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LANZAROTE CONVENTION

Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse

Replies to the general overview questionnaire

BOSNIA AND HERZEGOVINA

Replies registered by the Secretariat on 6 April 2014

GENERAL FRAMEWORK

Question No. 1: Definition of “child”

- a. Does the notion of “child” under your internal law correspond to that set out in Article 3, letter (a), i.e. “any person under the age of 18 years”?*

Entity laws on the social protection¹ define “child” as “any person up to 18 years of age” whereas the Law on Social Protection of BDBiH² does not define the term “child” or juvenile in a sense of his/her age, but only as such categories of juveniles who enjoy certain rights.

Entity laws on health insurance³ and law of the District⁴ do not define the term “child”, but an insured person only⁵.

Family laws in BiH do not provide the definition of “child” in a sense of the definition of the Convention. The laws prescribe that the person becomes of age when he/she turns 18 and at the same time the person obtains working/legal capacity that can be obtained even earlier upon entering into a marriage or if a juvenile older than 16 years has become a parent on which the court shall decide in extra-judicial proceedings.

The framework law on primary and secondary education in BiH in Article 16, para 3 prescribe that child is any person under the age of 18 years. Law on Primary Education of the RS and Law on Education in Primary and Secondary Schools BDBiH do not define the term “child” as defined by the Convention, but do define the age until primary education should last (15 years of age). Cantonal regulations on primary education regulate the definition of child in different ways so some of them define child as a person up to the age of 18 whereas others do not provide the child definition, but do prescribe the regular attending of school for children from 6 to 15 years of age.

Entity laws on the protection against family violence⁶ specify child is any member of the family who has not turned 18 years.⁷

Child is, in a sense of Criminal Code of BiH⁸, Criminal Code of F BiH⁹ and Criminal Code of BD¹⁰ any person who has not turned 14 years and a juvenile in a sense of these laws is any person who has not turned 18 years of age.

¹ Law on Social Protection, Protection on Civilian Victims of War and Protection of Families with Children of F BiH (Official Gazette ___); Law on Social Protection of the RS (“Official Gazette of “ No. 37/12)

² “Official Gazette of BDBiH“ No. 1/04,4/04,19/07,2/08

³ Law on Health Insurance of F BiH (“Official Gazette of F BiH“ No. 30/97,07/02 and 70/08); Law on Health Insurance of RS (“Official Gazette of RS“ No. 18/99, 51/01, 70/01,51/03,57/03,17/08,1/09,106/09)

⁴ Law on Health Insurance of BDBiH (“Official Gazette of BDBiH“ No. 01/02,07/02,19/07,02/08, 34/08)

⁵ “An insured person may be a child who has turned 15 years of age that is any older juvenile up to the age of 18 who has not completed primary education or has not got employed upon the completion o primary education provided such person has reported to Bureau for Employment. An insured person is a child from the day of birth and any child during regular education in primary and secondary schools and during studies in the institutions of higher education and faculties“

⁶ Law on Protection from Domestic Violence of Republika Srpska (“Official Gazette of RS“, No. 102/12); Law on Protection from Domestic Violence of F BiH (“Official Gazette F BiH 28/13)

⁷ Law on Protection from Domestic Violence of F BiH, Article 2

⁸ Criminal Code of BiH, Article 1, para 11 and 12

⁹ Criminal Code of F BiH, Article 2, para 9 and 10

Criminal-process legislation in BiH does not define the term “child”, but does determine the age for criminal responsibility. Criminal responsibility of juvenile exists if such juvenile at the time of the perpetrating the crime has turned 14. Law on Criminal Proceedings of BH, Law on Criminal Proceedings of FBiH and Law on Criminal Proceedings of BDBiH prescribe that criminal proceedings shall be suspended and the competent body of custody notified on that if established that a juvenile at the time of perpetrating the crime has not turned 14 yet. Law on Criminal Proceedings of RS prescribes that the proceedings cannot be conducted against a juvenile who has not reached 14 yet.

Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings of RS¹¹ in Article 2, para 1 defines the term “child” as “any person who has not turned 18 years of age”. The identical law in the Federation of BiH that came into force on 14 January 2014 also defines the term of “child” as “any person who has not turned 18 years of age”.

Law on Ombudsman for Children of RS¹² defines child as any person who has not turned 18 years regardless of such person being a local or foreign citizen, born in marriage or outside of marriage, being adopted or not, under the custody of parents or without parental custody.

b. What legislative or other measures have been taken to ensure that when the age of a victim is uncertain and there are reasons to believe that the victim is a child, the protection and assistance provided for children are accorded to him or her in accordance with Article 11, para. 2?

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c. Please state whether the age for legal sexual activities is below 18 years of age and if so, please specify the age set out in internal law.

Entities ‘criminal codes¹³ and law of BD¹⁴ establish an absolute prohibition of any sexual actions with a child regardless of whether such actions are consensual or even initiated by a child and child is any person under the age of 14. Besides, these laws also deem any common law marriage between a person of age with a juvenile who has not turned 16 years a criminal offence.

Family laws of both entities and District prescribe that the court may permit a marriage to be entered by a juvenile older than 16 years of age in extra-judicial proceedings.

¹⁰ Criminal Code of BD BiH, Article 2, para 11 and 12

¹¹ Official Gazette of Republika Srpska, No. 13/10 i 61/13

¹² Official Gazette of Republika Srpska, No. 103/08 and 70/12

¹³ Criminal Code of FBiH, Article 207; Criminal Code of RS, Article 195, para 1

¹⁴ Criminal Code of BD BiH, Article 204

Question No. 2: Non-discrimination

Is discrimination, on grounds such as the ones mentioned in the indicative list in Article 2, prohibited in the implementation of the Convention, in particular in the enjoyment of the rights guaranteed by it? If so, please specify. If not, please justify.

Legislative-legal framework for the protection against discrimination in Bosnia and Herzegovina consists of criminal codes of Bosnia and Herzegovina, its entities and Brcko District of BiH and such laws define criminal offences and punishments for such acts for respective levels of government in BiH.

Certainly, international-legal instruments that Bosnia and Herzegovina acceded to need to be mentioned here. The European Convention on Human Rights and Fundamental Freedoms is an integral part of the Constitution of BiH and rights and freedoms of the Convention prevail over any other laws of the legal system of BiH, which means that the Convention is not only applied as binding to all national judicial and administrative bodies without any need to pass implementing regulations, but it also has prevalence over any other regulation.

Further, the ratification of the Convention of Human Rights and Fundamental Freedoms allows for the protection of human rights and fundamental freedoms before the European Court for Human Rights in Strasbourg, which contributes to a better quality protection of BiH citizens against discrimination.

Bosnia and Herzegovina also assumed responsibility based on international provisions on human rights to ensure the equality of men and women in all spheres of life. To this end, in 2003, Law on Gender Equality was adopted and in 2009 Law on Prohibition of Discrimination.

Criminal Codes, along with Law on Gender Equality of BiH and Law on Prohibition of Discrimination in BiH widely open the door to the protection against discrimination and gender inequality that may be committed by bodies of government or individuals, before domestic courts of law, which is of paramount importance for any state that passed through the transition process.

Review of criminal offences, which foresees the protection against discrimination in criminal legislation of BiH:

Criminal Code of Bosnia and Herzegovina (BiH)

Relevant provisions related to the discrimination based on gender in the Criminal Code of BiH are, as follows:

Article 145 Infringement of equality of individual and citizen; Article 148 Violation of right to submit complaints and petitions; Article 149 Unauthorized use of personal data; Article 149a. Unauthorized deprivation of identification documents; Article 185 Establishment of slavery and transport of slaves; Article 186 Trafficking in persons; Article 187 International procuring in prostitution; Article 190 Torture and other cruel, inhuman and degrading treatment; Article 204 Violation of equality in performing economic activities;

When implementing the Convention, in particular when exercising guaranteed rights, provisions on the prohibition of discrimination on any grounds are contained in the Constitution of BiH, entities' and cantonal constitutions and the Statute of BDBiH and also in the laws regulating education, social and health protection, criminal codes and other domains.

Enjoying rights and freedoms as foreseen in the Constitution and applicable international treaties for protection of human rights specified in annexes to the Constitution is guaranteed to all the persons in BiH without any discrimination whatsoever.

Law on Prohibition of Discrimination of BiH¹⁵ establishes a framework for implementation of equal rights and opportunities to all persons in BiH and regulates a system for the protection against discrimination. The Law in Article 2, para (1) prohibits any direct or indirect discrimination on any grounds, including race, skin colour, language, religion, gender, ethnic affiliation, national or social origin, birth or similar status, faith, political or any other persuasion, property, education, sexual expression or sexual orientation, membership in trade unions or any other association, and every other circumstance with a purpose or a consequence to disable or endanger recognition, enjoyment or realization of rights and freedoms in all areas of life.

The prohibition of discrimination on the grounds of gender is explicitly and in detail prescribed by Law on Gender Equality of BiH as this law establishes the prohibition of gender-based discrimination in both public and private life.

Criminal codes of all levels of government do not define acts of discrimination separately; however, discrimination is defined through many articles of valid criminal codes. Criminal codes do contain provisions sanctioning the criminal offences committed against the freedoms and rights of individuals and citizens and treat infringements of equality of individuals and citizens as a separate act.

Such criminal offences of infringement of equality of individual and citizens are defined in the provisions of Article 145 of Criminal Code of BiH and entities' and BD criminal codes (Article 162 of Criminal Code of RS, Article 177 of Criminal Code of FBiH and Criminal Code 174 of BD BiH) and such criminal offence is defined as deprivation or limitation of rights as established in the Constitution of BiH, confirmed in international agreements, laws of BiH, other regulations of BiH or providing an individual with unjustified privileges and benefits, inter alia, based on gender. It is also prescribed that such criminal offence shall exist if the citizen is deprived of the right to free employment in the entire territory of BiH under equal conditions, and if such infringement of equality of citizens concerns the right to use the language and letter, which does not necessarily is done on the grounds of stated differences in ethnicity, race, etc. among citizens. This criminal offence as per the provisions of the Criminal Code of BiH and Criminal Code of FBiH may be perpetrated by official and responsible persons whereas according to the Criminal Codes of RS and BD of BiH, the perpetrator may be, apart from official persons, any other person who, based on the differences, inter alia, of gender and sexual orientation, deprives or limits the freedom and right of individual as established in relevant legal documents. It is important to mention that inciting to discrimination based on gender is interpreted in a sense of provisions of the criminal code defining inciting as "whoever intentionally incites another to perpetrate a criminal offence, shall be punished as if he had perpetrated such offence"; "Whoever

¹⁵ "Official Gazette of BiH" No. 59/09

intentionally incites another to perpetrate a criminal offence for which a punishment of imprisonment for a term of three years or a more severe punishment may be imposed, and the criminal offence has never been attempted, shall be punished as for the attempt of the criminal offence”; “incitement, demonstrating benefit from the perpetration of a criminal offence, giving or promising gifts, abuse of subjugation relationship or dependence, leading to or maintaining a person in the state of a real or legal deception”.¹⁶

Entities’ laws on protection and treatment of children and juveniles in criminal proceedings specify special rules of treatment of children who are victims or witnesses and laws, prosecutions, including authorized official persons, bodies of custody, families, schools, institutions at all levels of community and other stakeholders involved in the criminal proceedings are bound to abide by them in a such a way that without any discrimination whatsoever the feeling of dignity and personal value of child is contributed, the age of children is taken into account along with the best interests of children, his/her rights to life, survival and development, allowing for child in accordance with his/her age and maturity to express his/her views of all issues related to the child at which all such endeavours should lead towards the rehabilitation and social re-integration of child and his/her assuming of a constructive role in the society.

Article 4 of the specified Laws contains the provision related to non-discrimination which reads, as follows:

“Juveniles and young adults in all the stages of proceedings shall be treated in the same way regardless of race, skin colour, gender, language, religion, political or any other conviction, ethnic or social origin, property status, status acquired on birth or other status of juvenile, his/her parent, adoptive parent or custodian and all other forms of difference”.

Framework Law on Primary and Secondary Education in BiH in Article 3 provides for equal opportunities for education and choice at all levels of education regardless of gender, race, ethnicity, social and cultural origin and status, family status, religion, psycho-physical and other personal features. The principle of non-discrimination is incorporated in Article 4 containing the provision according to which “every child has a right of access and equal possibility to participate in appropriate educational process, without discrimination on whatever grounds” and Article 35 prescribes that “school cannot discriminate in children’s access to education or their participation in educational process on the basis of race, colour, gender, language, religion, political or other belief, national or social origin, on the basis of special needs status, or on any other basis”. In addition, the same Law, Article 34 thereto, established that “ school implements its role and functions in a motivating environment for acquiring knowledge; respectful and supportive towards the individuality of every student, as well as towards his or her cultural and national identity, language and religion; safe and free of any form of intimidation and abuse, physical punishment, insults, humiliation and degradation and damage to health including damage caused by smoking, or by the use of any other intoxicating or illegal substances”.

Law on Social Protection of RS, Article 3 prescribes that the rights of this law belong to the persons who fulfil the conditions and terms specified regardless of differences in race, skin colour, gender, language, political, national and religious determination, social and economic origin, place of birth, invalidity or any other status. In addition, the same article prescribes

¹⁶ Criminal Code of FBiH, Article 32.; Criminal Code of RS, Article 24.; Criminal Code of BD, Article 32.

that institutions of social protections shall provide equality in access to and use of rights contained in this law preventing any form of discrimination, either direct or indirect, on any grounds whereas persons, both legal entities and natural persons, implementing this law are bound to respect dignity and person of the beneficiary looking after his/her best interest. Laws in the field of social protection of FBiH and BDBiH do not contain any explicit prohibitions of discrimination.

Question No. 3: Implementation review

Please state (without entering into details):

a. the main legislative or other measures to ensure that children are protected against sexual exploitation and sexual abuse in accordance with the Convention;

The fundamental form for the protection of children against sexual exploitation and abuse is contained in the framework of criminal codes applied in BiH. The state Criminal code, in the group of criminal offences against humanity and values protected by international law, prescribes certain *crimiinal offences containing sexual exploitation of children*, that is the ones in which persons under the age of 18 appear as damaged parties, such as: Establishment of slavery and transport of slaves¹⁷, trafficking in persons¹⁸, international procuring in prostitution.

In the entities' criminal code and the criminal code of District, in the chapters "criminal offences against sexual integrity and moral" and "criminal offences against marriage and family", and entire host of criminal offences appear containing the elements of sexual exploitation and abuse of children (persons up to the age of 14) and juveniles (persons under the age of 18):

- Rape¹⁹
- Sexual intercourse with a helpless person²⁰ - Sexual intercourse with a powerless person²¹ - Sexual intercourse with a helpless person²²
- Sexual intercourse with a child²³ - Sexual violence against a child²⁴ - Sexual intercourse with a child²⁵
- Sexual intercourse by abuse of position²⁶ - Sexual intercourse by abuse of position²⁷ - Sexual intercourse by abuse of position²⁸

¹⁷ Criminal Code of BiH, Article 185, para 2 2

¹⁸ Ibid, Article 186, para 2

¹⁹ Criminal Code of the Federation of BiH, Article 203, para 5 and 6; Criminal Code of Republika Srpska, Article 193, para 2, Criminal Code of Brcko District of Bosnia and Herzegovina, Article 200, para 5

²⁰ Criminal Code of the Federation of Bosnia and Herzegovina, Article 204

²¹ Criminal Code of Republika Srpska, Article 194, para 2

²² Criminal Code of Brcko District of Bosnia and Herzegovina, Article 201

²³ Criminal Code of the Federation of Bosnia and Herzegovina, Article 207

²⁴ Criminal Code of Republika Srpska Article 195

²⁵ Criminal Code of Brcko District of Bosnia and Herzegovina, Article 204

²⁶ Criminal Code of the Federation of Bosnia and Herzegovina, Article 205 para (2): "A teacher, educator, parent, adoptive parent, guardian, step-father, step-mother or any other person who, by abusing his status or relationship toward a juvenile who is entrusted to him for education, upbringing, custody or care, performs sexual intercourse or equivalent sexual act upon a juvenile, shall be punished by imprisonment for a term between six months and five years".

²⁷ Criminal Code of Republika Srpska, Article 196.

²⁸ Criminal Code of Brcko District of Bosnia and Herzegovina, Article 202

- Lechery²⁹
- Satisfying lust in the presence of a child or a juvenile³⁰ - Satisfying sexual urges in the presence of others³¹
- Pandering³²
- Trafficking in juvenile persons³³ - Trafficking in persons³⁴
- Abuse of a child or a juvenile for pornography³⁵ - Abuse of children and juveniles for pornography³⁶
- Production, possession and projecting child pornography³⁷
- Introducing pornography to a child³⁸
- Incest³⁹ - Incest⁴⁰

Criminal offences that most frequently appear in concurrence with the above acts are, as follows:

- Common law marriage with a juvenile⁴¹
- Neglect or maltreatment of a juvenile⁴²

The Criminal Code of the Federation of BiH is still not harmonized with the international standards in the field of trafficking in persons. The endangered position of persons under 18 years is not observed and evidence is still sought that the perpetrators incited, procured or forced such persons to be sexually exploited.

Upon the passage of changes and amendments to the Criminal Code of Republika Srpska in 2010, the law was harmonized with both Lanzarote convention and other international standards in that field. Primarily, for instance, with the criminal offence “production and displaying child pornography”, the qualification of such criminal offence was expanded in order to include another incrimination that of the “possession of child pornography” in addition to the production and displaying child pornography. In addition, the changes also prescribe stricter sanctions for this criminal offence.

²⁹ Criminal Code of the Federation of Bosnia and Herzegovina, Article 208, para 2; Criminal Code of Brcko District of Bosnia and Herzegovina, Article 205, para 2

³⁰ Criminal Code of the Federation of Bosnia and Herzegovina, Article 209. Criminal Code of Brcko District of Bosnia and Herzegovina, Article 206.

³¹ Criminal Code of Republika Srpska Article 197

³² Criminal Code of the Federation of Bosnia and Herzegovina, Article 210, para 4; Criminal Code of Republika Srpska, Article 198.; Criminal Code of Brcko District of Bosnia and Herzegovina, Article 207

³³ Criminal Code of Republika Srpska Article 198b

³⁴ Criminal Code of Republika Srpska Article 207a

³⁵ Criminal Code of the Federation of Bosnia and Herzegovina, Article 211; Criminal Code of Brcko District of Bosnia and Herzegovina, Article 208

³⁶ Criminal Code of Republika Srpska Article 199, para 1

³⁷ Criminal Code of Republika Srpska Article 200

³⁸ Criminal Code of Republika Srpska Article 212; Criminal Code of Brcko District of Bosnia and Herzegovina, Article 209

³⁹ Criminal Code of the Federation of Bosnia and Herzegovina, Article 213, para 2 and 3; Criminal Code of Brcko District of Bosnia and Herzegovina, Article 210, paras 2 and 3

⁴⁰ Criminal Code of Republika Srpska Article 201

⁴¹ Criminal Code of the Federation of Bosnia and Herzegovina, Article 216

⁴² Criminal Code of the Federation of Bosnia and Herzegovina, Article 219

When it comes to process legislation, the procession of perpetrators of crimes against sexual freedoms and moral is conducted in compliance with the state and entities' laws on criminal processing plus that of the District, which all in essence regulate this matter in an identical manner.⁴³ These laws contain such provisions that prescribe special attention for certain categories of children and juveniles in criminal proceedings. These are mainly juvenile persons and victims of, as qualified by law "sexual offences".

The criminal processing laws also prescribe an obligation to report criminal offences. Official and responsible persons in all bodies of authority at all levels of government, in public companies and institutions are bound to report criminal offences of which they are aware or informed in any other manner. Under such circumstances, an official or a responsible persons shall take measures to preserve the traces of such criminal offence, the objects on which or by the means of which such criminal offence has been committed along with any other evidence and notify an authorized official person or prosecution without any delay.⁴⁴

Medical workers, teachers, educators, parents, custodians, adoptive parents and other persons who are either authorized or bound to provide protection and assistance to juveniles and to supervise the raising of juveniles and who have found out or made an assessment that there is a suspicion that a juvenile is a victim of sexual, physical or other form of abuse, are bound to immediately inform either an authorized person or a prosecutor of such suspicions.⁴⁵

The law prescribes the right of citizen to report a criminal offence. Everyone is bound to report the perpetration of a criminal offence in the event the failure to report it is qualified as a criminal offence as is the case with criminal offences against sexual freedom and moral committed over children.

In the event of a failure to inform of a criminal offence, that is, failure to adhere to these provisions, in certain cases only, can be construed as a criminal offence from Article 230 of the Criminal Code of BiH "Failure to inform of a criminal offence or a perpetrator" for the basic form of which a fine or imprisonment of up to three years can be said and for a qualified form the imprisonment of up to five years or a more severe punishment" which also applies to criminal offences of sexual violence over children.

Entities' laws on protection from domestic violence⁴⁶ explicitly prohibit any form of domestic violence. In a sense of these laws, domestic violence shall be any act of inflicting physical, psychological and sexual harm, sufferings or economic damage,⁴⁷ as well as threats to commit the aforementioned, and lack of due care and attention which may seriously impede family members and persons who are in close social relationships, regardless if among them there is

⁴³ Law on Criminal Proceedings of BiH ("Official Gazette of BiH" No: 36/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 58/08, 12/09, 16/09, 93/09, 72/13); Law on Criminal Proceedings of the Federation of Bosnia and Herzegovina ("Official Gazette of the Federation of Bosnia and Herzegovina" No. 35/03, 37/03, 56/03, 78/04, 28/05, 55/06, 27/07, 53/07, 9/09 and 12/10); Law on Criminal Proceedings of the Republika Srpska ("Official Gazette of the RS" No. 53/12); Law on Criminal Proceedings of BD BiH, refined text ("Official Gazette of BD BiH" No. 33/13)

⁴⁴ Law on Criminal Proceedings of BiH, Article 213; Law on Criminal Proceedings of FBiH, Article 228; Law on Criminal Proceedings of the RS, Article 221.; Law on Criminal Proceedings of BD BiH, Article 213.

