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Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

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EXECUTIVE SUMMARY

Amnesty International submits this briefing to the United Nations (UN) Committee against Torture (the Committee) ahead of its examination, in May 2015, of Serbia's second periodic report on the implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention or the Convention against Torture).

The document highlights Amnesty International's ongoing concerns in Serbia in relation to Articles 12, 13, 14 and 16 of the Convention, in the context of continued impunity for crimes under international law, the protection and support of witnesses in related criminal proceedings, and the failure of the authorities to provide reparation, including compensation, to victims of war-related torture.

In addition, Amnesty International outlines Serbia's failure to fully comply with its obligations under Article 3 of the Convention with respect to the right to asylum and Article 16 with respect to the protection of human rights defenders.

Each section is accompanied by recommendations to the Serbian government.

IMPUNITY FOR CRIMES UNDER INTERNATIONAL LAW

In reviewing Serbia's record in challenging impunity for crimes under international law, including torture, Amnesty International highlights the slow progress made in bringing those suspected of responsibility to justice but recognizes that the work of the Office of the War Crimes Prosecutor has been hampered by a lack of political support, resulting in a lack of personnel, funding and resources.

The submission identifies barriers to the prosecution of torture and ill-treatment, including in the legal framework, in the lack of prosecutions for command responsibility, crimes against humanity and crimes of sexual violence. The organization also draws the Committee's attention to the alleged ill-treatment of protected witnesses by the Witness Protection Unit.

Finally the organization considers that Serbia has failed to guarantee an enforceable right to reparation, including compensation and rehabilitation, to the victims of torture and other ill-treatment perpetrated by Serbian military, police and paramilitary forces; to the relatives of missing persons; and the victims of war crimes of sexual violence.

FAILURE TO ENSURE THE RIGHT TO ASYLUM

Amnesty International considers that Serbia has failed to uphold its human rights obligations to those seeking international protection, and consequently place them at risk of *refoulement*, including by failing to by failing to ensure prompt access to an effective and individualized asylum process. Reception facilities are inadequate to the increasing number of refugees and asylum seekers. In addition, officials are not trained in the identification of victims of torture and inhuman or degrading treatment and procedures for appropriate medical and other support is lacking. Finally, refugees and asylum seekers may be risk of *refoulement*, not only due to inadequate asylum procedures, but through pushbacks at

Serbia's borders, and a lack of respect for the rights of refugees and asylum seekers by Border Police.

HUMAN RIGHTS DEFENDERS

In this section, Amnesty International responds at Serbia's failure to guarantee the rights of Human Right Defenders, including in failing to address hate crimes, including against defenders of the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) people, and to guarantee the right to freedom of expression of non-governmental organizations which address impunity for crimes under international law.

IMPUNITY FOR CRIMES UNDER INTERNATIONAL LAW

INVESTIGATION AND PROSECUTION OF WAR CRIMES, (ARTICLES 12 & 13, QUESTION 26 IN THE LIST OF ISSUES)

Eleven years after the opening in March 2004 of the first prosecution at the Special War Crimes Court (SWCC) at Belgrade District Court, 170 persons suspected of criminal responsibility for crimes under international law committed during the armed conflicts of the 1990s have been prosecuted, in 37 cases. As of March 2015, 68 defendants had been convicted at the second instance, and 32 acquitted; six cases relating to a further 16 defendants remained at the Appellate Court. Sixteen cases, involving 51 defendants were at trial, with 24 cases involving 89 suspects in investigative proceedings.[1]

Amnesty International considers that the number of domestic prosecutions to date remains extremely low in relation to the number, scale and intensity of the crimes under international law, including torture, allegedly committed by Serbian forces during the armed conflicts of the 1990s.[2]

In 23 cases, indictments have included counts of torture or inhuman and/or degrading treatment, including against prisoners of war; seven indictments included charges of rape or other war crimes of sexual violence.[3] However, only 12 of these cases have been concluded

[1] Status of cases, as of 23 March 2015, http://www.tuzilastvorz.org.rs/html_trz/predmeti_eng.htm.

[2] In 2009, following their consideration of Serbia's implementation of the Convention, the Committee called on Serbia to ensure that, "All persons, including senior police officials, military personnel, and political officials, suspected of complicity in and perpetrators of war crimes and crimes against humanity, are brought to justice in adequate penal proceedings, including after the scheduled closure of the ICTY tribunal". *Consideration Of Reports Submitted By States Parties Under Article 19 Of The Convention, Concluding observations of the Committee against Torture, Serbia*, CAT/C/SRB/CO/1, 19 January 2009 , para. 11 (b), http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fSRB%2fCO%2f1&Lang=en, see also Committee against Torture, *List of issues prior to the submission of the second periodic report of Serbia*, (CAT/C/SRB/Q/2), 25 February 2011, para.11 (b).

[3] Merged indictments (*): KTO 4/14 Čanković, (rape), 9 April, 2014; KTO 1/14 Pop Kostić,31March 2004; KTO 6/13 Hondo (Čelebić), 17 May 2013;KTRZ 1/09, Marko Crevar, 5 March 2013, (Article 144); KTRZ 6/11 Ćirić Petar (Ovčara),(Article 144),18 June 2012; KTRZ 4/10 Ćuška, 17 December 2012, (*beatings and in amended indictment, rape); KTRZ 7/08 Skočić, Singular Indictment (Bogdanović and Others (torture and rape)), 4 December 2012; KTO 4/12 Kašnjeti Mark, 11 May 2012; KTRZ 9/11 Ćuška (Momić), (*inhumane treatment and murder), 31 May 2011; KTRZ 7/10 Bijeljina (Jović and Others), (Rape), 5 May 2011; KTRZ 11/10 Zvornik 5 (Alić) (*Torture, inhumane treatment, rape, sexual slavery), 23 February 2011; KTRZ 5/09 Beli Manastir (Vukšić and Others), 23 June 2010; KTRZ 8/07 Zvornik 4 (*Janković) (Torture and inhumane treatment); KTRZ 2/08 Prijedor (Kesar) (Article 144), 11 December

at the second instance, with two acquitting and two partially acquitting verdicts. Five cases are before the Appellate court, whilst another five cases are at retrial, the first instance verdict having been abolished; one case is at trial.[4] In this section, Amnesty International outlines how, a number of factors including within the legal framework, in indictments drawn up by the Office of the War Crimes Prosecutor, the process of judicial reform[5] and in Ministry of Interior Departments established to assist the court has led to impunity for torture, including rape.

Amnesty International notes that there are significant omissions, with a lack of indictments in situations where torture and other ill-treatment are reported to have been widespread as well as systematic. For example, no indictments have been brought against Ministry of Interior police officers responsible for the torture and other ill-treatment of some of the 2,000 Kosovars arrested in Kosovo, and transferred after the armed conflict to Serbian jails.[6] Nor have any indictments been laid against military personnel and Ministry of Interior police, operational in the Sandžak region between 1992-5, who subjected the local Bosniak population to torture and other ill-treatment, with the aim of driving them from the area. [7] While the victims in both of these examples have sought reparation from the Serbian authorities (see Reparation), those suspected of criminal responsibility, have not been brought to trial.

Nor has there yet been a prosecution, except at the International Criminal Tribunal for the Former Yugoslavia (ICTY), against those who ordered, organized and participated in the transfer the bodies of ethnic Albanians killed in Kosovo, and transferred for burial in Serbia, as part of a cover–up operation.[8] The relatives have not been provided with information about

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2009; KTRZ 10/07 Medak (Lazić and Others) (Article 144), 6 October 2009; KTRZ 16/08 Gnjilane Group (Ajdari And Others) (torture and rape), 11 August 2009**;** KTRZ 3/08 Stari Majdan (Malić), (murder & inhumane treatment), 8 July 2009; KTRZ 14/07 Stara Gradiška (Španović), 3 June 2009; KTRZ 17/04 Zvornik 2 (Grujić and Popović). 22 October 2008; KTRZ 4/07 Velika Peratovica (Trbojević), 21 August 2008; KTRZ 8/07 Zvornik 3 (Savić i Ćilerdžić), 14 March 2008; KTRZ 7/07 Lovas (Devetak and Others), 28 November 2017; KTRZ 3/03 Ovčara 1, Amended Indictment (Vujović And Others), 16 September,(Article 144); KTRZ 1/07 Orahovac Group (Morina) (torture and rape), 13 July 2005; KTRZ 7/04 Đakovica (Lekaj) (Torture, degrading treatment) 7 July 2005;KTRZ 4/03 Ovčara 1 Amended Indictment (Radak), (Article 144)13 April 2005. All available at http://www.tuzilastvorz.org.rs/html_trz/optuznice_eng.htm or http://www.tuzilastvorz.org.rs/html_trz/optuznice_lat.htm

[4] See http://www.tuzilastvorz.org.rs/html_trz/predmeti_eng.htm

[5] See Reparation, below.

[6] Human Rights Watch, *Under Orders, War Crimes in Kosovo*, October 2001, pp. 469-473, http://www.hrw.org/reports/2001/10/26/under-orders-war-crimes-kosovo

[7] Amnesty International, *Serbia and Montenegro: Legal loopholes allow impunity for torturers in the Sandzak*, 1 May 2003, EUR 70/002/2003, available at: http://www.refworld.org/docid/3f13040a4.html

[8] ICTY Appeals Chamber decision, 23 January 2014, in Šainovic et al, http://www.icty.org/x/cases/milutinovic/acjug/en/140123.pdf,and Appeals Chamber decision, 27 January 2014, http://www.icty.org/x/cases/djordjevic/acjug/en/140127-summary.pdf;

their final fate, and up to a third of cases, the whereabouts of their family member. In those still missing, their whereabouts remain unknown relatives. The failure of states to provide such information has been acknowledged by, for example, the European Court of Human Rights, as inhumane and degrading treatment.

FAILURE TO PROSECUTE SENIOR OFFICIALS

While the highest ranking Serbian officials have been tried and convicted at the International Criminal Tribunal for the former Yugoslavia (ICTY), and proceedings continue against three remaining defendants, no senior officials has been indicted by the OWCP, so far. Only a few middle-ranking military Yugoslav National Army (JNA), Yugoslav Army (VJ) or Ministry of Interior police officers have been indicted, and then only for their individual criminal responsibility for the commission of crimes.

Only one indictment has been brought against those who were in positions of command, where they issued the orders. In 2010, Branko Popović, indicted under Article 142, was however, found to have, "deliberately failed to issue an adequate order to the persons guarding hostages and take appropriate measures to protect the life and physical integrity of hostages; as a result of which omission, the hostages were murdered or physically injured".[9] No indictments have been brought against those who, through their actions or omissions, were responsible for, or failed to prevent subordinates under their command committing crimes under international law.[10] The lack of application of command responsibility necessarily leads to the impunity of those who bear the greatest responsibility for crimes committed during the armed conflicts of the 1990s.

In June 2012, the SWCC convicted 14 Croatian Serbs, for war crimes against the civilian population in the village of Lovas, in eastern Croatia, and sentenced them to a total of 128 years' imprisonment.[11] They were found responsible for inhuman treatment, torture, violation of bodily integrity (beating, wounding or causing serious bodily harm) and murder, including the killing of 40 and the wounding of 11 Croat civilians in October 1991. Only one of the Yugoslav National Army (JNA) officers, from the JNA Second Proletarian Guard Mechanized Brigade (who the court considered to be in overall command of the operation) was indicted and prosecuted.[12]

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[9] KTRZ 17/04 Zvornik 2 (Grujić i Popović), 22 October 2008, http://www.tuzilastvorz.org.rs/html_trz/OPTUZNICE/O_2008_10_22_LAT.pdf
Concluding remarks by Presiding Judge Tatjana Vuković; Branko Popović, was convicted and sentenced to 15 years' imprisonment. The conviction was confirmed on appeal in 2012.

[10] See *Prosecute Officials for War Crimes, Serbia Urged*, 18 January 2013, http://www.balkaninsight.com/en/article/serbia-urged-to-prosecute-high-profile-war-crime-cases

[11] http://www.tuzilastvorz.org.rs/html_trz/VESTI_SAOPSTENJA_2012/VS_2012_06_26_ENG.pdf

[12] http://www.tuzilastvorz.org.rs/html_trz/VESTI_SAOPSTENJA_2012/VS_2012_06_26_ENG.pdf;
However, in her concluding remarks the judge stated, "We have heard in this courtroom the full names of some other actors involved in the critical events, some of them even appeared before us as witnesses, so the prosecutor should .... look into their criminal responsibility as well, if we are to ensure fairness both to the victims and the accused", HLC, *War Crimes Trials in Serbia 2012*, pp. 5-6, http://www.hlc-rdc.org/wp-content/uploads/2013/02/Report-on-war-crimes-trials-in-Serbia-in-2012-ENG-FF.pdf.

Neither have senior JNA officers been indicted for the torture or other ill-treatment and the subsequent murder of over 200 Croatian civilians at Ovčara. Yet, though Major Veselin Šljivančanin, indicted at the ICTY for Ovčara, stated in his appeal that "there were officers at Ovčara who had a real possibility and were in a better position than (he) was to take measures to stop the abuse of the prisoners of war, and that they would have had good reason to take such measures".[13]

The responsibility of commanders and other superiors is set out in Article 384,"Failure to Prevent Crimes against Humanity and other Values Protected under International Law", of the 2005 Criminal Code and codifies customary international law under Serbian law; as yet, this article has not been applied in indictments.

