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

Second periodic report of States parties

Bosnia and Herzegovina*

[17 November 2010]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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List of acronyms

BiH	Bosnia and Herzegovina
BHCC	Criminal Code of BH
BHCPC	Criminal Procedure Code of BH
CMoI	Cantonal Ministry of the Interior
CVW	Civil Victims of War
FBH	Federation of Bosnia and Herzegovina
FBHCC	Criminal Code of the Federation of Bosnia and Herzegovina
FMoI	Federation Ministry of the Interior
FPA	Federation Police Administration
HJPC	High Judicial and Prosecutorial Council of BiH
ICMP	International Commission for Missing Persons
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the Former Yugoslavia
IPA	Instrument for Pre-Accession Assistance
MHRR	Ministry for Human Rights and Refugees
OSCE	Organization for Security and Cooperation in Europe
PD	Police Department
RS	Republika Srpska
RSCC	Criminal Code of RS
RSMoI	Ministry of the Interior
UNDP	United Nations Development Program
UNHCR	United Nations High Commissioner for Refugees
WV	War Veterans

I. Introduction

1. The Human Rights Committee considered the initial report submitted by Bosnia and Herzegovina on the implementation of the International Covenant on Civil and Political Rights for the period 1994 to 2004 (CCPR/C/BIH/1) at its 2402nd, 2403rd and 2404th sessions (CCPR/C/SR.2402, 2403 and 2404) held on 18 and 19 October 2006 in Geneva, and adopted concluding observations (CCPR/C/BIH/CO/1) commenting on the positive aspects, raising the main issues of concern and expressing recommendations for implementing the Covenant in Bosnia and Herzegovina (BiH). It requested that Bosnia and Herzegovina provide in its second report information on the recommendations contained in the concluding observations and on the implementation of the Covenant.

2. The Ministry of Human Rights and Refugees (MHRR) of Bosnia and Herzegovina, as the responsible ministry, started fulfilling its obligations in a timely manner. After the adoption of the Initial Report by the UN Committee for Human Rights, the MHRR informed the BiH Council of Ministers about the report of the BiH delegation on the presentation of the Initial Report, and the concluding observations of the Committee which obliged the MHRR to inform all competent authorities and institutions about the content of said concluding observations so that they could implement them as necessary. The MHRR sent all the documents, together with instructions, to all relevant State bodies and institutions (judicial, legislative and administrative). The Initial Report and concluding observations of the Committee, in the three official languages of BiH, were posted on the website of the MHRR, so that their content was available to the general BiH public, as well as to non-governmental organizations (NGOs). In early 2010, the MHRR established a cross-sectoral group with a mandate to draft the second periodic report. The working group consisted of representatives of relevant ministries at the State level, Entity ministries and departments of Brčko District.

3. The need for members of the cross-sectoral group to draft the second periodic report on the implementation of the Covenant in BiH to be experts and specialists most directly involved in the field countrywide was taken into account.

4. The second periodic report will be available to the civil society and NGOs operating in Bosnia and Herzegovina.

5. Regarding the positive aspects noted by the Human Rights Committee on the initial report of Bosnia and Herzegovina on the implementation of the Covenant, it should be noted that since the reporting period, the Law on Amendments to the Law on the Ombudsman for Human Rights has been fully implemented. In fact, Ombudsman institutions at the Entity level have ceased operations due to the adoption of Entity laws on the cessation of activities of these institutions. A unique institution has been established at the State level.

6. Special support to the work of the Ombudsman for Human Rights of Bosnia and Herzegovina is given in the Law Against Discrimination (BiH Official Gazette No. 50/09), which defines this institution as the central institution for the prevention of discrimination in Bosnia and Herzegovina. Pursuant to Article 7 of the Law, the Ombudsman has the competence to receive individual and group complaints alleging discrimination. The Ombudsman also provides information to physical and legal persons about their rights, responsibilities, and possibilities of judicial protection. On the basis of an appeal, the Ombudsman decides to admit a complaint or initiate an investigation, and proposes the initiation of the mediation process.

7. Therefore, it can be concluded that all necessary requirements for the Institution of the Ombudsman for Human Rights to operate at full capacity have been met and its

independence and impartiality and a unique approach to Human Rights in Bosnia and Herzegovina have been ensured.

8. The Committee positively evaluated the establishment of the State Gender Equality Agency and Gender Centres at the Entity level, with competence to make inquiries into individual cases of alleged violations of the Gender Equality Law in Bosnia and Herzegovina.

9. The Committee welcomed the State party's reform of criminal law and judicial system and in particular:

(a) Adoption of the Law on the Protection from Domestic Violence;

(b) Adoption of State and Entity laws on Protection of Witnesses; and

(c) Establishment of the War Crimes Chamber at the Court of Bosnia and Herzegovina vested with competence to deal with war crimes cases transferred by the International Criminal Tribunal for Former Yugoslavia, and of the State Investigation and Protection Agency within the Ministry for Security to enhance cooperation of the police with war crime prosecutors.

II. Implementation of recommendations formulated in the Concluding observations (CCPR/C/BIH/CO/1) to the initial report

Recommendation No. 8

10. Articles IV and V of the Constitution of BiH states that in election to the House of Peoples of the Parliamentary Assembly of BiH and tripartite Presidency of BiH, only members of the three constituent peoples, Bosniaks, Serbs and Croats, can stand. The constitutional group "Others", which, by the Constitution of BiH, has 17 national minorities, is unable to stand for election for the highest political positions. It has become clear that this is discrimination against, and inequality of, a group of Bosnian citizens as they are unable to equally participate in election for the most responsible positions in Bosnia and Herzegovina.

11. The constitutional reform began in 2006, when the so-called April Package was rejected by a number of political party representatives. The relevant constitutional amendments, which, inter alia, regulated the participation and equality of all citizens in BiH, in terms of the electoral process and equal right to stand for election and participation in government of all citizens regardless of their ethnicity, have not been adopted.

12. Due to violation of the right to be elected, and discrimination against "Others", which comprises people belonging to one of the constituent peoples, as provided for in Constitution of BiH, representatives of Roma and Jewish peoples brought a lawsuit before the European Court of Human Rights in Strasbourg. This was the case of *Dervo Sejdic and Jakob Finci v. Bosnia and Herzegovina*. On 22 December 2009, the Grand Chamber of the Court of Human Rights in Strasbourg reached verdict No. 27996/06 in favour of the complainants, and ordered BiH to reimburse legal costs to the applicants as well as to amend the Constitution so as to bring it in line with the European Convention on Human Rights and Fundamental Freedoms.

13. With a view to introducing the relevant constitutional and legislative amendments, the Council of Ministers adopted an Action Plan on 4 March 2010, and appointed a Working Group to draft the amendments. The Central Election Commission of BiH adopted

the Action Plan on 18 February 2010, presenting in detail the provisions to be adopted and possible steps to be taken if amendments were not adopted before the general elections until the end of May 2010.

14. On 4 April 2010, the Council of Ministers adopted the Action Plan and appointed a Working Group to prepare a draft of the constitutional and legal amendments. Unfortunately, the Working Group of the Council of Ministers did not reach an agreement about proposed constitutional amendments because of a disagreement among leading politicians about crucial questions. On 22 April 2010, the Council of Ministers of BiH considered the report of the Working Group on the preparation of constitutional and legislative amendments and gave it a new deadline to discharge the task. It meant that the general election in BiH would be conducted and BiH would not be able to comply with the judgment of the European Court for Human Rights. The judgment is expected to be completed and complied with immediately after the election, once the newly elected officials have taken office.

Recommendation No. 9

15. The Covenant has been translated into the official languages of Bosnia and Herzegovina, and the translations are available at the MHRR's website which also contains the concluding observations of the Human Rights Committee, translated into the three languages and two alphabets in BiH. After consideration and adoption by the Council of Ministers of BiH, the concluding observations were delivered to the Governments of both Entities and Brčko District, all bodies and institutions in BiH which are directly involved in the topics under the Covenant. From the foregoing, it is evident that the provisions of the Covenant and the concluding observations of the UN Committee are fully publicized.

16. According to information of the High Judicial and Prosecutorial Council of BiH, entity Judicial and Prosecutorial Training Centres have not yet organized special training in the implementation of the Covenant.

17. However, training of judges, prosecutors and lawyers in the implementation of the ICCPR will be organized in the coming period by entity Judicial and Prosecutorial Training Centres.

Recommendation No. 10

18. Since the signing of the General Framework Agreement for Peace (GFAP), several initiatives were launched to establish facts about past events and efforts have been directed towards establishing the Commission for Truth and Reconciliation. There have been several initiatives to establish the facts by the Commission for Sarajevo and Commission for Bijeljina. The first initiative for establishing the Commission for Truth and Reconciliation in BiH was launched in 2000 by the Truth and Reconciliation Citizens' Association, supported by the American Peace Institute. The goal of this initiative was to inform the public, and launch public debate on the necessity of establishing a single extra-judicial mechanism or an institution that would deal with establishing the facts of crimes committed in the 1990s. The key result was drafting of legislation on the Commission for Truth and Reconciliation, which was referred to the Parliamentary Assembly of BiH for deliberation in 2003. However, the draft was never deliberated in the Parliamentary Assembly. The second initiative to establish the Commission for Truth and Reconciliation was launched by Dayton Project NGO, also in cooperation with the American Peace Institute, and then eight Parliamentary parties. An attempt was made to mobilize the Parliamentary parties and their connections with civil society organizations (CSOs).

19. There have been other initiatives to establish facts, such as the Commission for Sarajevo and the Commission for Bijeljina. These Commissions have not become operational or have had problems while operating. In this sense, the only Commission that brought its operation to an end was the Srebrenica Commission. The official name of this commission is the Commission for investigation of events in and around Srebrenica from 10 to 19 July 1995. The Commission was established according to the decision of the Human Rights Chamber in *Selimović and others v. RS* by the RS Government. The decision ordered the RS to conduct a quick and impartial investigation of events which brought about violations of human rights, and to pay BAM 4 million into the account of the Srebrenica Potočari Foundation.

20. After these initiatives, efforts were intensified to adopt a systematic approach to restoring mutual confidence between different ethnic groups, and responsibility for the already committed human rights violations. In order to implement this approach, the Ministry of Justice and the Ministry for Human Rights and Refugees, with the support of the UN Development Program (UNDP) in BiH, began to implement the project to design the Transitional Justice Strategy in BiH.

21. Transitional justice is a method applied in societies that are burdened by the legacy of serious violations of human rights, and which includes several mechanisms representing an attempt to respond to the violations of human rights, and which leads to the establishment of the rule of law, renewal of trust and development of democratic processes in post-conflict country. These mechanisms include criminal justice, institutional reform, establishing facts (truth-telling) and reparation.

22. In 2008, BiH adopted the 2008–2012 Justice Sector Reform Strategy of BiH and the National War Crimes Prosecution Strategy. After the Strategy, the Action Plan for the implementation of the Justice Sector Reform Strategy of BiH was designed. These documents are a general policy framework for planning and implementing reforms within five areas of justice, namely the judicial system, execution of criminal sanctions, access to justice, support to economic growth, and coordination, management and accountability of the justice sector, until 2012.

23. The National War Crimes Prosecution Strategy provides a systematic approach to solving a large backlog of war crimes in the courts and prosecutor's offices of Bosnia and Herzegovina. This document defines the timelines, capacities, criteria and mechanisms for war crimes cases management, standardization of judicial practices, issues of regional cooperation, care and support to victims and witnesses, financial aspects and supervision of the implementation of the strategy.

24. The strategy emphasizes a need to process the most complex and most sensitive war crimes cases within seven years, and other war crimes within a period of 15 years. A central database of all war crimes cases in BiH will be developed in the Court and the Prosecutor's Office. At the same time, a functional case management mechanism, that is a system of assigning them between the State and Entity courts will be set up. The most accountable war criminals will be prosecuted as a matter of priority before the Court of BiH, the cases being selected according to agreed criteria for selection of cases.

25. The harmonization of case law in war crimes cases is to be achieved to ensure legal certainty and equality of citizens before the law.

26. Government institutions have a constitutional and legal obligation to provide all citizens with equal, fair and effective legal protection in accordance with international obligations. With regard to legislative and judicial reform, BiH has reached a level where national institutions and the legal system include modern democratic principles and legal standards, with special emphasis on the European Convention on Human Rights and Fundamental Freedoms. Awareness of access to justice and transitional justice as a *condicio*

sine qua non for the development of potential in peacetime and security has been growing in the civil society.