⁴⁵ Law on Criminal Proceedings of BiH, Article 213 para 2; Law on Criminal Proceedings of FBiH, Article 228 para 2; Law on Criminal Proceedings of the RS, Article 22. para 2.; Law on Criminal Proceedings of BD BiH, Article 213. para 2

⁴⁶ Law on Protection from Domestic Violence of Republika Srpska ("Official Gazette of RS", No. 102/12); Law on Protection from Domestic Violence of F BiH ("Official Gazette of F BiH 28/13)

⁴⁷ Law on Protection from Domestic Violence of F BiH, Article 7

or there was life community, from enjoying their rights and freedoms on basis of gender equality principle in all areas of public and private life.⁴⁸ One of the acts of domestic violence is defined by valid laws on protection from domestic violence is “*sexual harassment*”. Healthcare providers and social workers, educators, medical institutions, educational institutions, other institutions and bodies, as well as nongovernmental organizations that, during the course of carrying out their duties, learn of occurrences of domestic violence shall have the responsibility to immediately report such cases to the police.

Family member or any individual who learns of occurrences of domestic violence shall have the same responsibility to report it, particularly if a child is a victim of domestic violence. Failure to report domestic violence shall constitute an offence, except in the even when domestic violence is reported by a victim of violence.⁴⁹ Law prescribes fines for a misdemeanour of an official person employed with educational, healthcare or social institutions who has failed to report domestic violence when a victim is a child.⁵⁰

Police, prosecution, court, custody bodies and other services in charge of social and health protection are bound to provide the victim of domestic violence with the protection against violent behaviour in an emergency procedure. According to the Law on protection from domestic violence of the RS, special assistance and protection is enjoyed by the child.

Family laws prohibit any violence in family which also implies “any disturbance of either physical or psychological integrity” so that this provision tautologically means that any sexual harassment of children in family is also prohibited. The legislator prescribes in a separate legal provision the right of child to protection against any form of violence, abuse, neglect and abandonment.⁵¹ The Family Law of FBiH prescribes a duty and right of parents to protect child from any forms of vice including sexual abuse. The Family Law of RS prescribes that parents and other members of the family shall not subject child to humiliating treatments,⁵² among which all forms of sexual abuse and that parental rights shall be taken away from any parent sexually abusing child.⁵³ An explicitly stated parental duty is to keep and protect children from prostitution and sexual abuse.⁵⁴

Besides, Family Laws and Laws on Social and Children’s Protection regulate the issues of prevention, assistance and protection of children – victims of sexual exploitation.

⁴⁸ Law on Protection from Domestic Violence of RS, Article 6

⁴⁹ Law on Protection from Domestic Violence of FBiH, Article 8

⁵⁰ Law on Protection from Domestic Violence of RS, Article 42

(6) „Any employee of an educational, social or healthcare institution who has failed to report domestic violence as set forth in Article 6 of this Law shall be punished with a fine from BAM 1.000 to BAM 3.000.”

(7) “Any member of the family who has failed to report domestic violence as set forth in Article 6 of this Law when a victim is a child shall be punished with a fine from BAM 300 to BAM 900. “

Law on Protection from Domestic Violence of FBiH, Article 44.: “*Any official person who has failed to proceed pursuant to Article 8, para 1 of this law shall be punished with a fine from BAM 500,00 to BAM 3.000,00 if a victim of domestic violence is a child from Article 7, para 2 of this Law .*”

⁵¹ Family Law of FBiH, Article 127. Family Law of BD BiH, Article 110

⁵² Article 97 of Family Law of RS

⁵³ Article 106 Ibid

⁵⁴ Article 117 Ibid

b. whether your country has adopted a national strategy and/or Action Plan to combat sexual exploitation and sexual abuse of children. If so, please specify the main fields of action and the body/bodies responsible for its/their implementation;

The Council of Ministers of BiH passed on 13 July 2013 **Action Plan for Children 2011-2014**. This Action Plan defines the protection of children from sale, child prostitution and child pornography in order to prevent trafficking in children. The measures specified in the Action Plan are, as follows:

- Measure 1 - Develop and centralize mechanisms for systematic data collection in all areas that concern the implementation of the Optional Protocol, including establishing a database within the BiH Ministry for Human Rights and Refugees to monitor implementation of the Convention and the Optional Protocol,
- Measure 2 - Develop a coordinated system for a comprehensive data collection - disaggregated, among others, by age, gender, geographical location and socio-economic status – to cover all children below the age of 18 years.
- Measure 3 - Develop a national plan of action to address issues that are covered by the Optional Protocol and ensure adequate human and financial resources for its implementation.
- Measure 4 - Develop informational and educational programs and long-term campaigns to raise awareness of preventive measures against the sale of children, child prostitution and child pornography and their harmful effects.

The implementation of the Action Plan is a joint responsibility of the government of Bosnia and Herzegovina and applies to the entire territory of BiH. To this end, it is necessary for the governments within their own respective scope of competencies pass their operational action plans with a view of implementing the goals of the Action Plan. The newly formed Council for Children of BiH is the main body tasked with the monitoring of the implementation of the Action Plan. The first Report on the Implementation of the Action Plan for children of BiH (2011-2014) was produced for the period July 2011-May 2013 by Cross-sector Team for Preparation of Report on Implementation of the Action Plan for Children of 2011-2014, set up by the Ministry for Human Rights and Refugees of BiH. The team consisted of representatives of competent state and entity ministries and representatives of NGO sector. The report was adopted by the Council of Ministers of BiH at a session held on 3 September 2013. The general conclusion is that the activities conducted with a view of implementing the measures from the field of protection of vulnerable groups of children ensured the protection of children foreign nationals and achieving of their rights.

At a session of the Council of Ministers of BiH held on 28 November 2012, a Decision on Adopting State **Strategy for Combating Violence Against Children in BiH, for the period from 2012 to 2015**.⁵⁵ The strategic goal is to establish a multi-disciplinary and sustainable system for reporting and recording cases of violence over children, adequate and sustainable system of support, financing and gathering data in order to improve prevention, protection of children – victims of violence in Bosnia and Herzegovina and establish a safe environment in which right of every child to be protected from any form of abuse, neglect and exploitation will be achieved.

⁵⁵ “Official Gazette of BiH“ No. 38/13

Strategic measures concern four main challenges:

1. Prevention, emphasizing repeatedly problems of timely detection, reporting and system of recording of cases of violence against children;
2. Sustainability of the support system and financing of activities;
3. Systems of protection of children and
4. Monitoring, evaluation and advocacy that are chronologically listed with a view of an easier monitoring of the implementation of the Strategy.

The Strategy defines that the general goal should be achieved by the implementation of these continuous measures:

- Produce a manual for multidisciplinary education of all key stakeholders in combating violence against children (how to recognize violence, how to report it by sectors: health, police, social welfare, education);
- Draft a program for sensitization and mobilization of a wider public for identification and reporting of cases of violence against children;
- Based on an analysis of the harmonization of laws in BiH with a view of harmonizing and improving legislative solutions, initiate a process of producing a proposal for changes and amendments to the laws in order to improve the system for protection of children against violence;
- Set up coordination team for combating violence against children at municipal level;
- Establish, improve and strengthen the existing competent departments/sections for combating internet crime within the framework of police agencies in Bosnia and Herzegovina;
- Set up, as required, municipal, inter-municipal, regional and cantonal multidisciplinary advisory centres for children, young and parents within which a network of informational, educational advisory services and other programs intended for families, parents and children would be developed.

As for the strategic measures specific for individual years of the implementation regarding the protection of children against violence, we shall herewith state the following:

- ✓ Produce protocols/guidelines for treating children-victims of violence in Bosnia and Herzegovina in the context of defining a system of timely detection, reporting and recording,
- ✓ Take appropriate measures aimed at increasing the capacity of centres for social welfare, competent local healthcare services and improving the capacity of educational institutions, courts, prosecution offices and police agencies,
- ✓ Review the system of gathering data on violence against children that includes IT support and networking among all competent institutions and NGO sector,
- ✓ Complete the process of the inclusion of social workers into the systems of primary and secondary education,
- ✓ Conduct the FIRS research on the length of investigative and court proceedings with a view of preventing both secondary and tertiary victimization.

Implementers, time for implementation, method of financing, success indicators and reporting unit are determined for each of these measures. As for the NGO sector, in 2012, an independent monitoring body was set up with a view of monitoring the implementation of the Strategy and this body was formally verified by the Ministry for Human Rights and Refugees

of BiH. This Independent Monitoring Team consists of seven NGOs. The first activities of this Team in the monitoring of the implementation of the Strategy were done in the course of 2013 for the period 2011/2012 and it is expected that the First Report on Independent Monitoring of the Implementation of the Strategy for Combating Violence Against Children in BiH (2012-2015) are expected will be publicized by the end of the first half of the current year.

The Council of Ministers of Bosnia and Herzegovina at its 43rd session held on 26 March 2013 considered and adopted the Strategy for Combating Trafficking in Persons in Bosnia and Herzegovina 2013-2015 and the Action Plan for the Implementation of the Strategy for Combating Trafficking in Persons in Bosnia and Herzegovina 2013 – 2015.

This strategic document approaches the phenomenon of trafficking in persons both in a wider and a narrow sense. In the first case, efficient combating against trafficking in persons is viewed as an integral part of the endeavours to achieve the standards of the European Union and the harmonization with *Acquis Communautaire*, as set forth in the recommendations of the European Partnership and Progress Report and the Stabilization and Association Agreement. A more narrow perspective views an efficient combat against trafficking in people through the lens of the protection of victims who, upon identification and their being saved from the chain of trafficking in people should be provided with appropriate protection and help in order to insure their re-integration and prevent any repeat of victimisation. In this way, the document in question contains a host of preventive and repressive measures of heterogeneous nature; the integral implementation thereof should contribute to the reduction in numbers of victims of trafficking in people and protection of human rights in general.

This strategic document is based on an analysis of the implementation of the State Action Plan for Combating Trafficking in People in BiH 2008-2012, that is, on an analysis of success and recommendations for the improvement of the status of each strategic measure from this Plan.

The Strategy also defined basic principles by which the institutions of government and organizations of civil society will be guided when implementing the activities of combating trafficking in people and these are: respect of human rights, non-discrimination, share and responsibility of government, inter-disciplinary and cross-sector approach, protection of rights of children, international and regional cooperation, inclusion of a broader community and gender sensitive approach.

The Strategy sets five strategic goals: 1. Support; 2. Prevention; 3. Processing; 4. Proactive protection and 5. Partnership. Within each of these strategic goals, there are developed strategic measures that are specified and pragmatically elaborated in the Action Plan.

The identification of victims of trafficking in people, children in particular, is an extremely complex and demanding task due to which the Strategy foresees a host of measures and the Action Plan a series of activities aimed at the strengthening and empowerment of expertise capacities of all stakeholders, who, in compliance with their respective competencies and responsibilities may come into contact with potential victims of trafficking in people, including judges, prosecutors, border police, uniformed police, crime investigators, SIPA (State Investigation and Protection Agency) officers, expert associates with prosecution offices, Service for Foreigners, officers of the Ministry of Foreign Affairs, Civil Servants Agency, labour inspections, catering-tourism inspections, market inspections, police

academies, social workers, pedagogues in schools, healthcare workers, psychologists, employees of daily centres, journalists, NGOs.

Within the framework of such proactive protection of victims of trafficking in people, the Strategy indicates to the significance of multidisciplinary approach and partnership between the government and non-governmental sectors that should provide sustainable programs and procedures for the protection of victims of all forms of trafficking in people.

The Working Group for monitoring of the implementation of the Strategy for Combating Trafficking in People and the Action Plan is tasked with the monitoring of the implementation of the strategy and the action plan. The Working Group is chaired by the head of office of national coordination for combating against trafficking in people and competent ministries and agencies along with the representatives of the civil society are also on the Working Group.

Action Plan to improve the system of protection against child pornography and other forms of sexual exploitation and abuse of children via information and communication technologies in Bosnia and Herzegovina 2010 – 2012, among other things, defines an action plan to combat child pornography in Bosnia and Herzegovina, as follows:

1. Prevention – with a view of establishing necessary mechanisms and raising awareness of safe use of internet and a need for the protection of children and juveniles against the risks related to the use of internet including, but not limited to paedophilia and child pornography. Activities that need to be implemented in order to achieve the set goal are the following:
 - a. Establish help line,
 - b. Create an internet portal as a single point for raising awareness of the safe use of internet,
 - c. Promotional videos,
 - d. Involvement into the campaign “Safer Internet Day” and marking of the Safe Internet Day,
 - e. Raising awareness of the existence and presence of the problem.
2. Compliance, changes and amendments to the legislative framework in Bosnia and Herzegovina through the following activities:
 - a. Accede to new international documents,
 - b. Harmonization of criminal codes in Bosnia and Herzegovina,
 - c. Harmonization of laws on criminal proceedings in Bosnia and Herzegovina,
 - d. Initiate the preparations and signing of the protocol on cooperation of institutions.
3. Strengthening of institutional capacities of the police through the following activities:
 - a. Set up special departments for *sudeg* crime,
 - b. Improve the cooperation among police agencies,
 - c. Create a single database for *black* lists within SIPA,
 - d. Improve the cooperation between the police and non-governmental organizations,
 - e. Provide capacities required for the cooperation of the police officers who work on the combating of child pornography and paedophilia,

- f. Provide required technical assumptions for the investigation into crime offences of child pornography.
4. Cooperation with internet service providers in the following activities:
 - a. Procurement of equipment,
 - b. Further development and advancement of the existing capacities together with and in cooperation with internet service providers,
 - c. Preparations and adoption of rules on the protection of children against child pornography,
 - d. Develop a system of reporting and exchanging of information,
 - e. Develop a system of reporting by citizens, children in particular and improve the exchange of information among institutions,
 - f. Develop both international and regional cooperation,
 - g. Develop a system for the informing of public.
 5. Provide support to victims – rehabilitation and re-integration with a view of providing the victims with emergency and comprehensive assistance regardless of whether they have submitted report, including medical aid, medical checkups and treatments together with post-traumatic and social welfare support and legal aid – all of this should be confidential, free of charge and available on a 24 hour basis. The activities to reach this goal are, as follows:
 - a. Programs of rehabilitation and re-integration for victims,
 - b. Establishment of unified standards,
 - c. Establishment of minimal standards,
 - d. Funds for compensation to victims,
 - e. Strengthen the obligation for joint action among the sectors of education, healthcare and social services.

Please note that a new Action Plan for the period 2014-2015 is produced.

Question No. 4: Child participation

- a. *Please indicate what steps have been taken to encourage the participation of children, according to their evolving capacity, in the development and the implementation of state policies, programmes or other initiatives concerning the fight against sexual exploitation and sexual abuse of children (Article 9, para. 1)*

The principle of participation and the option to hear the child's opinion is represented in the laws regulating the field of family relations, social and child protection, that is legal protection. At the level of constitutional principles, this right is recognized to all persons under the jurisdiction of Bosnia and Herzegovina regardless of differences in age. Family laws, inter alia, foresee that the bodies of custody, prior to the placement in family, will allow for a child to express his view on the family placement and that opinion shall be regarded in compliance with the age and maturity of child, the child is entitled to be given all the information needed to form the opinion, the child who has reached the age of 10 may freely and directly express his opinion in all the procedures during which it is decided on the child's rights, that is, the child may on his own, or through another person or an institution, approach

the court or a body of administration and request assistance in the achieving of the child's right.

Regulations from the field of education prescribe that students' council may be established as one of the forums through which children may influence plans, measures, express their opinions and positions and get feedback.

Project "Protection of Children Exposed to Risk and Children in Contact with Judicial System of Bosnia and Herzegovina", within which a public campaign "Justice For Every Child" was implemented was financially supported by the Swedish Agency for Development (SIDA), Swiss Cooperation for Development (SDC) and UNICEF and implemented with a full cooperation of competent ministries and police stations in 10 municipalities in BiH. The comprehensive goal of the project, through the application of international norms and standards, is to contribute to the improvement of the position and respect of the children's rights and witnesses of criminal offences when children come into contact with judicial and other bodies where either a judicial, administrative or extra-judicial decision is required. The first individual goal is to advance the treating of children in conflict with the law and allow for the hearing procedure of the child as an injured party or a witness is adjusted to children. The second individual goal is to improve the application of prevention programs, alternative procedures and measures based on the children's rights and restorative justice and the programs of rehabilitation and re-integration.

Network of NGOs "Stronger Voice for Children" is of the view that although the children as per CRC (Article 12) and this Convention are entitled to participation. The state does not consult the children when passing and implementing national policies, programs or some other initiatives that apply to the protection of children against sexual exploitation and sexual abuse. However, it is important to indicate that over the past years in the procedure of drafting and passing various strategic documents, representatives of civil sector should also participate, which is a relevant step forward in the work and conduct of state bodies, therefore, it is now to a greater extent made easier to hear a child's opinion when drafting strategic state documents.

Non-governmental organizations, Ombudsmen for children of RS and Ombudsmen for human rights of BiH foster the participation of children in this field, but it is still difficult to achieve the children's views be taken into account when passing national or entities' policies. A network of young advisors to ombudsman for children is a body set up by the Ombudsman for children of Republika Srpska which has advisory and associate roles. The network of young advisors gather children/young persons from the entire Republika Srpska with a view of achieving the participation of children/young people in all the issues of concern to them, their freedom of expressing views, allowing for the access to information and introducing the young with the UN Convention on the Rights of the Child. Working on the achieving of these goals, the children will address the issues related to the rights guaranteed to them by the Convention thereby contributing to a better quality and more comprehensive viewing of the status of the child's rights in Republika Srpska. These young advisors, primarily through e-forum, in meetings, at local, regional, topical roundtables exchange views and experiences (on different subjects and issues from various domains of life of children/young people) among themselves and with the representatives of Ombudsman for children. Young advisors present ideas, questions, positions, problems, describe positive situations, draw conclusions and bring up proposals. Together with the Ombudsman they work on the process of their ideas and positions being observed by those competent ones who are able to implement them. The

cooperation with the young advisors is reflected in their participation in the participation and choice of topics that the children/young people find topical and deserving of consideration. The young advisors actively participate in the researches conducted by the institution of the Ombudsman for children, in the process of devising promotional and educational materials for children, peer education on the child's rights, cooperation with youth associations and NGOs gathering children/young people, informing the young on the activities of the Ombudsman and the child's rights through the Network of the Students' Councils of the RS. Through the membership in the Network of the Young Advisors, children/young people obtain a possibility of inclusion into the European Network of Young Advisors of Ombudsmen for Children and taking part in the activities outside of Republika Srpska.

Department for Protection of the Rights of Child of BiH conducted a host of activities in the course of 2012 and 2012 within the project "Strengthening of Capacities of the Department for Protection of the Rights of Child with the Institute of Ombudsman for Human Rights of BiH", which was supported by Save the Children, aimed at the promotion of the rights of children. One of the activities is the project "Ombudsman in Your School". The result of the activities are that the children get acquainted with the rights guaranteed by the Convention on the Rights of the Child thereby achieving the sensitization of the children for their participation in compliance with the Convention on the Rights of the Child, motivation for assuming an active role in the combating for the achieving of their rights and also additional education on the role of ombudsmen and mechanisms of action of this institution in the case of violation or protection of the rights of children all aimed at the children being able to recognize the institution of ombudsman as a partner in achieving their rights.

b. In particular, please indicate whether, and if so, how child victim's views, needs and concerns have been taken into account in determining the legislative or other measures to assist victims (Article 14, para 1):

According to the laws on social welfare, the position of the child is taken into account in the procedure of achieving rights from social welfare. In the procedure during which it is decided on the child's rights in social welfare, the competent body is bound to allow for the child to express his view in compliance with the child's age and abilities.

Entities' laws on protection and treatment of children and juveniles in the criminal proceedings establish special rules for treatment of children who are either victims or witnesses. Courts, prosecutions, including authorized official persons, bodies of custody, families, schools, institutions at all levels of the community and other stakeholders involved in the proceedings are bound to follow such rules in such a way that without any discrimination, the sentiment of dignity and personal value of the child is advanced, the child's age is taken into account along with the child's best interest, his right to life, survival and development, it is allowed for the child to express his views, in accordance with the child's age and maturity, on all the issues related to him at which all the endeavours should lead towards the rehabilitation and social re-integration of the child and the child's assuming a constructive role in the society.

Ombudsmen for children of the RS conducted, over the period from December 2011 to end of May 2011, in Republika Srpska, a research on the phenomenon of sexual exploitation of children. The starting point for all the activities of this research was the CoE Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse and the research covered all the forms of sexual exploitation of children as defined in Articles 18 through 23 of

the Convention. The research was conducted with a view of identifying the degree of understanding the notion of sexual exploitation of children and trends in this field, establishing the situation in the field of prevention of sexual exploitation of children over the past four years and the drafting of recommendations aimed at the advancement of the system of protection of children-victims of sexual exploitation over the past four years along with the recommendations for the improvement of the system of help and support.