Recently, there have been signs of progress. In August 2014, the OWCP announced the initiation of an investigation for command responsibility against Major General Dragan Živanović, former commander of the 125th Motorized Brigade, on suspicion of "failing to prevent" war crimes in Ćuška, Pavljan, Ljubenić and Zahač in Kosovo, between 1 April and 15 May 1999. While the indictment has not yet been published, the announcement lists crimes including the "mutilation of civilians" and rape.[14] In February 2015, the Chief Prosecutor announced his intention to investigate evidence compiled in the HLC's "Rudnica Dossier", which had recommended that current Chief of Military Staff, General Diković should be investigated for command responsibility for war crimes in Kosovo, in relation to the murder of ethnic Albanians, as part of a programme of enforced disappearances.[15]

INADEQUATE LEGAL FRAMEWORK

All defendants –including those suspected of torture - have been indicted for war wrimes against the civilian population (Article 142, FRY Criminal Code, 1993), with the exception of five prosecutions for war crimes against prisoners of war (Article 144). Not one suspect has been indicted for crimes against humanity (Article 371, 2006 Criminal Code), on the basis that crimes against humanity were not defined in Serbian law until 2005.[16] Amnesty International considers this position presents an incorrect interpretation and a misapplication of the legality principle (*nullum crime sine lege*), which, in turn, leads to the impunity of those responsible for such crimes.[17]

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[13] HLC, "Serbia Has Obligation to Locate Mass Gravesite with Victims from Ovčara and to Punish JNA",18 November 2014, http://www.hlc-rdc.org/?p=27653&lang=de

[14] OWCP, Press Release, "General Živanović to Face Investigation for Kosovo-Metohija War Crimes" http://www.tuzilastvorz.org.rs/html_trz/VESTI_SAOPSTENJA_2014/VS_2014_08_05_ENG.pdf

[15] For political reaction to these allegations, see, p. 45.

[16] "As the law [the 1993 Basic Criminal Code of the FRY] does not contain specific provisions referring to the criminal offence "Crime against humanity", so far the Court [Higher Court in Belgrade] has never had cases in which a criminal offence was qualified as a crime against humanity*"., Report submitted to Committee on Enforced Disappearances:* Serbia, para.14, footnote 56, http://www.ohchr.org/Documents/HRBodies/CED/StatesReportsarticle29/CED-C-SRB-1_E.pdf

[17] *Serbia: Submission to the Committee on Enforced Disappearances: 8th session, 2-13 February 2015*,http://www.amnesty.org/en/library/info/EUR70/001/2015/en, pp.7-9, 10-11.

Former members of the "Gnjilane group" of the Kosovo Liberation Army (KLA), were indicted and prosecuted under Article 142 (1) for crimes including the abduction, torture and rape of more than 100 Kosovo Serbs, which took place from 17 June 1999 and continued into September 1999, well after the conclusion of the internationalized armed conflict. The prosecutor justified the indictment under Article 142 (1) on the basis that the armed conflict "continued as an internal conflict well after 20 June 1999".[18] They were convicted in January 2011, at the first instance, of war crimes including torture and ill-treatment, and the unlawful detention, repeated rape, inhumane treatment and violations of bodily integrity of Kosovo Serb women, two of whom had escaped and subsequently testified in proceedings as protected witnesses.

During appeal proceedings, the defence had challenged the classification of the crime on the basis that, during the period in question was no military conflict.[19] While the Appeal Court rejected this argument, maintaining that the detention and torture of the injured parties took place during the time of the armed conflict,[20] Amnesty International considers that the abductions by the KLA which took place after the end of the armed conflict in June 1999, were part of a widespread, as well as a systematic attack on a civilian population and may constitute crimes against humanity, and must be investigated as such.[21] At the second instance proceedings in November 2013 the remaining nine defendants were acquitted on the basis of a lack of evidence.[22]

WAR CRIMES OF SEXUAL VIOLENCE

The jurisprudence of the ICTY and the International Criminal Tribunal for Rwanda (ICTR) has established that, depending on the circumstances, rape and other forms of sexual violence may be identified as a form of torture, and may be prosecuted as war crimes, crimes against humanity or genocide. [23] The International Criminal Court also recognizes crimes of sexual

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[18]KTRZ 16/08 Gnjilane Group (Ajdari And Others), 11 August 2009, see p. 4, http://www.tuzilastvorz.org.rs/html_trz/OPTUZNICE/O_2009_08_11_ENG.pdf

[19] HLC, *Case: Gnjilane Group, the indicted Fazli Ajdari and others Belgrade Court of Appeals – War Crimes Department No. of case: Kž 1 Po2 No. 2/13 (appeal)*, http://www.hlc-rdc.org/wp-content/uploads/2013/10/Gnjilane-Group-14.05.2013.pdf*)*

[20] The Court of Appeal did not acquit on the basis of the qualification of the crime, but on the failure of the prosecutor to provide any independent verification of the evidence, which had been provided by a single protected witness, see http://www.hlc-rdc.org/wp-content/uploads/2013/10/Gnjilane-Group-13.05.2013.pdf; Appeal Court decision available at, http://www.bg.ap.sud.rs/lt/articles/sudska-praksa/pregled-sudske-prakse-apelacionog-suda-u-beogradu/krivicno-odeljenje/ratni-zlocini/kz1-po2-2-13.html; see also KTO 4/12 Kašnjeti Marc; Kž1 Po2 1/13, Appeal, 8 March 2013; convicted following appeal and retrial on 21 June 2013,http://www.bg.ap.sud.rs/cr/articles/sudska-praksa/pregled-sudske-prakse-apelacionog-suda-ubeogradu/krivicno-odeljenje/ratni-zlocini/kz1-po2-1-13.html .

[21] See, for example, *UNMIK's Legacy: The failure to deliver justice and reparations to the relatives of the abducted*, (Index: EUR 70/009/2013), 27 August 2013, http://www.amnesty.org/en/library/info/EUR70/009/2013/en

[22] Eight defendants had been previously acquitted. On 13 November 2013, the Court of Appeal affirmed the judgment of the Higher Court, overturning the conviction of nine defendants in September 2012.

[23] Amnesty International*, Rape and sexual violence: Human rights law and standards in the international criminal court*, Index: 53/001/2011, March 2011, see esp., pp. 38-9,

violence as a form of torture.[24]

Only six cases including war crimes of sexual violence have been prosecuted at the SWCC to date; another is at trial. Each indictment was brought under Article 142 (1), where the charges of "rape" and "forced prostitution" are inadequately defined and inconsistent with international standards, in failing to identify the elements of "force, threat of force or coercion" in such crimes.[25] While sexual slavery[26] is qualified as a crime against humanity in Article 371, no indictments have been brought under this article. Given the reports of widespread and systematic war crimes of sexual violence by Serbian paramilitaries and other in BiH, and by Serbian forces in Kosovo, it is of concern almost half of these indictments, including in the Gnjilane Group case, mentioned above, have been brought against Kosovo Albanians.[27]

In September 2006, former KLA member Anton Lekaj was convicted and sentenced to 13 years' imprisonment for the rape of a Romani girl at the Hotel Pashtrik in Gjakove/Đakovica on 12 June 1999, and the rape of a Romani man on the night of 13-14 June, following the abduction by the KLA of the Roma girl and members of her wedding party on 12 June 1999.[28]

On 22 February 2013, Zoran Alić and six other paramilitaries known as "Sima's Chetniks" were convicted of the murder of 23 Roma, torture, and rape and sexual slavery in the village of Skočić in Zvornik municipality, BiH in 1992-3. Three protected witnesses, Roma girls who were then 13, 15 and 19 years of age, were detained by the paramilitaries, forced to cook and clean for them, and repeatedly raped and sexually humiliated them. A 13 year old girl was raped and then killed, along with almost all of her family. A grandfather and his grandson were ordered to engage in oral sex with each other, after which an unidentified soldier cut off the older man's penis. The defendants were sentenced to periods of between twenty and two years' imprisonment.[29] The first instance judgement was abolished on appeal,

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http://www.amnesty.org/en/library/info/IOR53/001/2011/en .

[24] *Rape and sexual violence*, pp.38-39.

[25] Amnesty International, *Rape and Sexual Violence: Human Rights Law and Standards in The International Criminal Court*, 1 March 2011, pp. 19-28, http://www.amnesty.org/en/library/info/IOR53/001/2011; Article 7 (1) (g)-1, Crime against humanity of rape, para (2), , International Criminal Court , *Elements of Crimes*, http://www.icc-cpi.int/nr/rdonlyres/336923d8-a6ad-40ec-ad7b-45bf9de73d56/0/elementsofcrimeseng.pdf

[26] Rome Statute, Article 8 (2) (b) (xxii).

[27] Case pending retrial, after verdict quashed on appeal, KTRZ 1/07 Orahovac Group (Morina), 13 July 2005, http://www.tuzilastvorz.org.rs/html_trz/OPTUZNICE/O_2005_07_13_ENG.pdf

[28] KTRZ 7/04 Đakovica (Lekaj), Indictment, 7 July 2005; confirmed at the second instance. http://www.tuzilastvorz.org.rs/html_trz/OPTUZNICE/O_2005_07_07_ENG.pdf.

[29] Expanded indictment KTRZ 7/08 Skočić, Singular Indictment (Bogdanović and Others), 4 December 2012, http://www.tuzilastvorz.org.rs/html_trz/OPTUZNICE/O_2012_12_04_LAT.pdf, not available in English; joined with

proceedings were returned for retrial.

In June 2011, three members of a Serbian volunteer unit were indicted for war crimes against civilians in Bijelina, BiH in 1992, in a case transferred from the BiH State Prosecutor's Office to the OWCP. Charges included murder, the multiple rape of two women and "particularly offensive and humiliating treatment that destroyed the victims' personal dignity".[30] In June 2012, Dragan Jović, charged with murder of Ramo Avdić, was sentenced to 15 years; Zoran Djurdjević and Alen Ristić were sentenced to 13 and 12 years respectively.

Rape was also amongst the charges laid against two former members of the Jackals, convicted and sentenced for war crimes in Ćuška, Pavlan, Ljubenić and Zahač (see Witness Protection, below).[31]

ENFORCED DISAPPEARANCES

An enforced disappearance is a crime under international law, often linked to torture or other cruel, inhuman or degrading treatment or punishment. The surviving family members of the disappeared person may be considered victims of inhuman or degrading treatment.[32]

KTRZ 11/10 Zvornik 5 (Alić), Indictment, 23 February 2011, http://www.tuzilastvorz.org.rs/html_trz/OPTUZNICE/O_2011_02_23_ENG.pdf,

See *Statement Regarding the Conviction in Skočić Case*, 26 February 2013, http://www.hlc-rdc.org/?p=22549&lang=de; Zoran Đurđević and Zoran Stojanović were each sentenced to 20 years' imprisonment; Zoran Alić and Tomislav Gavrić were each sentenced to 10 years, Dragana Đekić and Đorđe Šević to five years each; Damir Bogdanović was sentenced to two years' imprisonment. A summary of the initial verdict is available at http://www.bg.vi.sud.rs/; the first instance judgement was abolished on appeal, proceedings were returned for retrial.

[30] KTRZ 7/10 Bijelina (Jović and others), 5 May 2011; http://www.tuzilastvorz.org.rs/html_trz/OPTUZNICE/O_2011_05_05_ENG.pdf; on appeal the sentence of the youngest accused was reduced to 10 years, Kž1 Po2 6/12. 25 February 2103, http://www.bg.ap.sud.rs/lt/articles/sudska-praksa/pregled-sudske-prakse-apelacionog-suda-u-beogradu/krivicno-odeljenje/ratni-zlocini/kz1-po2-6-12.html; HLC, *War Crimes Trials in Serbia 2012*, pp. 39-43

[31] In December 2013, after the testimony of a victim, who was 13 years old at the time of the rape, the indictment was amended, so that only one perpetrator was accused of rape; he was subsequently acquitted, OWPC, Announcement, 11 February 2014, http://www.tuzilastvorz.org.rs/html_trz/VESTI_SAOPSTENJA_2014/VS_2014_02_11_ENG.pdf; for Indictment, 17 December 2012, para 3.2, http://www.tuzilastvorz.org.rs/html_trz/OPTUZNICE/O_2012_12_17_ENG.pdf; additional information from HLC.; the written verdict is not yet available

[32] The European Court of Human Rights has ruled that a state's continued failure to investigate cases of persons missing following a military intervention, during which many persons were killed or taken prisoner and where the area was subsequently sealed off and became inaccessible to the relatives, resulted in a continuing violation of the prohibition against torture and other ill-treatment set out in Article 3, ECHR. The Court stated that "the silence of the authorities of the respondent State in the face of the real concerns of the relatives of the missing persons attained a level of severity which can only be categorized as inhuman treatment within the meaning of Article 3", Cyprus v Turkey, (10 May 2001),

International human rights law provides that family members have a right to be informed of the progress and results of the investigation and the fate of the disappeared person.[33]

Serbia is a state party to the International Convention for the Protection of All Persons from Enforced Disappearance (CPED),[34] which at Article 24(2) provides that each victim - the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance, have the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person. The CPED provides that each state party shall take appropriate measures in this regard.[35] This is a continuing obligation, irrespective of when Serbia became a state party to the CPED; further under international law, the acts constituting enforced disappearances are considered as a continuing offence, as long as the fate and whereabouts of the disappeared person remain unclarified.[36]

Almost 35,000 people were reported missing to the International Committee of the Red Cross as a result of the armed conflicts of the 1990s; around 12,000 persons remain unaccounted for.[37] However scant few prosecutions have been brought in cases involving enforced disappearances, the most egregious being the failure for over a decade to bring to justice those responsible for ordering (and implementing) the concealment of the bodies of ethnic Albanians killed in Kosovo by Serb forces. This includes the transfer of their mortal remains to Serbia proper for destruction or reburial, including on Ministry of Interior Police land at Batajnica, Petrovo selo, Rudnica and in Lake Perućac.[38]

Judgment ECtHR, paras. 136 and 156-158. The Human Rights Committee also recognized that the "anguish and stress" suffered by a family member of a victim of enforced disappearance can amount to a violation of Article 7 of the ICCPR, *Quinteros v. Uruguay* (107/1981), Report of the Human Rights Committee.

[33] Cyprus v Turkey, Judgment of the European Court of Human Rights, (10 May 2001)2001) at paras 156-158; Khaila Isayeva v Russia, (15 November 2007) at para 130.

[34] CPED, http://www.ohchr.org/EN/HRBodies/CED/Pages/ConventionCED.aspx; ratified by Serbia, 18 May 2011, http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-16&chapter=4&lang=en; Serbia also recognized the competence of the Committee on Enforced Disappearances to receive and consider communications from or on behalf of victims or other states parties.

[35] This obligation is partially discharged through the Serbian Government Commission on Missing Persons which is charged, in cooperation with the relevant authorities, with informing families about the current status of cases, and where possible, the circumstances of the death of their family member.

[36] *Cyprus v Turkey*, Judgment of the European Court of Human Rights (10 May 2001) at paras. 136, and 150; Article 8(1) (b) of the International Convention on the Protection of All Persons from Enforced Disappearance; Article 17(1) of the Declaration on the Protection of All Persons from Enforced Disappearance.