27. The January 2010 decision of the Council of Ministers established an expert working group to develop the Transitional Justice Strategy in BiH. It is a coordinating body that will lead a transparent and comprehensive process of consultation with all stakeholders of civil society and local institutions in order to develop the strategy.

Recommendation No. 11

28. So far, BiH has taken legislative and other measures to ensure gender equality, including in the area of political and public life. However, these measures have proved insufficient for a substantial change in the status of women in political life. Women remain on the margins of political power, deprived of an exerting influence on the definition and implementation of policies in the State.

29. The list of rights in the Constitution of BiH explicitly provides for the right to freedom of thought, conscience and religion, freedom of expression and freedom of assembly and association. In accordance with the constitutional principle of non-discrimination, these rights are recognized to women and men in the same way. Furthermore, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is an integral part of the Constitution, therefore, it could be said that domestic legislation contains a special recognition of women's political rights in the manner provided for in this instrument. Consequently, BiH is obliged to take all measures aimed at eliminating discrimination against women in political and public life, as provided for in the CEDAW.

30. The Constitution of the FBH and the RS Constitution provide for universal and equal suffrage for all citizens, including inter alia:

- The right to form and belong to political parties
- The right to participate in public affairs
- The right to equal access to public services
- The right to elect and be elected

31. Therefore, all women and men have the same rights to participate in public and political life as guaranteed by the Constitution. However, constitutional provisions require more than equal treatment and opportunities; they require the same results or effects, taking into account the specific needs and situation of women and men. Only then it will be possible to talk about the equality of women. From the viewpoint of recognition of political rights of women, it is important to analyze the BiH Election Law which defines the principles of elections at all levels of government in the country. This law prescribes rules on the gender structure of the electoral lists of political parties, identifying the required quota for candidates from the "less represented sex", which in practice, refers to women who are underrepresented at all levels of government.

32. The Government's continued efforts to ensure gender equality in political life through the introduction of special measures to encourage greater participation of women in political life is encouraging. The State introduced the principle of electoral quotas for women, as well as a system of closed lists as early as in the 1998 election. The quota system has helped to elect a small, but critically important, number of women. However, apart from the quota, the new Election Law prescribes open electoral lists, which have reduced the chances of women actually being elected, even if they are on the lists of candidates.

33. The BiH Election Law prescribes that each candidate list include male and female candidates. Any candidate of the gender that is less represented on the lists is distributed on the candidate lists in the following way: at least one candidate of the less represented gender shall be among the top two candidates, two candidates of the less represented gender shall be among the top five candidates, and three candidates of the less represented gender shall be among the top eight candidates, etc.

34. In 2010, the Law on Amendments to the Election Law (BiH Official Gazette Nos. 23/01, 07/02, 09/02, 52/02, 04/04, 20/04, 25/05, 528/05, 62/05, 77/05, 11/06, 24/06, 32/07, 33/08, 37/08 and 32/10) were passed. Article 4.19, paragraph (4) was significantly amended to read “Every candidates list shall include candidates of male and female gender. The minority gender candidates shall be distributed on the candidates list in the following manner: at least one (1) minority gender candidate amongst the first two (2) candidates, two (2) minority gender candidates amongst the first five (5) candidates, and three (3) minority gender candidates amongst the first eight (8) candidates, *et seq.* The number of minority gender candidates shall be at least equal to the total number of candidates on the list, divided by three (3) rounded up to the closest integer.”

35. This provision of the Election Law of BiH complies with the provisions of the Law on Gender Equality of BiH (Official Gazette No: 32/10 – consolidated text), although the constituency decides on the choice of candidates. Considering that the elections in Bosnia and Herzegovina will be held with “open lists”, every voter has the right to elect a candidate from the list who he/she wants, regardless of the order of candidates.

36. The Law on Amendments to the Law on Financing Political Parties (BiH Official Gazette No. 102/09) has been adopted, and states that article 10, paragraph 1 of the Law on Financing Political Parties (Official Gazette No. 22/00) is amended as follows: “Financing of the parliamentary groups represented in the Parliamentary Assembly shall be distributed so that 30% of the funds are distributed equally to all parliamentary groups, 60% of the total amount allocated in proportion to the number of seats that each parliamentary group holds at the time of distribution, while 10% of the total amount will be allocated to parliamentary groups in proportion to seats belonging to the less represented gender. The Central Election Commission determines the under-represented gender according to official election results.”

Representation of women in the executive and legislative authorities in BiH (2006–2010)

37. In the Council of Ministers, which consists of nine members (State ministers) not including the Chairman, there are no women in positions of ministers; there are two women holding deputy minister positions.

38. In comparison with the data above, the composition of the Parliamentary Assembly of BiH (in both Houses there are 57 representatives) is as follows:

Gender structure:

Men: 49 (85.96 per cent)

Woman: 8 (14.04 per cent)

Total: 57 (100 per cent)

39. Composition of the Parliament of the Federation House of Representatives is as follows:

Gender structure:

Men: 74 (75.51 per cent)

Women: 24 (24.48 per cent)

Total: 98 (100 per cent)

40. Composition of the Parliament of the Federation House of Peoples is as follows:

Gender structure:

Men: 48 (82.75 per cent)

Women: 10 (17.24 per cent)

Total: 58 (100 per cent)

41. The National Assembly in Republika Srpska consists of eighty-three (83) members of parliament elected in direct election by the people. MPs in the National Assembly of the Republika Srpska were elected for a two-year term of office until 2002. Since 2002, in accordance with the new legislation, MPs are elected for a term of four years.

42. The Deputy Speaker of RS National Assembly is a woman, and composition is as follows:

Gender structure:

Men: 64 (77.11 per cent)

Women: 19 (22.89 per cent)

Total: 83 (100 per cent)

Gender structure of MPs in Brčko District:

Men: 28

Women: 3

Total: 31

43. The most recent general election in Bosnia and Herzegovina, held on 3 October 2010, showed progress in the number of women standing for the most accountable positions, ranging from the cantonal, entity parliaments and the Parliamentary Assembly, the President and Deputy Prime Minister of entities and Government of Brčko District. The pre-election campaign and election statistics show that out of a total of 8,242 candidates, 6,408 were male and 1,834 were female, at 77.75 per cent and 22.25 per cent respectively. Although women make up 52 per cent of the total population of BiH, after the election, their participation in government is less than proportionate at 22.25 per cent. Responsibility in this case lies, inter alia, primarily with women voters, who traditionally cast their votes in favour of men. In the coming period, more activity will be required to strengthen and promote women in society, in order to overcome traditions and distrust in women engaged in the most accountable positions. Upon completion of the electoral process, according to final results we shall know how many women are elected in Bosnia and Herzegovina, and in which positions.

Recommendation No. 12

44. The Law on Gender Equality in BiH (Official Gazette Nos. 16/03, 102/09) recognizes domestic violence as a form of gender-based violence; regulates, promotes and protects gender equality; guarantees equal opportunities for all citizens, both in public and private spheres of society; and prohibits direct and indirect discrimination based on sex. The Criminal Code of FBH (Official Gazette of FBH, Nos. 36/03, 37/03, 21/04, 69/04, 18/05), Article 222 of RSCC (Official Gazette RS, Nos. 49/03, 108/04, 37/06 and 70/06);

Articles 208 and 218 of the Criminal Code of Brčko District (Official Gazette of BD, Nos. 10/03, 45/04 and 06/05) provide for domestic violence as a criminal offence.

45. The Law on Protection from Domestic Violence of FBH (Official Gazette of FBH, Nos. 22/05 and 51/06) and the Law on Protection from Domestic Violence of RS (Official Gazette RS, Nos. 118/05, 17/08) define domestic violence as any act that inflicts physical, psychological or sexual harm, suffering or economic damage, as well as threats of such acts or omission of due care and attention, which seriously hampers family members and people, whether they are in close relation and social connections or not or whether there was a community of life or not, to enjoy their rights and freedoms on the principle of gender equality in public and private life.

46. In Brčko District, the procedure for adoption of the Law on Protection from Domestic Violence is under way.

47. These laws regulate protection from violence, the notion of domestic violence, persons who are considered family members, ways to protect family members, and the type and purpose of sanctioning perpetrators of violent acts.

The obligation for protection from violence lies with the police, prosecutors, Centre for Social Work/guardianship authority and the courts for minor offences.

48. Protection is achieved by following the procedures under the Law on Minor Offences. Penalties aimed at protection against domestic violence, set forth in the both Entity Laws on Protection from Domestic Violence, are protection orders or fines in the event of failure of protection orders.

49. Protection orders include 1) removal from apartment, house or other dwelling, and prohibition of returning to apartment, house or other dwelling; 2) prohibition of approaching the victim; 3) ensuring protection of persons exposed to violence; 4) prohibition of harassment or stalking of persons exposed to violence; 5) obligations of psychosocial treatment; 6) treatment of addiction; and 7) community service for the benefit of local communities (measure provided for in the RS).

50. The most common causes of domestic violence are inadequate living conditions, unemployment, financial insecurity, alcoholism, stress, mental illness, drug addiction, and violence as a mode of behaviour, derived from patriarchic views of the relationship between wife and husband. Victims of domestic violence are usually spouses, former spouses, children, parents and other persons living in a household.

51. Although victims of domestic violence may be persons of both sexes, the studies of domestic violence show that women are more often the victims, and men, in most cases, are abusers. In cases of domestic violence, children are normally considered to be victims, regardless of whether they are physically abused or not. Domestic violence leaves the children with very deep effects and trauma.

52. Prevention of domestic violence should be operating at different social levels: government, communities and individuals, with three categories of prevention:

- Primary prevention: prevention of violence (awareness-raising campaigns, training in human rights, syllabi for children and adolescents etc.)
- Secondary prevention: risk factors and risk groups identification, providing help (SOS lines, legal counselling, interpretation of the law, etc.)
- Tertiary prevention: provisions to prevent further violence (direct assistance to victims, shelters, effective police intervention, court proceedings, dealing with bullies)

53. BiH is obliged to respect international human rights instruments which forbid violence in public and private life, and thereby domestic violence. International and national documents are binding for BiH and its entities, obliging them to take all available measures to prevent domestic violence, protect victims as much as possible, and appropriately punish perpetrators.

54. In 2008, the Parliamentary Assembly of BiH adopted the Resolution on Combating Violence Against Women (Official Gazette No. 15/08). The resolution affirms that all forms of violence against women, including domestic violence, violate rights and fundamental freedoms, and prevent or reverse the exercise of these rights and fundamental freedoms. The resolution expresses concern over the lack of progress in protecting and promoting these rights and freedoms in all cases of violence against women.

55. Six safe houses in FBH (Foundation for Local Democracy of Sarajevo, Medica of Zenica, Vive Women of Tuzla, Women from Una of Bihac, BiH Women of Mostar and Caritas of Mostar – Fondacija lokalne demokratije-Sarajevo, Medica-Zenica, Vive Žene-Tuzla, Žene sa Une-Bihać, Žena BH-Mostar and Caritas-Mostar) provide shelter for 244 victims of domestic violence: 194 victims have been accommodated for up to 3 months, and 50 victims have been accommodated for over 3 months. In 2007, 265 victims of domestic violence were accommodated in these safe houses.

56. Besides the accommodation for victims of domestic violence, the activities of NGOs during 2008 in relation to victims of violence included counselling victims of violence, prevention of trafficking, economic empowerment of women, strengthening the capacity of professionals in the institutions, provision of medical services, work with violent persons, media campaigns, etc. In 2008, all of these services had 4,937 direct beneficiaries and the number of indirect beneficiaries was much higher.

57. NGOs in RS have three safe houses: Budućnost of Modriča, Udružene žene of Banja Luka and the Foundation for Education, Development and Social Protection of Children of Prijedor.

58. Currently, the listed safe houses in RS fulfil all requirements prescribed by laws and by-laws and their total capacity is 57 (Banja Luka: 21; Modriča: 16; and Prijedor: 20). The Strategy to Fight against Domestic Violence will determine a model and structures for accommodation of victims of domestic violence, taking into account the recommendation of the Council of Europe which established the standard that there should be a safe house for every 7,500–10,000 people.

