



**International Convention for
the Protection of All Persons
from Enforced Disappearance**

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Consideration of reports of States parties to the Convention

**List of issues in relation to the report submitted by Bosnia
and Herzegovina under article 29 (1) of the Convention**

Addendum

Replies by Bosnia and Herzegovina to the list of issues*

[Date received: 23 June 2016]

* The present document is being issued without formal editing.

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I. General information

Reply to paragraph 1 of the list of issues

1. Article II paragraph 1 of Constitution of BiH ensures the highest level of protection of international human rights and fundamental freedoms. Annex 6 of the Dayton Peace Agreement establishes that the international instruments for the protection of human rights are directly applicable in the domestic system. The Constitution of BiH prioritize human rights. In the Annex 7 of the Dayton Peace Agreement there is a reference to persons unaccounted for which stipulates that “The Parties shall provide information through the tracing mechanisms of the ICRC on all persons unaccounted for. The Parties shall also cooperate fully with the ICRC in its efforts to determine the identities, whereabouts and fate of the unaccounted for”.

2. Article II paragraph 2 of the Constitution of Bosnia and Herzegovina explicitly states that the rights and freedoms provided for in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols (ECHR) are directly applicable in Bosnia and Herzegovina and that these provisions have priority over all other laws.

3. Article III paragraph 3 of the Constitution of Bosnia and Herzegovina, emphasizes the following: “The general principles of international law shall be an integral part of the law of Bosnia and Herzegovina and the Entities”.

4. In its work, the Court of Bosnia and Herzegovina did not apply the International Convention for the Protection of All Persons from Enforced Disappearance.

Reply to paragraph 2 of the list of issues

5. Article III para.1 of BiH Constitution prescribes responsibilities of the Institutions of Bosnia and Herzegovina, which include the implementation of international and inter-Entity criminal law enforcement, including relations with Interpol, while the Article III. 3. a) provides that all governmental functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities. Considering the divided jurisdiction between the state and the entities, the criminal legislation of Bosnia and Herzegovina has no advantage over the criminal laws of the entities and Brčko District. These laws have the same legal force and their application is related to a specific area (the Entity and BD CC), or for certain forms of offenses (CC BiH). The harmonization of these laws is conducted on the principle of cooperation and consultation.

6. The jurisdiction of the Court of BiH is regulated in the Article 7 of the Law on the Court of Bosnia and Herzegovina - Revised text (“Official Gazette”, Nos. 49 / 09,74 / 09 and 97/09), which provides: The Court has jurisdiction over criminal offences defined in the Criminal Code of Bosnia and Herzegovina and other laws of Bosnia and Herzegovina. The Court has further jurisdiction over criminal offences prescribed in the Laws of the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District of Bosnia and Herzegovina when such criminal offences:

(a) Endanger the sovereignty, territorial integrity, political independence, national security or international personality of Bosnia and Herzegovina;

(b) May have serious repercussions or detrimental consequences to the economy of Bosnia and Herzegovina or may have other detrimental consequences to Bosnia and

Herzegovina or may cause serious economic damage or other detrimental consequences beyond the territory of an Entity or the Brčko District of Bosnia and Herzegovina.

7. Entity and Brčko District courts are competent for crimes defined in Entity and Brčko District Criminal Codes. The Court of Bosnia and Herzegovina has jurisdiction in the matters set out in Article 7 of the Law on the Court of Bosnia and Herzegovina, which includes both criminal offenses under the Criminal Code of Bosnia and Herzegovina and the crimes under the entity criminal codes and the Criminal Code of Brčko District, under the legally established conditions (so-called. “extended jurisdiction”). All four judicial systems in Bosnia and Herzegovina have their own criminal procedure laws.

8. In its answer to this question, the Ministry of Justice of the Republika Srpska stated that clearer delineation of criminal jurisdiction between the State and Entity level takes place as part of the Structured Dialogue between the EU and BiH. The completion of these reforms is expected by the end of 2016.

II. Definition and criminalization of enforced disappearance (arts. 1–7)

Reply to paragraph 3 of the list of issues

9. In its answer to this question, the Ministry of Justice of BiH has indicated that under the BiH Constitution, Bosnia and Herzegovina does not contain explicit provisions on the possibility of derogation of human rights in emergency situations. However, already mentioned introduction of provisions on direct application of the ECHR and its priority over any other law, also introduced the right of the State to derogation of a number of human rights in the case of war or other public emergency threatening to the nation. Therefore, all provisions of Article 15 of the ECHR, actually, are related to our country. In this way, by the acceptance of the ECHR, the principle of derogation has been introduced as a right of Bosnia and Herzegovina, bearing in mind that the measures for derogating human rights under this provision shall be in accordance with the other obligations under the international law. Since that international law, specifically the Convention for the Protection of All Persons from Enforced Disappearance (Article 1, paragraph 2 of the Convention) excluded deviations from the prohibition of enforced disappearance even in the case of exceptional circumstances, it presents the basis for the prohibition of derogation under Article 15 of the ECHR.

Reply to paragraph 4 of the list of issues

10. The Ministry of Justice stated that in May 2015 into the Criminal Code of Bosnia and Herzegovina was introduced “forced disappearance” (Article 190a.) which may be committed by an official or another person who acting upon order, instigation or with the explicit or implicit consent of a public official in the institutions of Bosnia and Herzegovina. From the definition of the offense, it is evident that any person acting on the orders or at the instigation of or with the consent or acquiescence of a public official in the institutions of Bosnia and Herzegovina, could be the perpetrator of this crime. This definition is in line with the Convention. However, this definition only covers the responsibility of officials in the institutions of BiH, whether they commit the offence in person or allow it, encourage or agree with another person commit offence. Accordingly, this provision is applied only at the State level but entity criminal codes and of Brčko District should be amended in order to define the responsibility of officials for this type of offense in the institutions of the Entities and Brčko District.

11. For this offence, the offender can be punished with at least eight years. The court shall impose the punishment within the limits provided by law for that particular offence,

having in mind the purpose of punishment and taking into account all the circumstances bearing on the magnitude of punishment (extenuating and aggravating circumstances), (Article 48 General Principles of Meting out Punishments). The Court of Bosnia and Herzegovina does not have practice in relation to this crime, so without final judgments in which are explained individual elements of this offense, they cannot give its view on this issue. We hope that the Parliamentary Assembly of Bosnia and Herzegovina shall provide the authentic interpretation of this provision.

