

**Bosnia and  
Herzegovina:  
Briefing to the  
UN  
Committee  
against  
Torture**

**AMNESTY  
INTERNATIONAL**



Amnesty International Publications

First published in 2010 by  
Amnesty International Publications  
International Secretariat  
Peter Benenson House  
1 Easton Street  
London WC1X 0DW  
United Kingdom  
[www.amnesty.org](http://www.amnesty.org)

© Copyright Amnesty International Publications 2010

Index: EUR 63/005/2010  
Original Language: English  
Printed by Amnesty International, International Secretariat, United Kingdom

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without the prior permission of the publishers.

Amnesty International is a global movement of 2.2 million people in more than 150 countries and territories, who campaign on human rights. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments. We research, campaign, advocate and mobilize to end abuses of human rights. Amnesty International is independent of any government, political ideology, economic interest or religion. Our work is largely financed by contributions from our membership and donations

**AMNESTY  
INTERNATIONAL**



# CONTENTS

|  |                    |
|--|--------------------|
| <a href="#">Introduction.....</a>  | <a href="#">5</a>  |
| <a href="#">1. Violation of human rights in the context of the “war on terror” .....</a>   | <a href="#">6</a>  |
| <a href="#">1.1 Background .....</a>   | <a href="#">6</a>  |
| <a href="#">1.2 Prolonged detention In inadequate conditions .....</a>   | <a href="#">7</a>  |
| <a href="#">1.2.1 Prolonged detention .....</a>  | <a href="#">7</a>  |
| <a href="#">1.2.2 Inability to effectively challenge decision on detention.....</a>  | <a href="#">8</a>  |
| <a href="#">1.2.3 Inadequate detention facilities.....</a>   | <a href="#">9</a>  |
| <a href="#">1.3 REFOULEMENT- risk of torture or other ill-treatment.....</a>   | <a href="#">10</a> |
| <a href="#">2. Failure to conduct prompt, impartial and full investigations and prosecutions of war crimes of sexual violence.....</a> | <a href="#">13</a> |
| <a href="#">2.1 Unknown number of victims .....</a>  | <a href="#">13</a> |
| <a href="#">2.2 Prosecution of cases of torture, including rape and other crimes of sexual violence .....</a>                          | <a href="#">14</a> |
| <a href="#">2.3 Inadequate measures of witness protection .....</a>  | <a href="#">14</a> |
| <a href="#">2.3.1 Witness protection outside of the courtroom .....</a>  | <a href="#">15</a> |
| <a href="#">2.4 Inadequate measures of witness support.....</a>  | <a href="#">15</a> |
| <a href="#">2.5 Definition of war crimes of sexual violence inconsistent with international law .....</a>                              | <a href="#">17</a> |
| <a href="#">2.6 Failure to provide access to a remedy and reparation .....</a>   | <a href="#">18</a> |
| <a href="#">2.6.1 Failure to provide adequate compensation.....</a>  | <a href="#">18</a> |
| <a href="#">2.6.2 Failure to provide restitution .....</a>   | <a href="#">21</a> |
| <a href="#">2.6.3 Failure to provide rehabilitation .....</a>  | <a href="#">22</a> |
| <a href="#">2.6.4 Failure to provide satisfaction and guarantees of non-repetition .....</a>   | <a href="#">23</a> |



# INTRODUCTION

This briefing is submitted by Amnesty International in advance of the Committee against Torture's (Committee) consideration in November 2010 of the combined second to fifth periodic report of Bosnia and Herzegovina (BiH) on its implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention). The briefing summarizes Amnesty International's main concerns about the failure of BiH to implement some of its obligations under the Convention.

The briefing focuses on the following aspects covered by the provisions of the Convention;

- torture and other cruel, inhuman or degrading treatment, including among others prolonged detention in inadequate conditions, refoulment and risk of refoulment following unfair proceedings to strip nationality in the context of the "war on terror";
- failure of the authorities to investigate and prosecute acts of torture and other cruel, inhuman or degrading treatment, and in particular crimes of sexual violence which occurred in the context of the 1992-1995 war;
- failure of the authorities to bring the legislation criminalising war crimes of sexual violence into line with international standards, which may result in impunity for such acts;
- failure of the authorities to provide access to a remedy and reparation to the survivors of war crimes of sexual violence.

In addition to the issues mentioned above and analysed in detail in this briefing Amnesty International also notes the reported failure of the authorities to provide access to justice and reparation to the victims of enforced disappearances and their families as documented in the submission made to the Committee by TRIAL and 11 non-governmental organizations (NGOs) from BiH.<sup>1</sup>

# 1. VIOLATION OF HUMAN RIGHTS IN THE CONTEXT OF THE “WAR ON TERROR”

## *Articles 1, 3 and 16 of the Convention*

Amnesty International is concerned that, in the context of the “war on terror” unfair proceedings to strip the citizenship of some 1,500 foreign nationals who came to the country during the 1992-1995 war have resulted and may result in their forcible return to countries where they face a real risk of torture or other ill-treatment and the death penalty. The organization is also concerned that the proceedings lacked guarantees of due process; people subjected to them have been subjected to prolonged detention in inadequate detention facilities and have been denied their right to effectively challenge the decisions to revoke their citizenship, detain and deport them.

### 1.1 BACKGROUND

The persons concerned are a group of some 1,500 individuals. Some of them have already had their citizenship revoked; others are at risk of revocation of their legal status in BiH. Some of these individuals came to BiH during the 1992-1995 war, and fought in the al-Mujahidin Unit of the Army of BiH (ABiH), which included foreign volunteers from Muslim countries. Others are foreign nationals who reportedly worked for charity organizations. After the war, many of the foreign nationals were granted citizenship and others obtained permanent residency status. Some married and had children with BiH citizens.

In 2005 the State Commission for the Revision of Decisions on Naturalization of Foreign Citizens (hereinafter the Commission) was established based on the ‘Law on Amendments to the Law on Citizenship of Bosnia and Herzegovina’ (*Zakon o zmjenama i dopunama zakona o državljanstvu Bosne i Hercegovine*), which entered into force in November 2005. The Commission was tasked with reviewing the status of citizens who acquired BiH citizenship between 6 April 1992 and 1 January 2006.

According to the law, the Commission can withdraw the citizenship of, among others, persons deemed to have obtained it for reasons which were not in accordance with the relevant regulations, or on the basis of false information, so long as doing so would not render the individual stateless. According to official statistics collected by the BiH authorities 441 persons have already had their citizenship revoked by the Commission, many of whom are at risk of being deported.<sup>2</sup>

Amnesty International and other human rights organizations have expressed their concerns that the proceedings for revocation of citizenship by the Commission violated the rights of the persons whose citizenship was reviewed by the Commission such as:

- The right to be informed about the proceedings and to attend them;

- The right to examine and challenge evidence as well as the right to present evidence;
- The right to a fair appeal before an independent body.<sup>3</sup>

Amnesty International as well as other human rights organizations have expressed concern that decisions by the Commission to withdraw citizenship may result in the involuntary return of individuals to their countries of origin where they face a real risk of torture or other ill-treatment or the death penalty.

## 1.2 PROLONGED DETENTION IN INADEQUATE CONDITIONS

Amnesty International is concerned that the prolonged detention in inadequate conditions of individuals whose citizenship has been revoked by the Commission, some of whom have applied for international protection, is arbitrary and may amount to cruel, inhuman or degrading treatment or punishment.