59. The mode of funding is prescribed by the Law on Protection from Domestic Violence and, according to Article 4 of the Law on Amendments to the Law on Protection from Domestic Violence, 70 per cent of the funds for accommodation shall be provided from the Entity budget and 30 per cent from the budget of the local community. The funds provided from the budget of the municipality/city are transferred according to victims' place of residence to the relevant centre for social work/social welfare services, which will then transfer the funds to the safe house in which the victim is accommodated. Funds from the Entity budget are transferred to the safe houses directly.

60. The FBH Gender Centre has established an SOS phone line (1,265) to help victims of domestic violence in the FBH. This project was developed in partnership with the Centre for Social Welfare of Jajce, the Foundation for Local Democracy of Sarajevo, "Medica" Citizens' Association of Zenica, Vive Women (Vive Žene) Citizens' Association of Tuzla, Association of Women of Bosnia and Herzegovina (Žena BH) in Mostar and Women from the Una (Žene sa Une), Association of Women of Bihac. The FBH Gender Centre agreed with all telecommunications operators in Bosnia and Herzegovina that calls made to the designated number are free. From the date of the establishment of this phone line (from beginning of December 2008 until 31 December 2009), experts provided assistance to

2,978 victims of domestic violence. It should be noted that non-governmental organizations whose staff provides technical assistance through this service have a major role in the functioning of this line, including ensuring salaries for the staff. Bearing in mind the minimum standards of the Council of Europe for support to the services to assist women victims of violence, and the obligation of the State to establish a helpline in the coming period, the provision of financial resources within the regular government budgets for the costs of this service should be considered.

61. The June 2005 Memorandum of Understanding between four NGOs in the RS and the Gender Centre of Republika Srpska established a single emergency telephone line (1,264) for the entire RS. According to NGOs operating the SOS line — United Women (Udružene žene) of Banja Luka, The Future (Budućnost) of Modriča, Lara Women's Association of Bijeljina and Women's Centre of Trebinje — in five months of 2005 (from the establishment of the hotline until the end of 2005) 1,019 calls related to domestic violence were recorded. In 2006, there were 2,657 calls. In 70 cases, the victims were men and in 2,587 cases the victims were women, and in 88 per cent of cases they were aged from 19–60 years. Two years after the establishment of the SOS line in the RS, there were 1,973 calls of which women were victims in 1,941 cases, and men were victims in 32 cases.

62. In the four years (2006–2010) for which the appropriate courts in the Federation requested data, the Federation of Bosnia and Herzegovina recorded a total of 1,275 cases involving the offence under Article 222 of the Criminal Code of the Federation of BiH. The domestic violence suspects/offenders are far more commonly male. Out of 1,335 the suspects/perpetrators of these crimes, some 1,302 or 97.53 per cent were men, and only 29 or 2.17 per cent were women. The rest were minor perpetrators of these crimes. On the other hand, when it comes to injured parties/victims of these crimes, women were the most common group at 1,005 or 79.87 per cent of the total number of 1,258 injured parties/victims. The number of male victims of domestic violence was 100 or 7.95 per cent. Thus, although much less men are victims of domestic violence, the data shows that there **were** men among the victims of domestic violence. It is interesting that the courts identified children as victims of domestic violence in only 153 or 12.17 per cent of cases involving 68 girls and 85 boys. These figures can be confusing because it is hard to believe that children were victims of domestic violence in such a small number of cases, especially compared with the number of women victims. The logical conclusion would be that the children victims of domestic violence mostly were not recorded or most prosecuted cases of domestic violence involved partner relationships where there were no children or they were not exposed to violence. Reviewing the sanctions imposed on domestic violence perpetrators, we can see that a suspended sentence was predominant, having been imposed in 1,046 cases, or 76.85 per cent of the total number of criminal sanctions imposed for such crimes. Fines were imposed in 143 or 10.50 per cent cases, while a sentence of imprisonment was imposed in 131 or 9.55 per cent cases. Other criminal sanctions were imposed in 42 or 3.08 per cent cases. From the viewpoint of protection orders imposed on behalf of victims of domestic violence against perpetrators, the definition of domestic violence, as set forth in the Law on Protection from Domestic Violence of the Federation of BH, which enumerates all forms of domestic violence, based on which the trial court imposes the statutory protective measures, is very important. These protection orders include removal from apartment, house or other dwelling, prohibition of returning to apartment, house or other dwelling, prohibition of approaching the victim, ensuring protection of persons exposed to violence, harassment or stalking of a person exposed to violence, obligations of psychological treatment, treatment against addiction.

63. According to the data supplied by all 10 cantonal prosecutor's offices in connection with Article 222 of the FBH Criminal Code, 781 criminal charges and 414 indictments were filed, 257 final and binding judgments were rendered, while 284 cases are pending. Women were reported to be victims in 712 cases and men in 66 cases.

64. According to an analysis of the data supplied by 26 Municipal Courts, it is evident that these Courts, in relation to Article 222 of the Criminal Code of FBH, received a total of 399 complaints, of which 323 cases were tried, 177 final and binding judgments were rendered, 73 judgments have not become final and binding yet, and 161 cases are pending.

65. According to the data supplied by all 10 Cantonal Courts, it is evident that in these Courts, 11 cases in 2008 involved allegations of crimes under Article 222 of the Criminal Code of the FBH.

66. Training of judges and prosecutors in the enforcement of laws on protection against domestic violence through programs of the aforementioned centres provides domestic violence training with a special emphasis on the penal policy.

67. Domestic violence as a relatively new type of crime was criminalized for the first time in the FBHCC in August 2003. Prosecutorial and judicial structures formed specialist teams dealing with collecting evidence of these types of crimes, assessing the severity of each case and taking appropriate statutory actions.

68. In order to prevent this type of crime, the Strategic Plan for the Prevention of Domestic Violence in the Federation of BiH (2009–2010) was developed. This document provides for a number of obligations for the Federation Ministry of the Interior – the Federation Police Department to be fulfilled in cooperation with the Cantonal Ministries of the Interior. A Working Group for the development of training and teaching the curriculum for police officers in the Federation BiH in issues of domestic violence and for professional development in this area was established. This group was appointed in a decision by the Minister of the Interior dated 8 January and 20 April 2010 and consists of representatives of the Federation Prosecutor's Office, HJPC, Cantonal Courts in Sarajevo and Tuzla, the Municipal Court of Sarajevo, the Faculty of Criminology, Criminology and Security Studies, the Federation Police Department, the Canton Sarajevo Ministry of the Interior, FBH Gender Centre and Medica NGO of Zenica.

69. So far it has held five meetings and has prepared the curriculum for publication. After the publication, training of 25 police officers will be held at the Police Academy in Sarajevo.

70. We note that in March 2009, the Federation Police Department developed an Action Plan to implement the Strategic Plan for the Prevention of Domestic Violence in the Federation of Bosnia and Herzegovina (2009–2010).

71. The 2007–2008 Action Plan for Fight against Domestic Violence, which was adopted by the RS Government in July 2007, envisages the adoption of the Strategy for Fight against Domestic Violence in the RS for the period 2009–2013. The RS Government and National Assembly have adopted the draft strategy. Consideration and adoption of the draft Strategy is in process. The coordinator of the activities is the Gender Centre of RS and the partners are the Ministry of the Interior of RS, the Ministry of Justice, the Ministry of Health and Social Welfare, the Ministry of Education and Culture, the Ministry of Family, Youth and Sports.

72. The Action Plan also envisaged designing a handbook for the entities providing protection in cases of domestic violence, which has been done. In late 2009, the Handbook for the Prevention of and Fight against Domestic Violence in RS – Procedures by Protection-Providing Entities, which was edited by the Gender Centre of the Republika Srpska, was printed and distributed to the protection-providing entities. The Handbook specifically describes competences of each protection-providing entity in cases of domestic violence. This is the first edition of the Handbook, which provides the basis for cross-sectoral cooperation in the treatment and further improvement of practices in dealing with

cases of domestic violence. The Ministry of the Interior of RS also contributed to developing of the Handbook.

73. Within the Ministry of the Interior of RS there are professionally trained inspectors, dealing with cases of violence against children. There is a designated room for interviewing child victims of violence. The room is furnished in accordance with international standards and provides an environment suitable for children, as well as video and audio recording of the conversation with child victims of violence, in order to avoid further victimization of the victims.

74. Cooperation between the RS Ministry of the Interior and other actors in charge of issues of juvenile delinquency (schools, centres for social work, medical facilities, courts, prosecutors, and other organizations and institutions, governmental and non-governmental sector) is satisfactory.

75. In November 2008, representatives of the Ministry of the Interior, Ministry of Health and Social Welfare, and Ministry of Education signed the Protocol on Procedures for Cases of Bullying among Children and Youth in the Educational System (School Peer Violence). This Protocol aims to strengthen cooperation between the appropriate authorities, and to identify concrete actions of appropriate authorities in cases of bullying.

76. The Ministry of Human Rights and Refugees, in cooperation with Save the Children Norway, has initiated the 2007–2010 National Strategy for the Fight against Violence against Children. The strategy was adopted by the Council of Ministers at the 14th session held on 20 June 2007. This strategy envisages the establishment of a monitoring team for continuous monitoring of the implementation of the National Strategy. In March 2008, the monitoring team made a plan for monitoring the implementation of the 2007–2010 National Strategy for the Fight against Violence against Children and appropriate questionnaires/forms for collecting data on the implementation of the National Strategy to be filled in by all institutions involved in the National Strategy implementation. In 2009, the Ministry of Human Rights and Refugees, in cooperation with the monitoring team, prepared the report on the implementation of the 2007–2010 Strategy for the Fight against Violence against Children in the period from June 2007 to December 2008. The Council of Ministers adopted the Report at the 111th meeting held on 13 January 2010. The monitoring team has been continuing their work in 2010 and are preparing the 2009 second report on the implementation of the 2007–2010 Strategy for the Fight against Violence against Children, which will be forwarded to the Council of Ministers for adoption. The project was implemented in collaboration with Save the Children Norway which formed a Working Group to develop the Strategy for the Fight against Violence against Children, which will cover the period 2011–2014. The Working Group consists of representatives of relevant institutions at the State and Entity levels. Finalization of the Strategy is planned for the end of 2010.

Recommendation No. 13

77. With regard to the recommendation in this paragraph, which clearly specified necessary actions, it should be noted that the following actions have been taken:

(a) In the most recent period there has been an upward trend in the number of judges in the district and cantonal courts, which will ensure faster adjudication of cases pending and help to ensure a sufficient number of staff for the prosecution of war crimes;

(b) The project to introduce the witnesses support department in the district and cantonal courts is being implemented.

78. The previously listed steps have brought about significant progress in terms of prosecuting war crimes cases before the district and cantonal courts. Also, when it comes to implementation of the entity laws on the protection of witnesses under threat and vulnerable witnesses, the Court of BiH has recently made considerable efforts to share their experiences and prevent the problems that have arisen in the initial phase of implementation of this legislation.

79. Furthermore, it is important to note that in Bosnia and Herzegovina in late 2008, the Council of Ministers adopted the National War Crimes Prosecution Strategy. The strategy provides a systematic approach to solving a large backlog of war crimes in the courts and prosecutor's offices of Bosnia and Herzegovina. This document defines the timelines, capacities, criteria and mechanisms for war crimes cases management, standardization of jurisprudence, issues of regional cooperation, care and support to victims and witnesses, as well as financial aspects, and supervising the implementation of the Strategy.

80. The strategy emphasizes a need to process the most complex and most sensitive war crimes cases within the next seven years, and the prosecution of other war crimes within a period of 15 years. A central database of all war crimes cases in BiH will be developed in the Court and the Prosecutor's Office of BiH. At the same time, a functional case management mechanism, i.e., a system to assign cases between the State and Entity courts will be set up. The most accountable war criminals will be prosecuted as a matter of priority before the Court of BiH, the cases being selected according to agreed criteria for selection of cases. The harmonization of jurisprudence in war crimes cases is to be achieved to ensure legal certainty and equality of citizens before the law.

81. The implementation of the above-mentioned strategy has started in accordance with approved criteria and the cases are being transferred to the district and cantonal courts. Also, in order to ensure adequate legislation, amendments will be made to the Code of Criminal Procedure (Official Gazette No. 93/09), which governs in detail the procedure for transferring cases involving crimes against humanity and values protected by international law.