Reply to paragraph 5 of the list of issues

12. As stated above, the Criminal Code was amended in May 2015 and forced disappearance was introduced as a criminal offense which is committed outside the war circumstances, but with limited application or only at the State level, and it is necessary to include the same offense in the criminal codes of the entities and Brčko District, in order to determine the responsibility of officials in the institutions of the Entities and Brčko District. Since the State Criminal Code stipulates Crimes against Humanity, it also applies to the Entities and Brčko District.

13. Enforced disappearance as prescribed in Article 172, Paragraph 1, item i) of the Criminal Code of Bosnia and Herzegovina the Court of Bosnia and Herzegovina interprets in accordance with the definitions referred to in paragraph 2 h) of the same article. During the decision-making, the Court is obliged with the law and only in the absence of a legal definition or provision it would be authorized to directly apply the international treaty.

14. Ordinary court as the Court of Bosnia and Herzegovina is not authorized to make a decision about the compliance of provisions of law and the provisions of the Convention, given that those questions fall within the domain of the Constitutional Court.

Reply to paragraph 6 of the list of issues

15. In all cases which are completed before the Court of BiH in which the criminal proceedings were conducted due to, among other things, a form of enforced disappearance as a criminal offense of Crime against Humanity under Article 172, Para. 1, i) of the Criminal Code of BiH (CC BiH), are accused of actions that they placed the burden of responding on the basis of individual criminal responsibility. We are enclosing a list of final judgments for this kind of crime, noting that almost all judgments can be found at the website of the Court of BiH (<http://www.sudbih.gov.ba/>), some of them are available in English language.

16. In Republika Srpska is applicable Criminal Code of RS because Article 166 stipulates that whoever unlawfully imprisons another person, keeps him imprisoned or otherwise unlawfully restricts his freedom of movement, shall be punished by a fine or imprisonment for a term not exceeding one year. If the criminal offence was committed by an official person by abuse of official position or authority, he shall be punished by imprisonment for a term not exceeding three years. If the unlawful deprivation of freedom was committed against a child or minor or lasted for more than fifteen days, or if the manner of the execution was brutal, or if such a treatment of the person who was unlawfully deprived of freedom caused grave impairment of his health, or if some other serious consequences occurred, the perpetrator shall be punished by imprisonment for a term between one and five years. If the person who has been unlawfully deprived of freedom lost his life as a result of the criminal offence the perpetrator shall be punished by imprisonment for a term between two and twelve years. Articles 20 to 26 of CC RS stipulates Attempted Criminal Offense, Inappropriate Attempt, Voluntary Abandonment of the Attempt, Accessories and Accomplices, Incitement. Article 166 in para. 5 stipulates that an attempt of the criminal offences referred to in Paragraphs 1 and 2 of this Article shall also be punishable.

Reply to paragraph 7 of the list of issues

17. According to the Missing Persons Institute of BiH, the Central Records of Missing Persons of Bosnia and Herzegovina (hereinafter: CEN BiH) has, as of today, the names and surnames of 35.236 persons which were reported as missing. In accordance with the legal provisions that there is no time limit for reporting a missing person, since its foundation the Missing Person Institute (2008) to date has received 397 new missing person reports.

18. CEN BiH was established in a manner to collect data from 13 bases on missing persons of which, four were primary databases that are downloaded from the Federation Commission on Tracing Missing Persons, Office for Tracing Detained and Missing Persons of Republika Srpska, the International Commission for Missing Persons (ICMP) and the International Committee of the Red Cross (ICRC).

19. To this date, it has been verified 20.032 missing persons. The number of verified person is constantly changing because the process of verification is continuous process. According to estimates of the Missing Persons Institute, the verification process could be completed by the end of 2017.

Reply to paragraph 8 of the list of issues

20. According to the data of the Court of BiH, in the period from the beginning of its work, Section I for War Crimes of the Criminal and Appellate Divisions has finalized total of 13 cases against 15 persons, which were, among other, indicted for the enforced disappearances as a form of criminal offense a crime against humanity. Out of this number there was 12 acquittals but in three cases a conviction for that offense has not been issued to all counts in the indictment, but only to the individual, while in relation to specific points acquitted or the verdict was is dismissed (see the cases under numbers 4 and 8 in the table that is provided in the appendix). To persons who have been convicted of a criminal offense under Article 172 (1) i) of the CC BiH was imposed prison sentence or long term prison sentence ranging from 7 to 22 years. The list of cases enclosed herewith contains information on penalties imposed for each prisoner individually. During a sentencing, the Court took into account the following aggravating factors: the persistence and perseverance in carrying out the crime, the fact that it has not contributed to the tracing of missing person remains, manifest of particular cruelty, cold-bloodedness and calculation during the commission of the offense, the number of criminal acts, the number of victims, the degree of danger and that the accused was the direct perpetrator of the crime.

21. As mitigating circumstances: no criminal record, family circumstances of the accused (married with children), impaired health status, the fact that the accused was young at the time of the offense, the advanced age of the accused, the fact that the ability of the accused to understand the importance of such action and the resulting consequences at the time of the offense was reduced, the conclusion of the plea agreement (through which the accused showed remorse and expressed willingness to accept responsibility for his actions), the fact that the accused was not the direct perpetrator of the crime, the fact that the defendant in the plea agreement has agreed to cooperate with the prosecution, had a proper conduction before the Court, the fact that the accused reported himself to the prosecuting authorities after he found out about a warrant for his arrest, and the fact that the accused during the war helped many neighbors of other nationalities. Detailed explanations on assessment of aggravating and mitigating circumstances are presented in the judgments which are available at the website of the Court of BiH. As we previously stated, Section I for War Crimes of the Criminal and Appellate Divisions has finalized total of 13 cases against 15 persons, which were, among other, indicted for the enforced disappearances as a form of criminal offense a crime against humanity. Please find enclosed the list of accused persons and penalties imposed. Currently, there are 13 cases, which involve 29 persons

pending before the Court of BiH who are indicted for the criminal offense under Article 172, Paragraph 1, i) of the CC BiH.