With a view of obtaining comprehensive results and a clear picture on the right state of affairs in this field, the Ombudsman for Children sought information from the children themselves thereby securing their participation. The methodology foresaw interviews both with the children-victims and other children with a view of obtaining information on the level of their being informed and their awareness of the problem. **The research encompassed the gathering of data** through the adjusted questionnaires prepared in advance in the field of social protection, criminal-legislative protection and non-governmental sector, in-depth individual interviews with children, case studies and group discussion at the roundtable.

The in-depth interviews were conducted with three children. Two of them were victims of sexual exploitation. In both cases, the procedures were validly terminated before the court. The third child with whom an in-depth interview was conducted comes from a risk group – this child could become a potential victim of social exploitation due to the influence of certain social factors. Based on the data gathered in the interviews and the data from the files of three centres for social work and competent courts, the expert team made case studies and submitted a written report. The interviews were conducted by professional and sensitized persons who are well acquainted with the problem and already engaged in working directly with the children-victims. These professionals performed the interviews with children as per a questionnaire prepared in advance and following the determined guidelines taking into account, primarily, the best interest of the child in each individual case. The interviews were conducted with previously obtained consent of both the child and his/her custodian. The purpose of the interview was to view the problem from the angle of child victim and to identify what sort of assistance, help and protection the competent bodies provided in those specific cases.

The views of children were taken into account when giving recommendations and opinions referred by the Ombudsmen to the competent bodies with a view of improving the work of state bodies, institutions and services in charge of prevention, protection and help to the children – victims of sexual abuse.

Question No. 5: Specialized bodies or mechanisms

- a. Please indicate the independent institution(s) (national or local) in charge of promoting and protecting the rights of the child. Please specify its/their responsibilities and indicate how resources are secured for it/them (Article 10, para. 2, letter (a))*

With a purpose of fulfilling the obligations Bosnia and Herzegovina has in compliance with the Convention on the Rights of the Child and its two Optional Protocols, the Council of Ministers, on 4 December 2012, passed a decision on the establishment of the Council for Children of Bosnia and Herzegovina as an expert, advisory and coordinating body with the Council of Ministers of BiH. This decision put out of force the Decision on the establishment

of the Council for Children from 2007 that was not implemented due to a lack of political will so the Council then de facto ceased to exist. The Council for Children now operates with the Ministry for Human Rights and Refugees of BiH and consists of 13 members appointed from the pool of civil servants (8 members), non-governmental organizations (2 members) and three members from the academic community. The Council for Children has a significant role in the promotion and protection of the rights of children and within its competencies, the Council is responsible for initiating and active participation in the drafting and monitoring of plans, strategic and action documents in the field of the rights of children, monitoring of the application of the Action Plan for Children and cooperation with the Department for Monitoring of the Rights of Child within the institution of the Ombudsmen for Human Rights of BiH and other working bodies of the Parliament of BiH.

Members of the Council for Children from NGOs are representatives of the network of non-governmental organizations “Stronger Voice for Children” and one of these NGO representatives is a Vice-Chair of the Council. Upon the passing of the decision on the formation of the Council for Children, the Council of Ministers passed a decision on appointment of members of the Council for Children and on 6 December 2013, the first formative session of the Council for Children was held. Despite the fact that in the Decision on the Formation of the Council for Children it is established that the work of the Council for children shall be financed from the budget of the Institutions of BiH in the budget of Bosnia and Herzegovina, the funds for the work of the Council of Children were neither planned nor allocated in 2013 and 2014. The work of the Council will be supported by UNICEF in the amount of approximately BAM 100.000,00.

The institution of Ombudsman for Human Rights of BiH was established in 1996 in compliances with Annexes 4 and 6 of the General Framework Agreement for Peace in Bosnia and Herzegovina as an independent institution for the protection of human rights and promoting of good governance and rule of law. Under the current circumstances, the Ombudsman of BiH functions based on the Constitution of BiH and Law on Ombudsman for Human Rights of BiH⁵⁶ that guarantee the independence and infrastructural framework for the protection and promotion of human rights and fundamental civil freedoms. Within this state institution there is also Department for Monitoring the Rights of Children. This Department presently functions at the level of a project funded by international organizations. The Department does the following activities: acceptance and registration of complaints on the grounds of violation of rights and freedoms of children proceeding as per such complaints, receiving citizens who approach the Department in order to seek assistance in the protection of rights and freedoms of children, monitoring of the status of rights and freedoms of children, preparing reports on the status of the rights of children, timely reporting to the Ombudsman on the problems identified in the field of the achieving of human rights and protection of children, monitoring of the functioning of legislative, executive and judicial branches, cooperation with other departments, in particular in those cases when the violations of rights of children are related to the violations of the rights of citizens.

Department for Monitoring of the Rights of Children pays particular attention to the protection of rights and freedoms of children, endangered categories in particular such as refugees, displaced persons and the socially impoverished categories of children, affirming of the rights and freedoms of children, analysis of key causes for the non-functioning of the government at passing of the decisions regarding children, removing impediments to

⁵⁶ Law on Ombudsman for Human Rights of BiH (“Official Gazette BiH”, No. 32/00,19/02,35/04,32/06 and 38/06,)

consistent application of the international conventions ratified by BiH, in particular the Convention on the Rights of Child.

In Republika Srpska, upon a decision of the Assembly of this entity, an independent institution called **Ombudsman for Children of the RS** was established. The competencies of the Ombudsman for children are established by a law⁵⁷. In performing tasks, the Ombudsman for Children acts within the framework of the Constitution, laws and other regulations, international treaties and generally accepted rules of the international law being guided by the principle of justice and ethics.

Ombudsman for children:

- 1) Follows compliance of legal acts and other regulations in Republic of Srpska which are related to rights of children with paragraphs of Constitution of Republic of Srpska, UN Convention on the rights of the child and other international documents which are related to protection of rights and interests of children.
- 2) Follows implementation of obligations of Republic of Srpska which come from Convention of United Nations about children's rights and other international documents which are related to protection of rights and interests of children.
- 3) Follows implementation of all acts related to rights and interests of children.
- 4) Follows violation of rights and interests of children;
- 5) Advocates for protection and promotion of rights and interests of children;
- 6) Suggests undertaking of measures for protection and promotion of rights of children, as well as blockage of harmful acts which endanger rights and interests of children;
- 7) Informs public on children's rights state;
- 8) Undertakes other activities adopted by this Law.

Ombudsman for children is authorized to submit to the Government, or National Assembly initiative for amendment or annex of legal and other common acts if violation of children's rights is due to lack of acts, as well as initiates new legal acts, other and common acts⁵⁸. In addition the Ombudsman for Children is authorized to suggest to state institutions, bodies, or local self-government units, as well as other legal and civil bodies that perform tasks in relation with children, proposes undertaking of measures for prevention of harmful procedures which endanger their rights and interests, to warn on irregularities, and to require reports on measures undertaken.⁵⁹

The budget of Ombudsman for Children in 2013 amounted to BAM 695.000.

⁵⁷ Law on the Ombudsman for Children of Republika Srpska ("Official Gazette of Republika Srpska" No. 103/08)

⁵⁸ Law on the Ombudsman for Children of Republika Srpska, Article 7 para 1

⁵⁹ Law on the Ombudsman for Children of Republika Srpska, Article 9, para 1 1

By virtue of a decision of the Government of Republika Srpska (“Official Gazette of Republika Srpska No. 66/06) **the Council for Children** of Republika Srpska was formed as a standing, advisory, coordination, governmental body tasked with the issues from the field of children’s rights pursuant to the UN Conventions on the Rights of Child, other international instruments and the Constitutions of BiH and Republika Srpska.

The Government of Republika Srpska appointed 11 members on this board from different fields of social activities related to the rights of child.

This Council functions in compliance with the law, Rulebook on the Work of the Council and the Rulebook on Organization and Functioning of the Council for Children.

The budget of the Council for Children of Republika Srpska in 2013 amounted to BAM 25.000,00.

b. Which legislative or other measures have been taken to set up or designate mechanisms for data collection or focal points, at the national or local levels and in collaboration with civil society, for the purpose of observing and evaluating the phenomenon of sexual exploitation and sexual abuse of children, with due respect for the requirements of personal data protection? (Article 10, para. 2, letter (b))

Protocol on the procedure in case of violence, abuse and neglect of children in Republika Srpska signed on 20 November 2012 including every form of sexual violence against children, inter alia, defines the processes of gathering information, keeping records and producing the annual report on the violence against children.

Republika Srpska is supposed to provide the first report in the course of 2014.

Within the Ministry of Interior of Republika Srpska, statistics for all sorts of offences are kept including the aforementioned offences; therefore, it is possible to monitor the phenomenon of sexual exploitation and sexual abuse of children.

c. Which legislative or other measures have been taken to organise the collection and storage of data relating to the identity and to the genetic profile (DNA) of persons convicted of the offences established in accordance with this Convention? What is the national authority in charge of the collection and storage of such data? (Article 37, para. 1).

The establishment and content of the database, results of the DNA analyses for the requirements of criminal and other judicial proceedings, conditions and methods for taking samples of biological origin used in the DNA analysis, deadlines for storing and removing of DNA profiles from the database are all prescribed by the Law on Database of Results of DNA Analyses⁶⁰. The Rulebook on methods of gathering, packaging and transporting DNA samples⁶¹ specifies the methods for gathering, packaging and transporting biological material samples taken for the requirements of DNA analyses. The Institute for Forensic Medicine of Republika Srpska performs DNA analyses, compares the results of DNA analyses and performs statistical calculations. The data on thus conducted DNA analyses are kept in the records of the Institute. The establishment and maintenance of the DNA profiles’ database for

⁶⁰ Law on Database of Results of DNA Analyses (“Official Gazette of Republika Srpska“ No. 121/12)

⁶¹ Rulebook on methods of gathering, packaging and transporting DNA samples (“Official Gazette of Republika Srpska” No. 61/13)

suspects and convicted persons, missing and unidentified persons and DNA profiles obtained from disputed biological traces found in relation to criminal offences are performed by the Ministry of Interior of Republika Srpska.

Question 6: National or local coordination, cooperation and partnerships

- a. *Please describe how coordination on a national or local level is ensured between the different agencies in charge of the protection from, the prevention of and the fight against sexual exploitation and sexual abuse of children. In particular, please provide information on existing or planned coordination between the education sector, the health sector, the social services and the law enforcement and judicial authorities (Article 10, para. 1);*

The Ministry of Security of BiH, that is its Sector for International Cooperation and European Integrations along with its Department for Combating Trafficking in People, coordinates the activities of all the stakeholders who deal with the issue of trafficking in people, gathers information on children-victims of trafficking (both citizens of BiH and foreign nationals) from prosecution offices, law-enforcement services, centres for social work and non-governmental organizations. The data collected are categorized by three indicators: trafficking in persons with a purpose of sexual exploitation, sale of children for forced marriages and begging. Their main task, apart from gathering information, is to report on the situation in the field and implement the Strategy for Combating Trafficking in People and the Action Plan supporting the implementation of this Strategy.

Number of children – victims of trafficking in persons⁶²

Year	Sexual exploitation		Sale for marriage		Begging		Total
	F	M	F	M	F	M	
2010	5				13	2	20
2011	4	1	5		3	6	19
2012	7	-	3		6	3	19
Total	16	2	8	-	22	10	58

Children-foreign nationals who are victims of trafficking in people fall under the competence of the Service for Foreigners' Affairs and Sector for Immigration. The Services provides accommodation for them in a safe house. The Sector for Immigration takes care of the financing of such safe houses including thus all the needs of children and keeps records on all children-foreign nationals who are victims of trafficking in people.

Number of children-foreign nationals, victims of trafficking in persons, unaccompanied

Year	Children-foreign nationals accommodated in safe houses		
	F	M	Total
2010	4	-	4
2011	2	-	2
2012	-	-	-
Total	6	-	6

⁶² Data from the Report on Position of the Children in BiH done by NGO "Zdravo da ste" in 201

Ministry for Human Rights and Refugees of BiH allocates funds from its budget earmarked for the assistance to the NGO sector that provides direct assistance to victims of trafficking in people, citizens of BiH.

A certain progress was made at the state level by passing Guidelines for procedures in cases of violence against children⁶³ based on the content and obligations set forth in the Strategy for Combating Violence against Children in BiH of which these Guidelines make an integral part. The Guidelines define the responsibility of the competent institutions in the field of protection of children against violence, a workflow of procedures and coordination among the education sector, health sector, social services, police and judicial bodies in cases of violence against children.

Protocol on the procedure in case of violence, abuse and neglect of children in the RS, inter alia, defines the duties of the responsible persons in educational institutions, healthcare institutions, institutions of social welfare and police for the procedures in the event of violence and also defines the forms, methods and content of the cooperation among such competent institutions. Among other things, a goal of this Protocol is to achieve a coordinated procedure and permanent cooperation among such services with a view of providing an adequate response in the protection of children and their interests. The results of its application will be seen in the course of 2014 upon the publication of the First Report on Violence against Children.

b. Is cooperation with a view to better preventing and combating sexual exploitation and sexual abuse of children encouraged between the competent state authorities, civil societies and the private sector (Article 10, para. 3)? If so, please specify how;

Ministry of Security of BiH has a protocol on cooperation signed with the non-governmental organizations MFS Emmaus and “Medica“ Zenica that take over the care of unaccompanied children or the cases when both mother and child are victims of trafficking in persons.

The Federation Ministry of Labour and Social Policy foresaw in 2012 the co-financing of Safe Houses in the amount of BAM 162.000,00. These funds are intended for six safe houses managed by these non-governmental organizations: FLD Sarajevo, *Žene s Une* (Bihać), *Prihvatište za žene i djecu u nevolji Mirjam* Karitas (Mostar), *Medica* (Zenica), *Udruženje građana Viva žene* (Tuzla), *Udruženje Žena BiH* (Mostar).

Within the project “Ti to možeš“ (“You Can Do It”) in October 2002, the Shelter for Girls-Victims of Violence was started. The Shelter has the capacities to receive 8 to 10 girls who are victims of mental, physical or sexual violence (trafficking, incest, prostitution, rape). The primary goal is to provide direct protection to girls victims of violence. The shelter is intended for BiH citizens between the ages of 12 to 18.

By virtue of a decision of the Council of Ministers (“Official Gazette” BiH“ No. 3/04) the Task Force Group for Fight against Trafficking in Persons and Organized Illegal Immigration was formed. This Task Force Group operates in the entire territory of Bosnia and Herzegovina and consists of representatives of prosecution, internal affairs, taxation bodies, financial police, state border police, that is, all those capable of giving their contribution to the fight against trafficking in persons and illegal immigration. The Task Force Group closely

⁶³ Ministry for Human Rights and Refugees of BiH- “Guidelines for procedures in cases of violence against children in BiH“ – February 2013

cooperates with the National Coordinator for Fight Against Trafficking in People and Illegal Immigration, European Police, Justice Department with the Embassy of the USA in Sarajevo, ICITAP, International Organizations for Migrations and different other non-governmental organizations who deal in the issue of trafficking in persons. The Task Force Group is tasked, under the immediate management of the Chief Prosecutor of the BiH Prosecution, to provide the cooperation among the competent bodies and organizations, conduct researches and form operating investigating teams that work on the gathering and exchanging relevant data and information on the cases of trafficking in persons and illegal immigration aimed at the suppression of such activities. The Ministry of Security, Department for Combating Trafficking in Persons and Illegal Immigration in cooperation with the Ministry for Human Rights and Refugees conducted a host of activities in the course of 2008 that related to the “development of monitoring mechanisms for the monitoring of the application of minimal standards for the protection of victims of trafficking in persons and care of such persons by different agencies“.

Upon the establishment of such monitoring teams, the quality of actions professionals and competent institutions is continually assessed and it is particularly necessary to assess the quality of services provided to victims of trafficking in persons and the comparison of such services to the basic standards of protection. In the first stage of these activities, all institutions and organizations involved into the fight against trafficking in persons based on the regional organizations of State Agency for Investigations and Protection (SIPA) appointed their respective representatives on a broader composition of regional monitoring groups and in the second stage, more narrower compositions of such monitoring teams were formed in charge of further cooperation, monitoring and coordination at the regional level. Monitoring teams are formed as per the principle of regional operations of the State Agency for Investigations and Protections in the regions of Sarajevo, Mostar, Banja Luka and Tuzla.

In their endeavours to take all the measures to stop the trafficking in persons in BiH, the Ministry of Security of BiH, Ministry for Human Rights and Refugees in cooperation with governmental and non-governmental organizations work intensively and with dedication on the implementation of preventive activities that help in the protection of the most vulnerable groups of the society from the modern-time slavery. On the occasion of 18 October that has been marked for five years already as the European Day for Combating against Trafficking in People in Mostar, Banja Luka, Tuzla and Sarajevo street actions are organized in order to educate and raise awareness of public on this problem.

Caucus of Women Parliamentarians of the House of Representatives of the Parliament of the Federation of BiH dedicated its formative session in May 2013 to the ratified CoE Convention on Prohibition of Sexual Exploitation and Abuse of Children and obligations arising from this Convention. This topical session was organized in the partnership with the organization “Zemlja djece” (Land of Children”) and “Zdravo da ste” (Hello, My Neighbour”) that implement the project the Lanzarote Convention. In addition, representatives of the Institution of the Ombudsman for Human Rights, Federation Prosecution and Cantonal Court in Sarajevo also took part in the session. Upon the presentation of obligations and responsibilities from the Convention and the results of the research of the above mentioned NGOs on the phenomenon of sexual exploitation and abuse of children, recommendations on changes and amendments to the Criminal Code of FBiH and its harmonization with the Convention were defined. The Caucus of Women Parliamentarians in late 2013 referred to the parliamentary procedure an initiative for changes and amendments to the Criminal Code of

FBiH in the part thereof related to crime offences against sexual freedoms and moral and the criminal offences against, marriage, family and youth.

In Republika Srpska, the association Nova Generacija (New Generation) opened a safe house on 1 June 2013. The house is called “Dječija kuća - sigurno mjesto” (Child’s House – Safe Place) and is intended for children who are victims of violence and exploitation; in the Federation of BiH, the Foundation of Local Democracy within the project, opened a safe house for girls. “Dječija kuća – sigurno mjesto“ is the first safe house intended exclusively for children. The safe house employs trained psychologists, social workers and educators and the capacity of the house is 14 beds. By accommodating children victims of violence and exploitation into a safe house, a protective measure is implemented so that a victim can get both physically and mentally protected from a perpetrator of violence and / or exploitation, that is, a child can be provided with the protection of life, bodily integrity and mental health at the same time preventing any further exploitation and abuse.

In the course of providing this service, cooperation with the Centre for Social Work of Banja Luka was established. Since the children who are accommodated will also come from other municipalities in the RS and in BiH, there will be a partnership realized with other centres for social work. Apart from that, there is a cooperation established with the Ministry for Human Rights and Refugees and the Ministry of Security of BiH.

Over the recent period, there has been a significant increase in the participation of the organizations of the civil society in the systematic dialogue with the Government through regular presentations and exchange of important documents and information and a number of initiatives in different fields with a view of improving sectoral policies has been also increased. NGO representatives have become members of a significant number of consultative and advisory bodies for the drafting of strategic documents in the field of the protection of children against sexual exploitation and abuse.

- c. Are partnerships or other forms of cooperation between the competent authorities promoted with particular regard to the recipients of intervention programmes and measures for persons subject to criminal proceedings or convicted of any of the offences established in accordance with the Lanzarote Convention (Article 15, para. 2 and Article 16)?*

Question 7: International cooperation

Has your country integrated prevention and the fight against sexual exploitation and sexual abuse of children in assistance programmes for development provided for the benefit of third states (Article 38, para. 4)? Please give examples.

PREVENTION OF SEXUAL EXPLOITATION AND SEXUAL ABUSE

Question 8: Education, awareness raising and training

a. *Which legislative or other measures have been taken to:*

- ensure that children, during primary and secondary education receive information on the risks of sexual exploitation and sexual abuse, as well as on the means to protect themselves, adapted to their evolving capacities? (Article 6, Explanatory Report, paras. 59-62). Please also specify whether this information includes the risks of the use of new information and communication technologies (Article 6, Explanatory Report, para. 6;)

During 2013, NGO MFS-EMMAUS in cooperation with the Ministry of Security of BiH – Department for Combating Against Trafficking in People and the organization Save the Children and OAK Foundation continued with the implementation of the project “Comprehensive Approach to the Problem of Child Pornography in BiH” aimed at the prevention of child pornography and other forms of sexual exploitation and abuse of children in BiH via information and communication technologies; in addition, they organized education workshops in four primary and secondary schools in BiH and established a cooperation with the Association of Teachers of IT of Canton Sarajevo.

In addition, MFS-EMMAUS continued with the activities of administration and promoting the interactive web portal www.sigurnodijete.ba, and allowed for a continuous work of an SOS line to report cases of abuse and exploitation of children. In the course of 2013, MFS-EMMAUS registered 254 reports which show a significant rising trend in the use of this web-portal. The registered reports are handled pursuant to the procedures signed with the competent institutions with a view of processing them and referring them to further procedures.

It is also continued with the promotion of the web portal www.e-school.sigurnodijete.ba, intended for teachers, which is a sub-page of the portal www.sigurnodijete.ba, the basic purpose of which is to establish links between the teachers throughout BiH and help in exchange of their knowledge and experiences on the dangers of internet in order to protect children and teenagers from this danger, which is becoming increasingly more present in our society. This web page also serves as a platform for education, discussions and exchanges of experiences between the teachers of primary and secondary schools and covers different topics on internet protection, provides useful manuals for teachers serving as a starting point for the getting to know the terminology of *cyberbullying*, *grooming*, plus other tips and topical information covering the issue of child pornography in Bosnia and Herzegovina.