82. IPA 2009 has planned activities requiring a total of EUR 1.8 million to strengthen the capacity of cantonal and district courts to prosecute war crime cases, as the main objective. The main activities are to ensure physical infrastructure for the processing of war crimes in at least 10 cantonal/district courts and to supply and install video equipment for the war crimes trials in at least 10 cantonal/district courts.

83. UNDP, in cooperation with HJPC, is implementing a USD 1.4 million project, with the main goal of building capacity for the successful conduct of investigation, indictment and trials of war crimes in Bosnia and Herzegovina. This project includes training of judges and prosecutors in the cantonal/district and entity courts and prosecutor's offices in prosecution of war crimes, support to the establishment of a witness-protection network, training of judges and prosecutors of the Court and Prosecutor's Office of BiH, and active regional cooperation and issues of the ICTY legacy.

Recommendation No. 14

84. With regard to the Missing Persons Institute of BiH, it should be noted that there have been significant positive developments.

85. The Parliament of BiH adopted the Law on Missing Persons in November 2004 (Official Gazette No. 50/04), as the only legal document of its kind in the world, which sets forth the principles for improving the process of searching, the definition of a missing person, the manner of keeping central records, the exercise of entitlements and other rights of family members of missing persons. The Law, *inter alia*, takes into account the

International Covenant on Civil and Political Rights and the 1992 UN Declaration on the Protection of All Persons from Forced or Involuntary Disappearance. Thereafter, the international agreement on Assuming the Role of Co-founders of the Missing Persons Institute of BiH was signed and ratified by the Council of Ministers of BiH and the International Commission for Missing Persons, based in Sarajevo (Official Gazette – International Treaties, No. 13/05), establishing the Missing Persons Institute of Bosnia and Herzegovina (hereinafter the Institute).

86. Although the Institute started work on 1 July 2007, it only became fully operational, staffed and equipped a year ago. Despite many difficulties, obstacles and obstructions by individuals and the institutions over the past nearly three years of its existence, the Institute, in cooperation with the International Commission on Missing Persons (hereinafter ICMP), the International Committee of the Red Cross (hereinafter ICRC), the Court and the Prosecutor's Office of BiH, Entity and Brčko District Prosecutor's Offices, State and Entity police and intelligence authorities and agencies, forensic experts, the companies that provide utility and burial services, demining and mountaineering teams, numerous witnesses and families of missing persons, has managed to locate and exhume the remains of about 2,700 missing persons.

87. In the same period of time, the remains of 2,584 missing persons were identified and handed over to their families.

88. The above-mentioned data suggests that out of 27,794 registered missing persons, so far more than 20,000 have been found, and more than 17,500 missing persons have been identified, which makes 72 per cent of the total number of registered missing persons.

89. The ratio of identified and found persons is 87.5 per cent. So, currently, approximately 8,000 more missing persons are still being searched for and some will never be found, such as the ones burned, thrown to the bottom of rivers and lakes, etc. In other words, about 10,500 missing persons (8,000 still missing, and 2,500 people found but yet unidentified) are still pending.

90. Comparing the above-mentioned figures with those from the 2006 report of the UN Human Rights Council, which stated that 15,000 people were still believed missing, the accepted view is that a significant step has been made in a positive direction.

91. The issue of the causes and circumstances of disappearance (death) of missing persons should be considered separately from the process of searching for the missing. Resolving this issue is within the exclusive competence of judicial and police institutions, including the International Criminal Tribunal for Former Yugoslavia (ICTY).

92. Significant assistance in the identification of victims has been provided by the ICMP (DNA analysis laboratories) and ICRC (AMDB – ante-mortem database).

93. When it comes to verification of the primary database, i.e. developing the Central Records of Missing Persons (hereinafter CRMP), the Institute has recently obtained access to all necessary databases (ICMP, ICRC, Federation Commission for Missing Persons, RS Office on Missing and Captured Persons), all necessary by-laws have been adopted for effective enforcement and protection of the verification process of the CRPM, and the establishment of the Verification Commission which has started work.

94. In order to implement the Law on Missing Persons in full, numerous by-laws have been adopted, including:

- Rulebook on the Marking of the Exhumation and Burial of Missing Persons (BiH Official Gazette No. 83/06)
- Decision on the Establishment of the Fund to Support Families of Missing Persons in BiH (BiH Official Gazette No. 96/06)

- Rulebook on the Receipt, Recording and Delivery of DNA Reports, adopted in 2008 by the Board of MPI
- Rulebook on the Use of Funds of the Institute for Missing Persons for the Exhumation and Identification, adopted in 2008 by the Board of MPI
- Rulebook on the Central Records of Missing Persons (BiH Official Gazette No. 80/09)

95. The Institute has also enacted the Guidelines on Security and Protection of Information System of the Central Registry of Missing Persons (BiH Official Gazette No. 02/10), governing the security goals of the Central Information System of Records, organization of protection, and measures and means to protect the security and their implementation.

96. The establishment of the Fund for Missing Persons intended to support families of missing persons of BiH (hereinafter the Fund) is an exclusive competence of the Council of Ministers and Governments of FBH, RS and Brčko District.

97. Unfortunately, despite the fact that some of these by-laws, whose enactment is within competence of the above-mentioned governments, the Fund, to this date, has not become operational due to a lack of consensus on the mode of its funding and where it is going to be based.

Recommendation No. 15

98. In the reporting period, i.e. from 2004 to 2010, amendments to the legislation which has improved the position of the victims of torture and civilian war victims, and persons with disabilities in general have been adopted. This particularly applies to camp detainees and victims of sexual abuse and rape. However, the existing legal framework has significantly extended discrimination among people who have already achieved the status of disabled persons, particularly, between disabled war veterans, civilian victims of war, disabled civilians and disabled workers, whereby the latter are placed in the worst position. An analysis of the situation, as a whole, shows that the entitlements granted on the basis of employment (to pensioners, disabled workers, etc.), pursuant to pension and disability schemes are lower than the entitlements granted on the basis of social welfare schemes (disabled war veterans, civilian victims of war, disabled civilians) in FBH.

99. The chapter of the Law on Amendments to the Law on Basic Social Protection, Protection of Civilian Victims of War and Families with Children (FBH Official Gazette No. 39/06) relating to the civilian victims of war came into effect on 1 September 2006.

100. This Law determines that civilian victims of war are persons who, during a war or imminent threat of war, sustained a body impairment of at least 60 per cent, family members of civilian victims of war, camp detainees, victims of sexual abuse and rape, and servicemen of armed forces of the former so-called "AP Western Bosnia".

101. Reasons for the adoption of these amendments were non-implementation and different implementation of the legislation governing the entitlements of civilian victims of war in the cantons of FBH, according to the Law on Basic Social Protection, Protection of Civilian Victims of War and Families with Children (FBH Official Gazette No. 36/99), which used to divide competences of the Federation and cantons in the field of social protection, i.e. provided that funding of social protection was solely within competence of cantons.

102. Three cantons in FBH were not paying benefits to civilian victims of war and their families in pursuance of the previous legislation (Herzegovina-Neretva Canton, Posavina

Canton and Canton 10), while the remaining 7 Cantons paid the benefit fees in pursuance of cantonal legislation in different amounts.

103. Because of this situation, the question of unification of entitlements granted to the civilian victims of war and funding of the entitlements from the budget of the FBH was set as a matter of priority in the Strategy for Social Assistance Reform in FBH, for which they obtained consent of all Cantons in the FBH.

104. The Federal Ministry of Labour and Social Policy prepared the draft amendments, in collaboration with the World Bank, determining the base for the exercise of benefits in the amount of BAM 213.00, with the possibility of cantons' increasing the amount of the allowances for personal disability, care and assistance of another person, orthopaedic disability, and family disability, depending on their economic power. However, after having received numerous amendments to the draft law proposed by the appropriate ministry and the Government of FBH, which were submitted by associations and NGOs in the parliamentary procedure, the Parliament of FBH adopted a base that is applied to disabled war veterans' entitlements to be applied to the payment of benefits to the civilian victims of war. Also, the Law has introduced new groups of beneficiaries – camp detainees, victims of sexual abuse and rape and servicemen of the so-called “AP Western Bosnia”, although the earlier legislation allowed the exercise of entitlements to persons who fulfilled the legal requirements.

105. Besides the adoption of the base for benefits paid to civilian victims of war in the amount equivalent to 70 per cent of the base paid to disabled war veterans, the Law on Amendments to the Law stipulates that the entitlements of civilian victims of war should be exercised in a manner and procedure provided for by law. Therefore, any application for entitlement is decided by the centre for social work as a body of first instance, while a review of the decision, i.e. the appellate proceedings, and payments to beneficiaries are conducted by the cantonal ministries responsible for social policy.

106. The exercise of entitlements is funded from the Federation budget and the cantonal budget in the amount of 50 per cent and 20 per cent respectively, of the base of disabled war veterans' benefits of the same category.

107. In accordance with the Law, the Federal Minister of Labour and Social Policy enacted by-laws for the law enforcement, namely, the Rulebook on the Body Impairment Rating of the Civilian Victim of War and Earning Ability Loss Assessment of the Family Members of the Civilian Victims of War in the Proceedings of Exercising of the Entitlements, the Instruction on the Manner of Allowances Payment to the Civilian Victim of War, and the Manner of Keeping Records of Beneficiaries (FBH Official Gazette No. 56/06) and Instructions on the Recognition of the Status of Civilian Victims of War (FBH Official Gazette No. 62/06), which was drafted in cooperation with associations of civilian victims of war, camp detainees and victims of sexual abuse.

108. According to the records of the Federal Ministry of Labour and Social Policy in the FBH, 8,288 civilian victims of war were recorded in late 2005. During the implementation of the Law in 2009, 10,943 beneficiaries were recorded who received payments as follows: 4,512 received personal disability allowance; 5,709 received family disability allowance. Also, 612 individuals received a single allowance per month, which is a personal cash benefit, as a victim of sexual abuse and rape.

Legal status of victims of torture, camp detainees, victims of sexual abuse and rape

109. Article 54 (1) of the Law on Basic Social Protection, Protection of Civilian Victims of War and Families with Children provides for the status of civilian victim of war to be granted to a camp detainee, if the person has “sustained a bodily impairment of at least 60% or significant deterioration in health due to torture, inhuman and degrading treatment,

unlawful punishment, unlawful detention, imprisonment, concentration camp, internment, forced labour during the war or imminent threat of war.” The base for determining benefits to be paid to civilian victims of war is 70 per cent of the monthly amount of personal disability allowance paid to disabled war veterans; in 2008 this amounted to BAM 563.95.

110. Article 54 (3) defines the status of civilian victims of war by the following wording: “a special group within the group of civilian victims of war are persons who were victims to sexual assault and rape.” Article 59 (2) provides for a monthly personal cash benefit for persons under Article 54 (3) of this law, amounting to 70 per cent of the base that is applied to disabled war veterans’ entitlements (BAM 563.95), as a single cash benefit in 2008.

111. It should be noted that even under the previous legislation, camp detainees and victims of sexual abuse and rape had the possibility of exercising entitlements under the law respecting civilian victims of war and that even then, the prerequisite was bodily impairment of at least 60 per cent. Under this law, a victim of sexual abuse and rape is required to submit findings, an opinion and assessment by a medical board of the Institute for Medical Expertise of Health Condition, without establishing the degree of disability.

112. Also, in 2009 in Una-Sana Canton, there were a lot of proceedings for granting the entitlements under the law respecting civilian victims of war, which involved servicemen of the armed forces of “AP Western Bosnia” and their families, who were deliberately obstructed from collecting the necessary documentation and in other ways hindered and denied the entitlements of civilian victims of war and victims of sexual abuse and rape for many years after the war. This process is slow, but it started after numerous interventions of the Federal Ministry of Labour and Social Policy vested into it through the competence of administrative supervision, inspection control and other activities.

113. Omissions were noted in the Law on the Protection of Civilian Victims of War and Their Families, for example, in exercising the entitlements by previous beneficiaries – returnees to Republika Srpska, where applications for the status of civilian victim of war could not be filed after late 2007, and Article 76a of the Federation Law that revokes the entitlements of the beneficiaries if they leave Bosnia and Herzegovina for more than three months is questionable, too.

114. It is well known that most victims of sexual abuse and rape left Bosnia and Herzegovina for a number of reasons, mostly for not being able to protect privacy and what they lived through in a community that is traditional and loaded with prejudices.