Individuals whose citizenship has been revoked by the Commission are routinely placed in the Immigration Detention Centre in Lukavica to await deportation. Detention orders against them are made based on the grounds of threat to national security.<sup>4</sup> Appeals against revocation of citizenship or application for other measures to regularize their status in BiH - including claims for international protection - do not suspend the execution of the decision on detention.<sup>5</sup>

### 1.2.1 PROLONGED DETENTION

Under the Law on Movement and Stay of Aliens and Asylum decisions to detain persons whose citizenship has been revoked are made by the Service for Foreigner's Affairs (*Služba za poslove sa strancima*). The Service is part of the Ministry of Security. Such decisions can be appealed to the Ministry of Security within 24 hours; appeal has no suspensive effect.<sup>6</sup> If the Ministry of Security fails to make a decision on the appeal within 24 hours, the applicant may file an appeal with the State Court of BiH within 24 hours.<sup>7</sup> The State Court of BiH has three days to make its decision; the appeal does not have a suspensive effect.<sup>8</sup>

Detention decisions are usually issued for 30 days and can be extended on monthly basis.<sup>9</sup> In exceptional circumstances only, the Service for Foreigners' Affairs can extend the detention beyond 180 days.<sup>10</sup>

Amnesty International is concerned that the extension of detention beyond the period of 180 of this group of individuals is common practice rather than limited to "exceptional circumstances."

Amnesty International's research indicates that as of 13 October 2010 the following individuals had been detained in the Immigration Detention Centre in Lukavica for more than 180 days:

- **Imad Al-Husein** a Syrian national whose BiH naturalization was revoked without a hearing in 2007, based on unspecified "national security" grounds has been detained since 6 October 2008 (two years and one week as of 13 October 2010). He has been contesting efforts to remove him from the country since 2007. His application to the European Court of Human Rights (ECtHR) remains pending.

■ **Ammar Al-Hanchi** (a Tunisian national) has lived in BiH since 1994. In 1997 he married a BiH national and has two children age 10 and 12 with her. He has been detained in the Immigration Detention Centre in Lukavica since April 2009 (one year and six months as of 13 October 2010) following revocation of his citizenship. In August 2009 he filed his case with the ECtHR which remains pending.

■ **Fadil El-Hamdani** (an Iraqi national) arrived in the-then Yugoslavia in 1979 to study in Zenica, BiH. In 1987 he married a BiH citizen and they have five children together. In May 1993 he joined the Army of BiH; based on his military service, he was granted BiH citizenship in 1995. He has been detained in Lukavica since 23 June 2009 (one year and four months as of 13 October 2010).

■ **Zijad al-Gertani** (an Iraqi national also known as **Abdullah Baura**) came to BiH in 1995. He is married to a BiH national, with whom he has three children. He has been detained in Lukavica since 4 May 2009 (one year and five months as of 13 October 2010) following revocation of his citizenship.

In a submission to the UN Committee on Migrant Workers (CMW) in April 2009 (on the occasion of its review of the report submitted by the government of BiH on its implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families) the Ombudsmen of BiH stated that:

*"[the] obscurity in the application of Article 102 paragraph 5 of the Law on Movement and Stay Aliens and Asylum of BiH which regulates a possibility of bringing " A Decision on exceptional extension of supervision" ensuring an extension of supervision under an alien for longer than 180 days, without clearly defined criteria, represents a great concern. In administrative dispute initiated by an alien after using a regular legal remedy for a decision on exceptional extension of supervision, the rights of a representative are limited and a procedure is unclear."*<sup>11</sup>

Amnesty International considers that the prolonged detention of the above-mentioned persons may amount to cruel, inhuman and degrading treatment.

The organization believes that authorities should demonstrate in each individual case that such detention is necessary and proportionate to a legitimate objective to be achieved, and that alternatives will not be effective. Alternative, non-custodial, measures should always be considered before resorting to detention, and detention should always be for the shortest possible time and must not be prolonged or indefinite. In addition, there should be a maximum, and reasonable, duration for detention provided by law. Once this period has expired, the individual concerned should be released.

#### 1.2.2 INABILITY TO EFFECTIVELY CHALLENGE DECISION ON DETENTION

Amnesty International is concerned that the persons whose citizenship has been revoked and who, consequently are detained in the Immigration Deportation Centre in Lukavica, are not able to effectively challenge decisions to detain them.

As explained above (see footnote 4), the Law on Movement and Stay of Aliens and Asylum defines grounds for detention of immigrants, one of them being the risk that free and



unrestricted movement of the person might “jeopardize the public order, legal order and security of BiH, or constitute a threat to public health in BiH, i.e. if it has been established that the alien constitutes a threat for public order, legal order and security of BiH.”<sup>12</sup>

In all cases which Amnesty International is aware of, persons who have been detained in the Immigration Deportation Centre in Lukavica, the “threat to national security” was given as a reason for detention. As explained below, this has a negative impact on the ability to effectively challenge these decisions.

The Law on Movement and Stay of Aliens and Asylum does not explicitly regulate the possibility of the persons against whom detention orders are issued to examine the evidence brought against them. At least formally, the detainees may request to examine the evidence under the Law on Freedom of Access to Information.<sup>13</sup> However, in cases in which detention orders were issued on the grounds that the individual poses “threat to national security” the requests by the detainees to examine the evidence brought against them have been rejected by courts based on the Law on Protection of Secret Data.<sup>14</sup>

The inability of the persons detained in the immigration centre to examine the evidence brought against them, has impeded the individual’s ability to effectively challenge the decision to detain them.

### 1.2.3 INADEQUATE DETENTION FACILITIES

Amnesty International is concerned that the conditions in the Immigration Detention Centre in Lukavica in which individuals are being held in prolonged detention (some for more than two years) are inadequate and may amount to inhuman or degrading treatment.

In a recent case related to immigration detention, *Shayan Baram Saadi v the United Kingdom* (hereinafter the Saadi case), the Grand Chamber of the European Court of Human Rights (ECtHR) observed in relation to immigration detention facilities that “*the place and conditions of detention should be appropriate, bearing in mind that the measure is applicable not to those who have committed criminal offences but to aliens who, often fearing for their lives, have fled from their own country.*”<sup>15</sup>

The Head of the Immigration Deportation Centre in Lukavica, whom Amnesty International talked to in September 2009, said that the facility was designed to respond to the needs of detainees held only for a limited period of time, of a couple of weeks.

Amnesty International has received a number of complaints from relatives and friends of people detained in the Immigration Deportation Centre in Lukavica that some detainees had suffered psychological breakdowns as result of their long-term detention in inadequate conditions.

**Omar Frendi**, an Algerian national, was detained in the Immigration Detention Centre in Lukavica for a year (from 10 February 2009 to February 2010). On several occasions during the period of his detention Amnesty International received information from his friends alleging that Omar Frendi’s psychological state was deteriorating. Information received by the organization claimed that he suffered deep depression as a result of his detention. When Amnesty International delegation went to visit the Immigration Centre

in September 2009 other detainees told the organization that Omar Frendi seemed depressed and unable to talk to anybody, including the Amnesty International's delegation. In February 2010 Omar Frendi was deported to Algeria. The authorities claim that the deportation was voluntary.

All four persons who were detained in the Immigration Deportation Centre in Lukavica and with whom representatives of Amnesty International spoke in September 2009 told the organization that they experienced their detention as an "act of torture" due to, the length of their detention, the conditions and also because of the uncertainty about the date of their expulsion from the country which could happen any time.