As one of the initiators and founders of SID (Safer Internet Day) Committee of BiH, MFS-EMMAUS in February every year marks the Safer Internet Day with a purpose of strengthening preventive and promotional activities on the protection of children and the young people at the use of IT and communication technologies. The central event of the Safer Internet Day in 2013 was held on 5 February in Secondary School for Dentistry in Sarajevo under the slogan “*Connect with Respect*”; on that occasion, the National Coordinator for Combating the Trafficking in Persons, Head of MFS-EMMAUS Sarajevo Office and Director of the organization OneWorldSEE talked to the students.

When it comes to the process of advocating the Action Plan and the promotion thereof, more precisely the activities contained in the Plan, a relatively large number of activities was done. The first activity within this strategic measure that was planned was the education of teachers on the given problem through Institutes of Pedagogy, etc. Within the project “Comprehensive Approach to the Problem of Child Pornography in BiH”, NGO MFS Emmaus and NGO Udružene žene (Women Associated) of Banja Luka organized educational workshops for children, parents and teachers in primary and secondary schools throughout Bosnia and Herzegovina. These educational workshops were held in more than 45 schools and were attended by more than 1700 students and parents and 230 teachers of both primary and secondary schools. The workshops were realized in the cooperation with the Federation Police Administration (FMUP), State Agency for Investigations and Protection (SIPA) and the partner organization Udružene žene Banja Luka. Association “Novi put” Mostar within the project “Protection of the Rights of Children –Victims of Abuse, Paedophilia and Begging in Herzegovina-Neretva Canton organized two workshops for pedagogues, psychologists and teachers from Herzegovina-Neretva Canton. With a view of building up capacities of teachers for a sustainable continuation of such education workshops in schools, special interactive and practical workshops for teachers (ToT) were also organized by NVO EMMAUS.

Representatives of several Institutes for Education and Pedagogy also took part in these workshops. Three workshops for teachers (ToT) workshops were held for a selected number of IT teachers and other teachers from school in which IT is not part of the regular school curriculum. These workshops were held in Sarajevo, Banja Luka and Tuzla and were conducted in an interactive and practical way. These were attended by 68 teachers including pedagogues, school principals and representatives of Institutes for Education and Pedagogy. The workshops were extremely well accepted by the teachers and assessed as excellent and useful which resulted in the establishment of a basis for further cooperation between the participations in implementing some other activities such as the marking of the Safer Internet Day. The participants of these workshops launched an initiative for the setting up of a special web page on the portal sigurnodijete.ba – www.e-school.sigurnodijete.ba which is used as a platform for the networking of teachers.

When it comes to the planned activities of educating the children with a purpose of raising awareness, Association “Novi put”, during the implementation of the project “STOP to the child pornography and paedophilia”, organized 8 interactive educational workshops for the children of the age at risk, from 12 to 15 years, teachers and pedagogues in primary schools, homes for children in Herzegovina-Neretva Canton with a view of raising awareness of the existence of this problem in BiH and prevention of its forms. Within the Daily Centre for Children involved in the life and / or work in the streets and the children at risk in Banja Luka (the Centre is managed by NGO “Nova generacija”), this NGO organized various workshops with the topics of violence, trafficking in persons, paedophilia, etc. In addition, there are also sporadic discussions on these topics with the children who attend the Daily Centre and this type of workshop is called “Cajanka” (Tea Party) and is of advisory character.

Ombudsman for Children of the RS conducted the education of children with an aim of the prevention of the abuse of internet and mobile phones on a couple of occasions, of which, we single out the following: Education in cooperation with the Ministry of Interior in the course of 2011 and 2012 attended by more than 200 primary school children, already described above, workshops “Children and Internet” in 2011 were held in 18 schools, of which 5 secondary and 13 primary schools so this education involved children coming from all parts of Republika Srpska. More than 600 students from those 18 schools participated in the

workshops along with a certain number of teachers, expert associates of schools and representatives of the Parents' Councils. The goals of the workshops were: education of children on advantages and threats of Internet, recognition of the e-violence elements and appropriate responses to such situations, responsible and ethical use of internet, getting to know the web page www.djecanainternetu.org, and motivation to talk and report all the cases that disturb or hurt the children. The workshops were organized by the employees of the Ombudsman for Children in cooperation with the University of Banja Luka and the Agency of Information Society of the RS. During the years of 2010, 2011 and 2012, within the workshops "On Your Rights in Your School" led by the staff of the Ombudsman for Children, of the topics was also free time so the inevitable part of these workshops was the use of internet and mobile phones. Students, mainly members of the Students' Councils, were given information on the threats of the violation of their rights on the internet. At all these workshops, children were given the brochures entitled "My Rights until Coming of Age" and "Children on Internet". During the workshops, the information were obtained that some children had had experiences with inappropriate messages from unknown senders sent both via mobiles and on the internet. In such situations, children would usually stop any communication and that was never discussed with the others. Some of the students felt a need to share such experiences with the leaders of the workshops expecting answers to some problematic situations they encountered while on internet.

In Tuzla there were also 2 workshops entitled "Cyber Violence" held in Primary School "Mejdan" and Primary School "Miladije" organized by NGO "Zemlja djece" (Land of Children).

As for the education of parents aimed at the prevention of the abuse of internet and mobile phones, the following activities were implemented. Association "Novi put" within the project "STOP to Child Pornography and Paedophilia" and the project "Protection of the Rights of Children – Victims of Abuse, Paedophilia and Begging in Herzegovina-Neretva Canton" organized workshops for parents with a view of protecting children and preventing the misuse of internet.

The Ombudsman for Children of the RS: This Institution talked on several occasions with parents on the misuse of internet and mobile phones. In Primary School "Branko Radičević" in 2011, Ms Nada Grahovac talked to the parents on numerous rights of children and on the threats of the children's rights being violated by the use of internet and mobile phones. Another talk with the parents was organized in 2011 in Primary School "Mladen Stojanovic" in the place of Bronzani Majdan" for the parents who are on the Parents' Council and this education was conducted jointly by the representatives of the Ombudsman and the Ministry of Interior. In the course of 2012, the Ombudsman for Children organized focus group interviews with parents in four schools for the requirements of the research within the project "Prevention of the Exploitation of Children in SE Europe", which was supported by Save the Children. After the official part of the focus group interview, many parents sought additional information as to how to protect the children on internet and pointed out how little they themselves knew about it and after that they were prepared to change their attitude to the subject. In the course of 2012, upon the invitation of the Chair of the Parents' Council of Primary School "Sveti Sava" in Zvornik, there was a meeting of the Parents' Council, school management and an expert team of the school with the Ombudsman for Children and one of the subjects of the meeting was the abuse of children via internet and mobile phones. Speaking in general of the children's rights, it was agreed that the Ombudsman for Children

should organize another workshop on the subject of advantages and risks of internet in that school in the beginning of the academic year.

NVO EMMAUS from Sarajevo included parents into their education workshops entitled “Surf Safely” organized in primary and secondary schools throughout Bosnia and Herzegovina. The workshops held in schools are especially significant as those were organized subsequently as a result of the cooperation established and upon the initiative from schools, which goes to show the successfulness of this initiative and activities by MSF-EMMAUS. All these activities covered the topics of the prevention of misuse of telecommunication technologies, mobile telephony included. Through the engagement of the Parents’ Council and simultaneous involvement of the Students’ Council, MFS.EMMAUS increased the potentials for steady electronic education of parents in the future, even after the completion of the project.

A significant deal of progress in the prevention of online abuse of children and young via information technologies was achieved in 2010 when MFS-EMMAUS gained a temporary membership in the network INHOPE – international association of Internet hotline, the leading organization in the world for the management of SOS lines for the reporting of inappropriate online content. In November 2012, MFS-EMMAUS obtained a full-fledged membership so BiH through MFS-EMMAUS became 42nd member country and gained access to the world database managed by INHOPE along with the efficient cooperation and exchange of information from this field with other member countries allowing for a more efficient fight against this phenomenon in BiH, region and the world.

As a result of the successful cooperation and endeavours of MFS-EMMAUS in the activities of the protection of children from the abuse via information and communication technologies, in April 2013 in Riga, Latvia, the representative of MFS-EMMAUS was elected a member of the Executive Committee of INHOPE. The membership on this exceptionally important body will allow for a greater inclusion of MFS-EMMAUS in the activities of INHOPE in the region and the world and the intensifying of the activities on the inclusion of Bosnia and Herzegovina into the Program of Safer Internet supported by the European Commission thereby contributing to the resolving of the problem of the abuse of children through IT and communication technologies and the prevention of the publication of illegal, harmful and inappropriate contents on the internet to which the children and young are exposed.⁶⁴

An analysis of the data of the Ombudsman for Children of the RS gathered through the aforementioned research, shows that the subject of sexual violence against children is not part of the compulsory curriculum and preventive programs in schools are missing. The participants of the focus group interviews from the education sector point out to a special problem of a lack of special, scientific literature on the problem and professional training of teachers. The majority of schools are not involved into preventive activities and a lack of cooperation between schools and competent institutions is particularly pointed out. Certain interviewees underlined that in some schools there are certain activities related in general to the issue of the protection of children against violence, but such activities, however, are the result of individual work and motivation of certain teachers or pedagogues. The interviews

⁶⁴ System for the protection against child pornography and other forms of sexual abuse and exploitation through information-communication technologies in Bosnia and Herzegovina – Evaluation of the implemented activities as specified in the Action Plan for the improvement of the system for the protection against child pornography and other forms of sexual exploitation and abuse of children via information and communication technologies in BiH over the period 2010-2020.

especially point out that professional education and training of teachers on the issues related to the prevention, identification and intervention in the case of sexual violence against children is necessary. Then, the education of students themselves on the protection against sexual violence through compulsory school programs as part of curricula and in cooperation with the competent ministry of education, institutes for education and pedagogy and NGOs through specially adjusted workshops and seminars. In addition, the interviewees emphasize that it is necessary to introduce additional education for children in homeroom classes and during extracurricular activities. All these activities should also include parents who should take part in seminars, workshops and lectures in parents' meetings and other forms of education. It is surely necessary to strengthen the cooperation between parents and schools.

For the past couple of years, there have been lectures in schools on the subject of violence against children, sexual violence included, dangers of internet, facebook and other social networks, recognition of dangers, ways of reporting, etc. In addition, there have been certain campaigns conducted, such as the campaign "Neko vreba preko web-a" (*Someone Lurking on the Web*), and roundtables entitled "Safety and Protection of the Children on the Internet", etc.

Within the project "The Lanzarote Convention in BiH" implemented by NGOs in cooperation with the Ministry for Human Rights and Refugees of BiH, 100.000 educational flyers "What do we need to know about sexual abuse and why?" were printed out. The flyers were printed in the languages of all the three constituent peoples and in two scripts and distributed to the students of all primary and secondary schools in Bosnia and Herzegovina.

- encourage awareness of the protection and rights of children among persons who have regular contacts with children in the education, health, social protection, judicial and law-enforcement sectors and in areas relating to sport, culture and leisure activities? (Article 5, para. 1);

When analyzing the practice in Bosnia and Herzegovina and the capacities foreseen in the strategic measures in regard with the raising awareness of the protect and rights of children among the persons in regular contact with children in education, healthcare, social protection, judiciary and law enforcement, several very specific activities are noted. Within the project implemented by the Ministry of Security of BiH in cooperation with Save the Children entitled "Comprehensive Approach to the Resolving of the Problem of Child Pornography in Bosnia and Herzegovina", the Ministry of Security of BiH established the cooperation with NGOs MFS Emmaus and Udružene žene Banja Luka with a view of establishing an SOS hot internet and telephone lines and raising awareness of children, teachers and parents about the problem and the ways of protection.

The Ombudsman for children of Republika Srpska set up on the webpage www.djecanainternetu.org "Hrabro sanduče" (*Brave Mailbox*) where children and adults, completely anonymously may report any difficulties they have experiences on the internet. In addition, the webpage contains contact telephone numbers and email addresses of the Ombudsman for Children and the Ministry of Interior of the RS that both children and adults can contact anonymously.

Since September 2010, the SOS has been established on the web site www.sigurnodijete.ba as a hotline that serves for reporting of cases embracing inappropriate content. In only several simple steps for children, parents and all other users of the web site, it is possible to report cases of child pornography, inappropriate content and other form of child abuse through

information and communication technologies. In compliance with present procedures established with the competent law enforcement agencies, all contents are to be immediately forwarded to the Federal police administration which further proceeds in accordance with operational procedures, and submits feedback data to MFS, thus its operators may eventually deliver feedback information to persons who reported the content, respectively to INHOP. A very interesting and useful activity is the one related to the Association "Nova generacija" from Banja Luka, the association that since 18 February 2013 has established a counselling line for children called Blue phone (080 05 03 05) which the children may use to report any form of violence, seek for advice about various problems they face and similar issues. This line has also been intended for parents, but only for problems and situations related to children. Up to now the calls have been directed for reporting of violence and seeking of an advice both by the children and parents, by which a purpose of this phone was fulfilled at the very beginning, because its meaning has been adequately understood. Based on information that was collected, up to date there have not been any reports related to child pornography and/or paedophilia. The line is anonymous and free, and has been financed by the Association by donations. Regrettably, call may not establish out of M.tel operating network, which should definitely be improved in the upcoming period. The Association „Zemlja djece“, has a line where the citizens may report mendacity and any other form of child violence, including child pornography. It is about a phone "IZI" Mobile network (067 112 8282) that functions since July 2012 and is available per 24h daily. The Association „Novi put“ has also established a help line: 060 318 77 80, with a possibility of on-line report of inappropriate content on the web site of association www.noviput.ba.⁶⁵

The Convention of Council of Europe for protection of children from sexual exploitation and child abuse was printed in all languages of three constitutive peoples, in both letters, that were distributed and will be further distributed to all professionals who work with children, in judiciary system and to professionals in all other segments related for education of children.

Results of research carried out within a framework of the project „Lanzarote convention in BiH“⁶⁶ were presented to professional from areas of social protection, judiciary, education and nongovernmental sector during three round tables held on the regional level (Sarajevo, Banja Luka and Mostar).

Investigation on experiences of youth related to various forms of violation and trauma in childhood in BiH⁶⁷ from 2012 has shown that sexual abuse was present with 23.4% of examinees, which means that every fourth examinee has gained an experience of some sort of sexual abuse.

- Ensure that persons, referred to while replying to the bullet point above, have an adequate knowledge, of sexual exploitation and sexual abuse of children, of sexual exploitation and sexual abuse of children of the means to identify them and of the

⁶⁵ System for protection against child pornography and other forms of sexual exploitation and abuse through information and communication technologies in Bosnia and Herzegovina – Evaluation of performed activities as planned by the Action plan for improvement of protection system against child pornography and other forms of sexual exploitations and child abuses through information and communication technologies in BiH, within a period of 2010-2012.

⁶⁶ Discussion was led in 12 focus-groups: amongst the children from age of 10-14 years (2 focus groups); children from age of 15 to 18 years(4 focus groups), youth from age of 19-25 years (4 focus groups). In total, 84 children and youth participated.

⁶⁷ In foundation, foundation for promotion of social inclusion of children and youth in BiH

possibility of reporting suspicions of a child being the victim of such acts? (Article 5, para 2).

Although legislative have regulated this segment, it will take longer time to implement it in practice in order to make changes thus it becomes natural and normal to report all suspicious sexual child exploitation and sexual child abuse.

b. Name policies or strategies that have been implemented to promote or conduct awareness raising campaigns targeted at the general public where the focus is directed especially towards risk and realities of sexual exploitations and sexual abuse of children? Please describe material used for campaign programs and its dissemination. If possible, please provide an assessment of the impact of campaign/programme. If there are currently plans for launching of (new) campaiings or programs, please provide details (Article 8, para 1);

- UN Convention on the rights of the child
- Optional Protocol to the Convention on rights of the child on the Sale of Children, Child Prostitution and Child Pornography
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime
- Recommendation of the Committee of Ministers to the Member States R(91)11 on sexual exploitation, pornography and prostitution of and trafficking in children and young adults
- Resolution 1099 (1996) of the Committee of Ministers to the Member State on sexual exploitation of children
- Recommendation (2001)16 on protection of children against sexual exploitations
- Resolution 1307(2002) on sexual exploitation of children
- European Convention on cyber crime
- Council of Europe Convention on protection of children against sexual exploitation and sexual abuse (Council of Europe *CETS No. 201*)
- Council of Europe Convention on action against trafficking in Human Beings – Action paln for children of Bosnia and Herzegovina (2011 - 2014)
- Action plan for improvement of protection system against child pornography and other forms of sexual exploitations and abuse of children through informative and communicational technologies in Bosnia and Herzegovina 2010-2012.

c. Please provide which legislative and other measures have been taken to prevent or prohibit the dissemination of material advertising the offences established in accordance with this Convention? If so, please povide details (Article 8, para 2 Explanaroty report para 66).

Child pornography in the Criminal code of Republic of Ruska – Given that big number of people, from all the world, can easily access the internet, and commitment of this act is often spread across state boundaries, thus compliance with international standards in this area has been established by the amendments to the Criminal Code of Republic of Srpska from 2010. Primarily in that respect, a broadening of commitment of the act with criminal offence arising from Article 200 of the Criminal Code of Republic of Srpska has been done. Apart from „production and presentation“ of child pornography, as commitment of offence, this activity is stipulated as „possession“ of child pornography. Paragraph 2 of this Article introduces

qualified form of this criminal act, if it was committed against person who is younger than 16 years of age. Moreover, paragraph 3 foresees more severe punishment for perpetrator of this act if this act was committed through the mass media or internet. The provision provides a definition of child pornography as follows: „Child pornography in terms of this provision shall be understood to mean any pornographic material that visually shows:

- a) *child or a minor involved in an obvious sexual act, and*
- b) *Realistic photographs that show a child or or a minor involved in an obvious sexual act“.*

The above mentioned amendments introduced more severe sanctions for criminal act that may be imposed to perpetrator of those acts.

In the context of the above mentioned, it is necessary to indicate that more documents aiming at protection of children against any abuse for purpose of pornography were produced in Bosnia and Herzegovina. Within a framework of the activities of the Office of the state coordinator for combat against trafficking in human beings and illegal migration of the BIH Ministry of Security, a Working group for establishment of state model for combat against child pornography was formed in 2008. Based on the assessment of the current situation and recommendation from the Working group, a document of „Analysis of capacity, procedures and imperfections in the system for child protection against pornography in Bosnia and Herzegovina“ and „Recommendation for model development in a combat against child pornography in Bosnia and Herzegovina“ was produced.

Question 9: Recruitment and screening

- a. *Which legislative and other measures have been taken to that the conditions to accessing those professions whose exercise implies regular contacts with children ensure that the candidates to these professions have not been convicted of acts of sexual exploitation or sexual abuse of children? (Article 5, para 3). Please specify to which professions such measures apply. Please, also indicate for how long the criminal record of a person who was convicted for such crimes is kept in your country;*

The Law on primary and the Law on secondary education in RS stipulate „sexual harrasment and abuse“ as a hard violence of working duties.⁶⁸

The Law on secondary education in RS stipulates that profession of a teacher and an expert assistant may be performed by a person who, *inter alias*, has not been convicted by any final decision for criminal offences against dignity of personality, moral, official duty, human trade, child abuse, sexual and other violence on child or juvenile.⁶⁹ The Law on preschool education of RS⁷⁰ stipulates that a duty in a preschool institution may not be performed by a person who has been convicted by final decision for criminal offences that makes him worthless for performance of duties and tasks related to preschool education: dignity of personality, moral, official duty, human trade, sexual integrity, child abuse, sexual and other violence of a child and juvenile person, abuse of children and juvenile persons for

⁶⁸ Law on Primary Education („Official Gazette of Republic of Srpska“ nos. 74/08, 71/09 and 104/11)

⁶⁹ Law on Secondary Education („Official Gazette of Republic of Srpska“ nos. 74/08, 106/09 and 104/11)

⁷⁰ Law on Secondary Education, Article 75.

pornography and making child pornography available, production and presentation of child pornography, kidnapping of juveniles, child neglect and abuse of child in family or family community and other criminal offences.⁷¹

The Law on primary education introduced, *inter alias*, expert assistant in schools to the following positions: pedagogues, psychologist and social worker.⁷² Apart from other activities, a pedagogue performs counselling, instructive and pedagogical corrective work with pupils, parents and teachers; while a psychologist performs psychological advisory work, instructive, diagnosis and psychological corrective work with pupils, parents and teachers; and social worker performs counselling and instructive work with pupils, parents and teachers aiming at improvement of social position of pupils in school and family environment, including resolution of social problems of pupils.⁷³

The Law on education in primary and secondary schools in Brčko District in BiH⁷⁴ prescribed that a teacher, expert assistant and assistant in educational system who has been convicted for criminal offences against moral, official duty and violation of child rights as grounded in the Convention on children rights may not work in elementary and secondary schools in this District.⁷⁵

Cantonal law in a domain of preschool and primary education⁷⁶ in this regard determines wider restrictions in employment of educators and expert assistants, respectively appointment of directors of those institutions stipulating that an educator, i.e. a director may not be an elected person who has been convicted for criminal offence by final decision implying that person is non-eligible for performance of duties and working tasks of preschool education.

The Law on primary education of Tuzla Canton⁷⁷ treats an employer in school, who had been by final decision sentenced by imprisonment for criminal offence against constitutional structure, against humanity and international law, against life and body, against dignity of person, against moral, against marriage and family, against official and other competent duty, after completion of his rehabilitation period, as eligible for work with children. Such a legal solution, *inter alias*, enables to persons who were convicted by final decisions for paedophilia and other forms of sexual exploitation and sexual abuse of children, to be employed in elementary schools as educators, teachers and therewith directly work with children, after the completed sentence and passage of legally determined time-limit for rehabilitation.