115. Due to the inability to ensure data protection, both in government agencies conducting the proceedings and in the associations that were established to provide assistance to these victims of war, only a small number of women qualified for a monthly allowance, a personal cash benefit in the amount of BAM 563.95.

116. There are reports that due to the situation of lack of protection of data, a certain number of raped and abused women and men hide behind the entitlement to personal disability allowance granted to the first group of civilian victims of war, with 100 per cent impairment. However, it still remains the problem of non-compliance with Article 18 of the Law on Gender Equality of the BiH (BiH Official Gazette No. 16/03), because there is no classification of statistical data by gender in the legislation governing the matter of persons disabled in peacetime and civilian victims of war.

117. The current database of civilian victims of war and their families in the FBH still lacks the possibility for collecting, recording and processing of beneficiaries by sex, age, ethnic, territorial and other statutory criteria for monitoring and reporting.

Effects on overall situation and forthcoming reform

118. It is necessary to point out a few facts that are important for understanding the situation in the field of social protection in the FBH.

119. Because of the vagueness of legal provisions, there are permanent demands for definition of new groups of beneficiaries of the entitlements, and an increase in allowances exceeding the specific norms, applicable standards and known practices in the field of social protection.

120. The amount of financial benefits in the FBH in comparison with the Republika Srpska and Brčko District was higher by nearly 100 per cent, which will considerably complicate the harmonization of legislation and social benefits throughout BiH – a prerequisite for reform in this sector.

121. In addition, the persons whose disabilities are found to be a result of imprisonment in a camp were granted the entitlements under the legislation regulating entitlements of war veterans, disabled war veterans and civilian victims of war, while the status of civilian victim of war and the entitlements it carries should be granted to other persons presenting evidence under Article 54 of the Law, but they cannot get financial benefits.

122. It should be noted that the adopted amendments to the Laws on Social Protection in the Federation have further increased discrimination against persons with congenital and acquired disabilities in favour of persons with disabilities as a result of war (disabled war veterans, civilian victims of war, camp detainees, etc.).

123. At the same time, 50 per cent of the needy population in FBH is totally excluded from social protection system, i.e. children, the unemployed, the elderly without family care, families with more children, single parents, ethnic minorities, etc.

124. The requirements that the reform of the social sector sets for the BiH government to approximate the system to the European Union standards include the following:

- Establishment of a unified legal framework for the entitlements of all war veterans, so that they can have more equal entitlements and financial benefits, better control can be achieved, and double dipping prevented
- By reforming the social sector as a whole, harmonization of the entitlements and allowances achieved on the basis of employment, social insurance and social protection and solidarity

125. In the Republika Srpska, there is no specific Law regulating the status of victims of torture as a specific group. However, this group of persons may, under certain conditions, achieve the status and entitlements under the Law on the Protection of War Veterans, People with Disabilities and Civilian Victims of War. Depending on whether a person died as a soldier or a civilian, his/her entitlements may be exercised in accordance with the valid legislation of the Republika Srpska, namely the Law on the Entitlements of War Veterans, Militaries with Disabilities and Families of Soldiers Fallen in the Fatherland War of the Republika Srpska (RS Official Gazette No. 55/07 – consolidated text, 59/08 and 118/09) and Law on the Protection of Civilian Victims of War (RS Official Gazette No. 24/10). This group of persons is specified by law as equal to the other groups of persons in terms of achieving the status and entitlements.

126. An application for recognition of the status and entitlements is submitted to the municipal/city administrative authority responsible for the protection of war veterans and civilian victims of war, by place of residence, to which appropriate documentation is attached.

127. Specific conditions for obtaining the status of disabled war veteran under the Law on the Entitlements of War Veterans, Militaries with Disabilities and Families of Soldiers Fallen in the Fatherland War of the Republika Srpska are bodily impairment of at least 20 per cent caused by wounds or injuries, determined by a medical board on the basis of medical records about treatment that cannot be older than one year after the termination of military service, or bodily impairment of at least 40 per cent caused by disease, determined by a medical board on the basis of medical records that can not be older than one year after discharge from the armed forces or cessation of the captivity.

128. A person who has a bodily impairment of at least 60 per cent caused by abuse, rape and deprivation of liberty (prison, concentration camp, internment, forced labour), determined by a medical board on the basis of medical records about treatment that dates back to not more than one year from the date of impairment or cessation of the circumstances under which the impairment occurred, can obtain the status of civilian victim of war under the Law on the Protection of Civilian Victims of War.

129. The most important entitlements under the Law on the Entitlements of War Veterans, Militaries with Disabilities and Families of Soldiers Fallen in the Fatherland War of the Republika Srpska are granted to disabled war veterans (regardless of the circumstances when disability occurred):

- Monthly allowance (for personal disability, supplemental financial assistance, care and support, orthopaedic)
- Health care (medical costs fully covered)
- Orthopaedic aids (in accordance with health care legislation)
- Spa rehabilitation in special rehabilitation program approved by the Government
- Priority in housing allocation (disabled war veterans in I to IV groups)

Family members of killed, missing or deceased combatants receive:

- Family disability allowance
- Health care (medical costs fully covered)
- Refund of funeral costs of exhumed combatant
- Spa rehabilitation in special rehabilitation program approved by the Government
- Priority in housing allocation
- Refund of costs of building tombstone
- Allowance to family of a combatant who was awarded a medal

Entitlement to protection under the Law on the Protection of Civilian Victims of War:

- Civilian disability or family disability allowance
- Allowance for care and assistance of another person (the first group is the only group having this entitlement)
- Allowance for family members incapable of work
- Additional financial assistance
- Allowance for a single parent
- Health care
- Professional rehabilitation

Assessment of military/civilian disability based on mental illness

130. In determining the status of disabled war veteran and the status of civil victim of war, PTSD is taken into account under certain circumstances. Assessment of military/civilian disability is based on the Rulebook on Determining the Military Disability Rating (RS Official Gazette No. 31/10).

131. Cash benefits under the Law on the Entitlements of War Veterans, Militaries with Disabilities and Families of Soldiers Fallen in the Fatherland War of the RS, and the Law on Protection of Civilian Victims of War.

132. According to the Law on the Entitlements of War Veterans, Militaries with Disabilities and Families of Soldiers Fallen in the Fatherland War of the Republika Srpska, the base for the calculation of monthly benefits is established by law at BAM 500.00. This base has been used for calculations since 1 May 2008.

Data on civilian victims of war in Bosnia and Herzegovina

<i>Federation of BiH</i>	<i>Number</i>
Families of people killed	5 790
Persons with disabilities (from 60% to 100%)	5 153
Total	10 943 civilian victims of war
<i>Republika Srpska</i>	
Civilian personal disability allowance Group I	87
Civilian personal disability allowance Group II	131
Civilian personal disability allowance Group III	83
Civilian personal disability allowance Group IV	219
Civilian personal disability allowance Group V	423
Civilian personal disability allowance Group VI	822
Family disability allowance of killed civilian victims of war	1 770
Family disability allowance of deceased civilian victims of war	290
Total	3 825
<i>Brčko District</i>	
Beneficiaries of family disability allowance	160
Total	160
Grand Total	14 928

Source: Federal Ministry of Labour and Social Policy and the Ministry of Labour and Protection of War Veterans and People with Disabilities, Republika Srpska.

Recommendation No. 16

133. Awareness of human trafficking in BiH is poor. However, as it is correctly stated in the recommendations, the problem lies in the effective cooperation of the judiciary and law enforcement. Significant steps in this direction have been made and they have already produced concrete results. Several criminal cases of human trafficking have been closed. A number of cases are pending before court, and some are in the process of deciding on the appeal. It should further be noted that, as a rule, the crime of human trafficking is

accompanied by the criminal offence of smuggling of persons. In this field, there has also been a significant progress in communication and cooperation between judicial authorities, so the time required for decisions by the courts on the prosecutors' proposals has significantly shortened. It should be noted that the cooperation with relevant authorities in neighbouring countries has significantly improved, which allows tracking down of organizations dealing with human trafficking and smuggling.

134. In 2008, BiH ratified the European Convention on Action against Trafficking in Human Beings. It intends to harmonize national legislation with international standards by amending the Criminal Code of BiH (in force in May 2010), which completely revised the wording of the criminal offence of trafficking. Domestic legislation introduced a new crime, "organizing a group or association for commission of the crime of human trafficking and migrant smuggling" (Article 189a).

135. When it comes to cooperation between judicial authorities, we can say that significant progress has been made. However, there is still an open question of including other institutions in this matter, and cooperation of the Entity with State police agencies.

136. In the criminal legislation of BiH, criminal offences alleged to have been linked to human trafficking are classified in the chapter of crimes against humanity and values protected by international law. The crime of trafficking is defined in Article 186 of the BHCC, which is aligned with the Palermo Protocol (Transnational Convention against Organized Crime amended by two protocols, one of them relating to the prevention, suppression and punishment of trafficking, especially in women and children). In the Entity-level legislation there are related offences, such as Article 210 of the FBHCC (soliciting for prostitution/pandering), Article 198 of the RSCC – (trafficking in human beings for prostitution), and Article 207 of the Brčko District CC (soliciting for prostitution/pandering).

137. In January 2010, on the proposal of the Council of Ministers, the Parliamentary Assembly of BiH amended the Criminal Procedure Code. There was a change in Article 186 of the Criminal Code of BiH, which is now fully compliant with the European Convention for the Suppression of Trafficking in Human Beings. The definition of the crime has been changed, and the penalties for the crime of trafficking have been tightened. Punishment of persons who use the services of victims of trafficking has been introduced. The system of confiscation of proceeds of this type of crime has been improved and closure of premises used for commission of this crime has been provided for. Also, Article 100 of the Law on Amendments to the Criminal Procedure Code provides for an obligation of authorities of the Federation of BiH, Republika Srpska and Brčko District to amend their criminal codes within 90 days of entry into force of the Criminal Code of BiH, which has been done.

138. In May 2008, the Council of Ministers considered and adopted the third National Action Plan for Combating Trafficking in Human Beings for the period 2008–2012. The new plan defines clear obligations that relevant institutions must fulfil in the next five-year period (2008–2012), in order to increase the performance of the criminal prosecution of traffickers and to improve standards of protection of victims of trafficking based on the latest international standards for the protection of human rights. The new National Action Plan for Combating Trafficking further elaborates the objectives in the fight against trafficking and clearly defines measures to achieve the objectives in the following areas: systems of support, prevention, protection and assistance to victims and witnesses, prosecution and international cooperation. The Action Plan is based on a comprehensive approach and includes three segments: prosecution, protection of victims of trafficking and prevention, with an emphasis on protection of domestic victims of trafficking.

139. In early 2009, the Rulebook on the Structure of the Ministry of Security was adopted, in which the Office of the State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration became the Department for Combating Human Trafficking within the Division of International Cooperation. In this way, permanent funding was ensured for the activities of the Department for Combating Human Trafficking from the budget of the Ministry of Security.

140. When it comes to the State budget, it should be noted that each year funds are planned in the Ministry of Security and the Ministry for Human Rights and Refugees, which are appropriated for programs to help victims of trafficking. In its 2009 budget, the Ministry, in collaboration with the Department for Combating Human Trafficking, ensured BAM 45,000 in support to the NGOs to provide direct assistance to victims of trafficking. The Ministry of Security earmarked BAM 100,000 in its budget for safe houses which provide accommodation and support to foreign victims of trafficking.

141. In 2008, the Judicial and Prosecutorial Training Centres of the Federation of BiH, Republika Srpska and Brčko District, in cooperation with the State Coordinator and the International Organization for Migration, and with the support of the US Agency for International Development, created and published a manual for judges and prosecutors, entitled "Human Trafficking – Prevention and Protection in BiH". Within the same project, training of judges and prosecutors took place, with the participation of police and representatives from social welfare services. During the training, participants shared their experiences and decided on the best possible solutions for gathering evidence and prosecuting trafficking cases, while providing care and protection to victims.

142. As in past years, the main trends of trafficking in 2009 were stagnation of the total number of identified victims, a small number of foreign victims, and increase in the number of identified victims of domestic trafficking.

143. Within the Department for Combating Organized Crime and Inter-cantonal Crime, the Federation Police Administration established the Department to Combat Human Trafficking, Sexual Offences, Juvenile Delinquency and Domestic Violence. The Department continuously monitors, among other issues, the situations of human trafficking and domestic violence.