The Ombudsmen of BiH in their April 2009 submission to the CMW observed that in the Immigration Deportation Centre in Lukavica:

*" 11. [...] the access to legal aid is made more difficult since an accommodated person has a right to one phone call, and a problem occurs if a diplomatic-consular representative body of a country of origin of an alien accommodated in the Centre is located outside BiH territory, since additional administrative procedure is necessary for international phone call to be approved, which takes additional time. Time represents a significant factor considering the fact that deadlines regulated by the law in relation to the procedure of expulsion are short and strictly set.*

*[...]*

*13. Aliens put under supervision in the Centre are not able to use computer as a tool in making written application, unless they have a lawyer.*

[Footnote: While visiting the Centre, Ombudsmen were informed that in the Centre there is neither computer that could be used by aliens, nor they were allowed to use their own laptops. Aliens placed in the Centre did not ask for internet connection, but solely to use computer as a technical tool]

*14. Aliens deprived of residence are not provided with free legal aid unless they applied for asylum."<sup>16</sup>*

Amnesty International considers that the authorities of BiH should, as a matter of urgency, make sure that detained persons are held in conditions which are adequate to the length of their detention. The authorities should seek alternatives to detention.

### 1.3 REFOULEMENT- RISK OF TORTURE OR OTHER ILL-TREATMENT

Amnesty International is concerned that some persons whose citizenship has been revoked by the Commission have been removed and others may be at risk of removal to countries where they face a real risk of torture or other ill-treatment.

The organization is concerned that the deportation decisions issued by the Service for Foreigners' Affairs against persons whose citizenship has been removed fail to take into consideration the risk of torture and other ill-treatment or the death penalty in the country to

which the persons are supposed to be deported.

In its report to the Committee the government of BiH stated that only five individuals were returned or left voluntarily to their countries of origin as a result of the work of the Commission.<sup>17</sup>

However, Amnesty International considers that this list is incomplete as the organization is aware of several other persons who were either deported or otherwise returned to their countries of origin. The organization is concerned that some of those who have been removed from BiH have suffered torture or cruel, inhuman and degrading treatment. Among them is **Badreddine Ferchichi** who was deported from BiH to Tunisia on 1 September 2006 and reportedly subjected to torture or other cruel, inhuman or degrading treatment.

On 1 September 2006, **Badreddine Ferchichi** (also known as Abu Malek) was expelled to Tunisia from Bosnia and Herzegovina, after the authorities there stripped him of his BiH citizenship and later rejected his application for asylum. He was arrested upon return to Tunisia and reportedly detained incommunicado for six days, during which he alleged he was beaten, suspended upside down and in the *poulet rôti* position in order to force him to give information about whether he had been involved in terrorism-related activities or has connections with “terrorist groups” abroad. He first appeared before the investigating military judge in the absence of his lawyer on 6 September 2006 and was later charged under Article 123 of the Military Justice Code, with “serving, in time of peace, in a foreign army or terrorist organization operating abroad”. He had reportedly fought as a volunteer for the Bosnian Muslim forces during the 1992-95 war in Bosnia and Herzegovina and worked for an Islamic charity organization afterwards.

Badreddine Ferchichi’s lawyers told Amnesty International that they have repeatedly requested from the Tunisian authorities access to the case documents regarding Badreddine Ferchichi’s return from Bosnia and Herzegovina because his case file – like all those who were forcibly returned to Tunisia – did not have any documentation to indicate that he was actually expelled from Bosnia and Herzegovina. They did not receive any reply to this request. They also said that he was twice taken out of Mornaguia prison in the outskirts of Tunis without proper permission from the investigating military judge who ordered his pre-trial detention; he was reportedly taken to the Ministry of Interior building where he was interrogated and ill-treated.

On 16 January 2008 **Badreddine Ferchichi** was acquitted by the Tunis Military Court but the Military Prosecutor appealed against the acquittal to the Military Court of Cassation, which ordered a retrial on 11 February 2009. He continued to be held at Mornaguia Prison awaiting his retrial. On 20 May 2009, he was retried before the Tunis Military Court and sentenced to three years in prison. He was released in September 2009 due to the time he had already spent in prison and is subject to five years of administrative control measures, under which he has to report daily to the National Guard station.

**Still at Risk: Ammar Al-Hanchi:**

**Ammar Al-Hanchi** who is a Tunisian national and whose BiH citizenship was revoked in 2001 has been detained in the Immigration Detention Centre in Lukavica based on the deportation order issued by the Service for Foreigners' Affairs since April 2009. He challenged his detention and the deportation decision before the State Court of BiH and before the Constitutional Court of BiH. He also filed a case with the ECtHR in August 2009, which remains pending. He claimed that his deportation to Tunisia would put him at risk of torture and other ill-treatment. Despite these concerns and the fact that his appeal was still pending before the Constitutional Court of BiH, on 11 December 2009 the authorities attempted to deport him to Tunisia.

When the authorities were taking him to the airport, a decision was made to suspend his deportation as a result of a decision of the ECtHR to request the BiH authorities to apply Interim Measures against deportation. In January 2010 the ECtHR decided to extend the period of the Interim Measures against deportation until **Ammar Al-Hanchi's** case is decided by the Constitutional Court of BiH.

## 2. FAILURE TO CONDUCT PROMPT, IMPARTIAL AND FULL INVESTIGATIONS AND PROSECUTIONS OF WAR CRIMES OF SEXUAL VIOLENCE

### *Article 12 of the Convention*

Amnesty International is concerned that over the past 15 years little progress has been made in domestic courts in BiH in the prosecution of those responsible for torture committed in war-time and in particular for acts involving sexual violence.

Despite some recent efforts, impunity still prevails and the majority of those responsible have not been brought to justice.

### 2.1 UNKNOWN NUMBER OF VICTIMS

Amnesty International is concerned that the authorities have failed to establish the real number of victims of torture, including the victims of war-time rape and other acts of sexual violence. As a result it might be difficult to establish what kind of measures and resources should be put in place by the authorities in order to prosecute all perpetrators of those crimes and to provide all survivors with access to justice and reparation.

There are no reliable statistics on the number of women and men who were raped or were subjected to other forms of sexual violence. Early estimates by the BiH government conducted during the war suggested the number of 50,000 victims although this estimate was questioned as unreliable and politicized.<sup>18</sup> The Parliamentary Assembly of the Council of Europe estimated that 20,000 women were subjected to rape and other forms of sexual violence.<sup>19</sup>

Amnesty International has not made its own estimate of the number of women and men who were raped during the war and is unable to verify any of the estimates produced by others. However, it considers that the evidence collected to date by the International Criminal Tribunal for the former Yugoslavia (ICTY) and domestic courts and information reported by national and international NGOs constitute strong evidence that the incidence of rape during the armed conflict was widespread and the number of those raped amounted to at least several thousand.

The organization has called on the authorities of BiH to undertake measures with a view to establishing the number of survivors of war crimes of sexual violence as accurately as possible. Based on the data collected, the authorities should put in place the measures and resources necessary to bring those responsible for those crimes to justice and to ensure that the survivor receive adequate reparation.

## 2.2 PROSECUTION OF CASES OF TORTURE, INCLUDING RAPE AND OTHER CRIMES OF SEXUAL VIOLENCE

As the Committee is aware, Bosnia and Herzegovina is a decentralized country composed of two semi-autonomous entities - Republika Srpska (RS) and the Federation of Bosnia and Herzegovina (FBiH) - as well as the Brčko District in the north of the country.

Prosecution of cases of torture, including rape and other crimes of sexual violence committed during the 1992-1995 war can take place before 10 cantonal courts in the FBiH, as well as before five district courts in RS and the Basic Court of the Brčko District. In March 2005 when the War Crimes Chamber (WCC) was created at the State Court of BiH, prosecutions started also at the state level. Thus currently there are 13 jurisdictions in BiH with jurisdiction to prosecute war crimes with the WCC in the State Court playing the central role.

Amnesty International notes that there are significant differences between the legislation in those jurisdictions relating to war crimes. These differences include different legal definition of the same crime, including the crime of torture; and in some instances they also prescribe different penalties for the same crime (See section 2.5 *infra*).