22. The Court do not transfer the cases in which the proceedings are conducted for a criminal offense a Crimes against Humanity since the entity and the courts of Brčko District do not apply the BiH Criminal Code, which prescribes this offense. For this reason, the Court of BiH only transfer cases in which the procedure is conducted for the criminal offense of war crime stipulated by the Criminal Code of the SFRY which they apply, while the cases in which the procedure is conducted for the criminal offense a crimes against humanity are not transferred because it is provided only in the CC BiH.

23. After the judgment of the ECtHR in the case *Maktouf and Damjanović vs. BiH*, the Court of BiH reopened proceedings in 23 cases against 31 person. All proceedings were reopened before the Court of BiH completed under the CC SFRY as a more lenient law. In new trials were imposed a more lenient sentences in comparison to the previous ones.

24. Regarding the issue of which criminal code should apply in each case individually, depending on the seriousness of the crime, the Court states that it does not depend only on the gravity of the crime but of all relevant facts which must be considered too. The offense of enforced disappearance is not incriminated in the SFRY Criminal Code, but only in the Criminal Code of Bosnia and Herzegovina, as a form of criminal offense of crimes against humanity. Therefore, cases are tried under the BiH Criminal Code, which stipulates appropriate sentencing range by giving the possibility of imposing a prison sentence ranging from 10 to 20 years, or long-term imprisonment ranging from 21 to 45 years.

Reply to paragraph 9 of the list of issues

25. In its response to this query the Ministry of Justice stated that Article 118, paragraph 2 of the Criminal Code of Bosnia and Herzegovina is not amended. The Parliamentary Assembly has not yet considered the possibility of granting amnesty based on these provisions and in which circumstances it should be taken into account the severity and seriousness of the offenses which should be excluded from the amnesty. According to previous practice, when entity amnesty laws were adopted, from the amnesty were exempted serious crimes under international law. However, modification of this provision is planned for the future.

26. Within its jurisdiction, the Ministry of Justice of Bosnia and Herzegovina has prepared the Law on Amendments to the Law of Bosnia and Herzegovina on Pardon, which provides for the amendment of Article 1 and 3 of the BiH Law on Pardon. That amendment is related to the limited possibility of granting pardons for crimes of genocide, war crimes and crimes against humanity, after three-fifths of sentence. This change has yet to be consider before the Council of Ministers of Bosnia and Herzegovina.

27. After negotiating the conditions of admission of guilt in five cases of crimes against humanity under Article 172 CC BiH, the BiH Prosecutor's Office has reached a plea agreement but in all cases was necessary to recognize other evidences. In all cases the suspects were obliged to testify against other persons in other cases. Some witnesses have been granted full or limited immunity from prosecution in exchange for fully and truthfully testifying in proceedings against other persons.

III. Judicial procedure and cooperation in criminal matters (arts. 8–15)

Reply to paragraph 10 of the list of issues

28. The Ministry of Justice states that in accordance with the prescribed criminal offence “forced disappearance” in the Criminal Code of BiH, it is also amended paragraph (1) of Article 15 which stipulates that “the statute of limitations for the crimes of a permanent character begins at the time of termination as unlawful status and in accordance with the recommendation of the Working Group on enforced or Involuntary Disappearances”.

29. The concept of the permanent nature of the crime is not specifically addressed in the criminal codes in Bosnia and Herzegovina but it is noted in the criminal law theories where it was stated that the determination of the time of commission of permanent criminal offense is governed by the time of termination of unlawful status, because this action is undertaken throughout the duration of the unlawful status in order to maintain such state.¹

30. So the answer to question 10 (i) is that it is possible to apply Article 190a. to cases of enforced disappearance that occurred earlier, if the fate or whereabouts of the victims are still unknown at this time. In relation to question 10 (ii), it should be taken into account the amended paragraph (1) of Article 15 of the CC BiH, according to which the statute of limitations for this type of offense starts at the time of termination of the unlawful status.

31. Article 377 of the Law on obligations stipulates when the damage is caused in a criminal offence, and a longer limitation period is anticipated for prosecution for criminal offence, the request for compensation of damage addressed to the competent person expires with the end of time period determined for limitation period of prosecution for criminal offence. The interruption of prosecution for criminal offence also implies the suspension of prescription of the request for compensation of damage. Article 19 of CC BiH stipulates that criminal prosecution and execution of a sentence are not subject to the statute of limitations for criminal offences of genocide, crimes against humanity and war crimes, or for other criminal offences that, pursuant to international law, are not subject to the statute of limitations.

32. The Court of Bosnia and Herzegovina do not have practice in relation to this crime, so it cannot give its view on this issue. Also, this is a factual issue which is determined on a case-by-case basis. Without practice, we cannot give a general view on this complex issue.

Reply to paragraph 11 of the list of issues

33. The Ministry of Justice stated that Article 37 stipulates the following: “The person whose extradition is sought shall be deprived of liberty by competent police authorities of Bosnia and Herzegovina, based on the international arrest warrant specifying a request of requesting State for custody of the person and he shall be brought before a judge for preliminary proceedings of the Court of Bosnia and Herzegovina, with the aim of making decision on the request of the requesting State to order provisional custody if there is a danger that the alien whose extradition is sought to escape or hide.”