A special data base on persons who were convicted by final decision for criminal offences of sexual violence against persons who are under the age of 18 years (child) does not exist in Bosnia and Herzegovina.

In compliance with the Criminal Code of BIH, perpetrators of criminal offences, including sexual violence of children, in case they have not been convicted again for new criminal offences, after passage of time-limit of conviction shall be deleted by legal force from criminal record. Hence, sentence by imprisonment for a term of one to three years shall be

⁷¹ Law on Preschool Education, Article 55

⁷² Law on Primary Education, Article 107

⁷³ Law on Primary Education, Article 109

⁷⁴ "Official Gazette of BD BiH", nos. 10/08, 25/08, 04/13

⁷⁵ Law on Education in Primary and Secondary Schools in BD BiH, Article 113

⁷⁶ Law on Preschool Education of Tuzla Canton („Official Gazette of TC“ nos. 12/09, 08/11); Law on Primary Education of Canton Sarajevo („Official Gazette of CS nos. 10/04, 31/11, 15/13)

⁷⁷ Law on amendments to the Law on Primary Education of TC („Official Gazette of TC 17/11)

deleted from criminal record as per expiration of deadline of five years from a day of execution, statute of limitations and pardoning of punishment, if the convicted person does not commit any new criminal act, sentence by imprisonment for a term of three to five years shall be erased from evidence after expiration of ten years from a day of execution, statute of limitations and pardoning, sentence by imprisonment for a term of five to ten years after expiration of fifteen years and similar. Sentence by long-lasting imprisonment shall not be deleted. By erasing a sentence from criminal record, a perpetrator of criminal offence shall be considered as a person with no criminal record. Such a legal solution produced a consequence that the perpetrator convicted by final decision for criminal offences of sexual violation of children, after passage of legally determined time-limit, after a completion of sentence, has a status of a person with no criminal record and may be employed and perform certain duties that enable to that person a direct contact with children.

b. Does the screening of candidates apply to voluntary activities (Report with explanations, para 57)?

Question number 10: Preventive intervention programme or measures

a. Which legislative or other measure have been taken to ensure that persons who fear that they may commit any of the offences established in accordance with the Convention, have access to effective intervention programmes or measure designed to evaluate and prevent the risk of offences being committed? Please specify under which conditions, if required (Article 7, Explanatory Report, para 64);

With a view to assessing and preventing a risk of commitment of criminal act, no legislative measures, nor programmes or measures for effective interventions have yet been established for this type of criminal offence. However, within a network framework of health institutions there are counsel centres engaging specialised experts, who offer adequate psychological treatments to the persons who fear that they may commit one of criminal offence established by the Convention.

Certain schools and local communities have preventive programmes and measures which should be clearly defined and should be mandatory for all subjects of protection.

b. Which legislative and other measures have been taken to ensure that persons subject to criminal proceedings or convicted for any of the offences established in accordance with the Convention, may have access to effective intervention programmes or measures? Please specify under which conditions (Article 15 to 17). Please indicate in particular:

- Who has access to those programmes and measures (convicts, persons subject to criminal proceedings, recidivists, young offenders, persons who have not yet committed a crime);***
- how the appropriate programme or measure is determined for each person;***
- whether there are specific programmes for young offenders;***
- whether persons have a right to refuse the proposed programme/measures?***

By the latest amendments to the Criminal Code of Republic of Srpska⁷⁸ the security measures were amended aiming at broadening it by introduction of new security measures, which are in compliance with the basic principles from the Lanzarot Convention as follows:

- Prohibition to approach or contact another person;
- Mandatory psychiatric treatment;
- Removal from joint household

Those amendments created a legal possibility in Republic of Srpska to impose measures for mandatory medical treatment to perpetrator of criminal offence for sexual violence of child, respectively psychological treatment differing from the Federation of Bosnia and Herzegovina and Brčko District, where this measure may be pronounced only to perpetrator who has committed this offence in a state of significantly diminished responsibility. The court may pronounce security measure for mandatory psychiatric and social treatment to a perpetrator of a criminal offence with elements of violence, if it finds based on the previous life of the perpetrator and psychiatric characteristics of his/her personality that there is danger that he/she shall repeat such or similar offence and that the psychiatric and social treatment is required for the elimination of this danger.

This measure of the mandatory psychiatric and social treatment may be applied along with serving a sentence by imprisonment or by community service, or with suspended sentence (Article 62b, para 2) and shall last until reasons for which it was pronounced ceased to exist, but at latests until expiration of imprisonment or community service or expiration of time-limit control with conditional sentence. It shall be executed in the institution for execution of the punishment of imprisonment or in other appropriate institution (Article 62b para 3).

Measures of psychosocial treatment may be pronounced to perpetrator of the domestic offence in compliance with the Law on protection from domestic violence. A goal of protective measures is to prevent domestic violence by its application, to ensure necessary health protection and security of victim of the violence, and to remove circumstances that are favourable or seminally impact on commitment of new domestic violence. Non-governmental organisations that have Safe houses for victims of domestic violence have started to work with perpetrator of violence and carry out their programmes for psychosocial treatment. The laws in Entities constituted misdemeanour sanctions for failure to proceed with the pronounced measures. In case that a person who fails to act in accordance with the pronounced legal protective measure as per Federation Law on protection from domestic violence, shall be sentenced with a pecuniary fine in the amount of BAM 1,000.00 to BAM 1,500.00

The Law on protection from domestic violence of Republic of Srpska similarly determines the issue of misdemeanour sanctions for protection against domestic violence. Article 42, para 5 of the mentioned law proscribes for adult perpetrator of domestic violence of child a sentence with pecuniary fine in the amount of BAM 2,500.00 to BAM 7,500.00.

⁷⁸ „Official Gazette of Republic of Srpska “ No. 67/13

Question 11: Participation of private sector, the media and civil society

What steps have been taken to encourage:

- a. the private sector (in particular the information and communication technology sector, the tourism and travel industry, the banking and finance sectors) to participate in the elaboration and implementation of policies, programmes and other initiatives to prevent sexual abuse of children? Please indicate which private sectors are concerned and explain how participation takes place. Please also provide information concerning any relevant code of conduct or enterprise charter aimed at protecting children from sexual exploitation and sexual abuse (Article 9, para 2, Explanatory report paras 68-73);*

When engagement of this sector is in question, based on our gained experience, the company „m:tel“ and several banks gave their contributions in protection against violence of child through internet, by establishing the web site www.djecanainternetu.org and printing of appropriate leaflets and holding of workshops in 40 schools across Republic of Srpska. m:tel in cooperation with the Ombudsmen for children in RS in the campaign for children protection on internet.

- b. the media to provide appropriate information concerning all aspects of sexual exploitation and sexual abuse of children (Article 9 para 3, Explanatory reports para 74);*

The Ministry of Interior of Republic of Srpska delivers information to media, with an aim to inform the public if those offences were committed and reported to the Ministry, with a purpose to condemn those offences, prevent any commitments of those acts and abet a victim to report the offence. We point out while informing the public by presenting data, a protection of privacy of child it taken into consideration. Moreover, statistics of all, including these offences are available to media and generally to public, citizens. The official statistics, including all statements and information are published on the web site of the Ministry of Interior.

- c. the financing, including, where appropriate by the creation of funds, of the projects and programmes carried out by civil society aimed at preventing and protecting children from sexual exploitation and sexual abuse (Article 9, para 4, Explanatory Report, para 75). May the proceeds of crime be used to finance the above mentioned projects and programmes? (Article 27, para 5, Explanatory Report, para 193).*

Printing of educative flyers for pupils of elementary schools and students of secondary schools in BIH on protection against sexual abuse and sexual exploitation was financed by micro credit company from Banja Luka „Zdravo“.

There are no organisations in Bosnia and Herzegovina that are exclusively dealing with prevention and protection of children against sexual exploitations. There are shelters for victims of violence and trafficking. Activities of those organisations are partly financed by state budget. The proceeds of crime have not yet been used for financing of projects and programmes carried out by civil society aimed at preventing and protecting children from sexual exploitation and sexual abuse.

Question 12: Effectiveness of preventive measures and programmes

- a. Please specify whether an assessment of the effectiveness and impact of the preventive measures and programmes described in replies to questions 4, 10 and 11 is regularly carried out;*
- b. Please provide examples of the good practices in prevention sexual exploitation and sexual abuse of children.*

In implementation of Protocol on proceeding in case of violence, abuse and neglect in RS, the effects have already been present. By monitoring and analysis of separate cases of violence of child, positive steps are being made in coordination of activities of competent services.

PROTECTION AND PROMOTION OF THE RIGHTS OF CHILDREN VICTIMS OF SEXUAL EXPLOITATION AND SEXUAL ABUSE

Question 13: Reporting suspicion of sexual exploitation or sexual abuse

- a. Are professional working in contact with children bound by confidentiality rules? Do these rules constitute an obstacle for reporting to the services responsible for child protection any situation where they have reasonable ground for believing that a child is a victim of sexual exploitation or sexual abuse? Please indicate the criteria or guidelines which allow for the waiving of confidentiality rules (Article 12, para 1, Explanatory report, para 89.);*

The Law on protection of witnesses under threat and vulnerable witnesses in Article 13 reads as follows:

Additional measures to provide for the non- disclosure of the identity of the witness

(1) In exceptional circumstances, where there is a justified fear that if some or all of the personal details of the witness are released it would seriously endanger the personal security of a witness or his family, and the danger would persist after the testimony is given, the Court may, either ex officio or upon the motion of the parties or the defense attorney, decide that the personal details of the witness shall remain confidential for such period as may be determined to be necessary, but in any event not exceeding thirty years, following upon the day the decision became final.

(2) The Court may, after hearing the parties and the defense attorney, decide that the identity of the witness is not disclosed by allowing the witness to testify behind a screen or utilizing electronic distortion of the voice of the witness or the image of the witness, or both the image and the voice, by using technical means for transferring image and sound.

(3) The Court may, at any time, revoke the decision from paragraph 1 of this Article, either ex officio or upon the motion of the parties or the defense attorney.

A priority must be the best interest of children in all situations and all activities related to children, notwithstanding whether those have undertaken by public or private institutions and services. The best interest for children requests providing of confidentiality of data and protection of children's right to privacy.

There is a legal regulation establishing a mandatory reporting of suspicion of sexual exploitations and abuse. The issues as set forth have been elaborated in the following laws: Law on protection from domestic violence, Family Law, Criminal Codes, Law on health protection, Law on protection of rights of patients, including the Protocols on proceedings, prevention and protection against domestic violence, and Protocols for proceedings in case of sexual violence of children. Rules of confidentiality in a work of professionals do not present any obstacle to report violence of children.

Within a framework of the Law on social welfare, Law on protection from domestic violence, Law on protection of human rights and freedoms, including other laws, the procedure by which a privacy of victim is protected, but do not present any obstacle to take a measure aiming to protect a child and identify a perpetrator.

A legislator proscribes an obligation for reporting by authorised person or prosecutor about all cases where there is a suspicion of any form of juvenile abuse. Punishment has been foreseen for the same offences if committed against a child or juvenile by medical doctor, dentist, medical staff, nurse or healthcare worker, psychologists, notary and worker for social protection. Hence, those professions have been particularly indicated, respectively the persons who are in professional contact with children or juvenile in order to particularly strengthen their obligation to report the above mentioned criminal offences.

The Criminal Code of BIH in Article 230 defines criminal offences as follows: “Failure to report on criminal offences of perpetrator”, for whose basic form a pecuniary fine sanction may be imposed or imprisonment for a term of three years, while for the qualified form an imprisonment for a term of five years or more severe punishment may be imposed”. In this Article an obligation to report the offences or perpetrator is related to criminal offences for which a long-lasting imprisonment (I para) is imposed or for criminal offences where imprisonment for a term of 5 years or more severe punishment (II para) may be imposed. Having in mind the imposed punishment for criminal offences against sexual freedom and moral committed at the damage of a child, means that such an obligation should be related to certain cases of sexual violence of children. No punishment for failure to inform of the criminal offence shall be imposed on a person who is the spouse, cohabiting partner, first-line blood relative, brother or sister, adoptive parent or adopted child or their spouse or cohabiting partner, or defence lawyer, medical doctor or confessional priest of the perpetrator.

Criminal Code of the Federation of Bosnia and Herzegovina in Article 345 reads that:

“Whoever knows of a perpetrator of a criminal offence for which a long-term imprisonment may be imposed, or whoever merely knows that such an offence is perpetrated, and fails to report this, although the timely discovery of the perpetrator or of the offence depends on such report, shall be punished by a fine or imprisonment for a term not exceeding three years. The punishment referred to in paragraph 1 of this Article shall be imposed on an official or responsible person, who fails to report a criminal offence which comes to his knowledge in the discharge of his duty, if a punishment of imprisonment for a term of five years or a more severe punishment may be imposed for such a criminal offence. A physician, dentist, midwife or medical worker, psychologist, notary public and social welfare worker shall be punished for the criminal offences referred to in paragraphs 1 and 2 of this Article, if the criminal offence is perpetrated against a child or juvenile. No punishment for the criminal offence referred to in paragraphs 1 and 2 of this Article shall be imposed on a person who is the

spouse, common-law partner, lineal blood relative, brother or sister, adoptive parent or adopted child and their spouses or common-law partners, or who is the defence attorney, physician or confessional priest of the perpetrator.”

The same Code in Article 383 „Abuse of Office or Official Authority” reads: „An official or responsible person in the Federation who, by taking advantage of his office or official authority and by exceeding the limits of his official authority or by failing to perform his official duty, acquires a benefit to himself or to another person or causes damage to another person or seriously violates the rights of another, shall be punished by imprisonment for a term between six months and five years.”

Article 387 of the mentioned Code defines a criminal offence in chapter „Lack of Commitment in Office” by reading: „An official or responsible person in the Federation who, by violating law, other regulations or general act or by omitting to perform his supervisory duty, acts in an obviously careless manner in the discharge of his official duty, which results in a serious violation of a right of another or a material damage exceeding BAM 1,000.00 occurs shall be punished by a fine or imprisonment for a term not exceeding three years. If, by the criminal offence referred to in paragraph 1 of this Article, a right of another is violated seriously or a material damage exceeding BAM 10,000.00 occurs, the perpetrator shall be punished by imprisonment for a term between six months and five years.”

The Criminal Code of RS and Criminal Code of BDBiH contain almost identical solution.

One of elementary principal of the Law on treatment upon juvenile in criminal proceedings is a respect of right to privacy of juvenile person at all stages of the proceedings. Prosecutor for juvenile, court for juvenile and judges of the council for juveniles and other persons participating in proceedings shall take into account that no violation of right on privacy for juvenile may occur.

b. Are there any rules encouraging any person who knows about or suspects, in good faith sexual exploitation and sexual abuse of children to report the facts to the competent authorities? If so, please specify under which conditions and to which (Article 12 para 2, Explanatory report 91). Please provide examples of good practice.

Yes, Criminal Procedure Code of BIH, Article 213, para 2 reads as follows:

Medical workers, teachers, pedagogues, parents, foster parents, adoptive parents and other persons authorised or obligated to provide protection and assistance to minors, to supervise, educate and raise the minors, are obligated to immediately inform the authorised official or the Prosecutor about their suspicion that the minor is the victim of sexual, physical or any other form of abuse.

The Family law stipulates that all organs, organisation and natural persons are obliged to immediately inform the body of custody regarding children's rights, particularly against violence, abuse, sexual exploitation of child as per Article 13. Hence, everybody is obliged to report suspicion that the child was exposed to any form of abuse; report shall be submitted to the centre for social care centre affairs, police and Ombudsman for children.

Question 14: Helplines

Which legislative or other measures have been taken to encourage and support the setting up of information services, such as telephone or internet helplines, to provide advice to callers, even confidentially or with due regard for their anonymity? (Article 13, Explanatory Report, para 92).

Association of citizens „New generation“ from Banja Luka is the Association of New generation that since has launched 18 February 2013 a free counselling line for children under the name Blue phone. The number of the phone is 080 05 03 05.

Blue phone is primarily a line intended to support children who are victims and witnesses of violence, but the line has been open for problems the children are facing and are related to violence. Children have recognised the Blue phone as a counselling line in broader sense, and that line will be developed in that direction. Presently, there are 8 volunteers working for phone counselling, while 18 of them are being trained. All volunteers working for the Blue phone are students of psychology and pedagogy or social work. Volunteers are educated through detailed training structured of 12 hours of education on a basis of phone counselling work and 18 hours of assertive communication training. Strong attention is driven onto supervisions and constant additional education of the volunteers with an aim that support and counselling have good quality and to improve a work of Blue phone. Since March 2014 working hours for Blue phone shall be prolonged for two hours, and the Blue phone shall work from 1000 to 1600 hours every day.

The Association of the citizens of local democracy has functional Green line since 2005 and that line has for a purpose to inform on gender conditional violence and collect data on gender conditional violence, sexual and reproduction health-right for life without violence and discrimination based on gender

Collected data assist in realisation/definition of necessary statistical monitoring, creations of policies and strategies in domain of sexual and reproductive health in Bosnia and Herzegovina.

The Ombudsman for children in RS as per its definition performs that part of the task, while on the following web site <http://www.djecanainternetu.org> he has established the so called brave box for reporting of any form of violence, that might be done by anonymous individuals. The contacts of competent service of the Ministry of Interior of Republic of Srpska may be found on that site.

Reporting of violence in BIH is an obligation of every citizen and that may be done on the phone number of the police 122 and two joint SOS phones intended for violence in family as follows: 1265 for Federation area 1264 for Republic of Srpska.

Question 15: Assistance to victims

a. Please indicate which types of assistance describe in Article 14 are provided to victim of sexual exploitation and sexual abuse of children (Explanatory Report paras. 93-100),

Please specify:

- *How the assistance is adapted to the victim age and maturity;*
- *How due account is taken of the child's view, need and concerns;*
- *If the assistance (in particular emergency psychological care) is also provided to the victim's close relatives and persons responsible for their care.*

„Medica“ Zenica as one of the oldest professional organisations in BiH and the one that since 1993 has been offering a comprehensive support and aid to victims of various forms of violence and trauma through its developed services (Safe house, care, logistical support, psychosocial work, work-counselling, individual and group therapy work, contact with institutions and institutes, offering of full support, medical support and care, Crises centre, SOS phone, Psycho and Legal aid, Children's' daily centre, occupational therapy and economic empowering, work on the field) offers protection, rehabilitation and reintegration of victims of sexual exploitations. Moreover, „Medica“ Zenica realises educational, research, investment and printing projects aimed at promotion and protection of human rights, prevention and rehabilitation of war trauma, sexual and domestic violence, establishment of referral mechanisms, formation of the unique data base in the area of Zenica –Doboj Canton and institutional network with utilisation of existing resources from community and prevention of trafficking in human.

„Medica“ Zenica is the non-governmental organisation that based on the signed Protocols with competent Ministries, is authorised by the BiH Ministry of Security for care of international victims of trafficking in human and the Ministry of human rights and refugees of BiH for care of citizens of BiH-victim of trafficking in human. Moreover, „Medica“ Zenica initiated, developed unique methodology and established institutional Network of support to victims/witnesses in cases of war crimes, sexual violence and other criminal offences in three Cantons (Zenica-Doboj, Central Bosnia and Una-Sana Canton) and Banja Luka with an aim to connect all relevant actors in this area and to enable offering of adequate support and aid before, during and after witnessing for victims and victims/witnesses of war crimes, sexual violence and other criminal offences.

When it comes to the types of assistance, „Medica“ from Zenica provides short-term and long-term accommodation in the Safe House and other services to the victims of sexual exploitation and children who are victims of sexual abuse. As part of their stay in the Safe House, in addition to safe accommodation, food, basic clothing items and footwear and toiletries etc. on the basis of their individual needs and the developed individual plan, clients also receive continued individual and group psychological assistance and support, counselling and therapy suited to the clients' age, medical assistance, educational work, economic strengthening, occupational therapy, mediation in dealing with institutions, work with family and other services in accordance with the needs of each individual client. Individual plan of work for each client is developed in cooperation with the client and other professionals and on the basis of individual needs. Duration of female clients in the Safe House also depends on individual needs of every victim/child. During the children's stay in the Safe House, the whole treatment is tailored to suit their age and individual needs and to various kinds of help. During individual work with children, treatment is given depending on the children's age, the gravity of the traumatic experience and the degree of the consequences developed after the violence experienced, and various counselling, therapeutic and educational approaches are aimed at the child's recovery and reintegration. „Medica“ Zenica also has services intended for children only, such as the Children's Day Care Centre „Medica“ Zenica, where children staying in the Safe House spend their free time. It helps them in developing life habits, skills, and through various educational, supportive and creative workshops, children learn about

non-violent communication, violence and protection from violence and various forms of exploitation, child rights and duties and other topics suited to their interests and in accordance with the assessment of the expert team on the need to cover certain topics. Children who attend regular schools receive support in learning, mastering the lessons and carrying out other school assignments, whereas children who do not attend regular schools are taught to read and write and in cooperation with other institutions, the Centre facilitates inclusion of children in the educational process. The whole treatment is provided with active participation of the clients, and tailored to suit individual needs, age, development period, physical and intellectual capacity etc.

During the stay of children clients in the Safe House, “Medica” Zenica, in cooperation with other institutions involved in caring for the clients, works with the parents and other family members, if there are no obstacles to it, such as that the parents and/or other family members participated in the child exploitation/abuse. Also, when it comes to clients who are of age, “Medica” Zenica also works with the family on developing mutual understanding and support between the family and the client, on reducing the stigma and rejection by the family, but also on fixing the symptoms that family members developed when learning about what the child had been through.