[37] Of 34,884 persons reported as missing during the armed conflicts on the 1990s, 11,443 cases are still open (on all sides), including 2,205 in Croatia, 1,712 in Kosovo, and 7,526 in BiH, ICRC, *Figures Related to the Persons Missing from the Balkans Conflicts*, March 2014.

[38] Amnesty International, *Submission to the Committee on Enforced Disappearances,* pp. 14-16; HLC,

However, in December 2014, five suspects were arrested in Serbia and ten in BiH, in a joint operation with the Bosnian authorities, in connection with the enforced disappearance of 20 civilians by Bosnian Serb paramilitaries in Štrpci in February 1993.[39]

RESOURCES AND FUNDING

While the SWWC was initially internationally funded, as responsibility for investigations and prosecutions of crimes under international law passed from the ICTY to domestic jurisdictions, funding now lies with the Serbian government, which has not ensured that the institutions charged with the investigation, prosecution and adjudication of such cases are equipped with the resources and personnel required.[40] For example, despite requests to the Ministry of Finance, no additional funding or resources were provided when additional responsibilities were placed on OWCP following amendments in 2012 to the Criminal Procedure Code (CPC), including covering the costs of *ex-officio* defence lawyers.[41] With only eight deputy prosecutors, two associates (one working with the ICTY) and three investigators, the OWCP lacks sufficient personnel to address its current workload of complex difficult cases, let alone the backlog of cases.

This has necessarily led to long investigations, delays in bringing indictments and a slow rate of prosecutions. As the Chief Prosecutor acknowledged in December 2014, the OWCP had fallen far behind other regional courts in bringing prosecutions and securing convictions.[42]

The OWCP has, until relatively recently, [43] lacked effective investigative support from the War

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Dossier: Rudnica, 29 January 2015, http://www.hlc-rdc.org/?p=28016&lang=de

[39] OWCP, "Prosecutor Indicts Five for Torture and Killing of 20 Train Passengers in Štrpci" in 1993, http://www.tuzilastvorz.org.rs/html_trz/VESTI_SAOPSTENJA_2015/VS_2015_03_03_ENG.pdf; indictment not yet public.

[40] Contrasting with the funding provided to defendants at the ICTY and their families, see http://www.balkaninsight.com/en/article/serbia-supporting-bosnian-serb-suspects

[41] Further, additional – and so far unfunded – responsibilities were placed on the prosecutor's office following amendments in 2012 to the Criminal Procedure Code (CPC), which removed the responsibilities of the investigative judge in preliminary hearings, and introduced investigative hearings, led by the OWCP. This also placed the burden on the OWCP to provide support for witnesses during investigative proceedings. Funding for the formal Witness Support Service however, remains with the judiciary – for the protection of witnesses during trial proceedings.

[42] Recent allegations made against the OWCP by members of the Serbian Assembly and the government, suggest that under the current administration, which in January sought his dismissal, the OWCP is unlikely to receive any additional support, see "Serbian MPs Claim Prosecutor Unlawfully Appointed", 19 Dec 2014, http://www.balkaninsight.com/en/article/mps-claim-unlawful-appointment-of-prosecutor; http://www.balkaninsight.com/en/article/a-serbian-guide-to-ruining-reputation, 20 January 2015; B92, "Prosecutor talks about "stirring up hornet's nest"", 8 January 2105, http://www.b92.net/eng/news/crimes.php?yyyy=2015&mm=01&dd=08&nav_id=92806

[43] Following a 2014 Memorandum of Cooperation, both the chief Prosecutor and Head of the WCIS report some improvement, Amnesty International interviews, OWCP and Dejan Marinković, Head of the WCIS,

Crimes Investigation Service, (WCIS), a Ministry of Interior police department, established to investigate crimes under the jurisdiction of the SWCC at the request of the OWCP,[44] with a staff of 50 responsible for investigations , the interview and arrest of suspects and the location of missing persons.[45]

The WCIS has been accused of lacking initiative and passivity, and in some cases – the obstruction of investigations. Lacking authority to conduct cross-border investigations, the WCIS predominantly investigate cases related to Kosovo where former and serving Ministry of Interior police are reasonably suspected of crimes under international law, including torture and other ill-treatment. The location of the WCIS within the Ministry of Interior then presents a particular problem – or indeed a conflict of interest - in investigating allegations against colleagues, often senior WCIS officers, which, "may be circumvented …for political or other reasons, or because of personal affiliations within the police".[46]

ILL-TREATMENT OF PROTECTED WITNESSES[47] (ARTICLE 13)

The Ministry of Interior Witness Protection Unit (WPU) has not only failed to provide effective protection to witnesses in proceedings at the Special War Crimes (Higher) Court, but protected witnesses have alleged that they were subjected to what they describe as "torture" by members of the WPU.[48] Amnesty International considers their treatment of these witnesses may have amounted to inhumane or degrading treatment.

However, allegations that the WPU intimidated and threatened witnesses, with the aim of getting them to withdraw their testimony have not been promptly or impartially investigated. While, some WPU were dismissed, following such allegations, no comprehensive measures have been taken by the authorities to address these allegations; no criminal investigation has taken place. [49]

November 2014.

[44] Article 8, Law on Organization and Jurisdiction. "The Service shall act on requests of the Prosecutor for War Crimes, in accordance with law".

[45] Amnesty International interviews, OWCP and head of the Criminal Justice System Unit in the OSCE Mission to Serbia, November 2013.

[46] Amnesty International interview, Ivan Jovanović, then head of the Criminal Justice System Unit in the OSCE Mission to Serbia, November 2013. Dejan Marinković, Head of the WCIS, told Amnesty International, "if we are collecting evidence: it is more difficult where colleagues are concerned. Then there are more aggravating circumstances with the colleagues. Evidence is destroyed, they are afraid and frightened and do not want to testify, so it is hard to get qualitative evidence", Amnesty International interview, Dejan Marinković, November 2013.

[47] *Concluding observations of the Committee against Torture, Serbia*, CAT/C/SRB/CO/1, 19 January 2009, para. 11 (c).

[48] In cases where protected witnesses have made their allegations public, only one indictment (Jackals) includes counts of torture (rape).

[49] Miloš Perović, Head of the WPU, was dismissed in June 2014, reportedly for corruption In November 2014, a

In addition to allegations of criminality, which may amount to perverting the course of justice, there are also consistent allegations, which point to negligence[50] on the part of the WPU, as well as a lack of effective protocols and procedures and/or their full implementation, which should also be reviewed.[51]

The Witness Protection Programme (WPP) provides protection for selected witnesses, considered to be at risk of serious harm, in proceedings for war crimes and organized crime.[52] These allegations have been made in particular by former Ministry of Interior police officers, accepted into the Witness Protection Programme (WPP), as "insider witnesses".[53] The substance of some of the allegations has been publicly contested by the WPU[54] and in some cases, by the OWCP, but have caused international concern.[55]

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senior police official told Amnesty International that reform of the WPU was to be included in an Action Plan agreed with the European Commission, as part of Serbia's progress towards EU membership, but implementation was not expected to be completed until 2018, Amnesty International interview, Ministry of Interior Police, November 2014.

[50] For allegations of incompetence, by Judge Snežana Nikolić Garotić, , "Serbia's War Crimes Witness Protection Unit 'Failing'", 29 November 2013, http://www.balkaninsight.com/en/article/serbia-s-war-crimes-witness-protection-unit-failing

[51] Including a failure to provide a contract between the WPU and the witness, clearly setting out the rights and obligations of the witness and the obligations of the WPU to the witness, including the nature and degree of protection, financial support and accommodation (including its location) to which they are entitled, and to provide reasons for their withdrawal from the programme.

[52] Law on the Protection of Participants in Criminal Proceedings, which created the concept of a protected witnes ("Zakona o programu zaštite učesnika u krivičnom postupku", (Official Gazette of the RS", no. 85/2005)), entered into force 1 January 2006, http://www.paragraf.rs/propisi/zakon_o_programu_zastite_ucesnika_u_krivicnom_postupku.html

[53] *Report on Irregularities in War Crimes Proceedings in the Republic of Serbia*, (confidential report) dated 15 November 2010, and seen by Amnesty International, and later made public); later made public, see *Participation of the Humanitarian Law Centre in War Crimes Prosecutions in Serbia*, April 2012, pp. 2-5 and ff, http://www.hlc-rdc.org/wp-content/uploads/2012/04/HLC-Participation-in-war-crimes-prosecution-in-Serbia-April-302012-ff.pdf

[54] The Head of the WPU, interviewed by Amnesty International in November 2013, did not deny the allegations, but in two cases, accused the protected witnesses of lying.

[55] European Parliament resolution of 18 April 2013 on the 2012 Progress Report on Serbia, para 11, http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2013-186; ; see also footnote 60; EC, *Progress Report Serbia*, 2014, p.43 http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf; European Parliament resolution of 18 April 2013 on the 2012 Progress Report on Serbia, para, 11, http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2013-186; see also http://www.balkaninsight.com/en/article/eu-urges-serbia-to-change-witness-protection, 3 October 2012; PACE Resolution 1784 (2011), *Protection of witnesses as a cornerstone for justice and reconciliation in the Balkans*, paras 16.5.1-16.5.2,

Allegations of the unprofessional, inappropriate, and sometimes unlawful, treatment of protected witnesses by the WPU, have been made public by former or serving police officers, who had agreed to provide testimony against their former colleagues, in proceedings against Ministry of Interior police officers operational in Kosovo in 1998-9.

These protected witnesses accuse the WPU of having failed to provide them with impartial protection. They state that the WPU has harassed and intimidated them with the aim of coercing them to withdraw their testimony, to the degree that they have feared for their safety. Some have alleged that their family members of their families were threatened. This has had the effect of deterring others from coming forward as witnesses.[56]

Slobodan Stojanović is a former member of the 37th Detachment of the Posebna Jedinica Policije (PJP, Special Police Unit).[57] Approached by the OWCP in 2005, as a potential witness against former PJP commander, Radoslav Mitrović, (indicted for the murder of 48 civilians[58]), he was admitted into the WPP in June-July 2009, following death threats from other police officers.

He told Amnesty International that, without notice, he and his wife and son were moved to Belgrade, into a "safe house", which he considered unsafe as it overlooked a police medical building and was 100 metres away from a police dormitory. He claims that during this time he was repeatedly threatened by members of the WPU. After four months, he was told he was no longer in the WPP, and was taken back to his home. His wife told Amnesty International, "We felt physically and mentally ill-treated; we felt they were trying to destroy us." Slobodan Stojanović and his wife continue to fear for their lives. [59]

Bojan Zlatković, a former member of the Special Police Unit alleged that the OWCP had failed to act upon his complaints about the WPU. According to the HLC, Bojan Zlatković "begged us to help him to speak in public about the torture he was submitted to because he

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http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta11/ERES1784.htm; *Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Serbia on 12-15 June 2011*, https://wcd.coe.int/ViewDoc.jsp?id=1834869, see esp. para. 23.

[56]Amnesty International has independently conducted interviews with serving police officers who told the organization that they were reluctant to testify, based on what they had heard about the possible treatment they might receive from the WPU. The organization has also received written testimony from protected witnesses, and others who have been reluctant to enter the programme on the basis of reports of alleged threats or other inappropriate treatment by the WPU.

[57] *Report on Irregularities in War Crimes Proceedings in the Republic of Serbia*, dated 15 November 2010, and seen by Amnesty International, and later made public); later made public, see *Participation of the Humanitarian Law Center in War Crimes Prosecutions in Serbia*, April 2012, pp. 2-5 and ff, http://www.hlc-rdc.org/wp-content/uploads/2012/04/HLC-Participation-in-war-crimes-prosecution-in-Serbia-April-302012-ff.pdf

[58] KTRZ 5/05 Suva Reka (Mitrović and Others), http://www.tuzilastvorz.org.rs/html_trz/OPTUZNICE/O_2006_04_25_ENG.pdf

[59] Amnesty International interviews, July 2014.Emails to Amnesty International.

wanted to testify about war crimes". He withdrew from the WPP in July 2011.[60]

Zoran Rašković, is a former member of the paramilitary group known as the "Jackals", indicted for the killing more than 100 ethnic Albanians in the villages of Zahac, Pavlan, Ljubenić and Cuška in Kosovo in 1999; two of the group were accused of rape.[61] Zoran Rašković agreed to become a cooperative witness, and entered the WPP. In December 2011, during proceedings, he requested that his anonymity as a protected witness be removed.

In January 2012, Zoran Rašković submitted a letter to the court, in which he detailed threats he had received not only from members of the WPU, but allegedly from a senior official in the Ministry of Interior, stating, "I thought that the Witness Protection Unit was what the name says, not a unit for the protection of criminals".[62] He also alleged that his mother and father had been threatened by the police, and that the WPU had refused to transfer him to another protected location, or – after he had revealed his identity – provide him with identity documents in his own name.[63]

FAILURE TO PROVIDE ADEQUATE REPARATION [ARTICLE 4 & 14, QUESTION 31-33 IN THE LIST OF ISSUES]

Amnesty International considers that Serbia lacks an effective administrative reparation system and has violated the right of victims of torture and other ill-treatment to an effective remedy. [64]

REPARATION THROUGH CIVIL PROCEEDINGS

The HLC has represented over 1,000 victims in civil proceedings, to exercise their right to compensation for violations of human rights and international law, including torture, by Yugoslav and Serbian forces.

Serbia's civil courts have rarely upheld these claims and, even where material compensation has been awarded, it has most often failed to reflect the gravity of the crime and the harm

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[60] "Protected Witness Appeal", in *Trials For War Crimes And Ethnically Motivated Crimes In Serbia In 2010*, pp 69-83, http://www.hlc-rdc.org/wp-content/uploads/2012/03/Reports-on-war-crimes-trials-in-the-Republic-of-Serbia-2010.pdf

[61] KTRZ 9/11 Ćuška (Momić), http://www.tuzilastvorz.org.rs/html_trz/OPTUZNICE/O_2011_05_31_ENG.pdf

[62] "Mislio sam i da je Jedinica za zaštitu svedoka jedinica kako i sam naziv kaže, da nije jedinica za zaštitu zločinaca", (AI translation).