144. A Strategy for the Fight against Corruption in BiH (2009–2014) and a Strategy for Combating Organized Crime in BiH (2000–2012) were adopted.

145. Through regular training and specific training courses, police officers in the Federation Police Administration were continuously engaged in training in the fight against all forms of organized crime, corruption, money laundering and other types of crime.

146. Some progress has been made in the field of combating human trafficking, but continuous efforts are still necessary to ensure proper investigation and punishment of crimes in this area.

147. Bosnia and Herzegovina has started to implement the 2008–2012 National Action Plan to combat human trafficking. Criminal offences involving trafficking are defined in the Criminal Code of BiH, which is consistent with relevant international instruments ratified by BiH.

148. Beside the Federation Police Administration, the Cantonal Ministries of the Interior are working on this matter, and successfully cooperate with other security agencies in the FBH and BiH.

149. In 2009 the Federation registered two cases of trafficking, and one case of smuggling of persons (in 2008, one case of trafficking and five cases of smuggling were recorded).

Statistics for 2005–2009 are as follows:

- 2005: Non-governmental organizations that signed protocols on cooperation with the Ministry of Security on the protection of victims of trafficking and managing shelters for victims offered temporary accommodation, assistance and protection to 66 potential victims of trafficking
- 2006: Based on data collected by the actors involved in combating of trafficking, a total of 71 victims of trafficking were identified
- 2007: An analysis of data collected from non-governmental organizations, law enforcement agencies and prosecutors shows that in 2007, 41 people were identified as victims of trafficking for prostitution
- 2008: An analysis of data collected from non-governmental organizations, law enforcement agencies and prosecutors shows that in 2008, 33 people were identified as victims of trafficking/incitement to prostitution
- 2009: According to data collected by prosecutors, law enforcement and non-governmental organizations, which are required for submitting the annual report on the trafficking situation in Bosnia and Herzegovina, in 2009, a total of 69 potential victims of human trafficking/incitement to prostitution were identified

150. In the fight against the exploitation of children, particularly children of Roma and other national minorities, in street begging, it is necessary to take measures in accordance with the Law on Offences against Public Order and the applicable municipal ordinances. Perpetrators of the offence of begging are usually legally incompetent persons or minors. Taking measures and actions within its competence, in accordance with the law, police officers are required to submit a report on every action and measure involving a minor to the appropriate local Centre for Social Work for further proceeding and, upon request, to provide assistance and achieve required cooperation with the appropriate local social welfare services.

151. Monitoring this issue it has been observed that people who beg, incite to begging or organize these illegal activities are mainly people assumed to be Roma without permanent residence, and often people from other cantons, the Republika Srpska and even neighbouring countries.

152. It is important to mention that disturbances of public order and peace by so-called *perači* (people cleaning windshields at traffic lights) can also be associated with disturbances of public order and peace by begging.

153. In order to combat this activity, the Canton Sarajevo has a Day Care Centre for children caught in the vagrancy or begging on the street.

154. There is good cooperation with Roma associations whose representatives are included in monitoring the activities of their members and organizing courses of training in this activity as a negative social phenomenon.

155. In 2009 and the first five months of 2010, the Republika Srpska did not record any trafficking in people. In 2008, one case of human trafficking was recorded (charges were filed against three persons), while in 2007, no such crime was reported.

156. In the first five months of 2010, the Republika Srpska recorded one case of trafficking for prostitution, which was solved (charges were filed against 17 persons). In 2009, 3 cases of trafficking for prostitution (charges were filed against 4 persons) were recorded, in 2008, there were 5 cases, which were all solved (charges were filed against 4 persons), in 2007, 5 cases were recorded, and all were closed (charges were filed against 9 persons).

157. In April 2008, the Rulebook on the Structure and Job Descriptions of the Ministry of the Interior of Republika Srpska was enacted by the Minister of the Interior of Republika Srpska. It established a team for the prevention of human trafficking within the Special Investigation Unit of the Criminal Police of the Republika Srpska, consisting of four employees who have the status of specially authorized police officer.

158. In their work on trafficking, officers of the Ministry of the Interior of Republika Srpska adhere to the 2008–2010 Action Plan for Prevention of Trafficking in BiH, which was passed by the Council of Ministers. This plan is a strategy at the State level.

159. Today, in the Republika Srpska, trafficking occurs for sexual exploitation or prostitution and is mostly committed by traffickers who procure underage girls, mainly from the Republika Srpska and Bosnia and Herzegovina, generally from weak and needy families, which are the circumstances of great benefit to the traffickers when recruiting underage girls who are later abused in prostitution for the traffickers' benefit – financial or otherwise.

160. Article 198 of the Criminal Code of Republika Srpska provides for the crime of trafficking for prostitution for profit, and states that whoever, for profit, encourages or entices another person to provide sexual services, or otherwise provides sexual services to another person, or is in any way involved in organizing or managing the provision of sexual services, shall be punished by imprisonment from six months to five years. Whoever, for profit, by force or threat of force or causing significant damage, or by fraud or coercion, entices another person to offer sexual services, shall be punished by imprisonment from one to five years. The punishment shall be also imposed on whomever, for profit, as specified in the previous paragraph, using the difficult situation arising from the residence of a person in a foreign country, compels or induces a person to provide sexual services, or hires in a professional way another person to induce the person. If the acts under the preceding paragraphs are made with regard to *a child or a juvenile*, the offender shall be punished by imprisonment from one to twelve years.

Recommendation No. 17

161. This recommendation specifically draws attention to the possibility of police detention of up to 72 hours and to the fact that detainees are not always informed of their rights, especially regarding the right to legal representation and disclosure of the Prosecutor's motion for custody.

162. Current legislation provides for police detention of up to 72 hours. However, it should be noted that these are exceptions. Specifically, a general detention term is a 24-hour period in which police authorities have an obligation to bring a person deprived of liberty before a prosecutor. However, in cases where a person is suspected of terrorism, there is the possibility of holding him/her up to 72 hours. Therefore 72 hours detention is an exception to the rule applied to only one type of criminal offence and, according to past practice (due to awareness of police authorities of the delicate nature of the matter of deprivation of liberty), the police authorities are extremely compliant and bring the detainees as soon as they can before the prosecutor. Such practices often cause many problems of a technical nature because the prosecutor on duty is unable to question the suspect during working hours so this causes overtime work for prosecutors as a growing practice.

163. Informing detainees of their rights is always a problem, especially in cases where the detainee does not want to cooperate (does not want a lawyer to be appointed as *ex officio* counsel). Significant progress has been made in this area, however. In accordance with amendments to the Criminal Procedure Code, a suspect must have a lawyer during pleading

on a motion for custody. This is an important progress, contrary to the earlier rule whereby detainees immediately after having been ordered to be kept in custody, had to have an *ex officio* counsel.

164. The new legislation provides that all persons, before placement in custody, must be informed about the right to *ex officio* counsel (representation), in accordance with which the defence counsel can effectively use all legal remedies available. Furthermore, regarding the issue of informing the suspect about a motion for custody, it must be clarified that, before a hearing, all suspects receive a written motion for custody and the only possible problem might be that the suspects are denied access to the evidence. The reason for this possibility lies in the fact that numerous pieces of evidence relate to several people, so full disclosure of evidence could have negative implications for the investigation being conducted against other suspects. However, in a situation of denying access to certain evidence, the prosecutor is required to deliver them to the court so that the court could adequately inform the defence counsel.

165. Finally, it should be noted that several activities are taken to raise awareness of law enforcement officers about the rights of persons deprived of liberty and equality of arms and that any departures may be made solely in accordance with the law and statutory procedure, during which the adoption of appropriate decisions by judicial authorities is necessary.

166. The Federation Police Administration has established a detention facility that is equipped in line with the applicable standards. In addition, the cantonal Ministries of the Interior (police) have established detention units.

167. The Criminal Procedure Code of the Republika Srpska defines the rights of all persons in criminal proceedings. Article 5 clearly provides for the rights of persons deprived of their liberty, stating that a person deprived of freedom must be immediately informed, in his native language or in a language he understands, of the reasons for his apprehension and instructed before the first questioning that he is not obliged to give testimony or to answer questions, that he has the right to defence counsel whom he can choose as well as the right to inform his family, consular officer of the foreign country whose citizen he is or other person he designates about his detention. A person deprived of liberty will have an attorney appointed *ex officio* at his request, if he is indigent and cannot bear the costs of defence. Article 12 of the CPC clearly states that the suspect or the accused or another person involved in proceedings who, out of ignorance, could miss some action in the proceedings and because of that not exercise their rights, will be instructed about their rights under the law and the consequences of failure to take the action by the court, prosecutor or other agencies which participate in the proceedings.

Recommendation No. 18

168. BH in some ways accepted the recommendations and deleted from the Criminal Procedure Code the possibility of custody on the grounds of protection of public security or property. Contrary to the earlier statutory provision, a possibility has been introduced that the court in exceptional circumstances, when an offence carries a punishment of imprisonment of 10 years or more and is particularly serious given the manner of commission or the consequences and where the release poses a realistic threat to public order, can order to put the suspect in custody. As we can see, the new provision provides for much harsher requirements, and requires clear lines of arguments in relation to certain aspects of detention in accordance with this statutory provision. In practice, detention on this ground is ordered in war crimes and genocide cases and some cases of organized crime. Sometimes it is a situation where different organizations, groups and even some members

of staff of State institutions are behind the crime and where a large number of individuals are involved in the commission of the offence.

169. Thus, the new statutory provisions are an attempt to reconcile the everyday needs of BiH life (especially regarding the need to prosecute people charged with war crimes) and the rights of suspects arrested. In this regard it should be noted that in recent years a large number of decisions of the Court of BiH on detention in accordance with Article 132 (1) (d) of the CPC of BiH has been sustained by the Constitutional Court.

170. Finally, regarding the custody orders in general and also under Article 132 (1) (d), more frequent use of restrictive measures that ensure the successful conduct of proceedings should be noted.

171. The custody orders under Article 132 (1) (d) are most commonly replaced by an order prohibiting attendance at public gatherings and restrictions on leaving the place of residence.

172. Article 132 (d) of the Criminal Procedure Code which regulates the order for investigative custody of persons suspected of criminal offences punishable by imprisonment for a term of ten years or more, based on the discretion of the judge that the grounds of protecting public safety or property require such detention.

173. At the 29th session of the House of Representatives, held on 14 May 2008, and the 18th session of the House of Peoples, held on 4 June 2008, the Parliamentary Assembly passed the Law on Amendments to the Criminal Procedure Code to amend Article 132, paragraph (d), which was published in the BiH Official Gazette (No. 58/08).

174. Following these amendments to the Criminal Procedure Code, Article 132 (d) reads: "in exceptional circumstances, if the criminal offence is punishable by a sentence of imprisonment of ten years or more, where the manner of commission or the consequence of the criminal offence requires that custody be ordered for the reason of real threat to public order." The above wording states that detention in this case may be ordered only if there is a real threat to public order and the vague provision of "public and property security" has been deleted.

175. Amendments to the BHCPC were approved by the OSCE in BiH. The above has met the Committee's recommendation to delete the ambiguous concept of "public and property security."

Recommendation No. 19

176. The Detention Unit at the State level, which was established in May 2005, is under the Ministry of Justice. It is intended to accommodate 20 people – detainees assigned by decision of the Court of BiH. The Detention Unit meets all European standards: rooms are 13m² in area, with private bath, TV and all other conditions required for stay of detainees. Also, the Detention Unit enables daily access by lawyers, family, phone calls for at least 5 minutes a day, stay in open space for at least 3 hours, sports activities, medical treatment, access to a library and daily newspapers, use of one's own clothes, access to premises for religious ceremonies, which complies with all European Union standards.

177. Bearing in mind the poor conditions which more or less characterize all prison units, BiH and its Entities have been making a great effort to improve staffing, material and hygienic conditions and the overall situation of prisoners. To this end, the Council of Ministers adopted the decision approving the EUR 39.30 million project for the BiH State Prison Construction, which will be included in the 2010–2012 multi-year capital investment program. The State prison is being built in accordance with European standards and will be able to accommodate about 350 prisoners.