34. Article 38 of the same Law stipulates: “After the person deprived of liberty, whose extradition is requested, is brought before the preliminary proceedings judge based on the international arrest warrant issued on a request of the requesting State or based on a request

¹ Comments of criminal laws in Bosnia and Herzegovina, Book I and II, Joint Project of the Council of Europe and the European Commission, Sarajevo, 2005, page 134.

by the foreign state, after his identity has been established, that person shall be informed without delay about the reasons why his extradition is requested, and based on which evidence, and he shall be called on to present his defence. The preliminary proceedings judge shall inform the person referred to in paragraph (1) of this Article that he is entitled to hire a defence counsel of his choosing who may be present during his hearing and that, in case he does not do so, the court shall appoint to him a defence counsel ex officio in case of a criminal offence for which the criminal legislation of Bosnia and Herzegovina prescribes mandatory defence. Minutes on the hearing and defence shall be taken. The provisional custody shall be ordered by the judge for preliminary proceedings and it may last for 18 days. The order (*rješenje*) on custody shall be delivered to the Prosecutor's Office of Bosnia and Herzegovina and the Ministry of Justice of Bosnia and Herzegovina in order to seek an extradition request from the state which has issued the arrest warrant. The deadline under paragraph 4 above can be extended but it shall not exceed 40 days. If the requesting State fails to submit the extradition request and the supporting documents within the deadline, the Court of Bosnia and Herzegovina shall render a decision terminating the custody of the person whose extradition is requested, which shall be delivered to the Ministry of Justice of Bosnia and Herzegovina. The release shall be without prejudice to a new arrest and extradition if the extradition request is received after the expiry of the deadline under paragraphs (4) and (5) above. If a person sought is in custody on some other grounds, the deadline under paragraph 5 above shall start running on the date of decision on custody issued at a request for provisional arrest. If a person sought is realized due to the failure to meet the deadline under paragraph 5 above, extradition custody shall not be ordered but it may be ordered only on the grounds of extradition request instead."

Reply to paragraph 12 of the list of issues

35. According to data from the Prosecutor's Office of BiH regarding the situation in Bosnia and Herzegovina that Working Group found in 2010 we have not provided additional forensic pathologists for the procedures of exhumation and identification.

36. The financial and human resources which are at disposal to the Institute for Missing Persons are insufficient. MPI BiH is facing a constant lack of funds, which is reflected, among other things, to the fact that the budget of the Institute from its inception until today is halved. This is confirmed by the fact that the budget of the MPI BiH in the first year of its existence (2008) amounted to 6,455,467.00 BAM, and in 2016 it was 3,342,000.00 BAM.

37. The consequence of the constant reduction of the MPI BiH budget are worn computers and other equipment for field work, inadequate protection of investigators in the field, deterioration of vehicle fleet (average age of vehicles is 15) and insufficient number of professional staff etc.

38. The authorities of Bosnia and Herzegovina have done nothing to implement the recommendations of the Working Group on Enforced or Involuntary Disappearances (WGEID) of June 2010, which were related to MPI BiH personnel, material, financial strength, the independence of the Institute, as well as procurement of all existing modern technology that is required for the detection of mass and individual graves.

Reply to paragraph 13 of the list of issues

39. The Constitutional Court of BiH has issued several decisions in which it ruled on the appeals filed by the families of persons who went missing during the war in Bosnia and Herzegovina.

40. The decisions made by the Constitutional Court (on missing person):

- AP-228/04 of 13 July 2005;
- AP-129/04 dated 27 May 2005;
- AP-1226/05 of 23 February 2006;
- AP-36/06 of 16 July 2007;
- AP-159/06 of 26 July 2007;
- AP-171/06 of 13 September 2007;
- AP-1143/06 of 13 September 2007;
- AP-384/06 of 10 January 2008;
- AP-95/07 dated 13 May 2008;
- AP-2980/06 dated 13 May 2008;
- AP-3783/09 of 20 December 2012;
- AP-2101/11 dated 10 March 2013.

41. Regarding the decisions AP-228/04 and AP-129/04, on 27 May 2006, the Constitutional Court has brought the decision that the Council of Ministers of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, the Governments of Republika Srpska and Brčko District have not executed orders referred to in the above mentioned decisions, while on 18 November 2006, in the case no. AP-1226/05, has adopted a decision that the Council of Ministers of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and Government of Brčko District of Bosnia and Herzegovina have not executed the orders set out in this decision while, while the Government of Republika Srpska did not fully executed the orders set out in this decision.

42. Following these orders, in its Information on Enforcement of Decisions (adopted on 12 February and 21 October 2014) the Constitutional Court noted that the decisions (AP-2980/06 AP-3783/09 and AP-2101/11) are implemented or that certain activities are in progress. In the Information adopted on 31 January 2009, the same was established for the decisions (BS-36/06, AP-159/06, AP-171/06, AP-1143/06, AP-384/06 and AP-95/07).

43. According to data from the Prosecutor's Office of BiH, in Prosecutor's Office of Sarajevo Canton is conducting the investigation in the subject called the "Algerian group" based on the appeal of DN against several government officials who are suspected of arrest and forced transfer, without a trial in detention centers, under the authority of the United States, of six citizens of Bosnia and Herzegovina who were held in custody for a long time, without access to the ICRC, without notification to families, without informing them of their rights and legal status, without the control over the conditions of detention in 2001, which makes the elements of the offence of enforced disappearance.

Reply to paragraph 14 of the list of issues

44. According to the data of the Court of BiH, within the Court of Bosnia and Herzegovina operates Witness Support Unit, which provides the necessary psychological and professional support to witnesses. It is aimed at providing support to witnesses or those persons who appear in criminal proceedings as witnesses, whether they are relatives of the victims or not.

45. In its answer to the question does the 2014 Law on Witness Protection Programme also applies to witnesses testifying before entities and district courts and are there cases of intimidation and threats against victims and witnesses and whether any of these cases

referred to investigations or prosecutions of enforced disappearances and does the relatives of victims of enforced disappearances receive adequate psychological support prior, during and after the process, State Investigation and Protection Agency stated that the 2014 Law on Witness Protection Programme refers only to the witnesses who are testifying before the Court of BiH.

46. In addition, we inform you that in the past period there were cases relating to investigation or prosecution in respect of enforced disappearances of persons in which were recorded cases of intimidation, threats to victims and witnesses and these are reported to the Prosecutor's Office of Bosnia and Herzegovina. Also, we note that within the Agency operates separate organizational or the the Department for the protection of witnesses, but it does not have adequate human potential for providing psychological support to victims and witnesses who are afraid of violence, re-victimization and intimidation because of early release of convicted persons.

47. Also, Article 6 of the Law on Witness Protection stipulates that during the investigation, the Prosecutor, and after the indictment has been issued, the Court, shall ensure that the body responsible for issues of social care is aware of the involvement of the vulnerable witness in the proceedings and shall enable the assistance of this body as well as psychological support to the witness, including the presence of appropriate professionals at examination or hearings.