[63] "On je uvek pucao za Srbiju", http://pescanik.net/2011/12/on-je-uvek-pucao-za-srbiju/; "Beleška sa suđenja za zločine u Ćuški – januar 2012", http://zeneucrnom.org/index.php?option=com_content&task=view&id=768&Itemid=68

[64] Committee Against Torture, *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, General Comment No. 3 of the Committee against Torture, Implementation of article 14 by States parties*, CAT/C/GC/3, 19 December 2012, para.20, http://www2.ohchr.org/english/bodies/cat/docs/GC/CAT-C-GC-3_en.pdf

suffered. In 2012, for example, the former mayor of Suva Reka in Kosovo, was awarded €3,300 for the physical and mental torture he suffered on a daily basis during his detention by Ministry of Interior Police between September 1998 until January 2000, and which left him with persistent ill-health. The HLC, acting on his behalf, stated that this compared unfavourable with compensation awarded to Serbian lawyers, judges and army officers, unlawfully detained during "Operation Sabre" in 2003, who were awarded amounts of between €5,000 and €50,000.[65]

Persistent institutional and legal barriers, described below, have led to the denial of claims.[66] The failings point to the necessity of recognizing the right to reparation in law, and establishing an effective and comprehensive administrative reparation mechanism.

STATUTE OF LIMITATION

In 2009, the Committee noted the Supreme Court ruling of 2005 which applied a statute of limitation in respect of the crime of torture", and urged "the speedy completion of judicial reforms so that no statute of limitations will apply to torture".[67]

The Supreme Court (then of Serbia and Montenegro) had ruled in 2005 that claims against the state must be brought within five years of the event that led to injury or death, violating the non-applicability of statutes of limitations to war crimes and crimes against humanity, including in civil suits arising out these crimes.[68] Although not applied in all cases,[69] the

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[65] Balkan Insight, "Serbia to Pay Reparations to Ex-Kosovo Mayor", 14 October 2012, http://www.balkaninsight.com/en/article/serbia-gives-reparation-to-ex-kosovo-mayor; see also HLC, "Humiliating Compensation for Kosovo Albanians Who Survived Torture by Members of Ministry of Interior", 8 July 2013, http://www.hlc-rdc.org/?p=23505&lang=de

[66] For further documentation see, HLC, *Material Reparations for Human Rights Violations Committed in the Past: Court Practice in the Republic of Serbia*, January 2012, http://www.hlc-rdc.org/wp-content/uploads/2011/12/Material_Reparations.pdf; HLC, *Servicing Justice or Trivializing Crimes? Fulfilling the Right for Victims of Human Rights Abuses to seek Reparation before the Serbian Courts,* 2012, http://www.hlc-rdc.org/wp-content/uploads/2013/06/Fulfilling-the-Right-for-Victims-of-Human-Rights-Abuses-to-seek-Reparation-before-the-Serbian-Courts.pdf

[67] *Concluding observations of the Committee against Torture: Serbia*, 19 January 2009, para.5; see also, with reference to the relatives of missing persons, *Consideration of reports submitted by States parties under article 40 of the Covenant, Concluding observations of the Human Rights Committee, Serbia*, CCPR/C/SRB/CO/2, 20 May 2011, para.12, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/SRB/CO/2&Lang=En

[68] Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, adopted 26 November 1968, entered into force on 11 November 1970. Serbia became a state party by succession in 2001, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-6&chapter=4&lang=en; *Material Reparations*, pp. 8-10, and footnote 12, Su No: I-400/1/3-11. In July 2011, the Constitutional Court of Serbia, in a slightly more positive decision, also decided that, in cases where the perpetrator had been convicted, that "the request for damages against any responsible person, not just the offender, is barred

Supreme Court ruling can be an almost insurmountable obstacle to victims seeking compensation, and in effect may render the right to redress ineffective.[70]

The applicable law – the Law on Contracts and Torts - allows only for compensation for violations committed on Serbian territory, and is, therefore, not in accordance with the Convention against Torture.[71] Consequently, the majority of suits for compensation have been brought by ethnic Albanians, including in relation to alleged torture and ill-treatment during and after the armed conflict in Kosovo,[72] and Bosniaks from the Sandžak region of the then SFRY who suffered discrimination, persecution, torture and other ill treatment by Serbian police and military forces between 1992-5.[73]

Complaints are neither adequately nor promptly addressed by the courts. Proceedings take an average of five years; one suit took as long as 13 years. A complaint submitted by Croatian Prisoners of War, decided in February 2014 had, even before appeal, taken six years.[74]

A claim for moral damages submitted in 2007, by the HLC, on the basis of the suffering of the relatives of people from Sjeverin in Serbia, who were killed or are still missing after being abducted while travelling on a bus traveling through Mioče (in BiH) in October 1992, was dismissed by the first instance court in February 2009. The Appellate Court failed to act on HLC's appeal. In August 2013, HLC lodged an appeal with the Constitutional Court, on the basis of "unjustified protraction of the proceedings before the Basic Court and the Court of Appeals in Belgrade, in which a final judgment has not yet been rendered even six years after the beginning of the proceedings". On 15 October 2013, the Constitutional Court, found that the rights of the families to a trial within a reasonable time, under Article 32 of the Constitution, had been violated. The Constitutional Court of Serbia granted compensation of €600 to each of the 22 applicants for the violation of this right. HLC subsequently filed a further appeal to the Constitutional Court, on behalf of 20 applicants, and called for a more realistic €10,000 to be awarded to each.[75]

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once the time allowed for the prosecution is up."

[69] In the case of Sead Rovčanin, the Appellate Court reversed the first instance court decision concerning the application of the statute of limitations, on the basis that the complainant was still receiving treatment for the torture he suffered in 1993, *Servicing Justice or Trivializing Crimes?* pp. 30-35.

[70] CAT, *General comment 3*, lists a number of obstacles including "statutes of limitations" which render this right ineffective, see footnote 61.

[71] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art.14.

[72] Considered by Serbia, and under UN Security Council Resolution 1244/99 to remain part of Serbia, despite Kosovo's unilateral declaration of independence.

[73] *Serbia and Montenegro: Legal loopholes allow impunity for torturers in the Sandzak, op. cit*

[74] HLC, *Material Reparations*, p. 13.

[75] *Constitutional Court: Right to Fair Trial Violated In Case of Families of Victims from Sjeverin*, HLC, 18 October 2013, http://www.hlc-rdc.org/?p=25106&lang=de, Family *Members of Victims of War Crimes from Sjeverin Seek Justice before constitutional court*, HLC Index out– 133F88388, 6 November 2013, http://www.hlc-

Complaints are frequently dismissed on the basis that there has been no judgement in criminal proceedings. Judgements at the SWCC do not include orders for compensation, and, as noted above, the number of prosecutions concluded at the SWCC, are relatively low, such that few claimants are able to present evidence confirmed in criminal proceedings. In February 2014, for example, the Belgrade Basic Court dismissed a complaint brought in 2007, by 12 former Croatian prisoners seeking reparation for their alleged torture at a camp in Sremska Mitrovica, on the basis that, in the absence of a final verdict in ongoing proceedings against former military reservist Marko Crevar, indicted for the torture, during interrogation, of Croatian prisoners detained at Sremska Mitrovica, a criminal act did not take place.[76] Yet, even where criminal prosecutions have been concluded, claims for compensation have been rejected.[77]

The combination of delays in bringing criminal prosecutions and the reluctance of courts to grant compensation in civil cases pending the conclusion of criminal proceedings amounts to a violation of victims' rights to an "effective remedy".

Further, victims are often unable to satisfy the requirement to prove damage or injury or proof of harm and suffering. Given the circumstances under which, and length of time since, the alleged violations took place, this is not surprising.[78] Yet even where victims of alleged torture and ill-treatment have provided proof of physical injury, or a diagnosis of post-traumatic stress disorder (PTSD), the court has rejected their claims or contested whether an injury or diagnosis is associated with the alleged violation.

Claims have also been rejected where independent documentation exists. In July 1995, after the fall of Žepa (BiH), many Bosniaks fled to Serbia, where around 850 of them were arrested and detained in prison camps. There, they allege they were subject to torture, inhuman and degrading treatment by Ministry of Interior officials. Although the camps had been visited and conditions documented by UNHCR, the International Committee of the Red Cross, and the Bosnian State Commission for Missing Persons, the majority of claims were not upheld on the basis of the statute of limitations, that the men had brought their complaint too long after their detention.[79] However, in September 2014, the Court of Appeals found Serbia responsible for the torture and ill treatment of Enes Bogilović and Musan Džebo, detained at Sljivovica camp, and

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rdc.org/?p=25261&lang=de

[76] http://www.balkaninsight.com/en/article/serbia-denies-compensation-to-croat-prisoners; as of March 2015, proceedings continue at the Appellate Court;, http://www.tuzilastvorz.org.rs/html_trz/OPTUZNICE/O_2013_03_05_ENG.pdf

[77] HLC, *Material Reparations*, p.10-11; Amnesty International, *Burying the Past*, p. 58.

[78] In the Sandžak local human rights organizations report that doctors were forbidden to issue medical certificates to victims of police torture between 1992-5, *Serbia and Montenegro: A Wasted Year*, p. 28.

[79] *Material Reparations*, p. 14. The case involved allegations against members of the Ministry of the Interior Police, the Serbian State Security (DB) and the VJ, of the ill-treatment and murder of Bosniak refugees, who were amongst some of 850 Bosniaks who had fled Žepa and surrounding villages, between the end of July 1995 and April 1996 and held in the Šljivovica and Mitrovo Polje detention camps in Serbia.

awarded each €2,750 compensation for their continued suffering.[80]

VICTIMS OF ENFORCED DISAPPEARANCE[81]

Serbia has not only failed in its obligation to bring those suspected of criminal responsibility of enforced disappearances to justice, but in its obligation to guarantee reparation to all victims, including the relatives of the missing.[82]

The Law on the Rights of Civilian War Invalids provides only a limited number of civilian victims of war with access to financial compensation in the form of a pension, and some other social benefits, and applies only to individuals who were killed in armed conflict, or died as a result of being wounded or injured by non-Serb forces, and their families.[83]

Both the Serbian laws on military and civilian "invalids" provide for monetary compensation, in the form of a monthly payment, to persons disabled by war and the families of persons killed in armed conflict or deceased as a result of injuries suffered in connection with the conflict. [84] Yet, in many respects, the legal framework discriminates against civilian victims of war, and fails to provide them with adequate compensation.[85] For example, the threshold for disabled military personnel is that their physical injuries have resulted in at least 20% bodily damage; for civilians, the degree of bodily injury required is 50%. Further, while families of killed or missing servicemen have the right to family disability pensions irrespective of their income, the families of killed and missing civilians are only able to

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[80] Reversing the initial Basic Court decision, see http://www.hlc-rdc.org/?p=27376&lang=de; on 14January 2015, it was reported that they had not yet received their compensation, http://www.balkaninsight.com/en/article/serbia-blocks-payment-to-bosnian-torture-victims

[81] See Amnesty International, *Serbia: Submission to the Committee on Enforced Disappearances: 8th session, 2-13 February 2015*, 20 January 2015, https://www.amnesty.org/en/documents/eur70/001/2015/en/

[82] In February 2015, the Committee on Enforced Disappearances, in their Concluding observations on Serbia's report under the Convention, found that Serbia had failed to ensure the "prompt, fair and adequate compensation of all persons who have suffered harm as a direct result of an enforced disappearance", CED, *Concluding observations on the report submitted by Serbia under article 29, paragraph 1, of the Convention*, (Advance Unedited Version), 12 February 2015, see esp. paras. 25-26, http://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/SRB/INT_CED_COC_SRB_19624_E.pdf

[83] The Law on Rights of Civilian War Invalids, *Official Gazette of the RS*, No 52/96, 52/96. The law provides for various forms of reparation including financial and heath care benefits, a monthly cash payments and funeral expenses; for HLC translation, see http://www.hlc-rdc.org/wp-content/uploads/2014/03/Law_on_Disability_Rights_of_the_Civilian_Victims_of_War.pdf.

[84] Article 13 (1) of the Law on the Basic Rights of Servicemen, Military Invalids and Families of Deceased Servicemen, Official Gazette of the SRJ, numbers 24/98, 29/98 and 25/200, applies to families of servicemen who "died or disappeared". The term "disappeared" is not included in Article 3 (2) of the Law on the Rights of Civilian War Invalids.

[85] HLC, *Material Reparations for Human Rights Violations Committed in the Past: Court Practice in the Republic of Serbia*, http://www.hlc-rdc.org/wp-content/uploads/2013/01/Material_Reparations.pdf

invoke this right if their income is below the level established by law.[86]

The rights of civilian victims of war were further restricted in 2013, when the Ministry of Labour, Employment and Social Policy revoked the status of civilian victims of war and their families, where the violations against them were committed outside of the Republic of Serbia.[87] This decision was initially applied in an administrative decision to the relatives of those abducted at Sjeverin, on the basis that – although the victims and their families were Serbian citizens – they were abducted and killed on the territory of BiH. The decision has subsequently been applied to all other similar cases.[88]

Amnesty International considers that, in order to ensure the right to reparation of all victims including victims of enforced disappearance, irrespective of their status, a more holistic approach is needed.[89] However, in December 2014, the Ministry of Labour, Employment, Veteran and Social Policy concluded their consultation on a proposed draft of a new law on the rights of war veterans, military and civilian war invalids and their family members.[90] The proposed law did not include, for example, the families of missing persons, victims of sexual violence, people suffering from psychological effects of violations and physical injuries, but whose disability level is less than 50 percent, and victims of Serbian forces. Some 15 NGOs called for the withdrawal of the draft.[91]

ABSENCE OF REPARATION FOR SURVIVORS OF WAR CRIMES OF SEXUAL VIOLENCE

Neither the current law on civilian victims of war, nor the proposed draft, recognize the right of survivors of war crimes of sexual violence to reparation, including compensation and rehabilitation, such as psychosocial support and access to adequate healthcare.

The eligibility criteria of 50% bodily injury, denies them the right to a pension, even if they suffer from medical or psychological conditions resulting from the violation committed against them. Eligibility is also based on proof of the incident. Given the limited number of prosecutions, survivors are unable to fulfil this condition. [92]

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[86] HLC & Documenta, *Transitional Justice in Post-Yugoslav Countries*, *Report 2007,* p. 51, http://www.forumnvo.org.rs/docs/Transitional_Justice.pdf

[87] This was prompted by a decision in the case of relatives of Serbian citizens from Sjeverin abducted in Mioče in BiH, see above.