If a child is a victim of sexual exploitation accommodated with the safe house shall get psychological aid from professional expert engaged in the safe house. If it is necessary, the child shall be provided with other form of assistance.

Law on social protection of Republic of Srpska⁷⁹ recognises the children – victims of sexual abuse and exploitations as beneficiaries of social protection. In Article 18 of the mentioned Law the beneficiaries of social protection as per this Law are children:

1. without custody, respectively the children without parents, who is abandoned by the parents, whose parents are not in a situation to offer full custody due to restrictions in performance of their parental rights or are deprived from that right; children with handicap in development;
2. whose development is disturbed by family conditions, i.e. whose parents are not in position to provide regular parenting for a child of physical and psychological education due to illness of one person, unresolved family relations, material and other reasons;
3. victim of the violence, respectively a child who is physically attacked, in addition to provisions that abuse specially exists in cases involving corporal and psychological violence against the child, sexual exploitation and emotional suffering, including threat or child neglect or non fulfilment of basic life needs, what may seriously imprison a child for enjoyment of his/her rights and freedoms;
4. victim of trafficking, that is to say a child who is canvassed, transported, hidden, forcibly transported or adopted by force of threat or deceived, by rapture or other form of forces or imposture, by abuse of position or bribe and who was incited to agree on his/her own exploitations;
5. with socially unacceptable form of behavioural conduct, i.e. a child under a risks to committee misdemeanour criminal act, or rambling, mendicity, or disturbs the generally accepted social rules of behaviours and valid legal norms;
6. exposed to socially risk behaviour;

⁷⁹ „Official Gazette of RS“, No. 37/12

7. respectively, a child whom due to particular circumstances, a special social protection is needed like for the reasons of poverty, catastrophic loss, refugee position due to war, migrations, repatriations, death of one or more members of the family, long-lasting medical treatment, release from institutions or other unpredicted circumstances.

A child in the meaning of this law is a person of 18 years of age.

Child - victim of sexual violence, in compliance with its needs, is entitled to certain rights as determined by the Law⁸⁰, as follows:

- pecuniary assistance,
- accommodation in social care institution,
- accommodation with breadwinning family,
- daily care and
- counselling.

Counselling is systematic and program-based professional assistance that is realised by application of social work method and other socio-humanistic sciences, aimed at offering aid to an individual, family members or family in development, boosting, preservation and improvement of proper social abilities when they face various unfavourable situations, such as (as in subject of our research): domestic violence, engagement in daily life after dwelling in institutions and in crisis situations. Counselling is being performed based on assessment of total needs of beneficiaries and individual plans. Counselling may be performed from the Center for social care, social care institutions, non-governmental organisations and professional worker who independently performs his/her duties related to social care as professional duty, under conditions that they are provided with necessary space and professional qualifications.

The child –victim of violence is entitled to accommodation ***in social care institutions or with other family*** if the family may not provide appropriate protection, while reasons for this form of social protection are in place. That is particularly significant in cases when child abuse occurred in family. The Social care centre shall in compliance with the law make decision on accommodation of child respecting the best interest for the child, total evaluation of life conditions and state of beneficiary and his/her environment, considering possibility of other care forms and opinions implying that accommodation and care with institutions is the best form of protection. The social care institutions provide: living, food, clothes, care, aid, care, rising and education; working, cultural, entertainment and recreational activities; health protection.⁸¹ Child – victim of violence who is three years of age may be temporarily placed in social care institutions with professional opinion of Ministry of health and social care.⁸²

The Law prescribes that a child may not be accommodated with another family if a family member has been deprived of parental right or business ability or in which all family relations have been disturbed or a family member has unacceptable form of conduct or in which due to illness of a family member, a health of a child was jeopardised and accommodation has not been

⁸⁰ Law on social protection of RS, Article 20: „Rights in social care protection as per this law are the following: pecuniary contribution, allowances for assistance and care of another person, support in leveling of possibilities of children and youth handicapped in raising and development, accommodation in institution, accommodation with breadwinning family, assistance and care at home, daily care, short-term pecuniary assistance and counselling.”

⁸¹ Law on Social Care protection of RS, Article 38 para 2

⁸² Ibid, Article 40.

provided.⁸³ The social care centre that instructs a child, who is victim of the violence, for an accommodation with institution or with another family, shall during a care provide clothing, footwear and pay transportation costs from the institution to the family.

Child – victim of violence, on account of his/her psychological difficulties and unfavourable life environments, is entitled to *daily care* which, through various types of organised daily service and accommodation, out of the domestic family provides food, care, guardianship, health care, upbringing and education, psychosocial rehabilitation and similar. Daily care may be performed with another family, social care institution, specialised centres for children that organises and offers public institutions, associations, religious organisations and similar. A decision thereabout is made by locally-competent centre for social care where parents or foster parent have residence. If none of child's parents is known, or if no residence of the parents is known, the procedure shall be done by the social care centre of the territory on which the child was identified.

Funds to exercise the rights as established by this law are provided from the municipal budgets and the budget of Republic of Srpska.

*The Law on social care protection of Brčko District*⁸⁴ recognises children who are victims of sexual violence as beneficiaries of social care under the category “abused children”. In the meaning of Article 16 of this law, the abused children are *minors*⁸⁵ *who are corporally injured or physically damaged by the acts which caused endangering of health, physical and psychological integrity of personality or prevented normal growing up*. The rights to social care and procedures for its enjoyment are similarly regulated like in Republic of Srpska, with an exception that this law does not recognise a right for daily care of children, but only as a service within confines of social care institution.

Federation Law on social care, civil war victims and protection of families with children does not recognise children who are victim of violence as special beneficiaries of social care. The mentioned law, *inter alia*, defines as beneficiaries, a juvenile in state of social care as follows: children without parental custody, neglected in upbringing processes, children whose development was disturbed by family affairs, children with physical and psychological difficulties, children/persons who due to state of special social need they face, social care protection is needed. In respect of this Law:

- a) child without parental guardianship is a child without both parents, unknown parents, abandoned by the parents deprived from parental rights and parents prevented to perform their parental duties;
- b) child neglect in upbringing process is seen with a child who due to insufficient supervision and negative influence of community disturbs the generally accepted norms of behaviour;
- c) neglected child in upbringing processes is a child, who with his /her behaviour disturbs generally accepted norms and commits misdemeanour or criminal offences;
- d) child, whose development was disturbed by family affairs, whose parents due to disaccorded family relations, material and other reasons did not have a possibility to ensure to child normal conditions for regular upbringings, physical and psychological development.

⁸³ Ibid, Article 43.

⁸⁴ „Official Gazette BD BiH“ number 1/03, 4/04, 9/07, 2/08

⁸⁵ Under juvenile are considered person under 18 years of age

In the most cases, the children who are victims in domestic environment are treated as children whose upbringing was disturbed by family affairs and protection and procedure to exercise the rights for the children is similar to lawful solution of RS.

- b. Please specify if and to what extent internal law provides for the possibility of „removing“ (Article 14, para 3, Explanatory Report, para 99) in cases where :*
- the alleged perpetrator, when the parent of persons caring for the child are involved in his or her sexual exploitation or sexual abuse;*
 - the victim from his or her family environment when parent or persons caring for the child are involved in his or her sexual exploitation or sexual abuse.*

In Family Law of RS one of the most important provisions stipulates a prohibition to the parents and other member of the family to subject the child to degrading treatment, corporal and psychological violence, respectively abuse.⁸⁶ If the parents, i.e. a parent of a child with whom is living with, have abused a child or neglected child care, ignored child's upbringing or if there are some disturbances with upbringing of the child, the Bodies of custody may remove a child and entrust him/her to other parent, other person or corresponding institutions unless there is court decision on entrusting of child. Also, the court may deprive parents from parental right if a parent abuses the child, abuses his/her parental right or has abandoned the child, ignored child's care and neglected his/her parental duties.⁸⁷ It is very important that the Bodies of custody as per Article 107 para 2 is obliged to institute a procedure for deprivation of parental right if it in any way finds out for occurrences of any of the previously mentioned activities.

Family law offers a definition of abuse of parental right. Hence, in accordance with the provision of Article 106, para 2, a parent is considered to abuse his/her rights and duties:

1. if performs physical and psychological violence on child,
2. if sexually abuses a child,
3. if exploits a child by forcing the child to egregiously work or to perform inappropriate work for his age,
4. if the child is allowed to enjoy alcohol, drugs and other narcotics or is he is incited to enjoy that,
5. if inciting a child to any form of unacceptable social behaviour,
6. If in any other form violates a right of a child.

Furthermore, the Law in para 3 of Article 106 prescribes sever ignorance of parental duties when a parent:

1. abandons a child,
2. he/she does not care about a child not living with him/her for a term longer then a month,
3. within a period of one year no conditions are created for joint life with the child who is accommodated with other family or institutions, and there is no justified reason for not creation of conditions,
4. he/she neglected care on basic living needs of the child who is living with him/her or does not abide by measures issued by the competent body for protection of rights and good of the child.

⁸⁶ Family law of Republic of Srpska, Article 97

⁸⁷ Family law of Republic of Srpska, Article 106, para 1

Parental right cease to exist when a child reaches age of maturity or when prior to maturity age he/she concludes a marriage in compliance with the law.

The Family laws in FBiH and BDBiH define abuse of parental rights. Hence, in conjunction with Article 154, para 2 of the Family Law of FBiH, *must not subject the child to degrading treatment, thus a parent abuses parental right and obligation in cases of corporal and pshycolocigal violence on child, sexual exploitations, inciting to socially unacceptable behaviour, and severe violation of child's rights in other manner.* The Court shall, by an extraordinary procedure, deprive those parents from parental entitlement, who due to abuse of their rights or coerce ignorance of their obligations, or abandoning of child, lack of care about a child living with them, manifestly expose a child to a danger of security, health and moral, especially in cases in which a violence of child occurs. By imposition of this measure all obligations and rights of the parents against the child shall cease to exist, except an obligation to financially support a child. The Bodies of custody shall during deprivation of parental right appoint a special guardian for a child who will perform his/her duty in term of duration of a sanction. The Court per *ex officio* submits to relevant registrar a decision on deprivation or return of parental right for evidence that should be enroled into a birth register.

In compliance with the Law on social protection of RS a child –victim of sexual abuse is entitled to accommodation with the social care institutions or with other family if the family may not provide corresponding protection. This is very important when violence occurred in domestic ambient. The Law prescribes that the Social care centre may make a decision based on a comprehensive consideration of beneficiary's need and capacity of his/her family.

The Law stipulates that the child may not be accommodated with other family if a member of that family has been deprived from parental right or business ability or in which all family relations have been disturbed or in which a family member has unacceptable form of conduct or in which due to illness of a family member, a health of a child was endangered and accommodation has not been provided.

The Law proscribes that affairs of social protection shall be performed by the social care centres and institutions of social protection.⁸⁸ A professional supervision shall be performed by the Ministry of health of social protection of Republic of Srpska.⁸⁹

Funds to execerise the rights as established by the law shall be provided from the budget of Republic of Srpska. For exercise of rights as embraced by this analysis (accommodation with institution of social protection, accommodation with other family and services for social affairs) the funds shall be provided from municipal budgets.

In case of sexual violence of child in domestic environment, based on valid laws on protection against domestic violence, police, prosecution, court, bodies for guardianship and other services competent for social and health protection are obliged to offer to the child, being the victim of domestic violence, a protection against violence form of conduct upon an urgent procedure. After receipt of report or acknowledgment that the domestic violence has occurred, police is obliged to immediately, without any delay, report to social care centre, that is to say, social care service, which will, without any delay, directly offer services of social protection and psycho-socio assistance to a victims of violence, and to produce a report accordingly. According to the Law on domestic violence in RS, the child enjoys special assistance and

⁸⁸ Law on social welfare, Article 70

⁸⁹ Law on social welfare Article 77 and 78

protection. On account of providing of physical protection and exercise of rights and interest of victim of domestic violence, police and guardianship body/bodies of custody are obliged to, with a prior agreement of the victim to domestic violence, temporarily take care of victim of violence in shelter/safe house. The Law of Republic of Srpska does not treat an accommodation of victim with the safe house as mandatory element (Article 15). The dwelling with safe house may not last longer than six months, whereby it may exceptionally be prolonged by a written agreement from the bodies of custody⁹⁰, i.e. for another six months as per completion of procedure and enforcement of decision by which a protective measure has been pronounced to perpetrator of offence⁹¹. Funds for temporary accommodation and care of victims of violence shall be provided by 70% of the federal budget and 30% of the cantonal budget, i.e. by 70% of Republic of Srpska budget and by 30% of municipally budget of the determined price for accommodation of victim. In the BiH Federation, upon the request by the bodies of custody, a victim of the domestic violence shall be accommodated with other corresponding institutions or with other family when the bodies of custody finds that such an accommodation may be more favourable for the victim and with agreement of the victim of the violence.

The Law on protection from domestic violence in FBiH in Article 11 prescribes that the protective measure of removing from the apartment, house or other dwelling and barring a person from returning to that apartment, house or dwelling may be ordered for a person who has abused a family member with whom he/she resides in an apartment, house or other dwelling if the misdemeanour court finds that there is a risk that the abusive person might repeat an act of violence if this measure is not employed. A person for whom the measure described in paragraph 1 of this Article has been prescribed shall immediately vacate the apartment, house or other dwelling, in the presence of a police officer, when necessary. The measure set forth in paragraph 1 of this Article shall be prescribed for a period of time of no less than one month and not longer than two years in duration

By the Law in RS this measure shall be prescribed for a period of time of no less than 30 (thirty) days and not longer than six (6) months.

Article 12 of the mentioned Law proscribes that protective measure is „a restraining order if there is a risk that he/she might repeat the abuse“ for a person who has committed a domestic act. In its ruling on the restraining order, the court shall define places and areas and the distance which an abusive person must not come near a victim of domestic violence. The measure set forth in paragraph 1 of this Article shall be prescribed for a period of time of no less than one month and not longer than two years in duration. The regulation of the implementation of the measure in paragraph 1 of this Article shall be enacted by the Minister of Internal Affairs of the Federation. In its ruling on the restraining order, the court shall define places and areas and the distance, as of 200 m, which an abusive person must not come near a victim of domestic violence.

⁹⁰ Law on Protection from Domestic Violence FBiH Article 33 (3)

⁹¹ The Law on protection against violence in family RS, Article 15 (5)

c. If the internal law does provide for this:

- Are the conditions and duration of such removal to be determined in accordance with the best interests of the child?

Conditions and duration of removal of the child from the family have always been in accordance with the interest of the child, and that is also an obligation of all bodies involved in protection of the child.

- Are social programmes and multidisciplinary structure in place to provide the necessary support for victims, their close relatives and for any person responsible for necessary support for victims, their close relatives and of any person responsible for their care?

d. Which legislative or other measure have been taken to ensure that victim of an offence established in accordance with the Convention in the territory of a party other than the one where they reside may make a complaint before the competent authorities of their state of residence? (Article 38, para 2, Explanatory Report paras. 258-259).

PROSECUTION OF PERPETRATORS OF SEXUAL EXPLOITATION AND SEXUAL ABUSE OF CHILDREN

Question 16: Criminal law offences

The main form of protection of children against pornography (sexual exploitation and abuse) has been constituted within a framework of criminal laws which are applied in BIH. Criminal offences directly related to „child pornography“ have been regulated by entity criminal code legislative.

Criminal Code of BIH stipulates the following areas.

(1) Whoever, by means of use of force or threat of use of force or other forms of coercion, by abduction, fraud or deception, the abuse of power or influence or a position of vulnerability, or by giving or receiving payments or benefits to achieve the consent of a person having control over another person, recruits, transports, transfers, hands over, harbours or receives a person for the purpose of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or similar status, servitude or the removal of organs of human body or of other types of exploitation, shall be punished by imprisonment for a term not less than three years.

(2) Whoever recruits, incites, transports, transfers, hands over, harbours or receives individuals under 18 years of age for the purpose of the exploitation referred to in paragraph (1) of this Article, shall be punished by imprisonment for a term not less than five years.

(3) In the event that a criminal offence under paragraphs (1) and (2) of this Article is perpetrated by an official exercising his official duty, the perpetrator thereof shall be punished by imprisonment for a term not less than five years.

(4) Whoever forges, obtains or issues a travel or personal document, or uses, retains, seizes, alters, damages, destroys a travel or personal document of another person for the purpose of facilitating trafficking in persons, shall be punished by a prison sentence between one and five years.

(5) Whoever organises or in any manner leads a group of people for the purpose of perpetration of the criminal offences referred to in paragraphs (1) or (2) of this Article, shall be punished by imprisonment for a term not less than ten years or a long-term imprisonment.

(6) Whoever uses the services of a victim of human trafficking shall be punished by a prison sentence between six months and five years.

(7) In the event that the perpetration of the criminal offences under paragraphs (1) and (2) of this Article resulted in a serious health damage, bodily injury or death of the persons referred to in paragraphs (1) and (2), the perpetrator shall be punished by a prison sentence of minimum five years or long-term imprisonment.

(8) The objects and means of transportation used for the perpetration of the offences shall be seized, while the facilities used for the purpose of human trafficking may be temporarily or permanently closed.

(9) Whether a person consented to the exploitation is of no relevance to the existence of a criminal offence of trafficking in persons

International Procuring in Prostitution

Article 187

(1) Whoever procures entices or leads away another person to offer sexual services for profit within a state excluding the one in which such a person has residence or of which he is a citizen, shall be punished by imprisonment for a term between six months and five years.

(2) Whoever, by force or threat to use force or deceit, coerces or induces another person to go to the state in which he has no residence or of which he is not a citizen, for the purpose of offering sexual services upon payment, shall be punished by imprisonment for a term between one and ten years.

(3) The fact whether the person procured, enticed, led away, forced or deceived into prostitution has already been engaged in prostitution is of no relevance for the existence of a criminal offence.

- a. Please indicate whether the intentional conducts as set forth are considered criminal offences in internal law?*
- b. Wherever the intentional conduct which is criminalised differs from the Lanzarote Convention benchmark, please justify;*

In the Criminal Codes of entities⁹² and Criminal Code of District⁹³, in chapters „criminal offences against sexual integrity and moral“ and „criminal offences against marriage and family“, a list of criminal offences having elements of sexual abuse and sexual exploitation of children are being indicated (persons who are 14 years old), respectively juvenile (persons younger than 18 years of age):

- Rape⁹⁴
- Sexual intercourse with a helpless person⁹⁵ - Sexual intercourse with a helpless person⁹⁶ - Sexual intercourse with helpless person⁹⁷
- Sexual intercourse with a child⁹⁸ - Sexual violence on a child⁹⁹ - Sexual intercourse with a child¹⁰⁰
- Sexual intercourse by abuse of position¹⁰¹ - Sexual intercourse by abuse of position¹⁰² - Sexual intercourse by abuse of position¹⁰³
- Lecherous act¹⁰⁴
- Satisfying act in a presence of child or juvenile¹⁰⁵ - Satisfying sexual lust in a presence of other persons¹⁰⁶
- Luring in offering sexual services¹⁰⁷
- Trafficking in juvenile persons¹⁰⁸ - Trafficking in human¹⁰⁹

⁹² Criminal Code of the Federation of Bosnia and Herzegovina (“Official Gazette of the Federation of Bosnia and Herzegovina” nos. 36/03, 37/03, 21/04, 69/04, 18/05, 42/10, 42/11) ; Criminal Code of Republic of Srpska (“Official Gazette of Republic of Srpska“ nos. 49/03, 108/04, 37/06, 70/06, 73/10, 1/12, 67/13)

⁹³ Criminal Code of Brčko District of BiH, cleared text („Official Gazette 33/13)

⁹⁴ Criminal Code of the Federation of BiH, Article 203(5) and (6); Criminal Code of Republic of Srpska, Article 193(2), Criminal Code of Brčko District of Bosnia and Herzegovina, Article 200 (5)

⁹⁵ Criminal Code of the Federation of Bosnia and Herzegovina, Article 204

⁹⁶ Criminal Code of Republic of Srpska, Article 194(2)

⁹⁷ Criminal Code of Brčko District of Bosnia and Herzegovina, Article 201

⁹⁸ Criminal Code of the Federation of Bosnia and Herzegovina, Article 207

⁹⁹ Criminal Code of Republic of Srpska, Article 195

¹⁰⁰ Criminal Code of Brčko District, Article 204

¹⁰¹ Criminal Code of the Federation of Bosnia and Herzegovina, Article 205(2): „A teacher, educator, parent, adoptive parent, guardian, step-father, step-mother or any other person who, by abusing his status or relationship toward a juvenile who is entrusted to him for education, upbringing, custody or care, performs sexual intercourse or equivalent sexual act upon a juvenile, shall be punished by imprisonment for a term between six months and five years“.

¹⁰² Criminal Code of Republic of Srpska, Article 196.

¹⁰³ Criminal Code of Brčko District, Article 202

¹⁰⁴ Criminal Code of the Federation of Bosnia and Herzegovina, Article 208(2); Criminal Code of Brčko District of Bosnia and Herzegovina, Article 205(2)

¹⁰⁵ Criminal Code of the Federation of Bosnia and Herzegovina, Article 209.; Criminal Code of Brčko District of Bosnia and Herzegovina, Article 206

¹⁰⁶ Criminal Code of Republic of Srpska, Article 197.