The organization notes that, across BiH, prosecutions take place in a justice system which has insufficient resources and a huge backlog of unresolved cases, amounting to almost two million.<sup>20</sup> Of this backlog 160,000 are unresolved criminal cases; among them it has been estimated that between 6,000 and 16,000 are unresolved war crimes cases, at different stages of prosecution, registered in all 13 jurisdictions of the country.<sup>21</sup> According to information provided by the authorities in December 2008 statistics on how many of the unresolved cases are related to rape and other war crimes of sexual violence have not been collected by the authorities and are not otherwise available.<sup>22</sup>

As of September 2010 the State Court of BiH had delivered final judgments in 18 cases related to war crimes of sexual violence and seven additional cases were pending at the trial stage or on the appeal.<sup>23</sup>

Amnesty International considers that, taking into account the number of acts of war crimes of sexual violence committed during the 1992-1995 which amounts to at least several thousands, the number of cases of war crimes of sexual violence prosecuted so far by the BiH judiciary is extremely low.

## 2.3 INADEQUATE MEASURES OF WITNESS PROTECTION

### *Article 13 of the Convention*

Amnesty International is concerned that the lack of adequate measures of witness protection has had a tremendous impact on the willingness and ability of witnesses to participate in

investigations or to testify in proceedings against alleged perpetrators. Many potential witnesses have reportedly experienced real or perceived threats to their safety. The organization considers that the lack of adequate witness protection is one of the factors causing impunity and remains a significant barrier to access to justice for survivors in BiH.

Under the law in Bosnia and Herzegovina, the responsibility to protect witnesses before and after the trials in the WCC at the State Court lies with the State Investigation and Protection Agency (SIPA) and its Witness Protection Unit.<sup>24</sup> Witness protection in the courtroom in the WCC is regulated by the Law on Protection of Witnesses Under Threat and Vulnerable Witnesses, which was adopted in 2003.<sup>25</sup>

### 2.3.1 WITNESS PROTECTION OUTSIDE OF THE COURTROOM

Serious concerns have been raised about the way protection of witnesses outside the courtroom, before and after trials, has been conducted by SIPA, including allegations that SIPA officers have disclosed the names of some witnesses to the public and that officers did not react quickly in situations in which the security of witnesses was at risk.<sup>26</sup>

Representatives of NGOs supporting survivors of war crimes of sexual violence told Amnesty International about their concerns that when carrying out their functions, SIPA officers have not taken adequately into account the particular needs and vulnerabilities of victims of sexual violence. According to them, SIPA officers who are responsible for delivering summons to witnesses or for escorting them to and from courtroom at the WCC have conducted their duties in a way which may expose witnesses to unnecessary negative consequences in the communities in which the victims live. The appearance of marked SIPA cars in small communities gives rise to speculations and creates pressure on witnesses who may be forced to explain to their neighbors the reasons for SIPA visits.<sup>27</sup> Given that many survivors have never disclosed the fact that they were sexually abused during the war and that they would prefer to keep this fact secret as much as possible, Amnesty International considers that SIPA should ensure that they respect the right to privacy of the survivors.

Concerns have been also expressed about the inability of SIPA to provide witnesses at serious risk with long-term or permanent protection measures, including changing their identity or relocation within or outside of BiH. Amnesty International considers that such measures should be available as a last resort when survivors are at such serious risk that they cannot safely continue their existing lives. According to the director of SIPA, Mirko Lujić, in 2008 the Agency was only able to provide a limited number of witnesses who qualify for such measures with this level of protection. In an interview for the daily *Nezavisne Novine* he stated that 10 per cent of witnesses are eligible for such complex protection, however, due to the lack of resources and legal obstacles, implementation of such measures in the majority of those cases was not possible.<sup>28</sup>

## 2.4 INADEQUATE MEASURES OF WITNESS SUPPORT

Amnesty International is concerned that measures to support witnesses at the State Court in cases relating to war crimes of sexual violence are insufficient. The lack of adequate support exposes victims to re-traumatization, and is a disincentive to the participation of witnesses.

Support to witnesses in proceedings before the WCC is provided by the Witness Support Section (WSS). The WSS employed seven staff members.<sup>29</sup>

According to official figures in 2009 the WSS provided support to 728 witnesses in war crimes cases pending before the War Crimes Chamber.<sup>30</sup>

The WSS contacts witnesses after the indictment in the case has been confirmed in order to assess their support needs. The services provided by the WSS, which are offered depending on the needs assessment can include psychological, medical and financial support. All witnesses before the WCC are eligible to receive a per diem (which in 2008 amounted to KM 15 (€ 7.50)) and reimbursement of their travel expenses. All witnesses are contacted at least three times by the WSS officers, including during the initial assessment of witnesses' needs; and to provide support during their appearance in the courtroom and 15 days after the hearing. If thereafter a witness continues to be in need of psychological support, they are referred to NGOs providing such services to survivors of war crimes.<sup>31</sup>

Apart from protected witnesses who, are escorted to the WCC by SIPA, the majority of the witnesses are responsible for arranging their own travel to Sarajevo, where the WCC is located; some do so with the assistance of NGOs.

Serious concerns have been raised by an association of survivors and other NGOs that, as public transport connections from many places in BiH to Sarajevo, where the WCC is based, are limited- in some instances only one bus to the capital city a day- many witnesses have been in a situation in which they had to travel on the same bus with family members of the accused or with defence witnesses. This has exposed witnesses to otherwise preventable stress and pressure and may have caused some re-traumatization. It was posited that the failure to ensure that witnesses have appropriate means to travel to and from the court may be an important factor in the decision of some potential witnesses not to appear in the courtroom.<sup>32</sup>

In the absence of effective systems of support for survivors who may be suffering from traumatic stress resulting from the crimes, it is not surprising some survivors are reluctant to appear as witnesses. In some cases where survivors have refused, the court has imposed fines on witnesses. Many of those survivors, who were in a desperate economic situation, were not able to pay those fines and felt embittered that their decision not to testify had not been respected. Interviewed by Amnesty International, Sabiha told the organization: "I got the summons from the State Court in Sarajevo. It said I would be fined if I do not come forward. Why? I do not understand. I am not a war criminal! Why do they want to punish me?"<sup>33</sup>

Many studies on the prosecution of war crimes in BiH have outlined the problem of possible re-traumatization of survivors in the process of giving testimony. Amnesty International shares those concerns and emphasizes the need for a more victim-oriented protection and support approach. However, victims' participation in criminal trials and other justice mechanisms, including by giving testimonies, can positively contribute to their healing process.<sup>34</sup> This was confirmed by the majority of the survivors Amnesty International talked to who said they would be ready to testify if the witness support system was more sensitive to their needs. As a result of their psychological condition many victims of rape are extremely vulnerable to manipulation by their perpetrators.<sup>35</sup> Furthermore, Amnesty International has received reports alleging that perpetrators have attempted to bribe victims to withdraw their testimony. Amnesty International is concerned that such attempts at bribery may be all the more



coercive where perpetrators know that victims are living in poverty. Representatives of NGOs whom Amnesty International talked to gave examples of witnesses who allegedly decided to withdraw or change their testimony in favour of the defence in return for money.<sup>36</sup>

Although the organization is not in the position to prove the veracity of such allegations, the existence of such reports points to the fact that there is real need for the authorities to give more attention to the psychological needs of survivors of rape. It is also necessary to provide victim and witness protection schemes or other measures to ensure that victims are not further distressed; are not pressurized to withdraw their testimony; and are not threatened in any way by alleged perpetrators.

