minimum rights that are respected at all stages of the criminal proceedings and they are: the right of a minor to be clearly advised about charges against him, to be presumed innocent until proved guilty, to remain silent, not to have his confession extorted by force, the right to legal aid, the right to the presence of a parent or guardian, the right to proceedings “without delay”, the right to cross-examine witnesses against him and invite and cross-examine witnesses in his favour under the same conditions and the right to effective legal remedy.

259. Further, it prohibits disciplinary measures involving deprivation of labour, reduction of food, restriction of communication of a minor with a family member, placing in a dark room and solitary confinement, collective punishment of juveniles, as well as other disciplinary measures that degrade and threaten the physical or mental health of minors.

260. At the 28th session held on 2 November 2012 the BiH Council of Ministers adopted a strategy to combat violence against children in BiH. The Strategy seeks to abolish and prevent all forms of violence against children, including corporal punishment, which is a common occurrence. In accordance with this Strategy, in 2013 the BiH Ministry of Human Rights and Refugees developed guidelines for handling cases of violence against children in BiH. The guidelines provide recommendations to the institutions and individuals acting in cases of violence against children in BiH, i.e. provide clear recommendations for the early detection of cases of violence against children. In the previous period, the BiH Ministry of Human Rights and Refugees, in cooperation with Save the Children Norway, supported the Council of Europe “Raise your hands against corporal punishment of children” campaign. The campaign resulted in a manual titled “Abolishing corporal punishment of children - questions and answers”. The manual was promoted and distributed to all stakeholders.

### **Question 28**

261. The BiH Law on Execution of Criminal Sanctions (BiH OG 12/10, 100/13) contains provisions that regulate the use of restraints, situations when restraints are used and a prison officer is allowed to act, provided that all actions are taken under doctor’s supervision.

262. The RS Law on Execution of Criminal Sanctions (RS OG 12/10, 117/11, 98/13) contains provisions prescribing the manner of acting by prison staff and the use of restraint of prisoners, allowing it only in situations requiring the prevention of self-harm or attack on other persons and prevention of destruction of property by prisoners, which is used exclusively by the order and under the control of physicians.

263. In addition to the Law, acting of employees in prisons are defined in the Rulebook on the manner of security service performance, weapons and equipment, the use of firearms and other coercive measures, marking and equipment of vehicles in correctional institutions of the RS (RS OG 38/11).

264. According to the FBiH Ministry of Justice, in accordance with the principles of humanity in the process of serving a prison sentence, the Law on Execution of Criminal Sanctions (FBiH OG 44/98, 42/99, 12/09, 42/11) sets out strict criteria for movement restriction of convicted persons. Thus, Article 52 of the Law provides that means of

restraint may be used only to prevent escape while bringing a prisoner or for health reasons or to prevent destruction of property by the prisoner. When used for health reasons in order to protect the person from self-injury, it is done by the order and under supervision of physicians. These restraints cannot be used as a punishment for convicts.

265. In addition to the Law, acting of employees in prisons is defined in the Rulebook on the manner of security service performance, weapons and equipment, the use of firearms, official identification card and uniform (FBIH OG 15/99, 46/99), where Article 63 sets forth that, while bringing a convicted person, the guard can tie, by written order or on his own initiative, a prisoner who puts up resistance, attempts escape or self-harm. Article 67 requires that a guard shall make a report on any use of force immediately, but no later than 24 hours, which report shall contain information about the type of means of restraint, time, location, reasons and the manner of use.

## **Question 29**

### *Minority rights*

266. Having ratified the 2002 Council of Europe Framework Convention for the Protection of National Minorities, BiH committed to use active policies, laws and other regulations in order to achieve the principles set out in the Convention. The BiH Law on the Protection of National Minorities (2003) recognized the status of national minorities to 17 minority communities. These are Albanians, Montenegrins, Czechs, Italians, Jews, Hungarians, Macedonians, Germans, Poles, Roma, Romanians, Russians, Ruthenians, Slovaks, Slovenians, Turks and Ukrainians. It ensures that members of minorities enjoy, except the rights enjoyed by all other citizens of BiH, additional protection and rights set out in the Framework Convention and the Law on the Protection of National Minorities, in particular in the field of history, culture, customs, traditions, language, script, education, religious freedom. The RS and the Federation enacted their own laws on the protection of national minorities.