[88] See *Letter to the Prime Minister Ivica Dačić*, http://www.hlc-rdc.org/?p=23628&lang=de

[89] See http://www.hlc-rdc.org/wp-content/uploads/2014/03/Administrative_reparations_-in_Serbia_an_analysis_of_the_existing_legal_framework.pdf

[90] Available in Serbian only, at http://www.minrzs.gov.rs/cir/aktuelno/item/1591-poziv-za-javnu-raspravu-nacrt-zakona-o-pravima-boraca,-vojnih-invalida,-civilnih-invalida-rata-i-clanova-njihovih-porodica

[91] HLC, "Draft Law on Rights of Civilian Victims of War should be withdrawn", 26 December 2014, http://www.hlc-rdc.org/?p=27883&lang=de

[92] There are no reliable estimates of the numbers of women and girls of Serbian ethnicity who were victims of war crimes of sexual violence during the armed conflicts in Croatia, BiH and Kosovo. A

Amnesty International recommends that the Serbian government:

- Take immediate measures to increase the number of investigators, prosecutors and analysts at the OWCP dealing with cases of torture and other crimes under international law;;

- Provide additional funding to the OWCP for the protection of witnesses appearing at investigative hearings;

- Reform the WCIS to ensuring an impartial and professional unit, with adequate resources and the capacity to carry out prompt, impartial, through and effective investigations.

WITNESS PROTECTION

- Initiate a full, independent and impartial investigation into allegations against the Witness Protection Unit made by former protected witnesses, bringing to justice those reasonably suspected of any criminal offence;

- Review the internal protocols and practices of the WPP with the aim of strengthening the organization including through the provision of adequate resources and the appointment of professional staff to ensure that all protected witnesses and their families receive the highest standard of protection;

- Consider options, including the transfer of the office of the WPU to the Ministry of Justice, which would improve protection for witnesses in cases of crimes under international law, including torture;

- Amend the relevant section of the CPC covering courtroom procedure and the examination of witnesses, to make special provision for the protection of the rights of victims of sexual violence through adequate safeguards during witness examination and cross-examination, including the exclusion of evidence of previous sexual history,

REPARATION

- Remove barriers in civil law which prevent victims of torture from receiving reparation through the courts, and establish an effective administrative system for determining claims to compensation and other forms of reparation;

- Re-draft the December 2014 revised law on civilian victims of war, ensuring that all victims of torture, including war crimes of sexual violence, and other crimes under international law, including enforced disappearances, are provided with full and effective reparation and prompt, fair and adequate compensation in relation to the harm suffered, through an administrative system, without discrimination.

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proposal to include "legal protection and psycho-social and economic support to victims of violence, "*including women who were exposed to torture and sexual abuse during wars on the territory of former Socialist Federal Republic of Yugoslavia*", was dropped from the National Strategy for the Elimination of all Forms of Violence against Women, see Women in Black, *Independent Monitoring of the Implementation of Resolution 1325 in Serbia*, 2012, p.71, http://zeneucrnom.org/pdf/independent_monitoring_of_the_implementation_of_resolution1325_in_serbia.pdf

NON-REFOULEMENT (ARTICLE 3)

THE LAW ON ASYLUM (QUESTION 9 IN THE LIST OF ISSUES)

In their response to the Committee, Serbia provided information on the details of the provisions of the 2007 Law on Asylum,[93] but failed to reflect on how the law is implemented in practice.[94] In this section, Amnesty International outlines how failures and delays in the implementation of the Law deny asylum seekers a fair, prompt and effective individual assessment of their protection needs and, in the majority of cases, result in the refusal of applications or their suspension because of the applicant having "absconded". Amnesty International considers this places asylum seekers at risk of *refoulement*, including *refoulement* to torture and other ill-treatment.

Amnesty International considers that the Asylum Office (formerly the Department of Asylum) within the Ministry of Interior Border Police Administration[95] has failed to effectively discharge their obligations under the Asylum Law, denying asylum seekers access to a fair, prompt and effective asylum process. The organization outlines below how the failure of the Asylum Office to promptly register asylum seekers, to provide them with identity cards and information on submitting a claim, to conduct asylum interviews promptly and to provide first instance decisions in a timely fashion, places a significant number of individuals at risk of *refoulement*.

The authorities, NGOs, asylum seekers and migrants alike acknowledge that Serbia is predominantly a country of transit. Amnesty International has calculated that at least 70% of those recording their intent to claim asylum leave Serbia before their asylum interview.[96] Although it is impossible in each individual case to identify the reasons why potential asylum seekers move onward to another country, rather than seeking asylum in Serbia, it is right to assume that the deficiencies of the asylum system play a role in such decisions. In the

[93] "Odsek za azil", http://www.mup.gov.rs/cms_lat/direkcija.nsf/odeljenje-za-strance.h. The law is also available in English: http://www.mup.gov.rs/domino/zakoni.nsf/Asylum%20Law.doc

[94] CAT/C/SRB/CO/1/Add.1, paras.24-46.

[95] The law, at Article 19, sought to establish a separate Asylum Office, independent of the Border Police. In January 2015 the government established an "Asylum Office" at the request of the EU Delegation in Serbia, who requested that an independent office, as envisaged under the law, be established. However, the new office remains within the Ministry of Interior (MoI), staffed by police officers.

[96] UNHCR estimate that half of those who declared an intention to seek asylum may not ever have reached an asylum centre. On the basis of statistics for January to November 2013, Amnesty International has calculated that 70% of those recording their intent to claim asylum leave before their asylum interview.

sections that follow, Amnesty International identifies the barriers that prevent those who declare their intention to seek asylum from proceeding with their applications.

Since the introduction of the Law on Asylum in 2008, the number of recorded asylum seekers has grown - from 77 in 2008 to 16,490 in 2014.[97] Yet, between the entry into force of the Asylum Law in April 2008 and 31 December 2014, only six people have been granted refugee status, and seven subsidiary protection.[98] In 2014, while 16,490 people recorded their intention to apply for asylum, the Department for Asylum conducted 17 interviews: eight applications were rejected; refugee status was granted to one Tunisian national whose application was submitted in 2013, and subsidiary protection was extended to five Syrian nationals. In 2013, 5,066 persons recorded their intent to claim asylum. Of the 193 applications considered (some from the previous year), four were upheld; five were rejected, eight dismissed and 176 discontinued.[99] In 2012, out of 2,723 declarations of intent only three individuals were provided with international protection; in 2011 none of the 3,134 recorded asylum seekers were provided with protection.[100]

A new draft Law on Asylum was announced in December 2014 by the Ministry of Interior, scheduled for adoption in March 2016.[101] Amnesty International urges the authorities to ensure that it addresses the deficiencies identified below, in order to reduce the potential for refoulement.

FAILURE TO ENSURE ACCESS TO ASYLUM PROCEDURES

Articles 22-23 of the Law on Asylum provide that, on entering the country, those wishing to claim asylum must record their intention to do so with the police at the border or the nearest police station, who issues them with a certificate. The certificate allows the asylum seekers to receive shelter at an Asylum Reception Centre (ARC), which they must reach within 72 hours. A copy is forwarded to the Asylum Office. Unaccompanied minors are first referred to the Belgrade Home for Children and Youth, and subsequently transferred to the ARCs, if they wish to claim asylum.

Under Article 10 of the rules governing ARCs, an asylum seeker is required to seek

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[97] In 2008, 77 persons recorded their intention to seek asylum; in 2009, 275; in 2010, 522; UN High Commissioner for Refugees (UNHCR), *Serbia as a country of asylum. Observations on the situation of asylum-seekers and beneficiaries of international protection in Serbia*, August 2012, para. 9, http://www.refworld.org/docid/50471f7e2.html

[98] Refugee status: two nationals of Libya and one of Egypt (2012); two nationals of Turkey (2013); one Tunisian national (2014). Subsidiary Protection: three nationals of Ethiopia and one of Somalia (2009); one national of Iraq (2010); three nationals of Syria in 2013 and five in 2014, Asylum Office statistics, 2014.

[99] Amnesty International interviews, July 2014; Belgrade Centre for Human Rights ,*Right to asylum in the Republic of Serbia 2013*, p. 39, http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2014/01/Right_to_Asylum_in_the_Republic_of_Serbia.pdf

[100] http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/sr_rapport_2013.pdf, p. 50.

[101] Amnesty International interview, Asylum Office, March 2015.

permission if they wish to leave the ARC for more than 24 hours. Following recommendations made in 2014 by the Ombudsperson, any person absent for more than 24 hours, is deemed to have absconded, and is excluded from the ARC and access to the asylum procedure.[102]

In 2014, 16,490 people, 9,701 of them from Syria, recorded their intention to claim asylum.[103] However, only 388 applications (2.35% of the total) were submitted to the Department for Asylum, 307 of which were then suspended because the applicant "absconded" during the process. In 2013, 5,066 persons recorded their intent to claim asylum, including 598 unaccompanied minors. Only 153 applications were submitted for asylum (3.02% of the total; 135 male applicants, 18 female applicants).[104]

FAILURE TO PROMPTLY REGISTER ASYLUM SEEKERS

Under Article 24 of the Law on Asylum, after the asylum seeker has reached an ARC they should be registered by an officer of the Asylum Office in a brief interview and issued with an identity card, which allows them some freedom of movement and prevents their arrest for being irregularly in the country (any personal travel documents they may have "which can be of relevance in the asylum procedure" are held by the authorities).

Article 24 fails to provide a time frame within which asylum seekers must be registered and issued with an identity card. In 2014, only 1,350 of the 16,490 individuals who registered their intention to claim asylum were formally registered by the Asylum Office.[105]

At the time of Amnesty International's visit to Bogovadja ARC in July 2014, not one asylum seeker had been registered since August 2013. None were registered at Sjenica ARC between its opening in December 2013 and March 2014, when registrations took place, but no further registrations had taken place by July 2014. At the Tutin ARC, opened in January 2014, no one had been registered by 10 July 2014.[106] Of 1,000 people receiving shelter at Bogovadja ARC, only 200 had been registered between January and April 2014.[107]

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[102] Rules of the House of the Asylum Centres, http://www.kirs.gov.rs/docs/azil/Rules%20of%20the%20house%20at%20the%20Asylum%20Centre.pdf; 6) The "Asylum Centres shall refrain from the practice of "keeping" rooms, i.e. beds, for the asylum seekers who have left the Centre on any grounds. The vacant capacities no longer occupied by their previous users shall be given without any delay to the newly arrived foreigners who have been referred, i.e. escorted, to the Centre", Protector of Citizens of the Republic of Serbia, *Recommendations*, IV (6) http://www.npm.lls.rs/attachments/053_azil%200702%20English.pdf

[103] All statistics quoted from those provided by the Asylum Office to UNHCR, Belgrade.

[104] Amnesty International interviews, July 2014; Belgrade Centre for Human Rights ,*Right to asylum in the Republic of Serbia 2013*, p. 39, http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2014/01/Right_to_Asylum_in_the_Republic_of_Serbia.pdf

[105] Amnesty International interview, February 2015.

[106] Amnesty International interview, UNHCR, July 2014.

[107] The former Head of the then Department of Asylum, suspended in December 2014, explained to Amnesty International in July 2014 that the Asylum Office did not have the time or capacity to make the

However, when Amnesty International visited two ARCs in March 2015, following the employment of new staff, registrations were taking place at each centre weekly -except at Sjenica and Tutin, where the Asylum Office still fails to meet the recommendation made by the Protector of Citizens (Ombudsperson) in the role of National Preventive Mechanism, that "The Asylum Office shall ensure that there are authorised Asylum Office officers on duty in all the Asylum Centres on daily basis".[108]

DELAYS IN ISSUING IDENTITY CARDS

The law provides no time frame for the issuing of identity cards. While staff of the Asylum Office visit ARCs to register individual asylum seekers, their identity cards are produced centrally, and later sent back to the centre. In practice, it may take several weeks before identity cards are issued, *de facto* denying asylum seekers freedom of movement outside the ARC.[109] Without identity cards, they risk arrest for being unlawfully in the country, and – if they have the means to do so - are unable to stay in a hotel or rent private accommodation, under the provisions on the Law on Foreigners, which requires the individual or company providing the accommodation to register the person's stay with the local police.[110]

Only 460 ID cards were issued in 2104, despite an estimated ARC population of at least 8,000. Despite the increased number of registrations in 2015, asylum seekers who had been registered at the Krnjača ARC in January 2015 informed Amnesty International in March 2015 that they had yet to receive their identity cards, or receive information about making an application.

FAILURE TO ENSURE SUBMISSION OF ASYLUM APPLICATIONS

Article 25 of the Law requires that, in order to initiate the procedure for the granting of asylum, asylum seekers should submit written applications to an officer of the Asylum Office within 15 days of registration. The asylum seeker then has the right to an oral interview, (Article17) "as soon as possible", with an authorized official, (Article 16), empowered to decide on refugee status up to the first instance (Articles 27-31).

The Department for Asylum does not appear to take any measures to ensure that applications for asylum are promptly made and submitted, including by providing information to the asylum seekers.[111] Several registered asylum seekers interviewed by Amnesty International in

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six to eight hour journey to Tutin or Sjenica (350 and 250 kms from Belgrade, respectively), although this failed to explain the lack of registrations at Obrenovac (in Belgrade) and Bogovadja (70 km from Belgrade). He suggested that after a period of time at these ARCs "those who are interested" [in applying for asylum] should be transferred to an ARC nearer to Belgrade". Amnesty International found this to be an inadequate response.

[108] Protector of Citizens of the Republic of Serbia, *Recommendations*.

[109] Amnesty International interview, manager Bogovadja ARC, July 2014.

[110] Article 7, Law on Foreigners, http://www.euprava.gov.rs/ResourceManager/FileDownload.aspx?rId=41031&rType=2.

[111] According to BCHR, in 2013, in many cases six months elapsed between an asylum seekers registration and submission of their application, BCHR, 2013, p. 40.