Amnesty International is concerned that the economic rights of the survivors of rape and other sexual abuses should be better respected, not only as they are entitled to such rights, but because an improved economic situation will make it easier for victims to take forward their cases and resist attempts at bribery by the perpetrators (See also section 2.6 infra).

## 2.5 DEFINITION OF WAR CRIMES OF SEXUAL VIOLENCE INCONSISTENT WITH INTERNATIONAL LAW

### *Articles 1 and 4 of the Convention*

Amnesty International is concerned that the definition of war crimes of sexual violence in the BiH Criminal Code is not consistent with the definition of such crimes in jurisprudence of international courts and in international standards.<sup>37</sup> In particular the organization considers that the condition of use of force or a threat of use of force as an element of the definition of sexual violence in the context of war may result in impunity for many of such act.

The organization considers that the application of the BiH Criminal Code by judges adjudicating in cases of sexual violence, which occurred during the war and which could be qualified as torture, without following international standards and jurisprudence related to prosecution of war crimes of sexual violence might result in impunity for some of those acts.

War crimes, crimes against humanity and genocide are defined in chapter XVII of the BiH Criminal Code under the heading Crimes Against Humanity and Values Protected by International Law. Crimes of sexual violence as crimes against humanity are defined by the Criminal Code as:

*“coercing another by force or by threat of immediate attack upon his life or limb, or the life or limb of a person close to him, to sexual intercourse or an equivalent sexual act (rape), sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation or any other form of sexual violence of comparable gravity.”*<sup>38</sup>

According to the Criminal Code, to constitute crimes against humanity, such crimes have to be part of “a widespread or systematic attack directed against any civilian population”<sup>39</sup>

Rape and other forms of sexual violence as war crimes against the civilian population are defined in a similar way in Article 173 of the BiH Criminal Code, except that such acts do not have to be a part of a widespread or systematic attack.

As established in a number of judgments of the ICTY, and particularly in the Appeals Chamber judgment in the *Kunarac* case, the use of force or the threat of force should not be the only means available to establish that the rape or other sexual act was not consensual.<sup>40</sup> The jurisprudence of the international tribunals favours the notion of “coercive circumstances” as well as direct force or the threat of force as an element of rape.<sup>41</sup> This approach was also taken by the Trial Chamber of the ICTR in the *Akayesu* Trial Chamber; the judgment states that:

*“coercive circumstances need not be evidenced by a show of physical force. Threats, intimidation, extortion and other forms of duress which prey on fear or desperation may constitute coercion, and coercion may be inherent in certain circumstances, such as armed conflict.”<sup>42</sup>*

The relevance of this reasoning to the context of the war in Bosnia and Herzegovina was confirmed by the Trial Chamber of the ICTY in its judgment in the *Delalić* case.<sup>43</sup>

Amnesty International has recommended that the BiH Criminal Code be amended, in a manner which is consistent with the jurisprudence of the international tribunals in cases of war crimes and crimes against humanity and genocide involving sexual violence. Until such time as the law is amended, the organization has recommended that judges, adjudicating in cases of sexual violence committed during the 1992-1995 period and qualified as torture, take into consideration the relevant jurisprudence of the international tribunals and international standards when interpreting the provisions of the BiH Criminal Code.

## 2.6 FAILURE TO PROVIDE ACCESS TO A REMEDY AND REPARATION

### *Article 14 of the Convention*

Amnesty International is concerned that very limited progress has been made by the authorities in providing the survivors of war crimes of sexual violence with access to reparation. The authorities have failed to develop a comprehensive strategy to address the needs of the survivors of war crimes of sexual violence in a way which is in line with international standards guaranteeing the right to reparation and remedy.

#### 2.6.1 FAILURE TO PROVIDE ADEQUATE COMPENSATION

According to the laws in BiH compensation to the victims of war crimes of sexual violence can be provided based on the status of a civilian victim of war. Both entities, the Federation of BiH (FBiH) and Republika Srpska (RS), regulate this issue differently in separate entity laws.

Amnesty International is concerned that both the laws and their implementation discriminate against women survivors of war crimes of sexual violence.

#### **Republika Srpska**

Amnesty International is concerned that the procedure to assess the eligibility of potential claimants for measures of social protection as civilian victims of war in RS precludes victims

of war crimes of sexual violence from accessing those measures of social protection. The organization also considers that the time-bars imposed to apply for the status of civilian victims of war in RS excluded a large group of potential applicants from claiming their rights.

The Law on the Protection of Civilian Victims of War in RS offers special measures of social protection to persons who have suffered damage to their bodies through assault, rape, detention, torture or otherwise, and whose bodily damage is at least 60 per cent. The law does not recognize victims of rape as a separate category of victims.

Persons granted the civilian victim of war status in RS can also benefit from additional entitlements prescribed by the law. In 2009 civilian victims of war in RS were eligible for monthly benefits ranging between KM 100 (€50) and KM 350 (€175.50) depending on their bodily damage assessed by a health commission.

The percentage of bodily damage is assessed by health commissions. The assessment of bodily damage was based on the "Rulebook on criteria for estimation of military disabilities." Civilian victims of war suffering post-traumatic stress disorder or other forms of psychological (rather than bodily) damage were not entitled to social benefits.

The fact that post traumatic stress disorder and other forms of psychological injury were not taken into account by health commissions when assessing bodily damage meant that many survivors of torture and sexual violence, whose health damage was more psychological than physical, were precluded from the special measures of social protection as civilian victims of war.

The law in RS defined deadlines by which prospective applicants had to register their claims for the status. The deadlines were extended several times and following the last amendment of the law the final deadline for applications expired on 31 January 2007. This excluded a large group of victims of torture, including sexual violence from claiming their rights.

Amnesty International has called on the authorities of RS to amend the Law on the Protection of Civilian Victims of War by creating a separate category of survivors of war crimes of sexual violence which does not have to prove the criteria of 60 per cent bodily damage; and to include trauma and other psychological effects on the survivors as one of the criteria in the application process.

The organization also urged the authorities of RS to remove the deadline for application for the status of the civilian victim of war, and re-open the procedure for applying for this status.

#### **Federation of Bosnia and Herzegovina (FBiH)**

The issue of compensation for the survivors of war crimes of sexual violence is regulated in FBiH by the Law on the Basis of the Social Protection, Protection of Civilian Victims of War and Families with Children in the FBiH. Unlike in the RS, the law in FBiH recognizes survivors of rape as a separate category of victims. The amount of monthly social benefits for the survivors of rape in the FBiH is KM 563 (€281.50). Civilian victims of war in the FBiH are also entitled to receive additional non-financial benefits such as priority in housing and employment.

The discriminatory provisions in the procedure for applying for the status of civilian victims of war in the FBiH may discourage many survivors of sexual violence from applying for this status and may consequently exclude them from receiving the social benefits which are attached to it. According to information received by Amnesty International, as of December 2008 only 500 women in the FBiH were in receipt of social benefits due to civilian victims of war.<sup>44</sup>

Discrimination against survivors of rape and other forms of sexual violence in the FBiH derives directly from the above-mentioned law, which prescribes that the maximum monthly financial allowance for civilian victims of war should equal 70 per cent of the maximum financial allowance available to war veterans.<sup>45</sup>

Also the procedure by which women may apply for the status of civilian victim of war in the FBiH is not sensitive to the psychological needs of the survivors. The procedure itself may cause re-traumatization.

The procedure requires potential claimants to obtain confirmation of their situation from an association of victims of sexual violence - Žene Žrtve Rata (Women Victims of the War). Such confirmation is provided on the basis of an interview between the potential claimant and a member of Žene Žrtve Rata.