¹⁰⁷ Criminal Code of the Federation of Bosnia and Herzegovina, Article 210(4); Criminal Code of Republic of Srpska, Article 198.; Criminal Code of Brčko District of Bosnia and Herzegovina, Article 207

¹⁰⁸ Criminal Code of Republic of Srpska, Article 198(b)

¹⁰⁹ Criminal Code of the Federation of Bosnia and Herzegovina, Article 207(a)

- Exploitation of a child or juvenile for pornography¹¹⁰ - Exploitation of children and juvenile for pornography¹¹¹
- Production, possession and transmitting of children pornography¹¹²
- Introduction of a child with a pornography¹¹³
- Incest¹¹⁴ - Incest¹¹⁵

c. Please highlight whether there are any other offences not included in the framework of incriminating sexual exploitation and sexual abuse of children in your country? Please provide their definitions and specify in which act these are included;

d. Please also specify whether the age of a child plays a role in determining the gravity of offence.

Age of a child plays a very important role taking into consideration criminal offences related to sexual abuse and those cases are considered as qualified forms of criminal offences. Moreover, when it is about determination of gravity of sanctions for perpetrator of those offences, the court, in compliance with the rules on determination of sanction takes into consideration all circumstances influencing on determination of sanction, especially on motives to commit such an act, his/her relationships against a victim etc.

Sexual Abuse (Article 18)

1. Engaging in sexual activities with a child who, according to the relevant provisions of national law has not reached legal age for sexual activities,
2. Engaging in sexual activities with a child where:
 - use is made of coercion, force or threats;
 - abuse is made of a recognised positions of trust, authority of influence over the child, including within the family;
 - abuse is made of a particularly vulnerable situation of the child, notably because of mental or physical disability or a situation of dependence.

Child Prostitution (Article 19)

1. Recruiting a child into prostitution or causing a child to participate in prostitution;
2. Coercing a child into prostitution or profiting from or otherwise exploiting a child for such purposes;
3. Having recourse to child prostitution.

Child pornography (Article 20)

1. Producing child pornography;
2. Offering or making available child pornography;

¹¹⁰ Criminal Code of the Federation of Bosnia and Herzegovina, Article 211.; Criminal Code of Brčko District of Bosnia and Herzegovina, Article 208.

¹¹¹ Criminal Code of Republic of Srpska, Article 199, para 1

¹¹² Criminal Code of Republic of Srpska, Article 200.

¹¹³ Criminal Code of the Federation of Bosnia and Herzegovina, Article 212.; Criminal Code of Brčko District of Bosnia and Herzegovina, Article 209.

¹¹⁴ Criminal Code of the Federation of Bosnia and Herzegovina, Article 213, para 2 and 3; Criminal Code of Brčko District of Bosnia and Herzegovina, Article 210, paras 2 and 3

¹¹⁵ Criminal Code of Republic of Srpska, Article 201.

3. Distributing or transmitting child pornography;
4. Procuring child pornography for oneself or for another person;
5. Possessing child pornography;
6. Knowingly obtaining access, through information and communication technologies, to child pornography.

Participation of a Child in Pornographic Performances (Article 21)

1. Recruiting a child into participating in pornographic performances or causing a child to participate in such performances;
2. Coercing a child into participating in pornographic performances or causing a child to participate in such performances;
3. Knowingly attending pornographic performances involving the participation of children.

Corruption of Children (Article 22)

The intentional causing for sexual purposes, of a child who has not reached the internal legal age for sexual activities to witness sexual abuse or sexual activities, even without having to participate.

Solicitation of Children for Sexual Purposes ("grooming") (Article 23)

The intentional proposal, through information and communication technologies, of an adult to meet a child who has not reached the age for sexual activities as established by internal law, for the purpose of committing sexual abuse or producing child pornography, where this proposal has been followed by material acts leading to such a meeting.

Aiding or abetting and attempt (Article 24)

1. Intentionally aiding or abetting the commission of any of the above offences.
2. The attempt to commit any of the above offences.

Question 17: Corporate liability

Does your system provide that a legal person may be held liable for an offence established in accordance with Article 26? Please specify under which conditions.

Chapter XIV of the Criminal Code of BIH regulates corporate liability for criminal offence.

Question 18: Sanctions and measures

Criminal Code of BIH, Article 131.

Sanctions for legal entities

The following sanctions may be pronounced to legal entities:

- fines;
- seizure of property;
- dissolution of the legal person.

Article 39 of the Law on family violence of FBiH imposes misdemeanour sanctions for failure to report violence in family by educational, health and other institutions and bodies, including non-governmental organisation that during the course of carrying out their duties learn of occurrences of committed violence in family as per Article 7 para 2 of this Law.

Official person who does not proceed in compliance with Article 8 para 1 of this Law shall be imposed with a fine in the overall range from BAM 500 up to BAM, if a child is victim in family violence occurrences as per Article 7 para 2 of this Law.

- a. Please indicate which sanctions internal law provides for the criminal offences established in accordance with the Convention with regard to both natural and legal persons. Please specify, whether the sanctions are criminal, civil and/or administrative sanctions (Article 27, Explanatory Report, paras.182-193);*

A policy for criminal offences in Bosnia and Herzegovina for criminal offence of sexual violence over children is disharmonised and has inadequate consequences, which that offence impacts on children-victims.

According to Criminal Code of the Federation of BiH and Criminal Code of Brčko District a person who commits a criminal offence of **“rape”** upon a child or juvenile will be sentenced by imprisonment for **term of minimum three year**, while according to the Criminal Code of Republic of Srpska, for **a term up to fifteen years**. If the offence has an element of qualified form¹¹⁶ of this criminal act an imprisonment for a term of minimum **five years** is stipulated in the Federation and District, while in Republic of Srpska for a term of minimum **ten years**.

The Federation Criminal Code Procedure and the Code of District establish a sentence for a criminal offence **“sexual intercourse on a child”** by imprisonment for a term of **one to eight years**. The Criminal Code of Republic of Srpska defines this offence as **“sexual intercourse with a child”**, for which sentence by imprisonment for a term of **one to ten years** has been stipulated.

Whoever performs such a criminal offence by forcible sexual intercourse or on helpless child shall be punished by imprisonment for not less than **three years** (Criminal Code of FBiH and Criminal Code of BSBIH), respectively from **three up to fifteen years** (Criminal Code of RS).

If this criminal offense has been committed by a teacher, educator, parent, adoptive parent, guardian, step-father, step-mother or any other person who, by abusing his status or relationship toward a juvenile who is entrusted to him for education, upbringing, custody or care, performs sexual intercourse or equivalent sexual act upon a juvenile, a perpetrator shall be sentenced by imprisonment for a term of five to fifteen years (CC RS), respectively from one to ten years (CC FBiH and CC BDBiH). When this criminal offence has been committed in a very humiliating way or if towards the child-victim several sexual intercourses have been done or equal sexual intercourse by more perpetrators, in all three criminal codes the

¹¹⁶ If a criminal offence has been committed referred in a particularly cruel or humiliating manner or if on the same occasion a number of perpetrators perform a number of acts of sexual intercourse or equivalent sexual acts against the same victim or if, by the criminal offence the death of the raped person is caused, or serious bodily injury is inflicted on the raped person or his health is severely impaired, or the raped female is left pregnant, respectively if the criminal offence has been committed out of hatred on the grounds of national or ethnic origin, race, religion, sex or language.

prescribed sanction is imprisonment for a term of minimum five years. If by this criminal offence a death case of child or if a child is cruelly injured, or his/her health is being deteriorated, a long-lasting sentence by imprisonment for a term of five years has been prescribed (CC FBiH, CC BDBiH, respectively minimum ten years (CC RS).

For criminal offence of „*sexual intercourse by abuse of position*“¹¹⁷ committed at detriment of the child, according to valid criminal and entity and district laws, a sentence by imprisonment for a term of six to five years is prescribed.

When the criminal offence of „*lust acts*“¹¹⁸ have been committed on a child or juvenile, a sentence by imprisonment for a term from **six to five years** is prescribed by the Federal criminal code.

Article 197, para 2 of the Criminal Code of Republic of Srpska for criminal offence of „*satisfaction of lust in front of a child or minor*“ prescribes a fine or imprisonment for a term **not exceeding three years**, while the Criminal Code of FBiH and Criminal Code of BDBiH prescribes imprisonment of **three month of a term**.

For criminal offences „*inciting to engage in prostitution*“ which was committed on a child or minors, the Federation Criminal Code prescribes imprisonment for a term of **three to fifteen years**, such an offence as per Criminal Code of Republic of Srpska was enshrined into a criminal offence of “trafficking of minor”, respectively “trafficking in human” as per Code of District.

Whoever uses child or juvenile for picture, audio-visual and other items containing child pornography commits criminal offence „*abuse of child or minor for pornography* „and shall be sanctioned by imprisonment for a term of **one to eight years**, according to the Criminal Code of RS, while the Criminal Code of the Federation and Brčko District prescribed imprisonment for a term of **one to five years**. Children pornography is incriminated in criminal legislative as a criminal offence „*introduction of pornography to a child*“¹¹⁹ that is to say „**production, possession and presentation of child pornography**“¹²⁰ with a sanction of pecuniary fine or imprisonment for a term of **one year, i.e. six months to five years**.

For criminal offence of „*trafficking in juvenile*“ the Criminal Code of Republic of Srpska prescribes the sanction of imprisonment for a term of minimum five years, and if that offences was committed employing force of threatening the sanction is imprisonment for at term of **minimum eight years. If the criminal offence “trafficking in human beings” was committed against a person under 18 years of age, the perpetrator shall in compliance**

¹¹⁷ As per Criminal Code of FBiH, Article 205, para 2 and Criminal Code of BDBiH, Article 202, a criminal offence of „sexual intercourse by abuse of position“ is committed when: *A teacher, educator, parent, adoptive parent, guardian, step-father, step-mother or any other person who, by abusing his status or relationship toward a juvenile who is entrusted to him for education, upbringing, custody or care, performs sexual intercourse or equivalent sexual act upon a juvenile.* As per Criminal Code of Republic of Srpska, Article 196, para 2, a criminal offence is committed when: *„A teacher, educator, parent, adoptive parent, guardian, step-father, step-mother or any other person who, by abusing his status or relationship toward a juvenile who is entrusted to him for education, upbringing, custody or care, performs sexual intercourse or equivalent sexual act upon a juvenile.“*

¹¹⁸ Criminal Code of the Federation of Bosnia and Herzegovina, Article 208, para 2, Criminal Code of Brčko District of BIH, Article 205.

¹¹⁹ Criminal Code of the Federation of Bosnia and Herzegovina and Criminal Code of Brčko District

¹²⁰ Criminal Code of Republic of Srpska

with the District criminal code be sentenced by imprisonment for a term of minimum 10 years.

Whoever commits a criminal offence of „*incest*” or sexual intercourse or equal sexual intercourse with a lineal juvenile relative or s siblings shall be punished by imprisonment for a term *of six months to five years* (CC FBIH, CC BDBiH), respectively for a term of *one to eight years* (CC BIH). When this offence is committed with a child, by the criminal law in the Federation and District a sanction of imprisonment for a term of two to ten years is prescribed.

Article 39 of the Law on protection from domestic violence of FBiH imposes misdemeanour fines for failure to report domestic violence. Pecuniary fine in the amount to BAM 100 up to BAM 3,000 shall be imposed to persons failing to abide by Article 8, para 2 of this Law, if the child is victim of domestic violence as per Article 7, para 2 of this Law.

- b. Which legislative or other measures have been taken to provide for the possibility of taking into account final sentences passed by another party in relation to the offences established in accordance with the Convention? Please provide details and describe any good practice resulting from the taking of these measures (Article 19, Explanatory Report, paras 203-208)*

Question 19: Jurisdiction

With regard to the offences referred to in question 16, please indicate which jurisdiction rules apply. Please specify under which condition, if required (Article 25, Explanatory Report, paras. 165-176).

Article 184, Para. 1 of the Law prescribes the criminal offences when the injured party in the criminal proceedings is a child or a juvenile, while a judge of the juvenile division, that is, the Panel whose president is a judge of the juvenile division or a judge with special knowledge, also tries adults for the criminal offences prescribed by the Criminal Code, inter alia, the following:

Question 20: Aggravating Circumstances

Please indicate which of the circumstances referred to in Article 28, in so far as they do not already form part of the constituent elements of the offence, may in conformity with the relevant provisions of internal law, be taken into consideration in your legal system as aggravating circumstances in the determination of the sanctions in relation to the offences established in accordance with this Convention (Explanatory Report, paras 194-202).

Criminal codes determined the General rules on sanctions according to which the court shall establish a sanction within confines as prescribed by the law to perpetrator of criminal offence, having in mind purpose of punishment and all facilitating and aggravating circumstances.

In respect of aggravating circumstance in compliance with Article 28 of the Convention, the majority of the mentioned circumstances makes constitutive part of criminal offence, and the court shall in line with the rules on determination of sanction particularly take care on: grade of guilt, motives out of which offence has been made, degree on endangering and violence of the victim, circumstances under which the act was committed, on relationship of perpetrator towards the victim, previous life of perpetrator, his/her personal opportunities and his behaviour after the committed offence and other circumstances that are related to perpetrator. When the court determines a punishment to a perpetrator for criminal offence repeatedly committed, the court shall especially take into account if previous act is of the same character or new one, are both offences committed based on the same motives and how much time have passed from previous punishment or pardoned sanction.

Question 21: Protective measures for child victim

- a. Describe the measures taken to inform children victims of their rights, services available, monitoring of their complaint, charges, general progress of the investigation or court proceedings and information about their role, as well as the outcome of their cases (Article 31, Para. 1(a) and Para (2)). Also, please present what was done in order to adjust all the relevant information to the child's age and level of matureness, and in the language he/she understands;*

The Law on Protection of Witnesses under Threat and Vulnerable Witnesses in criminal proceedings conducted at the Court of BiH or in the Prosecutor's Office of BiH ensures protection of the above mentioned witnesses, as well as professional help.

Further on, Article 6 of the foregoing Law stipulates provision of psychological, social, and professional help.

During the investigation, the Prosecutor, and after the indictment has been issued, the Court, shall, provided the witness agrees, and without disclosing any of the witness's personal details, 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.

In the proceedings pertaining to the protection of child rights, a child is represented by his/her legal representative, and if it transpires that a child is represented appropriately, a court will appoint him/her a temporary representative. If there are conflicting interests between the child and his/her parents or the legal representative, a court may, through the guardian authority, appoint him/her a collision guardian, whose duty is to make sure that the child receives all the necessary information and notices concerning the potential consequences of the child's actions in due time. Collision guardian must relay the child's opinion to the court.

As for the criminal proceedings in which a juvenile participates, one of the fundamental principles observed is that (s)he understands the language, and that the technology used corresponds to the age and the level of development of the underage person.

- b. Also, please indicate the measures applied to enable the examination of a child victim, submission of evidence and selection of means needed to understand his/her positions, needs and concerns, either directly or through a middleman (Article 31, Para. 1(c));***

Special chapter of the RS Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings entitled “Criminal Offences Detrimental to Children and Juveniles” contains provisions referring to situations when juveniles and children are victims or witnesses of the criminal offences committed to their detriment.

Article 184(1) of the Law prescribes the criminal offences in which a child or an underage person appears in the criminal proceedings as an injured party, while a judge of the juvenile division, that is, the Panel whose president is a judge of the juvenile division or a judge with special knowledge, also tries adults for the following criminal offences prescribed by the Criminal Code:

- a) murder,
- b) aggravated murder,
- c) infanticide,
- d) incitement to suicide and assistance in suicide,
- e) grievous bodily injury,
- f) kidnap,
- g) unlawful deprivation of liberty,
- h) abuse,
- i) rape,
- j) sexual intercourse with a helpless person, j) sexual abuse of a child,
- k) sexual intercourse by abuse of position,
- l) satisfying lust in front of others,
- m) trafficking in human beings for the purpose of prostitution,
- n) abuse of a child or juvenile for pornography,
- o) production and screening of child pornography,
- p) incest,
- q) cohabitation with a juvenile,
- r) abduction of a juvenile,
- s) neglecting and abusing a juvenile,
- t) domestic violence,
- u) breach of family obligations,
- v) evading the alimony,
- w) enabling another to enjoy narcotics,
- x) robbery and
- y) aggravated robbery.

Juveniles are treated in accordance with the procedure prescribed by Article 186 of the Law, which reads:

(1) When dealing with criminal cases involving perpetrators of criminal offences committed to the detriment of children or juveniles, while implementing the procedural actions, a child or a juvenile to whose detriment the criminal offence was committed shall be treated with particular care in view of his/her age, personality, education and the circumstances, in order to avoid potential damaging consequences for his/her future life,

upbringing and development. A child or a juvenile shall as a rule be examined in the presence of a pedagogue, psychologist or another expert.

(2) If a child or a junior juvenile who is the injured party in a criminal offence prescribed by Article 184 of this Law is being examined in the capacity of a witness, examination may be conducted two times maximum.

Prosecutor or an authorised official person shall examine the witness by using equipment for transfer of images and sounds, with the prosecutor or authorised official person not being in the same room with the witness. A child or a juvenile shall as a rule be examined in the presence of a pedagogue, psychologist or another professional.

(3) A child or a junior juvenile may be examined in his/her flat or another place where (s)he spends his/her time, or in a social care centre. When examining a witness, actions shall be taken pursuant to Para. 2 of this Article.

(4) Court shall examine a child or a juvenile in the capacity of a witness injured by a criminal offence prescribed by Article 184 of the Law, pursuant to Para. 2 of this Article in such a manner that the court, parties to the proceedings and the defence counsel can ask questions without being in the same room with the witness. A child or a juvenile shall be examined in such a manner that the questions shall be asked through the court, and if necessary, with the assistance of a pedagogue, psychologist or another professional.

(5) In order to protect the children and juveniles injured by a criminal offence prescribed by Article 184 of the Law, other appropriate provisions of the Law on Protection of Witnesses in Criminal Proceedings shall apply (Official Gazette of Republika Srpska, issue 48/03).

(6) Provisions of this Article shall also apply to examination of a child or a juvenile who is a witness-eyewitness to an offence prescribed by Article 184 of this Law.

(7) Article 184 of this Law shall apply in criminal proceedings against perpetrators of criminal offences committed to the detriment of children and juveniles.

(8) Article 187 of the Law shall refer to the ban on confrontation, specifying that if a child or a juvenile who is physically or mentally seriously traumatised by the circumstances under which the criminal offence was committed or suffers serious mental disorders rendering him/her particularly sensitive, is being examined in the capacity of a witness, (s)he shall not be confronted with the suspect, that is, the accused.

(9) If a juvenile injured by a criminal offence or who eye-witnessed the criminal offence is to identify the suspect, that is, the accused, such identification at all stages of the proceedings shall be conducted in a manner that makes it impossible for the suspect, that is, the accused, to see the underage person.

(10) Affective procedural laws in BiH also prescribe the manner of examination of an underage person. To wit, during *an examination of an underage person*, particularly if such a person was injured by the criminal offence, due care shall be exercised in view of his/her age, degree of mental, emotional and social maturity, level of education, circumstances and the surroundings in which (s)he lives, so that the examination would not have an adverse effect on the juvenile's mental state, and shall be conducted with the assistance of a

psychologist, pedagogue or another professional¹²¹. This provision also enables the authorities involved in the criminal proceedings to examine the juvenile in the presence of his/her parent or guardian as they are the persons whom the juvenile trusts and whose presence should provide psychological support during the examination. Even in cases when parents demand to attend examination of a juvenile injured party, particular care shall be required and the opinion by a psychologist, pedagogue or another professional, or other evidence indicating such necessity should be obtained in order to enable that. That shall not be done if, in the opinion of the law-enforcement agency, one might expect that the presence of a parent might affect the readiness of the underage injured party to give a statement or to give a truthful statement.

(11) Due care on the part of the law-enforcement agencies may also mean that they should avoid multiple examinations of an underage injured party.

(12) The Law also prescribes that a person injured by a criminal offence cannot be asked about his/her sex life prior to the criminal offence committed, and if such examination was already conducted, such a statement cannot represent the basis for a court ruling,¹²² that is, a person injured by a criminal offence cannot be asked about his/her sex life prior to the criminal offence subject to the proceedings, and no evidence presented with the view to indicate the injured party's prior sex experience, behaviour or sexual orientation shall be admitted. In the last two situations, which pertain to the victims of the so-called sex crimes, the law also prescribes the procedural consequences for failure to act in accordance with those provisions, that is, imposes limits in proposing and presenting evidence that might lead to breach of the provisions that protect the personal integrity of victims of the foregoing criminal offences.

(13) The Law also contains a provision that makes *audio or audio-visual recording of examination of juveniles* who did not turn sixteen yet and who were injured by the criminal offence, mandatory.¹²³ It is not possible to conclude on the basis of this provision that its goal is to protect the underage victims of criminal offences. However, this provision should also be used for protection of an underage victim of a criminal offence from secondary victimisation during the proceedings in such a way that its application, with the right to defence of the suspect, that is, the accused, already ensured, should result in avoiding multiple examinations of an underage victim or his/her exposure to the negative effects of appearing in a courtroom.¹²⁴

c. What kind of support and services are provided to children victims and their families so that their rights and interests are properly presented and taken into account? (Article 31, Para. 1(d));

¹²¹ Criminal Procedure Code of the Federation of Bosnia and Herzegovina, Article 100(4)

¹²² Criminal Procedure Code of the FBiH, Article 100(5); Criminal Procedure Code of the RS, Article 279

¹²³ Criminal Procedure Code of the FBiH, Article 104.