267. Based on the recommendations of the Committee of Ministers of the Council of Europe, BiH has committed to regularly report on the implementation of the Framework Convention for the Protection of National Minorities. So far, BiH has produced three country reports (2004, 2007, 2012).

268. Recognition of the Roma national minority status and recognition of the fact that the Roma in BiH, by any indicator, is the most vulnerable and also the largest national group, BiH has taken concrete actions and made significant positive progress in solving the problems of the Roma.

269. For five years now, the competent authorities of BiH have been implementing the Action Plan for Solving Problems of Roma in the areas of: employment, housing and health care and appropriating a significant amount of approximately BAM 3,000,000 every year. Results are measurable in improvements of housing conditions, employment, health care and education. The BiH Ministry for Human Rights and Refugees, as the competent authority, informs the BiH Council of Ministers regularly, in the form of reports, about the results of implementation of the Roma Action Plan. Enforcement of a judgment of the European Court of Human Rights in Strasbourg (Sejdic and Finci) will enable persons belonging to national minorities in BiH to have equal access to participation in public and political life as other three constituent nations have.

*Religious freedom in BiH*

270. The BiH Constitution provides for freedom of religion and the Law on Freedom of Religion and Legal Position of Churches and Religious Communities, which was adopted 2004, guarantees religious freedom and equality of all churches and religious communities in BiH without any discrimination.

271. All important issues of freedom of religion and of interest to the four traditional churches and religious communities are addressed in consultations with the BiH Inter-Religious Council, which was established in 1997. In 2008 the BiH Council of Ministers and the BiH Inter-Religious Council signed an Agreement on cooperation which aims to support its efforts to build inter-religious dialogue, religious tolerance and coexistence in BiH. The agreement also establishes the State's obligation to provide financial support to the BiH Inter-Religious Council.

272. Despite the significant amount of these and other activities taken by the state to enable the exercise and protection of religious freedom, there are abuses and discrimination, on a reduced scale, based on religious affiliation, especially in parts of the country in which a nation is a religious minority.

*Indicators of violations of religious freedom*

273. Based on data provided by the BiH Inter-Religious Council and the competent authorities of the Islamic Community in BiH, Serbian Orthodox Church, Catholic Church and the Jewish community about violations of religious freedom, we can conclude the following:

274. Cases of attacks on places of worship, desecration of graves and cemeteries, attacks and insults to religious officials, attacks on religious symbols, contempt or defamation of religions still occur. These and other forms of violations of religious freedom are present in all parts of the country, especially prevailing in parts in which a nation is a religious minority.

275. According to the BiH Inter-Religious Council (which has been implementing the "Monitoring of attacks against places of worship and other places of interest for churches and religious communities in BiH" project for several years now), 117 attacks on religious buildings, religious officials and believers who are directly related to the religious sites were recorded in the period from 1 November 2010 to 31 October 2013. Of the total of 117 attacks on religious sites from the beginning of the project to the end of the reporting period (56 attacks in RS, 61 attacks in FBiH). There were 56 attacks on the Islamic Community, 38 attacks on Serbian Orthodox Church buildings, 20 attacks on buildings of Catholic Church, while three attacks on buildings of Jewish community occurred.

276. Of the total of 117 attacks on religious sites from the beginning of the project (1 November 2010) to the end of the reporting period (31 October 2013), the authorities in BiH were able to identify perpetrators of 38 reported attacks. According to our information, out of 33 cases of violation of religious freedom, the authorities were able to solve five of them.