Concerns have been raised about this process and the interviews themselves. Concerns reported to Amnesty International include that

- Žene Žrtve Rata does not employ a psychologist to assist the survivors in the process of giving their testimony;
- The risk of re-traumatization of interviewees is not addressed.
- The interviews take place in the NGO's premises, in the same room that is used for all other activities, thus the women providing testimony about their experience are not afforded privacy or confidentiality.

The head of the association confirmed to Amnesty International that the organization offered testimonies of the survivors of rape as evidence to the State Court of BiH in criminal proceedings against those responsible for war crimes. Potential applicants had to sign to agree for their testimonies to be used in this way. Some of the survivors interviewed by Amnesty International told the organization that they felt under pressure to agree to participate in the criminal proceedings otherwise they felt they would not be granted certificates and would not be eligible to receive social benefits as civilian victims of war.

Amnesty International is of the view that survivors of rape should not be pressured to testify in criminal proceedings if they do not wish to do so in order to be eligible for social benefits. Requests for victims to testify should be made only in accordance with criminal procedural law and only when it is deemed necessary after exploring other means of building cases that pose less risk to the dignity and well-being of victims. Prosecutors must maintain their independence in the selection and preparation of cases. Only officials such as prosecutors, investigators or defence attorneys should play a role in preparing witnesses to testify at trial, in order to avoid calling into question the fairness of judicial proceedings. The role of NGOs

should be to provide psychological and social support to the survivors and witnesses in war crimes cases so that they would feel psychologically ready to face their perpetrators in the courtroom without the risk of re-traumatization.

#### 2.6.2 FAILURE TO PROVIDE RESTITUTION

Amnesty International is concerned that the BiH authorities have failed to provide survivors of rape with meaningful measures of restitution, as defined by the UN Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. Even in cases where restitution measures were offered, they have often failed to adequately respond to the special support needs of the survivors. Amnesty International is of the view that the most urgent measures of restitution for rape survivors should include restitution of property and employment.

Existing programmes of property restitution for refugees and internally displaced persons have failed to take into account gender needs of the survivors of sexual violence as well as their psychological condition. As a result, survivors have all too often been forced to return to their pre-war places of residence, which in many cases has caused their re-traumatization.

Many survivors of sexual violence Amnesty International talked to told the organization that they would still fear for their safety if they had to return, as those responsible for war crimes committed against them still remained at large and lived in their pre-war communities. Some victims were too traumatized to go back and thought they would never be able to live in the same communities. They felt that the failure of the BiH authorities to arrest the perpetrators and prosecute war crimes which were committed against them, prevented them from going back.

Amnesty International is concerned that a narrow perception of property restitution, which was understood in BiH mostly as return to one's pre-war home, may have had a negative effect on the decisions of individuals who felt pressured to return to their pre-war homes as other options of restitution of their property rights have not been meaningfully considered by the agencies facilitating the process.

Amnesty International is also concerned at the failure of the agencies implementing return programmes to recognize the rights of women survivors of war. In many cases the implementation of such programmes was not gender sensitive which resulted in the property and tenancy rights and other benefits resulting from such programmes being attributed mostly to men, as heads of households.

Amnesty International is also concerned that the BiH authorities have not provided survivors with meaningful measures of employment restitution or enabled them to re-integrate in the labour market, including by providing vocational training or other employment programmes.

Women are vulnerable in the labour market. Not only are they discriminated against on the basis of their ethnicity but also on the grounds of their gender.

Survivors of war crimes of sexual violence and representatives of their associations

interviewed by Amnesty International told the organization that stable employment is one of the most desired conditions which they believe would help them to rebuild their lives.

According to the law, in the FBiH civilian victims of war, including survivors of rape and other forms of sexual violence, are entitled to receive preferential treatment in employment. They should also be able to access vocational training and benefit from other measures to help them qualify for jobs. This part of the law, however, remains largely unimplemented. Amnesty International was told by officials of the FBiH Ministry of Labour and Social Policy that this was due to the lack of resources mostly in the cantons which were directly responsible for the implementation of the law.

In RS however, the right to preferential treatment in employment or to vocational training is not enshrined in the law on the civilian victims of war at all.

Amnesty International is concerned that the authorities of BiH have failed to provide survivors of war crimes of sexual violence with measures of restitution of their pre-war employment or to provide them with other measures which would enable them to successfully seek employment.

### 2.6.3 FAILURE TO PROVIDE REHABILITATION

Amnesty International is concerned that successive governments of BiH have neglected the needs of survivors of war crimes of sexual violence by not providing them with adequate psychological and medical services. In the absence of state services in many places in BiH local NGOs have been the only institutions offering this kind of support to victims.

The psychological care system in BiH is organized so that on average there is one Centre for Mental Health for each 40,000-50,000 people. In practice in municipalities which have a lower number of inhabitants, psychological care services are not available.

For example, Amnesty International was informed by a local NGO, that in the municipality of Jajce in the FBiH, with some 45,000 inhabitants, only one psychologist is employed and one psychiatrist visits the town once every two weeks for one day.<sup>46</sup> During each visit the psychiatrist is not able to see more than 10 patients. Since the end of the war almost 70 people have committed suicide in the municipality; about 60 per cent of suicides were women.<sup>47</sup> The high number of suicides indicates that there is insufficient psychological care in the Jajce municipality. This poses problems especially for victims of sexual violence who live in this community, as they often require such services.

Since the end of the war, Forum Žena, a women's NGO from the municipality of Bratunac in RS, has been campaigning for the establishment of a Centre for Mental Health in their town.

The municipality of Bratunac has 30,000 inhabitants. According to the information available to the NGO, since the end of the war around 8,000 internally displaced persons and refugees have come back to the town and surrounding villages. Of these more than 1,000 are single mothers, many of whom lost family members during the war. Despite the sizable returnee population, many of whom were traumatized during the war, the municipal authorities do not employ a psychologist or a psychiatrist. In the municipality of Srebrenica, which borders Bratunac and where the genocide against Bosniak (Bosnian Muslim) population was

committed during the war, the situation is exactly the same with no state provision of psychological services to its inhabitants. The only services available to those living in the municipalities of Bratunac and Srebrenica are provided by the NGO Koridor from Sarajevo which pays for psychiatric visits twice a month. The psychiatrist is, however, able to see only 15 patients on average per visit.<sup>48</sup>

Survivors of rape and other war crimes of sexual violence have special psychological needs related to the syndromes they suffer as a result of their experiences. Some of them, in order to be able to rebuild their lives, need psychological therapy. Others have to attend psychiatric treatment and receive medication.

According to a representative of an NGO providing psychological services to victims of torture, including rape, almost 90 per cent of rape victims do not receive any kind of treatment.<sup>49</sup> This puts their health at risk and violates their right to the highest attainable standard of physical and mental health.

The BiH authorities have not only neglected to provide support to survivors directly but they have also failed to provide resources to the NGOs providing such services. Amnesty International was told that one of the NGOs which provides services across the whole territory of BiH receives only 2 per cent of its budget from the BiH authorities. The remaining 98 per cent comes from international donors.

According to a report by a coalition of BiH NGOs, in 2008 in RS more than 19 per cent of the inhabitants did not have health insurance and were not able to access health services. In the FBiH the situation in 2007 differed between different cantons and on average 16.35 per cent of the inhabitants were excluded from the health care system.<sup>50</sup> Women were disproportionately affected.

Women survivors of rape told Amnesty International that they decided to apply for the status of the civilian victim of war because they thought that this would enable them to access free health services provided by the state. However, some women survivors from FBiH with official civilian victim of war status told Amnesty International that they have been refused medical care on a regular basis as the local medical personnel were not aware that they had any rights related to the status of the civilian victim of war.