2014 were not, or claimed not to be, aware that they were required to submit an application for asylum.[112]

FAILURE TO CONDUCT INTERVIEWS WITH APPLICANTS

Article 26 of the Law requires that an officer of the Asylum Office should interview an asylum seekers in person "as soon as possible" after the submission of an asylum application. Only 17 asylum application interviews took place in 2014. In 2013, of 193 applications, 19 asylum seekers were interviewed, and 17 decisions made.[113]

Up to December 2014, the Department of Asylum included only four legal officers, including the head of department, available to conduct refugee status determinations interviews, and one country of origin official. First instance decisions were made by only the Head of Department. The department claimed, quite correctly, that they were under resourced, although this fails to fully explain the low number of interviews conducted. The complement of staff was increased from 11[114] to 29 in January 2015, to include four interpreters (as required under Article 11, Law on Asylum).

In one case, the lawyer acting for an Iraqi family, who considered they had genuine grounds to fear persecution, submitted an appeal to the Asylum Commission on the basis of the "silence of administration" after they had not been interviewed two months after submitting their application; no interview was conducted, and the family decided to return to Iraq as they saw no prospect of getting asylum.[115]

INHUMANE TREATMENT AND OVERCROWDED RECEPTION CENTRES

Article 39(1) of the Asylum Law provides that an asylum seeker who has registered their intention to claim asylum with the police has the right to reside in Serbia "[for the duration of the procedure], if necessary, he/she shall be entitled to accommodation at the Asylum Centre". Asylum Reception Centres (ARC), are administered by the Serbian Commissariat for Refugees.

Until 2014 the capacity of reception centres was inadequate to the number of refugees and asylum seekers, often resulting in overcrowding.[116] In both 2013 and 2014, many had to

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[112] For example, in interview conducted with registered asylum seekers in Bogovadja, July 2014.

[113] Of the 17 decisions made in 2013, four were upheld, five rejected and eight dismissed without deciding on the merits. Amnesty International interview, UNHCR, July 2014.

[114] Others were on sick leave, maternity leave or had not been replaced, Amnesty International interview with Head of Asylum Department, July 2014.

[115] Amnesty International interview BCHR, March 2014.

[116] The first ARC was established at Banja Koviljača, on the border with Bosnia and Herzegovina, in late 2007 (capacity 86-100). In June 2011, when more than 1,000 refugees and migrants were queuing outside that centre, a "temporary" ARC was opened at Bogovadja (capacity 170). In 2013, with an increasing number of people seeking international protection, further "temporary" ARCs were opened at Vračević (January- July 2013) and in December at Sjenica (capacity 80, raised to 170 in October 2014) and Obrenovac (capacity 170, closed in May 2014 after floods in the region, causing further

wait for admittance outside ARCs in conditions that were described by the National Protective Mechanism in 2013 as amounting to inhuman and degrading treatment.[117] With the opening of successive ARCs the capacity by 2014 was around 800. Plans to build a permanent centre, with a capacity of 500 in Mala Vrbica in Mladenovac, close to Belgrade, have been repeatedly delayed since 2012, mainly by opposition from the local community.[118]

In the absence of sufficient accommodation, temporary centres have been opened in unsuitable accommodation, as at the temporary centre opened in a private house in Vračevićin 2013, where conditions were described as "unhygienic and inhuman".[119]

During 2013, when 3,023 asylum seekers were provided with accommodation in ARCs,[120] the pressure was such that between October and November up to 200 people at a time were sleeping out in the woods outside Bogovadja ARC, often in sub-zero temperatures, waiting for admission.[121] With a capacity of 170, Bogovadja was at that time said to be housing 280 persons.[122] The Belgrade Centre for Human Rights issued a statement suggesting that the lack of accommodation placed asylum seekers in conditions amounting to inhumane and degrading treatment.[123] On 27 November 2013, 170 of those still living in the woods were taken to new temporary ARC in a hotel at Obrenovac, in Belgrade.[124]

When Amnesty International visited Bogovadja in July 2014, around 30-40 individuals were again camped out in the ARC's ground on the nearby woods, waiting to enter the centre. The

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overcrowding as asylum seekers were dispersed to other centres). Another "temporary" ARC was opened in Tutin (capacity 80) in January 2014,Amnesty International interviews with Commissariat for Refugees and ARC staff, July 2014. Yet another temporary centre, with a capacity of 100 beds, was opened on 15 August 2014 in the Belgrade suburb of Krnjača, APC, "Otvoren novi privremeni Centar za azil u Krnjači", 18 August 2014, http://www.apc-cza.org/en/component/content/article/8-vesti/583-otvoren-novi-privremeni-centar-za-azil-u-krnjaci.html.

[117] Protector of Citizens, Report on the visit to the Bogovađa Centre within the National Preventive Mechanism, 14 October 2013, p. 5.

[118] http://www.apc-cza.org/en/component/content/article/8-vesti/577-uskoro-jos-jedan-centar-za-smestaj-azilanata.html

[119] Described in detail in, *Right to asylum in the Republic of Serbia 2013*, pp. 62-3.

[120] Excluding Vračević, *Right to asylum in the Republic of Serbia 2013*, p. 24, footnote 32.

[121] Republic of Serbia, Protector of Citizens, *National Preventive Mechanism, Report on the Visit to the Asylum Centre in Bogovadja on 14 October 2013*, http://www.npm.lls.rs/attachments/053_AC%20in%20Bogovadja%2014%20Oct%202013.pdf

[122] Amnesty International interview, Serbian Commissariat for Refugees, July 2014.

[123] BCHR, "Saopštenje povodom smeštaja za tražioce azila", 28 November 2013, http://www.bgcentar.org.rs/saopstenje-povodom-smestaja-za-trazioce-azila/, On 27 November 2013, 170 of these asylum seekers were taken to a hotel at Obrenovac, in Belgrade.

[124] http://www.apc-cza.org/en/component/content/article/8-vesti/551-latest-news-on-evacuated-asylum-seekers.html

organization recorded testimonies from asylum seekers in need of shelter, who had been forced to wait for several days for admission to the ARC, due to the limited number of spaces.

Again, in December 2014, harsh weather conditions caused a dramatic increase in the number of migrants and asylum seekers suffering from frostbite and ill-health in the absence of accommodation. In February 2015, the international medical organisation Médecins Sans Frontières (MSF) reported that several dozens of asylum seekers, including pregnant women and children, were again sleeping rough each night outside the Bogovadja asylum centre, waiting for admission. However, this is disputed by the Commissariat.[125] According to MSF, hundreds more asylum seekers and migrants were without shelter near border areas.[126]

FAILURE TO IDENTIFY VICTIMS OF TORTURE

Under Article 15 of the Law on Asylum, the authorities are required to provide care to asylum seekers with special needs including "persons who were subjected to torture, rape or other serious forms of psychological, physical or sexual violence".[127]

In interviews conducted by Amnesty International, both Asylum Office and ARC staff stated that such individuals are only very rarely identified.[128] Nevertheless, organizations providing medical and psychological assistance to asylum seekers in Hungary told Amnesty International that they had identified and provided assistance to victims of torture and sexual violence, who had previously travelled though Serbia, including those who had stayed at ARCs.[129]

The low identification rate of victims of torture or other ill-treatment seem to be caused by deficiencies in the system, including the absence of any procedures or mechanisms in place to would enable the identification of victims of torture or other ill treatment for the purpose of providing them with specific care.

Asylum Office staff have not been trained in questioning and identifying vulnerable groups, including victims of torture or other ill-treatment, nor have staff at ARCs – who are required

[125] Amnesty International interview, March 2015.

[126] MSF Press Release, "Asylum seekers and migrants left in cold Serbia", 19 February 2015, http://www.msf.org/article/gallery-transit-denied-stranded-cold-serbia . Local authorities in Subotica transported groups children and other vulnerable individuals to an ARC, "Abdul na putu do Evropske unije", 13 Janaury 2015, http://www.apc-cza.org/en/component/content/article/8-vesti/702-abdul-na-putu-do-evropske-unije.html

[127] Article 15, "*The principle of providing care for persons with special needs*. Care shall be taken in the asylum procedure of the specific situation of persons with special needs who seek asylum, such as minors, or persons completely or partially deprived of legal capacity, children separated from parents or guardians, handicapped persons, elderly people, pregnant women, single parents with minor children and persons who were subjected to torture, rape or other serious forms of psychological, physical or sexual violence".

[128] According to the manager of Bogovadja ARC, "about one in 300", Amnesty International interview, July 2014.

[129] Amnesty International interviews with NGOs Menedek and Cordelia Foundation, Budapest, July 2014.

to ensure that asylum seekers in their care receive appropriate medical and other assistance– received such training. No manual exists to provide guidance for staff, or for specific procedures to be adopted with respect to the care of vulnerable asylum seekers, nor are there any established referral mechanisms beyond the provision of medical assistance by health professionals within the Serbian healthcare system.[130]

FAILURE TO IDENTIFY VICTIMS OF TRAFFICKING (QUESTION 12 ON THE LIST OF ISSUES)

Amnesty International considers that the authorities have failed to establish "an effective mechanism to identify persons in need of international protection among victims of trafficking" either within the asylum process, or amongst those found unlawfully in Serbia.

Staff at ARCs have not been trained in the identification of victims of trafficking among asylum seekers or in their referral to relevant agencies. Although Border Police have been trained in the identification of victims of trafficking, only two or three cases of trafficking involving refugees or migrants were identified in 2013, and no cases were reported in 2014.[131] In 2013-2104, only one case – the possible trafficking of children – could Border Police officials recall that a full investigation been conducted.

REFOULEMENT OF REJECTED ASYLUM SEEKERS (QUESTION 9 OF THE LIST OF ISSUES)

Article 57 of the Law on Asylum establishes that asylum seekers whose asylum application has not been granted should voluntarily leave Serbia within 15 days of receiving a final decision; if they fail to do so they may be forcibly expelled under the Law on the Movement and Stay of Foreigners. Pending deportation, they may be detained at the Aliens Reception Centre for Aliens at Padinska skela. According to the Asylum Office, these provisions have not been put into practice, and deportations generally only take place under Readmission Agreements to neighbouring states including Bosnia and Herzegovina and or Albania.[132]

Article 39(3) of Constitution recognises the right not to be forcibly expelled to a country where the person would be at risk of a serious human rights violation.[133] Nonetheless,

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[130] Concerns also exist about inadequate healthcare at the ARCs. Amnesty International interviews with asylum seekers, July 2014; MSF Mobile Team Coordinator, March 2015.

[131] Amnesty International interviews, Tanja Milutinović, Border Police,Chief of Section; Mladen Mrdalj, Commander, Horgoš Border Police, July 2014.

[132] For the deportation of international protestors see, *Serbia: Release detained human rights activists*, 17 December 2014, https://www.amnesty.org/en/documents/eur70/019/2014/en/

[133] "Entry and stay of foreign nationals in the Republic of Serbia shall be regulated by the law. A foreign national may be expelled only under decision of the competent body, in a procedure stipulated by the law and if time to appeal has been provided for him and only when there is no threat of persecution based on his race, sex, religion, national origin, citizenship, association with a social group, political opinions, or when there is no threat of serious violation of rights guaranteed by this Constitution".

rejected asylum seekers are rarely granted the right of appeal against a deportation order.[134]

Amnesty International notes that the Committee on Enforced Disappearances has recently sought clarification on decisions on the expulsion of asylum seekers whose asylum applications have been rejected, and called on Serbia to ensure that the "appeals procedure for rejected asylum applications has automatic suspensive effect and provides for a substantive review of the application".[135]

PUSH BACKS AND UNLAWFUL RETURNS TO MACEDONIA

Amnesty International has received credible reports that refugees and migrants are regularly pushed back from the Serbian border with Macedonia, and may be at real risk of being subjected to cruel, inhuman or degrading treatment or punishment in Macedonia.

Amnesty International has received credible reports that since 2011 both undocumented migrants and rejected asylum seekers deported from Hungary to Serbia are subsequently deported to the country from which they entered Serbia - in the majority of cases, the former Yugoslav Republic of Macedonia (Macedonia), without access to an asylum process or any procedure to challenge the deportation.[136] Amnesty International received further allegations that deportees from Hungary are taken by the Serbian police by bus to the border with Macedonia and pushed over the border without a chance to seek asylum or appeal their deportation from Serbia, from migrants and asylum seekers as well, supported by intergovernmental organizations and domestic NGOs.[137] On the basis of this evidence, Amnesty International considers that people returned to Serbia from Hungary risk "chain *refoulement*" without their international protection needs being determined.[138]

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[134] In 2013 the European Court of Human Rights issued an interim measure in the case of an Iranian national (who had previously applied for asylum in Greece) whom the authorities wished to deport. BCHR was not been informed, nor did the authorities have permission for the removal. For this and similar cases, see BCHR, *The right to Asylum in the Republic of Serbia 2013*, and BCHR, *The Right to Asylum in the Republic of Serbia, 2012.*

[135] Committee on Enforced Disappearances, *Concluding observations on the report submitted by Serbia under article 29, paragraph 1, of the Convention*, (Advance Unedited Version), paras. 19-20, http://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/SRB/INT_CED_COC_SRB_19624_E.pdf

[136] Amnesty International interviews, July 2014 and January 2015. According to a Greek photojournalist, asylum seekers and migrants, even those who had not passed through Macedonia, were deported there, Amnesty International skype interview with Giorgos Moutafis, February 2014.

