



Human Rights Watch Submission to the Committee against Torture (CAT) on Bosnia and Herzegovina October 2010

Inadequate Safeguards against *Non-refoulement* in National Security Expulsions, and in Indefinite Detention pending such Expulsion (Articles 3, 16)

Bosnia and Herzegovina is seeking to forcibly remove foreign nationals whom it suspects of involvement in terrorism to places where they face the risk of torture and ill-treatment.

Bosnia lacks adequate safeguards against the risk of return to serious human rights abuse, including torture or ill-treatment, for those subject to deportation. Deportation against removal is not automatically suspensive, even in cases where *refoulement* is raised.

Those subject to removal on national security grounds are subject to indefinite detention without charge, on the basis of secret evidence to which neither they nor their lawyers have access.

As of October 2010, six men are currently subject to such detention (Imad Al-Husin, Ammar Al Hanchi, Abdullah Baura, Fadil Al Hamdani, Nouredine Gaci and Muhamed Elfarhati Othman, cases summarized below). Some have been in detention since 2008. In October 2009, those in detention went on hunger strike to protest their continuing detention. The strike lasted until early 2010.

The open-ended nature of the detention and the inability of the men effectively to challenge its lawfulness raise concerns that it may amount to inhuman and degrading treatment or punishment.

Some of these men, who are of North African and Middle Eastern origin, have been stripped of their acquired Bosnian nationality through a process that itself lacked procedural safeguards, although in some cases the decisions were overturned following challenges in the Bosnian courts.

In a February 2009 report, the Council of Europe Human Rights Commissioner Thomas Hammarberg echoed Bosnian and international NGO concerns about the lack of

adequate safeguards against the risk of return to serious human rights abuse, including torture or ill-treatment, for those subject to forced removal.

Specific cases are summarized below:

Attou Mimoun, a naturalized Bosnian of Algerian origin, was stripped of his citizenship and expelled to Algeria in December 2007. His current whereabouts are not known.

In the case of **Awad Aiman**, a Syrian whose Bosnian citizenship was revoked in July 2007, local and international NGOs raised concerns about the risk of *refoulement*, considering Syria's record of torture and ill-treatment in detention and interrogation centers (he was detained pending deportation). In August 2010, Awad's Bosnian citizenship was restored upon appeal. He currently remains in Bosnia (not in detention).

Imad Al-Husin, pending the decision of the Bosnian Constitutional Court on his appeal against revocation of citizenship and deportation. On August 19, 2010, the European Court of Human Rights communicated to Imad Husin that it may intervene in the event he continues to be detained without charges by the end of 2010. Al-Husin currently remains in detention.

Benkhira Aissa, an Algerian whose Bosnian citizenship was revoked in 2008, was twice sentenced to death in Algeria in 1998 and 1999 on charges related to "conspiracy against the state and activities within a terrorist group." On November 12, 2009, Benkhira Aissa was released from indefinite detention after his Bosnian citizenship was restored on appeal.

Omar Frendi, an Algerian detainee, accepted a voluntary departure to Algeria and left the country on February 25, 2010 (his current whereabouts are not known).

Noureddine Gaci, an Algerian detained in June 2010, whose permanent residence is currently under review.

Muhamed Elfarhati Othman, an Egyptian detained in October 2010 after his residence permit was cancelled.

Abdullah Baura, an Iraqi detained in May 2009 following revocation of his citizenship.

Fadil Al Hamdani, an Iraqi detained in June 2009 following revocation of his citizenship.

Ammar Al Hanchi, a Tunisian detained in April 2009, following revocation of his citizenship. In August 2009, he applied to the European Court of Human Rights, invoking a risk of *refoulement* if deported (violation of Article 3 of the Convention).

Human Rights Watch hopes that in upcoming CAT Review of Bosnia and Herzegovina, the Committee will press the state party to take the following steps:

- Ensure that persons are not deported from Bosnia in circumstances where they face a real risk of persecution, torture or ill-treatment.
- Ensure that appeals by non-Bosnian citizens challenging their deportation have automatic suspensive effect while their cases are decided.

- Immediately provide information to the detainees and their legal representatives on the evidence against them,
- Ensure regular review of detention pending removal by a judge, at which the detainee and his legal representative are present and the right to challenge the lawfulness of the detention at any time.
- Introduce a time-limit for detention pending removal, and grant bail to anyone who cannot be removed within that time limit.