Amnesty International has called on the authorities of BiH to ensure that medical and psychological care is available and accessible to women survivors of war crimes of sexual violence. The organization has urged the government to take urgent action to increase the availability of facilities and personnel that can provide psychological, psychiatric and other necessary health support services for survivors of rape. The organization has also called on the authorities to remove financial and other barriers to accessing medical services and medicines, including the non-recognition of their status or unaffordable transportation costs.

#### 2.6.4 FAILURE TO PROVIDE SATISFACTION AND GUARANTEES OF NON-REPETITION

The authorities of BiH have failed to provide victims of war crimes of sexual violence with satisfaction and guarantees of non-repetition. Despite the fact that the war ended 15 years ago the BiH authorities have not publicly expressed an apology to women survivors of rape

and other war crimes of sexual violence.

Other measures of satisfaction could include non-judicial mechanisms aimed at establishing facts about the occurrence of rape and other forms of sexual violence, such as truth commissions. Although Amnesty International has no position on the necessity of establishing a truth commission in BiH, the organization is of the view that this or other mechanisms of establishing facts on the causes, scale and impact of rape and other war crimes of sexual violence should be considered by the BiH authorities. The need for such a mechanism, its possible form and its implementation should be consulted on with the public, including with survivors of rape and sexual violence and associations representing them.

Many victims interviewed by Amnesty International pointed out that the public perception of rape was preventing them from rebuilding their lives and integrating with the society. Some of them told Amnesty International that they felt stigmatized and marginalized by the society which often blamed them for what happened to them during the war.



# ENDNOTES



<sup>1</sup> Written Information for the Examination of Bosnia and Herzegovina's Combined Second to Fifth Periodic Reports Submitted by TRIAL (Track Impunity Always), Association of Families of Killed and Missing Defenders of the Homeland War from Bugojno Municipality, Women's Section of the Association of Concentration Camp Detainees, Association of Relatives of Missing Persons from Hadžići Municipality, Association of Relatives of Missing Persons from Ilijaš Municipality, Centre for Legal Assistance to Women Zenica, Association Women from Prijedor – Izvor, Association of Women-Victims of War (Udruženje Žene Žrtve Rata), Association of Relatives of Missing Persons of the Sarajevo-Romanija Region, Association of Relatives of Missing Persons of the Vogošća Municipality, Infoteka (Women's Information and Documentation Centre), Vive Žene Tuzla. October 2010.

<sup>2</sup> Spisak lica kojima je oduzeto drzavljanstvo Bosne i Hercegovine odlukom Drzavne Komisje za Revizju Odluka O Naturalizaciji Stranik Drzavljanina u Bosni i Hercegovini, a koja su stekla drzavljanstvo Bosne i Hercegovine naturalizacijom poslije 6. Aprila 1992. Godine, a prije 1. Januara 2006. Godine. Sluzbeni Glasnik Bosne i Hercegovine Broj 24, 3 April 2007. List includes the names of 329 persons; Spisak lica kojima je oduzeto drzavljanstvo Bosne i Hercegovine odlukom Drzavne Komisje za Revizju Odluka O Naturalizaciji Stranik Drzavljanina u Bosni i Hercegovini, a koja su stekla drzavljanstvo Bosne i Hercegovine naturalizacijom poslije 6. Aprila 1992. Godine, a prije 1. Januara 2006. Godine. Sluzbeni Glasnik Bosne i Hercegovine Broj 73, 1 October 2007. List includes the names of 99 persons and Spisak lica kojima je oduzeto drzavljanstvo Bosne i Hercegovine odlukom Drzavne Komisje za Revizju Odluka O Naturalizaciji Stranik Drzavljanina u Bosni i Hercegovini, a koja su stekla drzavljanstvo Bosne i Hercegovine naturalizacijom poslije 6. Aprila 1992. Godine, a prije 1. Januara 2006. Godine. Sluzbeni Glasnik Bosne i Hercegovine Broj 31, 15 April 2008. List includes the names of 13 persons.

<sup>3</sup> Bosnia and Herzegovina: Withdrawal of citizenship must not result in human rights violations. Amnesty International, Helsinki Committee for Human Rights in Bosnia and Herzegovina and the International Committee for Human Rights. Public statement. EUR 63/011/2006. Available under the following web address: <http://www.amnestyusa.org/document.php?lang=e&id=ENGEUR630112006> and Amnesty International 'Annual Report 2009: Bosnia and Herzegovina'; Amnesty International 'Annual Report 2010: Bosnia and Herzegovina' and Bosnia and Herzegovina: Halt Effort to Deport Syrian at Risk of Torture. Amnesty International, Helsinki Committee for Human Rights in Bosnia and Herzegovina and Human Rights Watch. PRE01/251/2008. Available under the following web address : <http://www.amnesty.org/en/for-media/press-releases/bosnia-and-herzegovina-halt-effort-deport-syrian-risk-torture-20081017>; Human Rights Watch, UPR Submission on Bosnia and Herzegovina. August 2009. Available under the following web address: [http://lib.ohchr.org/HRBodies/UPR/Documents/Session7/BA/HRW\\_UPR\\_BIH\\_S07\\_2010\\_HumanRightsWatch.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session7/BA/HRW_UPR_BIH_S07_2010_HumanRightsWatch.pdf)

<sup>4</sup> Under Article 99 of the Law on Movement of and Stay of Aliens and Asylum, detention of foreigners may be ordered on the following grounds: 1) If the person absconds or prevents the execution of decisions related to his expulsion from the country or other similar measures related to implementation of immigration decisions; 2) If free and unrestricted movement of the person might "jeopardize the public order, legal order and security of BiH, or constitute a threat to public health in BiH, i.e. if it has been established that the alien constitutes a threat for public order, legal order and security of BiH; 3) If the person has provided false statement about his identify or if his identity cannot be established within six hours from arrival.

<sup>5</sup> Article 100 and 101 of the Law on Movement and Stay of Aliens and Asylum adopted in April 2008 (Official Gazette 36/08, 6 May 2008).

<sup>6</sup> Law on Movement and Stay of Aliens and Asylum adopted in April 2008 (Official Gazette 36/08, 6 May 2008). Article 100 and 101.

<sup>7</sup> Ibid, Article 101.

<sup>8</sup> Ibid

<sup>9</sup> Ibid, Article 100 (3).

<sup>10</sup> Ibid, Article 102 (5).

<sup>11</sup> Implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Initial Report of Bosnia and Herzegovina: Statement by the Ombudsmen of Bosnia and Herzegovina. Available under the following web address: [http://www2.ohchr.org/english/bodies/cmw/docs/ngos/Ombudsman\\_BIH\\_CMW10.doc](http://www2.ohchr.org/english/bodies/cmw/docs/ngos/Ombudsman_BIH_CMW10.doc)

<sup>12</sup> Law on Movement and Stay of Aliens and Asylum adopted in April 2008 (Official Gazette 36/08, 6 May 2008). Article 99 (2)(b).

<sup>13</sup> Law on Freedom of Access to Information adopted in October 2000. (Official Gazette 28/00, 17 November 2000).

<sup>14</sup> Law on Protection of Secret Data adopted in July 2005 (Official Gazette 54/05, 28 July 2005).

<sup>15</sup> Saadi vs. United Kindom, European Court of Human Rights, application no. 13229/03 Grand Chamber Judgment of 29 January 2008. para. 74.