48. In its response, the Prosecutor's Office of BiH has stated that despite the existence of witness protection mechanisms there are no safeguards from any harassment, intimidation or sanctions in case of criminal charges of missing person's relatives, their representatives or other persons involved in the investigation of enforced disappearance. There are no examples of measures taken in order to ensure that the relatives of victims of enforced disappearances receive adequate psychological support prior, during and after the procedure.

Reply to paragraph 15 of the list of issues

49. The Ministry of Justice stated that the answer to the first part of question can be found in the para. 65 of the BiH Report. Suspension from duties is provided for in the Law on Civil Service in the Institutions of BiH and the BiH Labour Law.

50. According to data of SIPA on whether domestic law provides for suspension from duties of State officials suspected of having committed, or having been involved, in the commission of an enforced disappearance during the investigation, Article 58 of the Law on Civil Service in the Institutions of BiH prescribes the procedures of preventive suspension, which may include conduction of appropriate actions against civil servants suspected of having committed or been involved in the commission of enforced disappearances. Also, Article 112 of the Law on Police Officials of Bosnia and Herzegovina provides that a police official may be temporarily suspended from tasks and duties that he/she performs or from the police body if criminal or disciplinary proceedings have been initiated against him/her and if, considering the nature of criminal offence or the nature of serious violation of official duty as well as the circumstances under which a criminal offence or a violation was committed, there are grounds to believe that otherwise it would be damaging to the interest of the service or internal proceedings.

Reply to paragraph 16 of the list of issues

51. The Ministry of Justice states that Article 12 of the Law on International Legal Assistance provides that National judicial authorities shall afford assistance in respect of the request for mutual legal assistance to a judicial authority of the State that has no treaty on mutual legal assistance in force with Bosnia and Herzegovina, only if it may be expected

based on the assurances provided by the requesting State that it would execute a corresponding request of the national judicial authority.

52. Article 9 of the same Law provides that The relevant national judicial authority may refuse the request for mutual legal assistance: a) if the execution of the request would prejudice the legal order of Bosnia and Herzegovina or its sovereignty or security; b) if the request concerns an offense which is considered to be a political offense or an offense connected with a political offense; c) if the request concerns a military criminal offense. (2) Crimes against humanity or other values protected by international law, and attempts of commission of such offenses, as well as complicity in the perpetration of these criminal offenses, may not serve as a basis to deny the request for mutual legal assistance in terms of Paragraph (1) Sub-paragraph b) of this Article. (3) No request for mutual legal assistance shall be denied solely because it concerns an offense which is considered to be a fiscal offense pursuant to national law.

IV. Measures to prevent enforced disappearances (arts. 16–23)

Reply to paragraph 17 of the list of issues

53. (a) Service for Foreigners' Affairs is tasked with performing administrative tasks related to the movement and stay of aliens in Bosnia and Herzegovina and imposing the expulsion measures while the Ministry of Justice is tasked with performing surrender or extradition of a foreigner.

(b) Law on movement and stay of aliens and asylum clearly provides reasons for imposing the expulsion measure from BiH.

(c) At the any repressive decision of the Service it is enabled three-stage protection, or filing complaints to the Ministry of Security and lawsuits before BiH Court.

(d) For all persons, including persons who may be linked to terrorism or endangering of national security of BiH, when the conditions are met or the prohibition of returning is established, the Law prescribes the procedure and the possibility of his/her stay in BiH until the moment when the conditions for the return of an alien in the country of origin are met.

54. The new Law prescribes the maximum stay, or the period of supervision in the Immigration Centre. This control is determined at 90 days, and can be extended for another 90 days. In cases where the alien does not cooperate or we are not able to provide conditions for execution (the identity, or obtain a travel document etc.) the alien must be under supervision up to 18 months and after this period he must be released.

55. During the supervision, all aliens have the right to free legal assistance and it is possible, within the legal deadline, to file a complaint or a lawsuit against the decision on placing under supervision. The above rights are available to all beneficiaries of Immigration center, no matter if it is about people who pose a threat to national security or they are economic migrants.

56. When it comes to accommodation conditions, rights and obligations of beneficiaries of the Immigration Centre, it is important to emphasize that these requirements are consistent with the highest standards. Specifically, all beneficiaries, in addition to free legal assistance, have adequate accommodation, health and social protection, the right to visit - private and official, the right to express religion and all other rights which ensures full respect for rights and freedoms, and protection of personal integrity.

Reply to paragraph 18 of the list of issues

57. Regarding the question is there any legal provision that specifically prohibits secret detention, SIPA stated that articles 131 to 147 of the Criminal Procedure Code of Bosnia and Herzegovina prescribed procedure relating to the detention, including procedures relating to the rapid communication and access to counsel - lawyers, family and doctor, as well as procedures relating to the implementation of measures of control over the execution of detention by the competent authority.

58. Article 2 of the above mentioned Law provides prohibition of restriction of freedom and other rights, except under conditions prescribed by this law. Therefore, any detention of persons outside the prescribed procedure is not allowed.

59. In its answer to this question, the Ministry of Justice of Republika Srpska stated that the Article 13 of the Criminal Procedure Code of Republika Srpska provides that A perpetrator who is mentally capable and has committed a criminal offence with intent or out of negligence shall be held criminally responsible and that a perpetrator shall be held criminally responsible if he has perpetrated a criminal offence out of negligence only when the law prescribes so.

60. The duration of custody shall be for the shortest necessary time. Article 53 of the CPC states that the suspect or accused must have a defense attorney at the first questioning if he is mute or deaf or if he is suspected of a criminal offense for which a penalty of long-term imprisonment may be pronounced. A detainee has the right to appeal the decision on custody. RS Law on Execution of Criminal Sanctions precludes the acceptance of any person to prison without a court decision on custody. The same law provides for the possibility that the Ombudsman has access to prisons in RS. BiH Law on Ombudsman provides for authorization to perform the unannounced control in any prison in BiH. These controls are taking place regularly so as the controls of the International Committee for the Prevention of Torture (CPT).