277. There is a good practice of installation of video surveillance on religious objects that have repeatedly been the subject of attack.

278. In this sense, BiH should continue to monitor the exercise of the right to freedom of religion and particularly the incidents committed against religious and other holy buildings and to encourage the relevant institutions work on resolution of these cases more intensively.

279. Statistics on the prosecution of criminal offenses of inciting national, racial and religious intolerance in the period from 2011 to 2013 have been provided by HJPC and shown in Annex 8.

### **Question 30**

280. The Anti-discrimination Law protects citizens of BiH from discrimination in all areas of life such as work and employment, social security and health care, judiciary and administration, housing, public information, education, sport, culture, science and economy. Further, the Law prohibits sexual or any other form of harassment, mobbing, segregation and incitement to discrimination. In accordance with the Anti-discrimination Law, all public authorities have an obligation and a duty to fight against discrimination, to refrain from it and to actively create conditions for equal treatment. Although the BiH Constitution and international documents to which BiH is a signatory to provide for prohibition of discrimination, once they were passed, the BiH Law on Gender Equality and the BiH Law on Prohibition of Discrimination defined its forms, prohibition of discrimination in all areas of life and mechanisms for protection against discrimination. The BiH Law on Gender Equality also prohibits gender- and sexual orientation-based discrimination.

281. The central institution for the protection against discrimination is the BiH Institution of Ombudsman for Human Rights which is vested with broad powers in order to protect individuals and groups from actions that the Law defines as discriminatory.

282. According to information available to the BiH Ministry of Human Rights and Refugees, since the entry into force of the BiH Law on Gender Equality and the Law on Prohibition of Discrimination, only one case was filed with the BiH Institution of Human Rights Ombudsman, which case involved discrimination against persons on the basis of sexual orientation. In the case, it was an attack on a LGBT person in BiH in 2008, at the time of the Sarajevo Queer Festival. According to the Ministry, the BiH Gender Equality Agency has no registered complaints of sexual orientation- or gender identity-based discrimination. Further, the BiH Ministry of Human Rights and Refugees has not received any complaints related to gender-, sexual expression- or orientation-based discrimination.

### **Other Issues**

#### **Question 31**

283. Statistics on the prosecution of criminal offenses related to terrorist activities in the period from 2011 to 2013 have been provided by HJPC and shown in Annex 9.

284. According to the BiH Ministry of Security information in the context of the fight against terrorism, BiH has transposed in its legislation the following international instruments of UN Security Council: resolutions 1267, 1373 and others.

#### *UN Conventions on the fight against terrorism*

285. BiH is a signatory to 14 of 18 universal instruments relating to the fight against terrorism.

286. Security policy was adopted by the BiH Presidency in 2006.

287. The BiH Council of Ministers adopted in 2010 its second consecutive Strategy for Preventing and Combating Terrorism (2010-2013) and a new one is being drafted for the period 2014-2017.

*Goals of the Strategy for the Prevention and Combating of Terrorism*

288. Implement the strategy in a way that would not lead to harming the fundamental human rights and freedoms enshrined in international conventions and valid legislation.

*Other relevant laws*

- Law on the Application of Certain Interim Measures for the Effective Implementation of the Mandate of the International Criminal Tribunal for Former Yugoslavia and Other International Restrictive Measures (BiH OG 25/06)
- BiH Law on Prevention of Money Laundering and Financing of Terrorist Activities (BiH OG 53/09)
- Law on Protection of Witnesses under Threat and Vulnerable Witnesses (BiH OG 3/03, 21/03, 61/04)
- Law on Witness Protection (BiH OG 29/04)
- Law on the Protection of Classified Information (BiH OG 54/05, 12/09)
- BiH Law on Intelligence and Security Agency (BiH OG 12/04, 20/04)

289. The Universal CT Convention is transposed in our criminal law through adoption of the amendments to the BiH Criminal Code. This procedure, just like any other procedure of making new laws or amendments to existing laws, has been followed as provided for in the BiH Constitution.