¹²⁴ Even though it prescribes mandatory audio or audio-visual recording of examination of underage persons who did not turn sixteen yet and who were injured by a criminal offence, the CPC of FBiH does not explicitly provide for the possibility to replay the recording at the main trial, without the re-examination of the underage injured party at the main trial. With such a possibility enabled, naturally, having previously enabled the parties and the defence counsel to examine the witness who is in another room using the video link, or in the same room, mandatory recording of the statement given by an injured party who is under 16, would truly make sense, and it would also make a court ruling based on such a statement possible to render.

d. Describe the measures taken to protect the privacy, identity and image of child victims (Article 31, Para. 1(e));

One of the basic principles in the entity laws on protection and treatment of children and juveniles in the criminal proceedings is the recognition of an underage person's right to privacy during all stages of the proceedings. Law stipulates exclusion of public from the main trial, ban on publishing the case file and the course of the proceedings, as well as the personal details of the underage person or his legal representative. Name and other data that indicate the juvenile's identity will not be published in the media.

During the main trial, a judge may order that, with the exception of the prosecutor, defence counsel and the representative of the guardian authority, all or some persons leave the courtroom. During the presentation of some of the evidence or presentations by the parties, a judge may order a minor to leave the courtroom due to the potential detrimental effect on his/her upbringing. If it is relevant for the juvenile's defence, the defence counsel will inform him/her of the contents and course of the proceedings during his/her absence.

Witness Support Section has been operational in the District Court of Banja Luka for the past four years. Head of the Section is a psychologist who applies the special protective measures on children witnesses. In her work, she uses all the legal solutions concerning the protection of children, their privacy, and subsequent traumatising. She is familiar with the Lanzarote Convention and participated in the drafting of indicators for monitoring of the Convention's implementation.

e. Describe the measures taken to ensure the safety of child victims and child witnesses, as well as their families, from intimidation, retaliation, and repeated victimisation (Article 31, Para. 1 (f));

f. Please indicate whether a victim and his/her family are notified when the person who was charged or convicted is temporarily released from prison or custody. Please indicate who submits such information and how (Article 31, Para. 1(b));

Law on Protection of Witnesses under Threat and Vulnerable Witnesses¹²⁵ which are in force in Bosnia and Herzegovina, regulate the requirements and the procedure for providing protection and assistance to a witness outside court when there is justified fear that by testifying in order to prove a criminal offence, (s)he would be exposed to a realistic and serious threat to life, health, physical integrity, freedom or a fairly large property, and other protective measures are insufficient. Protection and assistance can also be provided to persons close to a witness or victim. Protection of a witness or a person close to him is provided through the Witness protection programme. An underage person may enter the protection programme only with the parents' or guardians' consent.

¹²⁵ There are four such texts of the law, identical to each other, that is, containing differences that are necessary because of the division of jurisdiction in the criminal justice system in BiH. Those are the following: Law on Protection of Witnesses under Threat and Vulnerable Witnesses (Official Gazette of BiH, issue 3/2003, 21/2003, 61/2004, and 55/2005), Law on Protection of Witnesses under Threat and Vulnerable Witnesses (Official Gazette of the FBiH, issue. 36/2003), Law on Protection of Witnesses under Threat and Vulnerable Witnesses (Official Gazette of the Brčko District of BiH, issue 11/2003, 8/2007), and the Law on Protection of Witnesses in Criminal Proceedings (Official Gazette of the RS, issue 21/2003, 61/2004, and 55/2005)

g. Indicate also what measures were taken to make sure to avoid contact between victims and perpetrators in the judicial and legal offices of executive agencies. Please indicate the conditions under which competent authorities may allow such contact in the child's best interest, if the investigation or the procedure demand such contact (Article 31, Para. 1(g));

This is partly regulated by the Law on Protection of Witnesses under Threat and Vulnerable Witnesses.

Entity laws on protection and treatment of children and juveniles in the criminal proceedings regulate the legal measures that ensure that there is no contact between the victims and perpetrators during the criminal proceedings.

If a child or a junior juvenile who is the injured party in a criminal offence prescribed by Article 184 of this Law is being examined in the capacity of a witness, examination may be conducted two times maximum. Prosecutor or an authorised official person shall examine the witness by using equipment for transfer of images and sounds, with the prosecutor or authorised official person not being in the same room with the witness. A child or a juvenile shall as a rule be examined in the presence of a pedagogue, psychologist or another professional.

A child or a junior juvenile may be examined in his/her flat or another place where (s)he spends his/her time, or in a social care centre. Court shall examine a child or a juvenile in the capacity of a witness injured by a criminal offence in such a manner that the court, parties to the proceedings and the defence counsel can ask questions without being in the same room with the witness. A child or a juvenile shall be examined in such a manner that the questions shall be asked through the court, and if necessary, with the assistance of a pedagogue, psychologist or another professional.

Other appropriate provisions of the Law on Protection of Witnesses under Threat and Vulnerable Witnesses in BiH also apply in order to protect children and juveniles who are injured parties as a result of a criminal offence.

These provisions shall also apply when examining a child or a juvenile who is a witness-eyewitness to an offence prescribed by Article 185 of the FBiH Law. Article 84 of this Law shall apply in criminal proceedings against perpetrators of criminal offences committed to the detriment of children and juveniles.

If a child or a juvenile who is physically or mentally seriously traumatised by the circumstances under which the criminal offence was committed or suffers serious mental disorders rendering him/her particularly sensitive, is being examined in the capacity of a witness, (s)he shall not be confronted with the suspect, that is, the accused.

If a juvenile injured by a criminal offence or who eye-witnessed the criminal offence is to identify the suspect, that is, the accused, such identification at all stages of the proceedings shall be conducted in a manner that makes it impossible for the suspect, that is, the accused, to see the underage person.

- h. Indicate conditions under which a child who is a victim of criminal offences established in accordance with the Convention is entitled to free legal aid (Article 31 Para. 3).*

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Question 22: Investigations and criminal law measures aiming to protect a child victim

- a. Please indicate the measures for protection of victims that were adopted in order to make sure the investigation and the criminal proceedings do not aggravate the trauma a child had already suffered, where possible (Article 30, Para. 2, Explanatory Report, Paras. 211-215);*

Article 6 of the Law on Protection of Witnesses under Threat and Vulnerable Witnesses stipulates provision of psychological, social, and professional help.

During the investigation, the Prosecutor, and after the indictment has been issued, the Court, shall, provided the witness agrees, and without disclosing any of the witness's personal details, 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.

Family Law of Republika Srpska prescribes the concept of guardianship in a specific case, which means appointing a guardian for certain issues in situations when this is necessary in order to protect the rights and interests of certain persons. A special guardian is appointed for a person (a child) whose parents have the parental right in order to conduct a lawsuit between the child and the parents (adoptive parents) as well as in all other situations when their interests are conflicting (the so-called collision guardian). Special guardian can be a person working in the social care centre, or a child's relative, who is justifiably expected to protect the child's interest to the greatest extent. A guardian must conscientiously care for the person, rights, duties and interests of the charge and for the management of his/her property. A guardian may also be appointed by the authority before which the procedure is conducted (the court), and which will inform the guardian authority without delay, or the procedure will be conducted by the competent guardian authority, in accordance with the law.

- b. Have legislative or other measures been taken to ensure that investigations or prosecution of offences established in accordance with the Convention shall not be dependent upon the report or accusation made by a victim and that the proceedings may continue even if the victim has withdrawn his or her statement. (Article 32, Explanatory Report, Para. 230.);*

Pursuant to Article 35 of the FBiH Criminal Procedure Code, a prosecutor is in charge of prosecuting all criminal offences prosecuted ex officio, regardless of the injured party's position and regardless of whether the victim withdrew the report. A prosecutor has the right and duty to, immediately upon learning there are grounds for suspicion that a criminal offence was committed, take the necessary measures towards discovering the offence and conducting an investigation, finding the suspect, leading and supervising the investigation, as well as

directing the activities of authorised official persons related to finding the suspect and collecting statements and evidence.

Identical legal solutions are offered by the Criminal Procedure Codes of BiH, RS, and the Brčko District of BiH.

- c. Indicate legislative or other measures taken in order to make sure that the statutory limitations to instituting proceedings in case of criminal offences established in accordance with Articles 18, 19, para. 1(a) and (b), and 21, para. 1(a) and (b) last long enough to enable effective instituting of proceedings, even after the victim came of age, proportional to the gravity of the crime at hand (Article 33, Explanatory Report, Paras. 231-232);*

Latest amendments to the Criminal Code of Republika Srpska from 2013 harmonised the provisions on statutory limitations to criminal prosecution with the Lanzarote Convention in such a manner that statutory limitations to criminal offences against sexual integrity, marriage and family committed to the detriment of persons under 18, shall start running as of the day when the injured party comes of age.¹²⁶

Criminal codes of the FBiH and the Brčko District in terms of criminal offences of sexual violence against children are not harmonised with the international standards, as they prescribe that the subjective deadline for statutory limitations starts running as of the day when the criminal offence was committed. Pursuant to the foregoing laws, criminal prosecution cannot be undertaken when the following lengths of time pass since the perpetration of the criminal offence¹²⁷:

- a) Thirty-five years in the case of a criminal offence for which a punishment of long-term imprisonment is prescribed (criminal offence of a sexual intercourse with a child if the offence caused the child's death, or the child suffered serious bodily injuries, or the child's health was seriously broken, or a female child got pregnant);
- b) Twenty years in the case of a criminal offence for which the punishment of imprisonment for a term exceeding ten years is prescribed (criminal offence of rape of a child or juvenile committed in a particularly cruel or degrading manner or if several sexual acts or corresponding sexual acts were performed on the same victim by several perpetrators and the criminal offence of inducing to prostitution if involving a child or a juvenile);
- c) Fifteen years in the case of a criminal offence for which the punishment of imprisonment for a term exceeding five years is prescribed – (criminal offence of sexual intercourse with a helpless person, criminal offence of incest);
- d) Ten years in the case of a criminal offence for which the punishment of imprisonment for a term exceeding three years is prescribed – (criminal offence of sexual intercourse by abuse of office committed against a child or a juvenile, criminal offence of forced intercourse, lewd acts, abuse of a child or juvenile for pornography);
- e) Five years in the case of a criminal offence for which the punishment of imprisonment for a term exceeding one year is prescribed – (criminal offence of extramarital union with a junior juvenile, satisfying lust in front of a child or a juvenile, neglecting or abusing a child or a juvenile);

¹²⁶ Law on Amendments to the Criminal Code of Republika Srpska, Article 19, Para. 2.

¹²⁷ Criminal Code of the Federation of Bosnia and Herzegovina, Article 15; Criminal Code of the Brčko District of Bosnia and Herzegovina, Article 15

- f) Three years in the case of a criminal offence for which the punishment of imprisonment for a term not exceeding one year or a fine is prescribed – (criminal offence of introducing a child to pornography).

In addition to the fact that the Criminal Code of the Federation of Bosnia and Herzegovina and the Criminal Code of the Brčko District of Bosnia and Herzegovina are not harmonised with the Lanzarote Convention, such unharmonised criminal legislation at the entity, that is, district level with respect to the statutory limitations to criminal prosecution also results in different treatment of children – victims of criminal offences of sexual violence, depending on the jurisdiction in which a criminal offence was committed.

- d. May judicial authorities appoint a special representative for the victim when the holders of parental responsibility are precluded from representing the child in proceedings related to sexual exploitation or sexual abuse of children as a result of a conflict of interest between them and the victim? Indicate who can be appointed a representative and what are his/her tasks (Article 31, Para. 4). Please describe under which conditions is this possible?*
- e. Describe how the internal laws enable groups, foundations, associations or governmental or non-governmental organisations to provide assistance and/or support to victims and participate in court proceedings (for example as a third person) (Article 31, Para. 5). Please indicate under which conditions, if required;*
- f. Describe under which conditions are undercover operations permitted during criminal investigations established in accordance with the Convention (Article 30, Para. 5);*

The following articles of the Criminal Procedure Code of BiH regulate this area:

Article 116

Types of Special Investigative Actions and Conditions of Their Application

(1) If evidence cannot be obtained in another way or its obtaining would be accompanied by disproportional difficulties, special investigative measures may be ordered against a person against whom there are grounds for suspicion that he has committed or has along with other persons taken part in committing or is participating in the commission of an offense referred to in Article 117 of this Code.

(2) Measures referred to in Paragraph 1 of this Article are as follows:

- a) surveillance and technical recording of telecommunications;
- b) access to the computer systems and computerized data processing;
- c) surveillance and technical recording of premises;
- d) covert following and technical recording of individuals, means of transport and objects related to them;
- e) use of undercover investigators and informants;
- f) simulated and controlled purchase of certain objects and simulated bribery;
- g) supervised transport and delivery of objects of criminal offense.

(3) Measures referred to in Item a) of Paragraph 2 of this Article may also be ordered against persons against whom there are grounds for suspicion that he will deliver to the perpetrator or will receive from the perpetrator of the offenses referred to in Article 117 of this Code information in relation to the offenses, or grounds for suspicion that the perpetrator uses a telecommunication device belonging to those persons.

(4) Provisions regarding the communication between the suspect and his or her defence attorney shall apply accordingly to the discourse between the person referred to in Paragraph 1 of this Article and his or her defence attorney.

(5) In executing the measures referred to in Items e) and f) of Paragraph 2 of this Article police authorities or other persons shall not undertake activities that constitute an incitement to commit a criminal offense. If nevertheless such activities are undertaken, this shall be an instance precluding the criminal prosecution against the incited person for a criminal offense committed in relation to those measures.

(6) Undercover investigator is specially trained authorised official who investigates under his or her changed identity. The undercover investigator may participate in legal transactions under his or her changed identity. If it is necessary to establish and keep the identity, appropriate documents may be issued, changed or used.

Article 117

Criminal Offenses as to Which Undercover Investigative Measures May Be Ordered

Measures referred to in Paragraph 2 of Article 116 of this Code may be ordered for following criminal offenses:

- a) criminal offenses against the integrity of Bosnia and Herzegovina;
- b) criminal offenses against humanity and values protected under international law;
- c) criminal offenses of terrorism;
- d) criminal offenses for which, pursuant to the law, a prison sentence of three (3) years or more may be pronounced.

g. Please also describe the techniques applied in examining material containing pornographic images of children (Article 30, Para. 5).

At the regional training of INHOPE, organised in Sarajevo in May 2013, in addition to having participants from other countries in the region, representatives of the FBiH Administration of Police, RS Ministry of Interior, Police of the Brčko District of BiH, and MFS (International Fund of Solidarity) EMMAUS were trained in the necessary skills and knowledge for efficient monitoring of internet contents. Various tools-applications (online and offline) for efficient locating of internet contents were presented. Coordination among the law-enforcement agencies and online SOS lines was improved.

Question 23: Child-friendly interviewing and procedures

The following articles of the Law on Protection of Witnesses under Threat and Vulnerable Witnesses deal with this area:

Article 7

Order of presentation of evidence at the main trial

In the course of the main trial, the Court may hear witnesses under threat and vulnerable witnesses at the earliest possible time and shall have the possibility of hearing those witnesses at the main trial in a different order from the one stipulated by the CPC BiH.

Article 8

Examination

- (1) The judge or the presiding judge shall exercise an appropriate control over the manner of the examination of witnesses when a vulnerable witness is examined, particularly to protect the witness from harassment and confusion.
- (2)
- (3) In exceptional circumstances, if the Court finds it to be in the witness's best interest, the Court may, with the consent of the parties and the defence attorney, hear a vulnerable witness by posing questions directly to the witness on behalf of the parties and the defence attorney.

Article 9

Testimony by using technical means for transferring image and sound

When determining whether there are justified reasons for examining a witness using technical means for transferring image and sound in such manner as to permit the parties and the defence attorney to ask questions although not in the same room as the witness, the need to provide for the protection of witnesses under threat and vulnerable witnesses shall also be taken into account.

Article 10

Removal of the accused

- (1) Where there is a justified fear that the presence of the accused will affect the ability of the witness to testify fully and correctly, the Court may, either *ex officio* or upon the motion of the parties or the defence attorney, and after hearing the other party and the defence attorney, order that the accused be removed from the courtroom.
- (2) If removed from the courtroom the accused shall be enabled to follow the testimony through technical means for transferring image and sound, or the testimony shall be recorded and presented to the accused.
- (3) The defence attorney shall be present at the hearing. After the testimony has been presented to the accused but before the witness is released, the defence attorney and the accused shall have the opportunity to consult.
- (4) A decision pursuant to paragraph 1 of this Article is subject to appeal by the parties and the defence attorney. The Panel of the Appellate Division shall consider the appeal within 72 hours following the day the appeal is received.

Article 11

Exception from the imminent presentation of evidence

When determining whether the records on testimony given during the investigative phase may be read or used as evidence at the main trial, the Court shall also take into account the need to provide for the protection of a witness under threat who would expose himself or his family to great personal danger and the protection of a vulnerable witness who would expose himself to significant emotional distress by appearing at the main trial.

a. Describe how interviews are held (Article 35) with child victims, particularly indicating the following:

- Are they held without unjustified delays once the competent authorities were informed of the facts;

Immediately upon finding out that a criminal offence was committed involving a child as a victim of sexual abuse and exploitation, urgent measures are taken to examine the child. If the child suffers from intense post-traumatic stress, risk assessment is made in cooperation with the guardian authority, and in accordance with the assessment, the guardian authority takes actions falling under its jurisdiction –finding accommodation, material assistance, appointment of a guardian, psychological empowerment, etc. As soon as the conditions are created, the child is examined by a prosecutor in the presence of a pedagogue, psychologist or another professional.

- Are the interviews held, when necessary, in the rooms intended or adapted for that purpose?

Examinations are conducted in the prosecutor's office, and exceptionally, as prescribed by Article 187 Para. (3) of the FBiH Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings, if there are justified reasons behind it, a child or a junior juvenile may be examined in his/her residence or in another place where (s)he stays, or in the social care centre.

- Are the interviews conducted by experts trained in that field?

As a rule, children and junior juveniles are examined with the assistance of a pedagogue, psychologist or another professional.

- Do the same persons, if possible and when adequate, do all the interviews with a child?

- Is the number of interviews limited and to the extent absolutely necessary to conduct the procedure?

If a witness who is being examined is a child or a junior juvenile who is an injured party as prescribed by Article 185 of the FBiH Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings, such examination can be carried out two times maximum. Republika Srpska and the Brčko District of BiH share the same legal solution.

- Can a child be accompanied by his/her legal representative or, where adequate, an adult of his/her own choice, unless a reasoned contrary decision was rendered with respect to that person?

Article 186 of the Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings prescribes the actions of the competent authorities when interviewing children and junior juveniles. Those provisions were quoted under Question 21.

In the Ministry of Republika Srpska inspectors in charge of juvenile delinquency, who specialise in working with juveniles, work in Police Departments on cases of sexual violence against children. With respect to the cyber-crime, Administration of Crime Police has a special department (Department for Hi-tech Crime) which works on prevention and detection of cyber-crime, including the criminal offences of production and screening of child pornography and abuse of children or juveniles for pornography. Examination, that is, interviewing of children or juveniles who were victims or are injured parties is carried out in the offices containing equipment and meet the requirements for examination of juveniles with the assistance of a pedagogue, psychologist or another professional who accompanies the examined person in the room, while a police officer, a parent, a guardian, adoptive parent and representative of the guardian authority remain outside. The room is equipped in accordance with the international standards and provides surroundings suitable for children, as well as video and audio recording of the interview held with the children who are victims of violence. All of this is aimed at avoiding additional victimisation of the victim. This is not a classical questioning of children, the interview is conducted with the assistance of a professional so that it would run with as little stress and trauma as possible, and would at the same time yield information necessary for crime-processing. So, children, that is, juveniles, are examined without delay, in the rooms set for that purpose. Examinations are conducted by experts. Number of interviews (examinations) with a child is limited to two, as prescribed by the Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings. A child may be accompanied by his/her legal representative.

b. Please specify whether all conversations with a victim, or, where appropriate, conversations with children in the capacity of witnesses, can be recorded and whether the recorded conversations may be accepted into evidence during court proceedings;

Conversations can be recorded (audio and video recording) where prescribed or ordered by law. A video and audio recording is evidence in court proceedings.

c. Describe the conditions under which a judge may order an examination without the presence of the public and that the child victim may be heard in the courtroom without being present, that is, through appropriate communication technologies (Article 36).

Criminal procedure prescribes that from the moment of opening the session till the completion of the main trial, a judge, that is, a panel, may at any point, ex officio, or following a motion by the parties and the defence counsel, but always upon hearing them, exclude the public throughout the main trial or part of it, if it is in the interest of protecting a juvenile or a witness.

Exclusion of public does not relate to the parties to the proceedings, the defence counsel, the injured party, the legal representative and the agent. A judge, that is, a panel, may allow official persons, scientists and public officials to attend the main trial from which public was excluded, and at the request of the accused person, his/her spouse or extramarital partner and close relatives may also be allowed to attend.

A judge, that is, a panel, shall warn the persons attending the main trial from which public was excluded, that they must keep as a secret all the things they heard at the trial, and that unauthorised disclosure of a secret constitutes a criminal offence.

Decision to remove the public will be rendered in a reasoned procedural decision by the judge, that is, the panel, and made public.

When a juvenile is on trial, pursuant to the current laws on protection and treatment of children and juveniles in criminal proceedings, public is always excluded. A judge may allow persons who work on protection and upbringing of juveniles or suppressing juvenile delinquency, as well as scientists, to attend the main trial. During the main trial, a judge may order that, with the exception of the prosecutor, defence counsel and the representative of the guardian authority, all or some persons leave the courtroom. During the presentation of some of the evidence or presentations by the parties, a judge may order a minor to leave the courtroom due to the potential detrimental effect on his/her upbringing. If it is relevant for the juvenile's defence, the defence counsel will inform him/her of the contents and course of the proceedings during his/her absence.