61. The Ministry of Justice stated that the Article 37 of the Law on International Assistance in Criminal Matters stipulates that The Ministry of Justice stated that Article 37 stipulates the following: "The person whose extradition is sought shall be deprived of liberty by competent police authorities of Bosnia and Herzegovina, based on the international arrest warrant specifying a request of requesting State for custody of the person and he shall be brought before a judge for preliminary proceedings of the Court of Bosnia and Herzegovina, with the aim of making decision on the request of the requesting State to order provisional custody if there is a danger that the alien whose extradition is sought to escape or hide."

62. Article 38 of the same Law stipulates: "After the person deprived of liberty, whose extradition is requested, is brought before the preliminary proceedings judge based on the international arrest warrant issued on a request of the requesting State or based on a request by the foreign state, after his identity has been established, that person shall be informed without delay about the reasons why his extradition is requested, and based on which evidence, and he shall be called on to present his defence. The preliminary proceedings judge shall inform the person referred to in paragraph (1) of this Article that he is entitled to hire a defence counsel of his choosing who may be present during his hearing and that, in case he does not do so, the court shall appoint to him a defence counsel ex officio in case of a criminal offence for which the criminal legislation of Bosnia and Herzegovina prescribes mandatory defence. Minutes on the hearing and defence shall be taken. The provisional custody shall be ordered by the judge for preliminary proceedings and it may last for 18 days. The order (*rješenje*) on custody shall be delivered to the Prosecutor's Office of Bosnia and Herzegovina and the Ministry of Justice of Bosnia and Herzegovina in order to seek an extradition request from the state which has issued the arrest warrant. The deadline

under paragraph 4 above can be extended but it shall not exceed 40 days. If the requesting State fails to submit the extradition request and the supporting documents within the deadline, the Court of Bosnia and Herzegovina shall render a decision terminating the custody of the person whose extradition is requested, which shall be delivered to the Ministry of Justice of Bosnia and Herzegovina. The release shall be without prejudice to a new arrest and extradition if the extradition request is received after the expiry of the deadline under paragraphs (4) and (5) above. If a person sought is in custody on some other grounds, the deadline under paragraph 5 above shall start running on the date of decision on custody issued at a request for provisional arrest. If a person sought is realized due to the failure to meet the deadline under paragraph 5 above, extradition custody shall not be ordered but it may be ordered only on the grounds of extradition request instead.”

63. Article 13 of the Criminal Procedure Code of Republika Srpska provides that the suspect or accused shall be entitled to be brought before an independent and impartial court in the shortest reasonable time period and to be tried without delay. The court shall also conduct the proceedings without delay and prevent any abuse of the rights of any participant in the criminal proceedings. The duration of custody shall be for the shortest necessary time.

64. Article 53 of the CPC states that the suspect or accused must have a defense attorney at the first questioning if he is mute or deaf or if he is suspected of a criminal offense for which a penalty of long-term imprisonment may be pronounced. A detainee has the right to appeal the decision on custody. RS Law on Execution of Criminal Sanctions precludes the acceptance of any person to prison without a court decision on custody. The same law provides for the possibility that the Ombudsman has access to prisons in RS. BiH Law on Ombudsman provides for authorization to perform the unannounced control in any prison in BiH. These controls are taking place regularly so as the controls of the International Committee for the Prevention of Torture (CPT).

65. The CPC BiH and the CPC of Entities and DB BiH contain provisions on the deprivation of liberty or detention, manner, the basics reasons, the duration and the abolition of detention which are fully harmonized with the provisions of Article 5 of the Human Rights Convention.

66. In accordance with the Law on the Human Rights Ombudsman in Bosnia and Herzegovina (Official Gazette of BiH, No. 19/02, 35/04, 32/06 and 38/06) Ombudsmen of Bosnia and Herzegovina investigate all complaints concerning the poor functioning or violations of human rights and freedoms committed by any authority. Article 20 of the above mentioned Law provides correspondence addressed to an Ombudsman or to the Institution from places where individuals are held in detention, in imprisonment or in custody may not be the subject of any kind of censorship, nor may such correspondence be opened. Conversations between a complainant and an Ombudsman or persons delegated by the Ombudsman may never be monitored or interfered with.

67. The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.

68. In October 2008, Bosnia and Herzegovina has ratified 2002 UN General Assembly Optional Protocol which provided that all States Parties must establish National Preventive Mechanism (NPM) for the prevention of torture, which will regularly visits institutions in which where kept persons deprived of their liberty and which will operate preventively in order to improve treatment and the conditions in institutions in which such persons are held (prisons, police stations, psychiatric hospitals, psychiatric wards in general hospitals, clinical centers, social care centers, asylum for foreigners).

69. Unfortunately, the national preventive mechanism has not yet been established, and the draft Law on NPM, which was proposed by the Ministry for Human Rights in Bosnia

and Herzegovina in November 201, had not received a positive opinion from the Ministry of Finance and Treasury of Bosnia and Herzegovina but the commitment of the Ministry of Human Rights BiH is that this issue must be addressed and incorporated into the new draft law on Human rights Ombudsman of Bosnia and Herzegovina which, in its draft, provides that the function of the National preventive mechanism must be carried out by the Ombudsmen for Human rights in Bosnia and Herzegovina. Currently, the Law is in the parliamentary procedure.

70. The condition for the effective and independent performance of tasks within the jurisdiction of the Ombudsman of Bosnia and Herzegovina as an independent institution established to promote good governance, rule of law and the independence is also the financial independence as reported in the recommendations of the International Subcommittee for Accreditation SCA ICC.

71. Financial independence and strengthening the capacity of the institution of Ombudsman is a prerequisite to keep the status “A” before the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), and the re-accreditation of the Institution of Human Rights Ombudsman is scheduled for November 2016.

72. Since 2010 until today, the budgetary resources for the functioning of the Ombudsman Institution were diminished, which resulted in its planning and work and also hampered the normal functioning in all aspects of work. In particular, during the budget planning process for 2014 BiH Ombudsmen Institution has filed a request for a minimum of necessary funds for the establishment of NPM in the amount of 378,458. BAM. Unfortunately, the requests for additional budget funds were rarely or never been taken into consideration although the existence of legal and legitimate reasons such as the Law on Prohibition of Discrimination in BiH, the specific mandate of the Human Rights Ombudsman in accordance with this Law, then the special activities in the area of government, ministerial and other appointments and access to information.