290. It is important that the BiH Constitution protects human rights and fundamental freedoms by defining them through the “catalogue of rights” (Article II, 3) stating that the enjoyment of rights and freedoms is guaranteed to all persons in BiH without discrimination on any grounds and giving supremacy to the European Convention on the Protection of Human Rights over all other laws in BiH.

291. In addition, it is important to note that there are general remedies in place such as the right to appeal to the court and the BiH Constitutional Court in the case of human rights violation.

**Questions 32, 33 and 34**

292. When designing its own programming tasks, BiH has been dedicating and orientating in substance and programming to basic guidelines and objectives of the Council of Europe that proclaim and essentially want to affirm in all societies and countries caring about the development of democracy and democratic relations. This means, above all, the promotion and recognition of human rights and fundamental freedoms, the rule of law and pluralist democracy; awareness raising and encouraging the development of Europe’s cultural identity and diversity; finding solutions to problems (the return of displaced persons and refugees, gender equality, protection of children, discrimination against minorities, intolerance, drug addiction, AIDS, trafficking, organized crime etc.) supporting and encouraging the European standards in political, legislative and constitutional reforms. In order to achieve faster inclusion into the European mainstream and better access to legislative drafting in the recent past, BiH has intensively worked on the preparation and drafting of relevant laws and regulations and other materials that BiH is obliged to produce and submit to the competent international organizations and institutions.

293. In accordance with the BiH Constitution, the BiH Parliament is responsible for passing laws and, according to the usual procedure, the BiH Ministry of Human Rights and Refugees drafts and proposes laws under its jurisdiction through the BiH Council of Ministers.



294. The Ministry of Human Rights and Refugees is a human rights and fundamental freedoms policy-maker. Further, it prepares proposals and draft laws, by-laws and other regulations in this area; give opinions, comments, suggestions and participate in the preparation of bilateral agreement; preparation of submissions and proposals related to international conventions signed or to be signed by BiH in the field of human rights, cooperates with the entities and BD and international organizations and human rights institutions; prepares reports and information on the human rights situation in BiH for the Council of Ministers, the Presidency and the BiH Parliament; monitors the implementation of human rights legislation in BiH, receives and processes applications, appeals and petitions; on the basis of data collected on human rights violations prepares reports and information, provides assessments and recommendations to the competent authorities of the State and Entity authorities on the elimination of human rights violations in the work of these and other institutions.

295. It gives opinions on draft laws and proposals agreed on by the BiH Council of Ministers respecting their compliance with the relevant international conventions on human rights and fundamental freedoms.

296. The Department provides technical assistance to citizens, taking all the necessary steps in the exercise and protection of human rights in accordance with the human rights laws and human rights instruments. The Department cooperates with non-governmental organizations (domestic and foreign) for the protection of human rights and freedoms.

297. The BiH Ministry of Foreign Affairs sent to the BiH Ministry of Human Rights and Refugees letter 07/4-2-05-4-17096/11 attaching therewith Human Rights Council Resolution 15/11 on the World Programme for Human Rights Education.

298. The UN Human Rights Council, in its Resolution 15/11, adopted an action plan for the second phase of the World Programme (2010-2014) focused on higher education in human rights and the training of teachers and lecturers, civil servants, law enforcement officers and military personnel. To this end, in 2012 the BiH Ministry of Human Rights and Refugees prepared a draft Decision on the Establishment of the Commission for the Implementation of the World Programme for Human Rights Education, which would prepare the Action Plan for Human Rights Education.

299. The Commission has not been established yet due to a failure of the RS Ministry of Education and Culture to approve it.

300. At the 77th meeting held on 18 December 2013 the BiH Council of Ministers entrusted the BiH Ministry of Human Rights and Refugees with the adoption of guidelines for the implementation of the World Programme for Human Rights Education in BiH, in accordance with the UN Human Rights Council Resolution 15/11.

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