<sup>16</sup> Implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Initial Report of Bosnia and Herzegovina: Statement by the Ombudsmen of Bosnia and Herzegovina. Available under the following web address: [http://www2.ohchr.org/english/bodies/cmw/docs/ngos/Ombudsman\\_BIH\\_CMW10.doc](http://www2.ohchr.org/english/bodies/cmw/docs/ngos/Ombudsman_BIH_CMW10.doc)

<sup>17</sup> Committee against Torture: Combined second to fifth periodic reports of States parties due in 2009, submitted in response to the list of issues (CAT/C/BIH/Q/2) transmitted to the State party pursuant to the optional reporting procedure (A/62/44, paras. 23 and 24). para. 90, p. 17 and 18. Available at: [http://www2.ohchr.org/english/bodies/cat/docs/AdvanceVersions/CAT-C-BIH-2\\_5.pdf](http://www2.ohchr.org/english/bodies/cat/docs/AdvanceVersions/CAT-C-BIH-2_5.pdf)

- <sup>18</sup> S. Vranic, "Breaking the Wall of Silence. The Voices of Raped in Bosnia", Antibarbarus, Zagreb 1996. p.239.
- <sup>19</sup> Parliamentary Assembly of the Council of Europe. Resolution 1670 (2009). Sexual violence against women in armed conflict. Adopted on 29 May 2009. para. 6.
- <sup>20</sup> Bosnia and Herzegovina. 2008 Progress Report. European Commission. 05 November 2008. p. 13.
- <sup>21</sup> See: B. Ivanisevic, "The War Crimes Chamber in Bosnia and Herzegovina: From Hybrid to Domestic Court", International Centre for Transitional Justice. 2008. p. 9. The author presents different estimates ranging between 6,000 and 16,000.
- <sup>22</sup> Amnesty International interview with the RS Minister of Justice, Banja Luka, 10 December 2008 and the FBiH Minister of Justice, Sarajevo, 15 December 2008.
- <sup>23</sup> The cases were against the following accused: Veiz Bjelic (X-KR-07/430-1); Damjanovic Dragan (X-KRZ-05/51); Jankovic Gojko (X-KRZ-05/161); Lelek Zeljko (X-KRZ-06-202); Mejakic and others (X-KR-06/200); Paliija Jadranko (X-KRZ-06/290); Samadzic Nedo (X-KRZ-05/49); Simsic Boban (X-KRZ-05/04); Stankovic Radovan (X-KRZ-05/70); Tanaskovic Nenad (X-KRZ-05/165); Vukovic Radmilo (X-KRZ-06/217); Vukovic Ranko and Vukovic Rajko (X-KRZ-07/405), Janković Zoran (X-KRŽ-06/234), Kurtović Zijad (X-KRŽ-06/299), Fuštar Dušan (X-KR-06/200-1), Pinčić Zrinko (X-KRŽ-08/502), Bundalo Ratko and Others (X-KR-07/419), Kujundžić Predrag (X-KR-07/442), Bastah Predrag and Others (X-KR-05/122), Bašić Veljko (X-KR-05/122-1 ), Dolić Darko (X-KR-09/783 ), Hrkač Ivan (X-KR-06/170), Kovač Ante (X-KRŽ-08/489), Drljača Mladen (X-KR-08/503), Kličковиć Gojko and Others (X-KR-06/213), Lazarević Sreten and Others (X-KRŽ-06/243).
- <sup>24</sup> Law on the State Investigation and Protection Agency. Official Gazette of Bosnia and Herzegovina, 63/04.
- <sup>25</sup> Law on Protection of Witnesses Under Threat and Vulnerable Witnesses, Official Gazette of Bosnia and Herzegovina, 21/03.
- <sup>26</sup> D. Tolbert and A. Kontic. "Final Report of the International Criminal Law Services (ICLS) Experts on the Sustainable Transition of the Registry and International Donor Support to the Court of Bosnia and Herzegovina and the Prosecutor's Office of Bosnia and Herzegovina in 2009", International Criminal Law Services Foundation. 15 December 2008. p. 21.
- <sup>27</sup> Consultation meeting with BiH NGOs, Sarajevo, 27 March 2009.
- <sup>28</sup> SIPA stitila nekoliko stotina svjedoka. Nezavisne Novine. 28 July 2008.
- <sup>29</sup> The Registry for Sections I and II of the Court of Bosnia and Herzegovina and Special Departments of the Prosecutor's Office of Bosnia and Herzegovina, Annual Report 2009, Sarajevo 2010. p. 30. (State Court's Registry Report).
- <sup>30</sup> The Registry for Sections I and II of the Court of Bosnia and Herzegovina and Special Departments of the Prosecutor's Office of Bosnia and Herzegovina, Annual Report 2009, Sarajevo 2010. p. 31. (State Court's Registry Report).
- <sup>31</sup> Amnesty International interview with an employee of WSS, Sarajevo, 15 December 2008.
- <sup>32</sup> Amnesty International interview with an employee of Medica Zenica. Zenica, 09 December 2008 and with employees of Udruženje Zena Viktorija 99. Jajce, 09 December 2008.
- <sup>33</sup> Amnesty International interview with Sabiha, FBiH, 28 March 2009.
- <sup>34</sup> S. M. Weine, A. Dzubur Kulenovic, I.Pavkovic and R. Gibbons, "Testimony Psychotherapy in Bosnian Refugees", Available at: <http://ajp.psychiatryonline.org/cgi/reprint/155/12/1720.pdf>. I. Agger, "The Blue Room: Trauma and Testimony Among Refugee Women: A Psycho-Social Exploration", Zed Books, 1992; J.D. Lindy, "An Outline for the Psychoanalytic Psychotherapy of Post-Traumatic Stress Disorder", Charles R. Figley (Ed.), Trauma and its Wake. The Study and Treatment of Post-Traumatic Stress Disorder. Routledge, 1985. pp.195-212. As well as Amnesty International interview with the director of Vive Zene, Tuzla, 12 December 2008.
- <sup>35</sup> Amnesty International interview with a psychologist working at Vive Zene, Tuzla, 28 March 2009.
- <sup>36</sup> Consultation meeting with BiH NGOs, Sarajevo, 27 March 2009.
- <sup>37</sup> Criminal Code of Bosnia and Herzegovina. Official Gazette of Bosnia and Herzegovina No. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07. (BiH Criminal Code)
- <sup>38</sup> Ibid, Article 172 (1) (g).
- <sup>39</sup> Ibid, Article 172 (1).
- <sup>40</sup> Prosecutor v. Kunarac Appeals Chamber Judgment. 12 June 2002. para.129.
- <sup>41</sup> For a more comprehensive analysis of the international standards related to the definition of war crimes of sexual violence, "coercive circumstance" and the issue of consent in such cases as well as their application to Bosnia and Herzegovina please refer to Amnesty International: "Whose Justice? The Women of Bosnia and Herzegovina are Still Waiting." EUR 63/006/2009. September 2009.
- <sup>42</sup> Prosecutor v. Akayesu, Trial Chamber Judgment, para. 688.
- <sup>43</sup> Prosecutor v. Delalic, Delic, Mucic and Landzo. IT-96-21. Trial Chamber Judgment, 16 November 1998. para. 478-479.

<sup>44</sup> Amnesty International interview with an official of the Ministry of Labour and Social Policy, Sarajevo, 24 March 2009.

<sup>45</sup> The Law on the Basis of the Social Protection, Protection of Civilian Victims of War and Families with Children in the FBiH. Article 9.

<sup>46</sup> Interview with Udruženje Žena Viktorija 99. 9 December 2008.

<sup>47</sup> Ibid.

<sup>48</sup> Interview with Forum Žena Bratunac. 12 December 2008.

<sup>49</sup> Amnesty International interview with Centar za žrtve torture (CTV), Sarajevo, 25 March 2009.

<sup>50</sup> Do univerzalne zdravstvene zaštite u BiH. Pregled stanja i preporuke za djelovanje. Inicijativa i civilna akcija (ICVA), Helsinški komitet za ljudska prava u BiH i ostali. Maj 2009, p. 1.