Reply to paragraph 19 of the list of issues

73. When answering this question, the Ministry of Justice stated that Article 61 of the BiH Law on the execution of criminal sanctions, detention and other measures stipulates the obligation of registration of detainees or prisoners in the corresponding record book. Article 16 of the Rulebook on House Rules in Detention Facilities for Execution of Criminal Sanctions and Other Measures, stipulates the obligation of keeping the registers of detainees or convicts with accompanying alphabetical order. Admission of detainee or a convicted person in the register shall be made chronologically, immediately after arriving of detainees or convicted persons into the institution.

74. The same provision of the Rulebook prescribes which data on detainee must be registered and the manner of keeping the registers and reasoning. In the alphabetical register, detainees are registered chronologically according to the alphabetical surname initial. The Ministry of Justice of Bosnia and Herzegovina had no complaints against the officers regarding registration of persons deprived of their liberty. Regarding the question relating to measures to ensure that all records of persons deprived of their liberty are properly kept and updated, the State Investigation and Protection Agency SIPA states that in the Law on Police Officers, the processing of personal data and keeping the records are prescribed as one of the police authorities. In accordance with the police authorities, and in accordance with Article 34 of the Law on Police Officials of Bosnia and Herzegovina, the Agency conducted records of persons deprived of their liberty on any grounds. Department of Internal Control performs the control of lawful keeping and updating records, but the control may be carried out by the competent officer from the Department of Planning, Analysis, Cooperation and Information, as well as the authorized persons of the Agency for

the Protection of Personal Data in accordance with the Law on the Protection of Personal Data.

75. In the Agency are not recorded complaints, procedures and sanctions relating to the omission of police officers in the process of recording the arrest.

Reply to paragraph 20 of the list of issues

76. Security officials at the Immigration Centre, before they started to work, or come into direct contact with the beneficiaries of the Centre, were obliged to go through general and specialized training in dealing with illegal migrants who are placed under supervision in the Immigration Centre. This practice has enabled leisurely stay of foreigners in the Centre and instigated their cooperation with officials in the procedure prior to the implementation of the removal of illegal migrants (identification and verification of identity and citizenship, cooperation during the process of return, etc.). Training in dealing with illegal migrants was held by experts in this specific area from the Netherlands. Training was conducted in accordance with the highest international standards. In 2016, the Center for Education of Judges and Prosecutors of the Federation of Bosnia and Herzegovina has realized several seminars in the field of criminal and family law regarding the civil aspects of child abduction, and through the specific topics such as child abduction, detention and other forms of deprivation of liberty they spoke about a certain provisions of the International Convention for the Protection of All Persons Against Enforced Disappearances.

77. In particular, this institution did not conducted individual Judicial Training on the topic of the International Convention on Enforced Disappearances and its implementation. However, the UNODC Project -Increase Legal Regime to Combat Terrorism and Foreign Terrorist Fighters is in preparation stage of educational material and educational activities in which will be significantly more topics dedicated to the implementation of the International Convention on Enforced Disappearances. Realization of training and mentioned activities will begin during 2017 through a program of professional training of judges and prosecutors.

78. Centre for Judicial and Prosecutorial Training of Republika Srpska has not organized training mentioned in question no. 20 of additional questions of the Committee.

V. Measures for reparation and protection of children against enforced disappearance (arts. 24 and 25)

Reply to paragraph 21 of the list of issues

79. The Ministry of Justice states that Article 20, paragraph h) the CPC BiH defines the term “injured party” refers to a person whose personal or property rights have been threatened or violated by a criminal offense. Under this definition can qualify every victim of enforced disappearance, as a missing person, and another person who is a direct consequence of the forced disappearance harmed. Under this definition can be qualified every victim of enforced disappearance, as a missing person or another person who is directly harmed as a consequence of the enforced disappearance.

Reply to paragraph 22 of the list of issues

80. Through its regional and field offices, the Missing Persons Institute of BiH have established constant contact with the missing person’s families. Families of victims are regularly and timely informed about identifications, exhumations, the process of finding human remains and other activities within the competence of the Institute.

81. In its answer to this question, BiH Prosecutor's Office stated that a representative of the victim's relatives is in direct and constant contact with the people involved in the investigation and informed about everything, including about procedures regarding the exhumation and identification of remains.

Reply to paragraph 23 of the list of issues

82. Article 15 of the Law on Missing Persons, provides for the establishment of the Fund for Assistance to Missing Persons Families (hereinafter: the Fund), which was partially realized by making the Decision on establishing the Fund for assistance to families of missing persons in Bosnia and Herzegovina ("Official Gazette of BiH" No. 96/06). Headquarters, financing, management and other issues related to the Fund should be addressed by signing the Agreement with the BiH Council of Ministers of BiH, Entity Governments and the Government of BD BiH. This Agreement has still not been agreed nor signed. The reason for nonconformity relates to the question of funding and the headquarters of the Fund and compensation payments to victims' families. The Ministry of Human Rights and Refugees have repeatedly initiated activities on the harmonization of the Financing Agreement Fund but the agreement with the representatives of the Entity Governments regarding the headquarters and manner of financing it could not be achieved. The key disagreement concerned the percentage of funds that were supposed to provide entities to finance the Fund at the level of Bosnia and Herzegovina on the basis of the following criteria: the number and places of suffering of the missing persons.

83. In the meantime, the Constitutional Court has reached a number of decisions regarding the establishment of Fund. The Constitutional Court issued a decision establishing that the obligations on the basis of previous decisions, especially the decision AP 228/04 in which was stated the following:

"(...) the Council of Ministers of Bosnia and Herzegovina, the Governments of the Federation of Bosnia and Herzegovina and Republika Srpska and the Government of Brčko District of BiH must promptly ensure operational functioning of the Fund for the support the families of missing persons in Bosnia and Herzegovina and the Central Records of Missing Persons in Bosnia and Herzegovina, which were established in accordance with the BiH Law on Missing Persons".