[137] An asylum seeker at Bogovadja ARC told Amnesty International that he had been deported three times from Serbia to Macedonia; Amnesty International interview, July 2014; similar reports were confirmed in Amnesty International interviews in July 2014, with UNHCR in both Serbia and Macedonia; and Serbian NGOs, APC and BCHR, and with the Assistant Director of Border Police, Macedonia Ministry of Interior, January 2015. See also "*No place to go – detention in"Padinska Skela" and deportations. A testimony of S.",* http://noborderserbia.wordpress.com/memories-poems-stories-songs/

[138] See also http://helsinki.hu/wp-content/uploads/Serbia-report-final.pdf (2012); http://helsinki.hu/wp-content/uploads/Serbia_as_a_safe_third_country_A_wrong_presumption_HHC.pdf;

There is also ample compelling evidence that persons found to be irregularly on the territory of Serbia and who have not (yet) recorded their intention to seek asylum, including unaccompanied minors, are routinely deported, or pushed back at Serbia's borders without access to due process.[139] The Serbian Asylum Office in March 2015 confirmed that persons found to be irregularly on the territory of Serbia are driven by bus to the Macedonia border in order to give effect to deportation orders, which state that they must leave the country within five days. Amnesty International has also interviewed migrants and asylum seekers who report that they have been pushed back into Serbia at the Hungarian border. Similar testimonies have been reported by MSF teams working in that area. However, a representative of the regional Border Police told Amnesty International that this occurred in very few cases.[140]

According to the Border Police Department, 9,014 persons were detained in 2014 as irregular migrants in Serbia. But, as noted above, few formal deportations take place. Under the Law on Foreigners, the majority of those detained are either required to pay a fine of up to €50, or are sentenced to four or five days imprisonment, and issued with a deportation order. Amnesty International has, however, received reports from migrants and asylum seekers that they are issued with a court decision on deportation, without having been taken before a court; the documents being issued at the police station.[141]

The Asylum Office told Amnesty International that in 2014 they had sent 20 requests, under a Readmission Agreement with Macedonia,[142] to the Macedonian authorities for the readmission of around 200 individuals, but that all requests had been refused, reportedly on the basis that the Macedonian authorities are unable to return asylum seekers to Greece.[143] Evidence gathered by Amnesty International in both Serbia and Greece solidly indicates that refugees and migrants found to be irregularly on the territory of Macedonia are routinely pushed back to Greece by the Macedonian authorities. Such push backs do not occur just at the border between Macedonia and Greece, but from within the country, and without the opportunity to claim asylum in Macedonia or challenge the deportation.[144]

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[139] Amnesty International interviews with APC and BCHR, July 2014, February 2015; interviews with refugees and migrants, Subotica, July 2014 and March 2015.

[140] Amnesty International interviews in Subotica, and with Kikinda Border Police, March 2015.

[141] Amnesty International was been shown examples of these documents by migrants and refugees, apparently issued by the Misdemeanour Court in Subotica, but not bearing the signature of a judge, or a court stamp, as should be normal practice. A humanitarian worker in Subotica told Amnesty International that he had witnessed such documents being issued to migrants and asylum seekers by Border Police, after the former had been detained at the "green border", Amnesty International interviews, Subotica, March 2015.

[142] "Zakon o Potvrđivanju Sporazuma Između Vlade RepublikeSrbije I Vlade Republike Makedonije O Predaji iPrihvatu Lica Čiji Je Ulazak ili Boravak Nelegalan saProtokolom Između Vlade Republike Srbije I VladeRepublike Makedonijeo Sprovođenju SporazumaIzmeđu Vlade Republike Srbije i Vlade Republike Makedonije o Predaji i Prihvatu Lica Čiji Je Ulazak ili Boravak Nelegalan", 31 March 2011, http://www.parlament.gov.rs/akti/doneti-zakoni/u-sazivu-od-11-juna-2008.1526.html

[143] Amnesty International interview, Department of Asylum, July 2014.

[144] Amnesty International interviews with asylum seekers in Serbia, March 2015; interviews with

TREATMENT IN MACEDONIA

Amnesty International is concerned that, based on evidence gathered by the organization in both Serbia and in Greece, persons deported, pushed back or otherwise forcibly returned to Macedonia are at real risk of ill-treatment and detention in inhumane and/or degrading conditions upon return.

The organization has gathered testimonies from refugees and migrants that they have been subjected to ill-treatment, including beatings, by law enforcement officials in Macedonia.[145]

The organization has also gathered testimony from refugees, who were found in the company of persons suspected to be smugglers, that they were detained – in the capacity of witness – in the Reception Centre for Foreigners at Gazi Baba. There they report that they were subject to ill-treatment, including beatings, and unlawfully detained – without access to a lawyer, for up to six months. The conditions they describe amount to inhumane and degrading conditions.[146] The conditions in Gazi Baba have also been reported by the Macedonian Ombudspersons Office (as National Preventive Mechanism), UNHCR in Macedonia, the Macedonian Young Lawyers Association and the EU Delegation to the Former Yugoslav Republic of Macedonia.[147] The European Committee for the Prevention of Torture (CPT) conducted a visit to Gazi Baba in November 2015; while the CPT in April raised concerns about the Reception Centre for Foreigners with the government, their report has not yet been made public.[148]

"SAFE COUNTRIES OF ORIGIN" AND "SAFE THIRD COUNTRIES" (QUESTIONS 10 AND 11 OF THE LIST OF ISSUES)

Article 33(6) of the Law on Asylum provides that an asylum application shall be dismissed in the event "the asylum seeker has come from a safe third country, unless he/she can prove that it is not safe for him/her". For those who are interviewed and denied refugee status at the first instance, Article 35 provides for the right of appeal to a second instance body, the Asylum Commission (Article 20), within 15 days of the initial decision.

Until 2012, the Asylum Office automatically applied the "safe third country" concept, without seeking further information from the applicant. Safe countries are listed in a

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migrants and refugees in Greece, March 2015.

[145] Amnesty International interviews July 2014 and March 2015.

[146] Amnesty International interviews with asylum seekers in Serbia, July 2014 and March 2015; in Macedonia, January 2015, and in Greece, March 2015.

[147] See for example, National Preventive Mechanism, 03.07.2014, Ad hoc visit of the Centre for foreigners, http://ombudsman.mk/upload/NPM-dokumenti/2014/Poseti/Vonredna%20poseta-Prifaten%20Centar%20za%20stranci-03.07.2014-Ang.pdf, Amnesty International interviews, Macedonia, February 2015. See also, *Macedonia : Hundreds unlawfully held in inhuman conditions*, 26 February 2015, https://www.amnesty.org/en/documents/eur65/1083/2015/en/

[148] CPT, "President of the Council of Europe anti-torture Committee holds high-level talks in Skopje", http://www.cpt.coe.int/documents/mkd/2015-04-01-eng.htm

Government decree on defining the list of safe countries of origin and safe third countries, which includes 54 "safe countries of origin" and 42 "safe third countries", including all countries with borders with Serbia, including Macedonia, as well as the countries through which most reach Serbia, including Greece and Turkey.[149] This has not been amended since 2009. Although since 2012, the Asylum Office has sought further information from applicants and country of origin information,[150] in the view of NGOs providing legal assistance to asylum seekers, the application of the "safe country" policy broadly continues. Between January and April 2014, for example, all decision made in seven cases where applicants were represented by lawyers working for the Asylum Protection Centre (APC) were rejected "pursuant to Art. 33, paragraph (1) item 6, 13 i.e. because the asylum seeker came to Serbia from a safe third country".[151]

This problem is compounded by further deficiencies at the appeals stage. According to NGOs providing legal assistance to asylum seekers, the majority of appeals are routinely dismissed, irrespective of their merits, including in appeals against decisions based on the "safe third country" concept; explanations for rejection are rarely provided.[152]

ILL-TREATMENT OF ASYLUM SEEKERS BY LAW ENFORCEMENT OFFICIALS (QUESTION 13 OF THE LIST OF ISSUES)

"When the police catch you, they do what they want. We hear the stories again and again. The police are acting according to directions, officially. They can beat you, they can threaten you, and they can do what they want to do. They are extracting money. They take advantage of that."[153]

Although asylum seekers and migrants interviewed by Amnesty International have generally been positive about their treatment by the Serbian police, the organization has received a number of allegations that suggest that some law enforcement officers are responsible for the ill-treatment of migrants and asylum seekers. In July 2014 for example, individual migrants in Subotica and a group of young asylum seekers from Somalia staying at the Bogovadja ARC Amnesty International that they had been beaten with sticks by Serbian border police on the

[149] "Government decree on defining the list of safe countries of origin and safe third countries", Službeni glasnik RS, No. 67/2009, http://www.apc-cza.org/en/component/phocadownload/category/2-zakoni-i-konvencije.html?download=5:odluka-o-utvrdjivanju-liste-sigurnih-drzava-porekla

[150] Amnesty International interviews, Asylum Office, July 2014, March 2015.

[151] *Asylum In The Republic Of Serbia: Report For The Period of January –April 2014*, p.8, http://azil.rs/doc/ENG_april_2014.pdf

[152] In 2013, 19 appeals were submitted to the Asylum Commission; two were upheld (setting aside the first instance ruling), and 10 rejected as ill-founded, BCHR, *Right to asylum in the Republic of Serbia 2013,* p. 17.

[153] Amnesty International interview with head of humanitarian organization, Subotica, Serbia, July 2014.

Serbia-Macedonia border.[154] In Subotica migrants and asylum seekers separately reported being slapped, kicked and beaten, including with sticks, by police near the border with Hungary, and in one case, an asylum seeker alleged that he was beaten at Subotica police station while in detention.[155]

Migrants and asylum seekers also told Amnesty International that they were threatened by Serbian Border Police while waiting to cross the Hungarian border in Subotica in the north of Serbia. One group of four Afghan men stated that, on a previous attempt to cross the border, they had been discovered by armed Border Police, who had given them the option of paying €100 each, or otherwise be arrested. Frightened that they would be shot, they paid, and "The police told us, "Go! Go! Go!"[156] While it is impossible to corroborate allegations that Serbian law enforcement officers are involved in the exploitation of asylum seekers and migrants, through demanding bribes, they are frequent and consistent, and have been reported by other international and domestic NGOs.[157]

Amnesty International recommends that the Serbian government:

- Ensure that the Asylum Office provides prompt access to an individualized asylum process, including through the timely registration and issuing of identity cards, conduct of refugee interviews, adequate consideration of accurate and updated country of origin information, and the provision of refugee status decisions within a reasonable time;
- Consult fully on the new draft law with relevant agencies, UNHCR and NGOs, to ensure that it is fully compliant with international standards and addresses deficiencies in the current law, including the lack of time-bound obligations;
- Establish a fully independent Asylum Office, independent of the Ministry of Interior, staffed with sufficient trained, qualified and experienced civilian personnel, and provided with the financial and technical resources required to respect, protect and fulfil the rights of asylum seekers;
- Ensure the provision of adequate reception facilities to prevent asylum seekers from suffering inhumane or degrading living conditions;
- Ensure Border Police and staff at ARCs are provided with training in the identification of vulnerable asylum seekers, including victims of torture or other ill treatment, rape and other sexual violence, and trafficked persons; establish an effective referral mechanism with relevant state agencies and NGOs to address their specific support and procedural needs;
- Promptly investigate allegations of push backs and refrain from returning anyone to Macedonia in violation of the principle of *non-refoulement*.

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[154] Amnesty International interview July 2014.

[155] Amnesty International interviews conducted in March 2015 near the Greek-Macedonian border, in Greece; in Bodovadja and Krnjača ARCs, and in Subotica, Serbia, March 2015.

[156] Amnesty International interview with R.A., and three other Afghan asylum seekers, July 2014.

[157] A Syrian asylum seeker reported when that he and a group of three others when found by Serbian Border Police approaching the Hungarian border, they were oferred the choice of paying €100 each and being directed to the border, or otherwise being returned to Serbia, Amnesty International interview, Hungary, March 2015; with Serbian NGOs; communication with Human Rights Watch.

HUMAN RIGHTS DEFENDERS

ARTICLE 16, (QUESTION 35 IN THE LIST OF ISSUES)

"*In Serbia today, if you campaign for accountability for abuses from the past, for gay or women's rights or if, as a journalist, you write about the links between government and organized crime, then you quite literally put your life on the line. We are safe only so long as we are protected by the international community.*" Biljana Kovačević-Vučo, then Director of YUCOM, 2008. [158]

Despite the Committee's 2009 recommendation that Serbia "take concrete steps to give legitimate recognition to human rights defenders and their work", borne out of their concerns about the hostile environment for human rights defenders (HRDs) working on transitional justice and minority rights, Biljana Kovačević-Vučo's statement is equally true today.[159] In the intervening period, Serbia has significantly failed to protect the rights of HRDs and independent media journalists, including to physical and metal integrity.[160]

Indeed, Amnesty International considers, that since 2012 the situation of HRDs, and independent media journalists has deteriorated. Rather than ensure independence and plurality of the media, members of the government, or their agents, have undermined, rather than protected the rights journalists, prompting Gordana Igrić, the regional director of Balkan Independent Reporting Network, to write, "This kind of propaganda against independent and critical media reminds me of the 1990s".[161]

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[158] Quoted in *Serbia: Human Rights Defenders at Risk*, 14 September 2009, http://www.amnesty.org/en/library/info/EUR70/014/2009/en;see also see, for example, *The Writing on the Wall: Serbian Human Rights Defenders at Risk*, 29 November 2005, https://www.amnesty.org/en/documents/eur70/016/2005/en/

[159] CAT/C/SRB/CO/1, para.13.

[160] According to the Serbian journalists' association NUNS (Nezavisno udruženje novinara Srbije) between 2008 and early 2014, there were a reported 365 incidents of physical and verbal assault, intimidation and attacks on the property of journalists, "Novinari i dalje na nišanu", https://sites.google.com/site/specijalizovanidosije/br-18-baza-napada-na-novinare-2013/novinari-i-dalje-na-nisanu

[161] During 2014-15, there has been a significant increase in verbal attacks, harassment and the attempted intimidation of independent journalists by public officials, the closure of political talk shows, as attempts to either take down or hack websites of independent media critical of the government; see for example, Balkan Insight, "Vucic Disputes BIRN Revelations on Etihad Contract", 15 August 2014, http://www.balkaninsight.com/en/article/vucic-disputes-birn-revelations-on-etihad-contract; http://www.balkaninsight.com/en/file/show/Informer%203.pdf; NUNS, "Pritisak Aleksandra Vučića Na Novinare Birn-A", 10 January 2015, http://www.nuns.rs/info/statements/23139/pritisak-aleksandra-

In 2009, Amnesty International reported on continued threats to individuals and NGOs (including gender-based threats), working on transitional justice, as well as HRDs protecting lesbian, gay, bisexual, transgender and intersex (LGBTI) rights.[162] The same HRDs still receive threats to their lives and property, although the number of physical attacks has declined.[163] For some, such threats – especially on social media – are so routine, (for the organizers of the Belgrade Pride, almost daily), that HRDs rarely report them to the police, having little faith that the authorities will bring the perpetrators to justice. When they do notify the authorities, police and prosecutors often fail to act with due diligence in bringing perpetrators to justice, or in taking into account provisions for crimes motivated by hate, including in cases of physical attacks on lives and property.