178. Having made commitments in accordance with the decision of the European Court of Human Rights, the Ministry of Justice facilitated the Memorandum of Understanding on Legal Assistance and Official Cooperation in the field of enforcement of security measures, imposed in criminal proceedings between BiH, FBH, RS and Brčko District (BiH Official Gazette No. 44/06). The Council of Ministers adopted a decision on accepting this Memorandum, which provided for the establishment of the Steering Committee for the Rehabilitation of Psychiatric Hospital in Sokolac, which will be the institution to carry out the security measures/orders imposed by any court in BiH. It also adopted the decision on the Establishment of the Implementation Unit for this project, the decision on the appointment of the Coordinator of Project Implementation, and the decision to ensure the funds for the project implementation (BiH Official Gazette Nos. 55/06 and 72/06). All administrative procedures have been completed for the implementation of the Psychiatric Hospital of the Sokolac Rehabilitation project and all conditions have been met for the execution of the contract to rehabilitate the psychiatric hospital, which will also meet all European standards.

179. The Government of FBH has adopted the Draft Amendments to the Criminal Code of FBH and the Draft Law on Amendments to the Law on Execution of Criminal Sanctions in the Federation BiH and sent them to the Parliament to be adopted as a matter of urgency. The reason for the emergency procedure is the need to introduce house arrest with electronic surveillance as a mode of execution of imprisonment for a term of one year in the FBH, as well as electronic monitoring of persons released on parole from correction institutions. The Criminal Code and the Law on Execution of Criminal Sanctions in the FBH having been amended in line with it.

180. In Orašje, FBH, a new medium-security correctional facility has been opened within the existing correctional institution (prison), and the rehabilitated and extended facilities of the medium-security correctional facility of Sarajevo in Ustikolina and the rehabilitated IV ward of high-security Zenica Prison, which is designated to accommodate high-risk and violent inmates, are scheduled to be opened soon.

181. In terms of overcrowding of correctional facilities, it should be noted that the amendments to the Criminal Code of BiH have introduced the possibility of the court's replacing a prison term of up to one year with a fine, at the request of the sentenced person. This option seems to significantly contribute to reducing the burden on the prison capacities, because even before the entry into force of these amendments (in May 2010) a number of requests for replacement of a prison sentence with fine were filed. This trend continued even after the entry into force of amendments to the Criminal Procedure Code.

182. The whole series of amendments to the Law on Execution of Criminal Sanctions of RS, its compliance with the Law on Execution of Criminal Sanctions, Detention and Other Measures of BiH, some obsolete procedures in the execution of criminal sanctions, new developments in prison system, as well as the existing and anticipated composition of the convicted persons are the reasons which have influenced the decision to enact the new Law on Execution of Criminal Sanctions of RS (RS Official Gazette No. 12/10) and the Law on the Special Regime of the Execution of Prison Sentences (RS Official Gazette No. 30/10). It should be pointed out that the new legislation will require a greater number of prison staff as well as greater expertise. Since 2006, the prison staff and professional training have been given due attention.

183. The number of prison officers has increased from year to year according to the plan. With 665 employees in correctional institutions at the end of 2006, the number of employees increased to 699 by the end of 2007, and at the end of 2009, that number was 758. What should be noted particularly is the fact that the number of employees in the security service and treatment has increased most and they need to meet all current and future challenges.

184. In accordance with the training curriculum for prison staff of the Ministry of Justice of Republika Srpska, in 2009 and during the first half of 2010, a team of eminent experts of the Ministry of Justice of Republika Srpska and the College of Internal Affairs delivered a series of lectures for members of the security service and treatment service as well as for instructors in all correctional facilities. Permanent training of prison staff will continue in the future.

185. Also, a large number of employees in correctional institutions participated in additional specialized courses of training organized by the Council of Europe and some international organizations and NGOs. We should especially emphasize the fact that inspectors from the Ministry of Justice of Republika Srpska as well as a number of long-time employees-experts in prisons of Republika Srpska were involved as experts in training of prison staff.

186. As part of the Working Programme of the Ministry of Justice of Republika Srpska and all prisons, the improvement of conditions for the execution of imprisonment, detention and correctional measures of referral to a correctional home is set as one of the most important priorities.

187. Rehabilitation and adaptation of certain premises significantly improved accommodation in prisons and better conditions of living for convicted persons have been created.

188. Construction of the Special Regime Ward in the Foča Prison, with the capacity to accommodate 38 convicted persons has been completed, and the Ward has been furnished. The Foča Correctional Institution has also refurbished some of the premises used by groups of inmates, and reconstruction of access roads to the Prison and construction of the reception area and fence wall have been completed, which has largely improved the Prison security.

189. A number of authorities that were located in rented premises of the Istočno Sarajevo Correctional Institute opened the possibility of extending the accommodation capacity for sentenced and detained persons. Facilities for detention have been rehabilitated to provide necessary conditions. 9 rooms with capacity for 45 persons in custody have been refurbished. The Detention Unit has been completed with a living area and rooms for leisure and sports. With regard to security, the fence wall has been made higher and topped with defensive wire, and the existing video system has been upgraded.

190. At the same time, the District Prison in Doboj has completed a one floor extension, which has increased the space for additional 500 square meters which has created conditions for enlargement of accommodation capacity from 120 to 188 inmates (120 convicts and 68 detainees) as well as significantly improved living conditions of convicts and detainees and working standard of employees. In other penitentiaries in Republika Srpska during 2009 and 2010, the extension of accommodation facilities and improving conditions for life and work of convicted and detained persons continued.

191. Unlike the Federation of BiH, the Republika Srpska has no major problems executing security measures for mandatory psychiatric treatment and compulsory treatment of addiction. A sentenced person, on whom the verdict handed down one of these two security measures/orders, is sent by the courts to the so called Forensic Ward of the Psychiatric Hospital of Sokolac and at the end of treatment, the convicted person is sent to serve his prison sentence. Fully aware of the fact that the conditions for the execution of security measures and hospital treatment of convicted persons with mental disabilities are far from the prescribed standards (to which we were warned through Reports of CPT), the Government of the Republika Srpska adopted the Decision on the Establishment of the Special Hospital for Forensic Psychiatry in Sokolac. By signing the contract between the Entity Ministries of Justice and the Special Hospital in Sokolac, the conditions for donor

funds were created and work on adaptation and rehabilitation of the existing building in Sokolac started.

192. The Police of Brčko District adopted the 2008–2013 Strategic Plan. As a specific local community, and the need to build a police organization that will be able to provide effective protection to its citizens against all possible forms of threats, the Police of Brčko District has defined its strategy with the following policy objectives:

- Improve citizens' feeling of security in the Brčko District of BiH
- Improve the image of police in the public
- Develop capacity for rapid and efficient response to incidents and accidents
- Continue the process of developing criminological intelligence capacity that will enable the Police of Brčko District to efficiently respond to current and potential terrorist and other threats to public safety
- Improve the investigative capacity of police officers
- Increase the efficiency of the Police of Brčko District of BiH in the fight against internal and external corruption

193. In achieving all the six objectives, which are a strategic development priority for the Police of Brčko District in order to build a modern highly professional law enforcement agency, the Police of Brčko District defines strategies (modes) in terms of methodology to achieve these goals.

194. Based on the *strategies* for achieving the policy objectives, the annual operating objectives for the implementation of this plan on an annual basis are defined in detail and are subject of Annual Operational Plans.

Indicators of reported crimes in particular areas

<i>1. Classification of reported crimes</i>	2005	2006	2007	2008	2009
Criminal offences against marriage, family and youth	63	67	55	26	32
Domestic violence	60	63	55	26	29
Avoiding maintenance	2	3	0	0	3
Neglect or abuse of a child	1	1	0	0	0
Crimes against Humanity and International Law	17	15	43	6	12
War crimes against civilian population	17	15	43	6	10
War crimes against prisoners of war	0	0	0	0	0
Unlawful killing and injuring the enemy	0	0	0	0	1

Number of cases of begging in the Brčko District of BiH:

In 2004, 35 cases

In 2005, 64 cases

In 2006, 90 cases

In 2007, 107 cases

In 2008, 113 cases

In 2009, 262 cases

Recommendation No. 20

195. On 24 June 2010, more than two years after the commencement of intensive work on the revision of an extremely important and complex strategic document, the Parliamentary Assembly adopted a revised strategy for the implementation of Annex 7 (Agreement on Refugees and Displaced Persons) of the GFAP in Bosnia and Herzegovina.

196. Besides an overview of the current situation, this document identified problems, formulated recommendations and measures for implementing the strategic objectives of the reform and the improvement of the situation in the following areas:

- Reconstruction of housing for refugees, displaced persons and returnees, the closure of collective centres and addressing the issues of alternative accommodation for displaced persons and returnees, and social housing with a particular emphasis on the problems of displaced persons and refugees and housing for vulnerable groups of returnees
- Completion of the process of restitution of property and occupancy rights of refugees, displaced persons and returnees
- Electrification of returnee villages and individual dwellings of returnees
- Reconstruction of infrastructure in areas of interest for the return of refugees, displaced persons and returnees
- Health care of displaced persons and returnees
- Social protection of displaced persons and returnees
- Right to education for displaced persons and returnees
- Right to work and employment of displaced persons and returnees
- Security of displaced persons and returnees and mine disposal in the areas of return
- Right to compensation to be paid to displaced persons, refugees and returnees

197. The revised strategy has provided a comprehensive legal and operational framework whose implementation will result in improving access to rights by refugees and displaced persons from BiH under Annex 7 of the GFAP.

Recommendation No. 21

198. On 24 June 2010, the Parliamentary Assembly adopted a revised strategy for the implementation of Annex 7 of the GFAP, which recognized the closing of collective centres as the first priority.

199. It was determined that it was necessary to develop explicit and uniform criteria for assessing the specific needs of occupants of collective centres/alternative accommodation in order to define long-term measures for achieving a durable solution, and that the closure of collective centres requires a transparent and multidisciplinary approach to ensure durable solutions for people accommodated in collective centres.

200. In this regard, the following recommendations and measures were adopted that will be implemented as a matter of priority:

- In accordance with the actual and expressed needs of current occupants of collective centres, develop programs and projects that will aim at full dissolution of this kind of housing. Special attention must be paid to particularly vulnerable categories such

as orphans, single mothers, the elderly, sick and disabled persons, to ensure adequate exercise of their rights

- Formulate a comprehensive profile of all individual residents in collective centres/alternative accommodation in order to design appropriate durable solutions for vulnerable people (from the unique return projects to ensuring the institutional security and/or social housing in areas of displacement, etc.)
- Identify and provide legal and procedural safeguards that regulate the process with full respect for the rights of displaced persons, including the prevention of the consequences of forced evictions of people who are in need and provide access to dignified and permanent housing for people in need
- Limit each new placement in the existing collective care establishments, and prevent the formation and development of new, formal or informal forms of collective housing, and provide another form of adequate housing for people in need

201. Bearing in mind the fact that BiH still has about 160 refugee centres, where 2,865 families or 7,490 people are living, BiH negotiated with the Council of Europe Development Bank (CEB) the required loan of approximately EUR 40 million in order to dissolve the collective centres. A project has already been planned in cooperation with UNHCR, and the competent services of the Bank to close the aforementioned collective centres for refugees and displaced persons in BiH, as well as to address accommodation for the people who occupy the space but do not have refugee status.

202. The funds in the amount of EUR 100,000 for a feasibility study have been provided. The loan will be used over the next three years and will cover reconstruction of existing housing for occupants of refugee centres, building of new housing, as well as construction of new collective facilities for these categories of people (old people homes or similar type).

Recommendation No. 22

203. The Constitution of BiH determines, inter alia, that no person shall be deprived of BiH or Entity citizenship arbitrarily so that the person is rendered stateless, and no person shall be deprived of BiH or Entity citizenship on any grounds such as sex, race, colour, language, religion, political or other opinion, national and social origin, affiliation with a national minority, property, birth or other status.

204. According to the Constitution, in the chapter governing the right to identity, there is shared responsibility. Thus, the legislation on identity cards, domicile, residence, identification number and the movement and stay of aliens and asylum is within exclusive competence of the institutions of BiH, while the rules on citizenship are within competence of BiH and its Entities. The legislation which regulates the registration of births and personal names is within the exclusive competence of the Entities and Brčko District.

205. Registration of birth is one of the fundamental human and child's rights and a precondition for exercise of rights in other areas of life such as the right to identity, the right to education, the right to health care etc. The non-registration of birth, especially of Roma children, has been a concern of the Ministry for Human Rights and Refugees for a long time. Addressing this issue that largely affects the Roma population in BiH, as well as preparations for the implementation of tasks assumed by signing the Framework Convention for the Protection of National Minorities should contribute to improving the status of the Roma population, and create conditions for their social inclusion.