84. In addition to this, also other decisions concerning the issues related to the process of tracing missing persons in Bosnia and Herzegovina have been made. All these decisions of the Constitutional Court are identical: AP -129/04 dated 27 May 2006, AP -1226/05 dated 18 November 2006, AP- 228/04 dated 27 May 2006, AP -159/06 dated 26 June 2007, AP -171/06 dated 13 September 2007, AP -1143/06 dated 13 September 2007, AP -36/06 dated 16 July 2007, in which was established the violation of missing person's families rights. In 2005, after the authorities of Bosnia and Herzegovina have submitted the First Initial Report on the implementation of the Convention against Torture, activities on the development of a legal framework for victims of torture in Bosnia and Herzegovina, and therefore the missing person's families shall enable real and every form of protection, were started.

85. Law governs the basis of protection for all victims of war torture in BiH, the rights and forms of protection, realization of rights and other issues, as required by international conventions and protocols ratified by BiH. The first text of the Law on victims of torture and civilian victims of the war did not receive the necessary positive opinions of the Entities and Brčko District and for the same reason it is not sent to Parliamentary procedure. The new text of the legislation, second in line, was made it in 2008. This text neither did not receive the necessary positive reviews from the entity governments and relevant institutions. According to the views of the entity governments, the rights of the

victims of torture in Bosnia and Herzegovina are provided through the entity laws and that this issue can be improved by amendments to the existing laws.

86. Working Group consisting of representatives of the Ministry for Human Rights and Refugees and other relevant institutions in BiH, together with representatives of non-governmental organizations working with victims of torture gathered in the Project “Together against torture in Bosnia and Herzegovina-Network”, in 2011 have started to creating the third text of the Law on the rights of victims of torture in Bosnia but, again, it did not receive the necessary positive opinions in BiH.

87. The Programme of the Council of Ministers of BiH for 2016 foresees the drafting the Law on the rights of victims of torture in Bosnia and Herzegovina. Activities on drafting the legal text are ongoing.

88. In this draft version, the provision according to which social security benefits are conditioned on declaring the victims of enforced disappearance as deceased, is not mentioned in the existing Law on the Protection of Persons with Disabilities, Protection of Civil War Victims and Protection of Families with Children, in Article 54, paragraph 2, point 5 missing person’s families are entitled to family disability, which shall be paid monthly in accordance with the Law.

89. The Ministry of Health and Social Welfare has not provided the answer to this question.

Reply to paragraph 24 of the list of issues

90. According to the Ministry of Justice, unlawful removal of child victims of enforced disappearance in the criminal codes in BiH is not defined as a criminal offense and this needs to be done in accordance with Article 25 of the Convention. This issue should be resolved through amendments to the entity criminal codes. In its response, the Ministry of Justice RS states that the CCRS in its amendments envisaged this crime and regulated this matter as a specific offense of “enforced disappearance”. It was proposed the following text;

91. Article 198b of the Criminal Code of Republika Srpska stipulates that whoever recruits, transports, transfers, delivers, sells, purchases, intermediates in sale, harbours, keeps or receives a person younger than 18 years of age with the purpose of use or exploitation of that person’s labour, perpetration of a criminal offence, prostitution or other uses of sexual exploitation, pornography, establishment of slavery or similar relationship, forced marriage, forced sterilization, illegal adoption or similar relationship, for the purpose of the removal of organs or body parts, for the use in armed forces or of some other type of exploitation, shall be punished by imprisonment for a term of not less than eight years.

92. In the answer to this question, Prosecutor’s Office alleges that after the army of Republika Srpska occupied the safe UN area in Srebrenica, enforced disappearance 436 children has occurred, mostly boys, of whom 342 children have been exhumed from mass graves and identified while 94 children are still unaccounted for. In several investigations and trials before the Prosecutor’s Office of BiH children were the victims of enforced disappearances.

93. Missing Persons Institute of BiH does not keep separate statistics on children victims of enforced disappearance, so these indicators cannot be presented.

Reply to paragraph 25 of the list of issues

94. The answer to this question is contained in the section of Article 25 of the Initial Report of BiH on Enforced Disappearances and partly contained in the previous answer.

Appendix

Review of closed cases for the criminal offense of Crimes against Humanity, Article 172 (1) i) (enforced disappearance)

<i>Case no.</i>	<i>Case name</i>	<i>The accused</i>	<i>Judgement²</i>	<i>Sanction</i>
1. X-KRŽ-05/51	Dragan Damjanović	Dragan Damjanović	Accused	Long term imprisonment – 20 years
2. X-KRŽ-05/04	Boban Šimšić	Boban Šimšić	Accused	Imprisonment – 14 years
3. X-KR-05/46	Rade Veselinović	Rade Veselinović	Accused	Imprisonment – 7 years and 6 months
4. X-KR-09/662	Stojan Perković	Stojan Perković	Accused/indictment rejected	Imprisonment – 12 years
5. X-KRŽ-06/275	Rašević i dr.	Mitar Rašević	Accused	Imprisonment – 7 years
		Savo Todović	Accused	Imprisonment – 12 years and 6 months
6. X-KR-09/684-1	Dragan Rodić	Dragan Rodić	Accused	Imprisonment – 8 years
7. X-KRŽ-05/58	Momčilo Mandić	Momčilo Mandić	Osloboden	-
8. X-KRŽ-05/122	Bastah et.al	Predrag Bastah	Accused/acquittals/ indictment rejected	Long term imprisonment – 22 years
		Goran Višković	Accused/indictment rejected	Imprisonment – 18 years
9. X-KRŽ-07/400	Krsto Savić	Krsto Savić	Accused	Imprisonment – 17 years
10. S1 1 K 003810 12 Krž	Zoran Marjanović	Zoran Marjanović	Acquittals	-
11. S1 1 K 008728 14 Kžk	Željko Jukić	Željko Jukić	Accused	Imprisonment – 13 years
12. S1 1 K 007121 14 Krž 9	Branko Vlačo	Branko Vlačo	Accused	Imprisonment – 13 years
13. S1 1 K 014550 15 Krž 8	Dragan Šekarić	Dragan Šekarić	Aquittals	Imprisonment – 17 years

² The information given in this column refer exclusively to the charges of forced disappearance (Article 172 (1) item i) of the CC BiH).