206. The legal framework of BiH concerning the right to identity governs the following issues: registration in the birth register, giving of a personal name, determination of a unique identification number and nationality.

207. To solve this problem, a more systematic and comprehensive approach has been taken by the authorities in BiH, i.e. the Ministry for Human Rights and Refugees, in cooperation with some international organizations and institutions in BiH, has taken a number of actions to tackle this complex and evident problem in BiH.

208. In late 2009, the Ministry of Human Rights and Refugees of BiH conducted registration and established a database of the needs of Roma in BiH, which, inter alia, provides information on the needs of Roma in Bosnia and Herzegovina inclusive of 31 January 2010, in the field of vital records, possession of identity documents, access to health insurance, nationality and the like. For example, based on this registration, it was noted that of the births not entered into the registers in the FBH (384), RS (69) and the Brčko District (18), all of them were Roma people. Among the Roma population, 4,654 in FBH, 487 in the RS, and 59 in Brčko District do not have health insurance. Out of the total currently estimated number of 16,762 Roma or about 4,500 households.

209. In co-operation with entity ministries and institutions, it was agreed that in the RS, and since 2009 in the FBH, the Entity laws that regulate insurance, the provision of compulsory insurance to cover children aged 0–15 years (who are not entitled to health care on another ground) and people over 65 years of age have been incorporated.

210. Also, in cooperation with the UNICEF Mission in BiH, relevant state and Entity institutions and legal experts in the field of children's and human rights carried out a legal analysis of BiH legislation that regulates the registration of birth. The analysis highlighted the complexity of the problem, described its forms and formulated concluding observations and recommendations.

211. This legal analysis will help the State and Entity authorities to take a more systematic approach to considering amendments to the rules governing this area, and thus help to create an environment conducive to social inclusion, not only of the Roma in BiH, but also other children and citizens who, at present, are not able to exercise their right to identity.

212. When it comes to the area of prevention and reduction of statelessness and the phenomenon of unregistered persons without legal identity, many of whom are Roma, BiH authorities and the UNHCR have targeted a lot of activities at providing assistance to the Roma with regard to civil registration and obtaining the necessary documents required for the enjoyment of all other rights. Since May 2008, UNHCR, in partnership with the authorities in BiH, and with the help of lawyers of Vasa Prava – Your Rights in BiH Associations, has been providing free legal assistance to indigent Roma with a view to registration in the birth registers, regulating personal status, and obtaining necessary documents. This activity is supported by the European Union, Government of Switzerland and Principality of Liechtenstein.

213. As a result of these activities, until December 2009, 776 applications for legal aid in this area were successfully processed and 306 births of children and adults were registered. Most of the subsequent registrations were in the birth registers, because only in 18 cases the registration of birth was performed in a timely fashion. In addition to these applications, Vasa Prava – Your Rights in BiH also provided free legal aid to Roma in the exercise of other rights. By the end of 2009, 1,482 various documents were obtained free of charge, including documents from neighbouring countries, which are also involved in a regional project supported by the European Union. In 2009, 546 people received free legal aid, of which there were 205 subsequent registrations in the birth registers.

214. The largest number of people who have been given free legal aid is identified in the field by lawyers of Vasa Prava -Your Rights in BiH, with the help of the Roma NGOs, Roma mediators and other Roma activists who have helped out in this process.

215. The Action Plan on the Educational Needs of Roma and Members of Other National Minorities (2003) complies with provisions of the Framework Law on Primary and Secondary Education in Bosnia and Herzegovina (BiH Official Gazette No. 18/03.), which determines that:

- Every child has the right of access and equal opportunity for participation in appropriate education, without discrimination on any grounds (Article 4 of the Framework Law)
- Equal access and equal opportunities include providing equal conditions and opportunities for all, to begin and continue further education. (Article 4 of the Framework Law)
- Language and culture of each major minority living in BiH will be respected and accommodated within schools to the fullest extent practicable, in accordance with the Framework Convention for the Protection of National Minorities (Article 8 of the Framework Law)

216. All of the above conforms with international instruments and is directly applicable in BiH on the basis of the Constitution and Annex 4 of the General Framework Agreement for Peace.

217. Also, the Action Plan is consistent with the provisions of the Protection of National Minorities (BiH Official Gazette No. 06/03), which stipulates that regardless of the number of members of national minorities, the entities and cantons are obliged to ensure that persons belonging to national minorities, if required, can learn about their language, their literature, history and culture in the language of the minority to which they belong, as well as extra-curricula lessons.

218. The Action Plan defines the overall goal to improve access to the system of formal education of Roma in BiH through addressing a number of obstacles they are currently facing and the practical, systematic questions, broader by nature, while improving the participation of Roma communities and advocating for full inclusion of their children in regular education.

219. In developing the Action Plan on the Educational Needs of Roma and Members of Other Minorities in BiH, the Ministry of Human Rights and Refugees and the Ministry of Civil Affairs of BiH were included, with a role in coordinating and monitoring activities in the implementation thereof. The Council of Ministers adopted the Action Plan and proposed to all other levels of the executive in BiH to also accept all the activities and standards contained in it and to consider it an integral part of the Strategy for Solving Problems of the Roma (Roma Strategy), in a segment that refers to the sphere of education of the Roma as a national minority in BiH.

220. However, after the experience gained in more than six years of implementation, it was concluded that the Action Plan on the Educational Needs of Roma and Members of Other Minorities in BiH, especially in the segment which refers to Roma is not fully consistent with the current needs, neither in content nor in methodology, neither at the level of the text nor at the level of standards prescribed or imperatives that require specific relevant actors in the governmental and non-governmental sectors for its implementation. Indeed, given the many uncertainties and obstacles, its implementation is barely progressing and gives insufficient results, both from a financial point of view (procurement of textbooks, stationery, equipment, payment of transportation, meals at school, etc.) and

with regard to increasing the percentage of new Roma pupils in primary schools, organizing summer schools, the inclusion of Roma assistants in the educational process, etc.

221. In July 2008, the Council of Ministers adopted the Action Plan for Roma in Employment, Housing and Health Care, and at the same meeting, a decision on the accession of BiH to the Decade of Roma Inclusion 2005–2015 was made and formalized when signed at the Steering Committee of the Decade meeting in Belgrade in September 2008.

222. The Decade involves four key areas to stop discrimination and reduce inequalities, namely, housing, employment, health and education, as a coordinated, open and transparent process.

223. Bearing in mind the deficiencies listed while discussing the Action Plan on the Educational Needs of Roma and Members of Other Minorities in BiH (2003) and that at the 16th meeting of the International Steering Committee of the Decade of Roma Inclusion (held in Belgrade on 25 and 26 June 2009, and attended by representatives of Bosnia and Herzegovina), the present member states agreed on the recommendations and proposals aimed at preventing discrimination in education, the MHRR was the authority responsible for drafting the Revised Action Plan on the Educational Needs of Roma in BiH.

224. The revised Action Plan on the Educational Needs of Roma incorporated the principles and recommendations from the Belgrade Conference on Education as a “road map” for future work on education, and for accelerating progress toward the goal of true inclusion in education of all children.

225. Specifically, this document defines the goals and measures for equal opportunities for Roma participation in education, without discrimination on any grounds, and helping children in need to achieve better results in education, in accordance with International Human Rights Standards on the Rights of National Minorities to Education.

226. On 4 July 2010, the Council of Ministers adopted the revised Action Plan of BiH on the Educational Needs of Roma. The implementation of the revised Plan will determine the results of improvement of the overall social position of Roma in BiH.

Recommendation No. 23

227. Complying with the recommendations of the Human Rights Committee with regard to paragraphs 8, 14, 19 and 23, BiH informed the relevant Committee about the relocation of a Roma settlement in Butmir which is in the territory of Ilidža Municipality. On that occasion it was stated that in the period from January 2008 to February 2009, 33 Roma families were given permanent housing: eight (8) apartment houses were built for them in the territory of five (5) municipalities of Sarajevo Canton: two apartment houses with six apartments were built in Ilidža, two apartment houses with eight apartments in Ilijaš, and one apartment house with four apartments in the municipality of Novi Grad Sarajevo, two apartment houses with eight apartments in Vogošća, and two apartment houses with eight apartments in Hadžići.

228. The project was implemented in cooperation with the Government of Sarajevo Canton (BAM 450,000) and the Government of Sweden – SIDA project, which provided BAM 1,415,200.00 in funding. One of the implementing agencies was Caritas Schweiz which trained 10 young Roma (beneficiaries) in job hunting, with a short literacy course and training in basic construction trades.

229. The relocation of Roma was successfully completed on 3 June 2009. The project was implemented in accordance with the valid legislation and the legal basis for the use and

maintenance of constructed housing units. This exercise was approached in a humane and anti-discriminatory manner.

230. Although the Roma moved into the newly constructed homes in a perfectly orderly manner, which was a source satisfaction for all, after a period of time, the Ministry of Housing of Sarajevo Canton received reports that a number of housing units were destroyed by the new residents in the Municipality of Ilijaš. The competent authorities found out that six of the eight apartments in Ilijaš were vacant at the time. Immediately thereafter, following the legal procedure, the contract for occupancy of the apartments was terminated with two occupants. Since the aforementioned apartments belong to the Municipality, the vacant apartments were allocated to the Roma families that lived in the territory of Ilijaš and did not have an adequate place to live.

Recommendation No. 24

231. BiH has finalized the ratification of the European Charter for Regional or Minority Languages. The ratification of the European Charter for Regional or Minority Languages is an outstanding Council of Europe post-accession commitment of BiH. The process of ratification is necessary to selecting the articles of the Charter which BiH accepts, and selecting the minority languages to be used, in an adequate way.

232. Since BiH is a complex state, besides the Ministry for Human Rights and Refugees of BiH, it was necessary to include the relevant Entity ministries and ministries of the Brčko District (responsible for culture and education) in the process of ratification of the said international instrument, and ensure that the ministries and institutions gave their opinions. Opinions were obtained and articles of the Charter that BiH would accept were selected. In order to better discharge this task, the Secretariat of the Council of Europe, which, *inter alia*, deals with the use and protection of minority languages of the Member States of the Council of Europe, was involved in this process.

233. Following the adoption of the draft decision on the ratification of the European Charter for Regional or Minority Languages by the Council of Ministers and both houses of the Parliamentary Assembly, the BiH Presidency is expected to complete the ratification with dispatch.

Recommendation No. 25

234. The 31 March 2006 decision of the Constitutional Court stated that both Entities use insignia, religious and national symbols that are discriminatory against certain ethnic groups. It was found that Articles 1 and 2 of the Law on the Flag and Coat of Arms of the Federation of BiH, and Articles 2 and 3 of the Constitutional Law on the Flag, Coat of Arms and Anthem of Republika Srpska are not in accordance with Article II/4 of the Constitution of BiH and are in conflict with Articles 1.1 and 2 (a) and (c) of the European Convention on Elimination of All Forms of Racial Discrimination under Annex I to the Constitution of BiH.

235. The decision stated that Article 2 of the Law on the Use of the Flag, Coat of Arms and Anthem stipulating that the flag, coat of arms and anthem of RS “make the statehood of RS”, is not in conformity with Articles I/1 and I/2 of the Constitution of BiH. Further, Article 3 of the Law on the Use of the Flag, Coat of Arms and Anthem stipulating that the RS symbols are used “in accordance with the moral norms of the Serbian people” is not in conformity with Article II.4 of the Constitution of BiH, and Articles 1.1. and 2 (a) and (c) of the International Convention on the Elimination of All Forms of Racial Discrimination under Annex I to the Constitution of BiH. The Constitutional Court therefore repealed

them. The provisions repealed have not been in force since the date of publishing in the Official Gazette, pursuant to Article 63, paragraph 3 of the Rules of the Constitutional Court.

236. In making such decision, the Constitutional Court concluded that it was the legitimate right of the Bosniac and Croat people in the FBH, and the Serbs in the Republika Srpska to have equal rights, which must also be extended to the Serbs in FBH, and to the Bosniac and Croat people in the Republika Srpska.

237. Although this issue is still not fully resolved, in general it can be concluded that the authorities of both Entities respect the decision of the Constitutional Court of BiH.