LGBTI HUMAN RIGHTS DEFENDERS

The holding in September 2014 of the first Pride March since 2010 was greeted as a great success in guaranteeing LGBTI people in Serbia the right to freedom of expression and assembly. Yet, the rights of LGBTI people, including the right to life and bodily integrity, and to redress and reparation, have not been guaranteed.

In December 2012 Serbia adopted a Law on Amendments to the Criminal Code, which introduced the concept of hate crimes. Article (54a) provides that where a crime is considered to have been motivated by race, religion, national or ethnic origin, gender, sexual orientation, or gender identity, this might be considered as an aggravating circumstance in sentencing.

According to the ODIHR, up to 30 successful prosecutions a year for "hate crimes" took place up to 2012.[164] Yet in 2013, following the adoption of the amendment, the NGO Labris found no successful prosecutions of homophobic or transphobic hate crimes.[165] Crimes

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vucica-na-novinare-birn-a.html; http://www.balkaninsight.com/en/article/eu-condemns-serbia-pm-s-criticism-of-birn-1; "Serbia: Protesters criticise cancellation of political talk shows", 6 October 2014, http://mediafreedom.ushahidi.com/reports/view/388; http://www.balkaninsight.com/en/article/belgrade-s-tv-head-dismissed; "Getting a PhD in Serbia: the case of minister Stefanović", 2 June 2014, http://pescanik.net/getting-a-phd-in-serbia-the-case-of-minister-stefanovic/; http://pescanik.net/a-summer-strike/

[162] In 2009, Amnesty International reported on continued threats to individuals and NGOs (including gender-based threats), working on transitional justice, as well as HRDs protecting Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) rights, see *Serbia: Human Rights Defenders at Risk*.

[163] Other HRDs are also at risk for other reasons: in December 2013, Aida Ćorović, head of the NGO "Urban–In" based in Novi Pazar, had to be placed under police protection in, following threats against her from Islamic groups and local political leaders because of her criticisms of radical interpretations of Islam and on local corruption, http://www.civilrightsdefenders.org/news/statements/no-more-tolerance-towards-radical-and-extremist-groups-in-serbia/.

[164] For figures and analysis to 2012, see http://hatecrime.osce.org/serbia;

[165] Labris, *HateCrimes .Actions of State Authorities in Cases of Attacks Against LGBT Persons in Serbia*, 2013, http://labris.org.rs/en/wp-content/uploads/2014/04/Hate-Crimes-Publication-English.pdf

against LGBTI people, where they are reported, are not promptly, impartially and thoroughly investigated, nor is it always understood that the motivation for such crimes must be fully investigated.

In October 2013, Pride organizer and human rights defender, Boban Stojanović's, home, where he lived with his partner Adam Puškar, was extensively damaged, including by a suspected Molotov cocktail. Graffiti indicated that the crime was motivated by his sexual orientation and his visibility as part of a gay couple, reading: "We know where you live, we know where you sleep." Further graffiti took the form of two male symbols crossed out by a swastika.

Boban Stojanović immediately contacted the police, and forensic officers promptly came to his home to record the damage and gather evidence.[166] He then moved to a safer location, and continues to feel unsafe, and thus unable to live at the property. After six months, the period set out by law during which an investigation should be conducted, the police had made no progress. Boban Stojanović then took out a complaint against the police for their failure to investigate. Lawyers acting for Boban Stojanović informed Amnesty International in March, that they had not yet received a reply to a letter send to the relevant police department in December 2014, requesting information on the progress of the complaint.[167]

In October 2014, during a periodic visit to check the property, he discovered that a window had again been broken. In the absence of threats or graffiti, the Public Prosecutor found no element of hate crime, and characterised it as property damage.[168]

The Belgrade-based NGO Gay-Straight Alliance (GSA) regularly receives threats of violence, including death threats, via email and on social networks. Each of these threats are immediately reported to the police, and members of the board have provided detailed statements to the Special Prosecutor's Department of Cyber Crime. However, no suspects had been identified by January 2015.[169]

On 10 March 2014 GSA reported that, for the first time, they had received a threatening phone call on their SOS Hotline. As the caller's number was visible, GSA immediately reported the incident to the authorities.[170] On 1 April, GSA received further extremely homophobic and violent threats through the contact form on their website, and again reported them to the authorities.[171]

On 12 May 2014, GSA issued an email stating that on 11 May they had again received

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[166] *Serbia must commit to ensure the protection of LGBTI people*, 1 November 2013, http://www.amnesty.org/en/library/info/EUR70/016/2013/en

[167] Communication from Lawyers Committee for Human Rights (YUCOM), Belgrade.

[168] Interviews and emails with Boban Stojanović, October 2013 - January 2015.

[169] Email received from Lazar Pavlović, GSA, 29 January 2015.

[170] http://en.gsa.org.rs/2014/03/threats-to-gay-straight-alliance/

[171] http://en.gsa.org.rs/2014/04/new-death-threats-to-gay-straight-alliance/

threats on the SOS Hotline number, from the same mobile phone number as in March and immediately informed the police. However they reported that their initial report was "still with the First Basic Prosecutor and it seems that it was never processed".[172]

The police then forwarded a file related to the second threat from the same mobile to the Basic Public Prosecutor's Office in Vranje, in southern Serbia, which subsequently identified a suspect, under 18 years of age. According to Lazar Pavlović, Acting President of GSA, the police declined to initiate proceedings against the suspect "because we didn't report the first phone call threats (in March) to the police" (both threats were in fact reported to the police immediately after they occurred), concluding that "GSA didn't take these threats seriously".[173]

In presenting their Annual Report for 2014, the GSA president noted a positive increase in the number of case of violence and discrimination reported to the police, but that further efforts were required to reduce the number of unresolved cases.[174]

TRANSITIONAL JUSTICE & GENDER

In both its 2005 and 2009 reports, Amnesty International documented threats and attacks to the live and property of, as well as malicious prosecutions against human rights organizations and individuals seeking to challenge impunity for crimes under international law committed during the wars of the 1990s. In many of these cases, those targeted for such attacks are women, working in both human rights and in women's organizations, where threats and attacks have been made on the basis of their gender.

Amnesty International had reported threats in 2005-2009, for example, to Sonja Biserko, Chair of the Helsinki Committee for Human Rights in Serbia, related to her work for human rights and transitional justice. In 2013, after it was made public that she was to appear as a witness for Croatia in a hearing of Serbia and Croatia' genocide counter-claims before the International Court of Justice (ICJ), she was subjected to a continuing virulent and vicious hate campaign, including on the basis of her gender.[175]

Amnesty International has previously reported repeated, and often gender-based, threats to the life and property of Nataša Kandić, former Executive Director of the Humanitarian Law Centre (HLC), as well as a series of politically motivated prosecutions. In February 2015, proceedings were again opened against Nataša Kandić, on behalf of General Ljubiša Diković, the current Chief of Staff of the Serbian Army, in relation to allegations made against the General and published by the NGO in 2012 that he had committed war crimes in Kosovo,

[172] Email received from GSA, 12 May 2014.

[173] Email received from Lazar Pavlović, GSA, 29 January 2015.

[174] http://en.gsa.org.rs/2015/03/gsa-annual-report-for-2014-presented-in-national-assembly/

[175] See for example, *Sonja Biserko nije sam*, 4 March 2014, http://zeneucrnom.org/index.php?option=com_content&task=view&id=998.

had damaged his honour and reputation.[176]

Following publication by the HLC on 30 January 2015 of the "Rudnica Dossier", the HLC and its current Executive Director, were again under attack. The dossier included detailed evidence and allegations that Ljubiša Diković – as commander of the 37th Motorized Brigade of the Yugoslav Army in Kosovo in the relevant period in 1999, "knew or had reason to know" that crimes had been committed in the villages, and concluding thatan investigation should be opened into his command responsibility in connection with his command responsibility for attacks on four villages between 5 April and 27 May, in which at least 69 Kosovo Albanians were killed, some of whose bodies had been subsequently transported to Serbia, and in 2014 exhumed in Rudnica.[177]

The Ministry of Defence immediately issued a statement, criticizing the allegations, describing them as a direct attack on reputation of the Republic of Serbia and its armed forces. The NGO was subsequently attacked in the mainstream media, and by almost every institution in Serbia, including President Tomislav Nikolić, who accused the HLC of wanting, "[T]o cause instability in Serbia by any means and return the country to chaos". Prime Minister Vučić described the dossier, "as [part of] a continuous campaign against an institution [the Army] that has the biggest support of Serbian public, and it is obvious... that one part of the public and politicians want to destroy everything good in Serbia".[178]

Neither the General nor any government officials initiated a prosecution, but a private complaint was brought against Sandra Orlović, Executive Director of the HLC, for "causing concern amongst citizens" by a lawyer who had previously acted for member of the Serbian and Bosnian Serb armed forces.[179]

GENDER BASED HATE CRIMES: ŽENE U CRNOM (WOMEN IN BLACK)

On 26 March 2014, Radomir Počuča, a spokesperson for the Ministry of Interior Anti-Terrorist police, posted a message on his personal Facebook page, encouraging football fans to stop fighting each other, but to attack the NGO Women in Black. The message appeared the day before the NGO took part in a silent vigil to commemorate the victims of the Kosovo

[176] B92, "Army chief vs. ex-NGO head trial starts", 18 February, 2015, http://www.b92.net/eng/news/crimes.php?yyyy=2015&mm=02&dd=18&nav_id=93224

[177] "The data and evidence presented in this Dossier provide sufficient grounds for launching an investigation against several persons for the execution and concealing of crimes, which they committed either as direct perpetrators and/or for which they had command responsibility. Therefore, the HLC calls on the OWCP to take the necessary action needed to prosecute those responsible for the crimes, without further delay", HLC, *Dossier Rudnica*, p. 8, http://www.hlc-rdc.org/wp-content/uploads/2015/01/Dosije_Rudnica_eng.pdf.

[178] http://www.balkaninsight.com/en/article/serbian-pm-claims-war-crime-allegations-of-army-chief-attack-on-the-army

[179] Independent Balkan News Agency, "Lawsuit Filed Against HRF [HLC] Directress For Denouncing Serb Crimes In Kosovo",2 FEBRUARY 2015, http://www.balkaneu.com/lawsuit-filed-hrf-directress-denouncing-serb-crimes-kosovo/

war. On 29 March, on another Facebook page, in support of Radomir Počuča, a "Boris Knežević" wrote: "I call upon all our brothers, wherever they see those whores in black, to immediately lynch and burn them!!!" Further threats appeared on Facebook, including by "Online Reporter", who wrote: "They are evil, they have made up those so-called rapes in Bosnia and Kosmet [Kosovo and Metohija], and they would be happy if anyone wanted to rape them..."[180]

Threats against the NGO continued: on 5 April, a demonstration in support of Radomir Počuča - organized by a right wing group known as the Serbian Parliament Zavetnici (Pledgers) – was held outside their office, and called for the introduction of a law prohibiting NGOs, on the model of that introduced in Russia.[181] On 6 April, further threats were posted on social media calling for Women in Black "to be slaughtered [with a] serrated knife and blunt object".[182] The NGO's offices were put under 24-hour police protection.

The Lawyers' Committee for Human Rights (YUCOM), on behalf of Women in Black, brought criminal charges against Radomir Počuča under Article 387 of the Criminal Code (Racial and other forms of discrimination). The Prosecutor's Office for Cyber Crime subsequently launched a preliminary investigation, but re-qualified the crime as "a threat to public security", which attracts a lesser sentence, and does not provide for the examination of a possible hate motive. Radomir Počuča was dismissed from his post, and in theory proceedings continue. A year later there has been no main hearing; after the defendant failed to appear at proceedings in October 2014, a warrant for his arrest was issued in November. According to his Facebook page, Radomir Počuča was in Ukraine, fighting with the pro-Russian militia.[183]

On 8 July 2014, members of Women in Black were attacked while they held a silent vigil in the town of Valjevo in western Serbia, as part of the commemoration of the 19th anniversary of the Srebrenica massacre. They were first subject to booing, which was followed by "savage howling, cursing, spitting and hurling of sexist, racist and other derogatory insults, and accusation that they had "invented Srebrenica".[184] Then, a group of men, one of whom was wearing a T-shirt with the words "Chetniks Valjevo" and an image of former Bosnian Serb General Ratko Mladić threw eggs at the group. Although the police presence was increased, some men then physically assaulted the activists, seized their banners and injured four of the group. [185] Eleven men were arrested for the attack, along with four others suspected of

[180] For further details of these and other threats, see *Repression over human rights defenders: Attacks against Women in Black in the* period March-September 2014, http://www.helsinki.org.rs/otpor%20ekstremizmu/doc/Dossier%202%20-%20attacks%20on%20WiB,%20September%202014.pdf

[181] Amnesty International interview with Stasa Zajović, May 2014.

[182] http://www.blic.rs/Vesti/Hronika/455707/Nazubljenim-predmetom-i-tupim-nozem-Pretnje-smrcu-Zenama-u-crnom

[183] http://www.balkaninsight.com/en/article/serbian-ex-policemen-skips-trial-again

[184] Email communication, Zene u Crnom, 9 July 2014.

[185] As far as Amnesty International is aware only the Minister for European Integration condemned the

assaulting police officers. They were sentenced to one month's imprisonment, but after a day in pre-trial custody, they were released.[186] At no point was this case considered as a hate crime.

Amnesty International recommends that the government of Serbia:

- Publicly condemn threats and attacks on HRDs, and ensure the protection of HRDs in accordance with the UN Declaration on Human Rights Defenders;187

- Refrains from making or supporting attacks on individuals and NGOs who challenge impunity for crimes under international law.

With respect to hate crimes against HRDS, ensure that:

- Effective investigations are conducted into the crimes outlined above, and that the suspects are promptly brought to justice;

- Police and prosecutors are provided with training to ensure they are fully aware of their obligations to investigate any alleged discriminatory motives, where there is reason to believe that such a motive may have played a role in a criminal offence; prosecutors should present alleged discriminatory motives to the attention of the court when there is sufficient evidence to do so; [188]

- The relevant bodies collect data on hate crimes at all levels, including reporting, investigation, prosecution and sentencing, disaggregated by hate motive including sexual orientation and gender identity. This data should be made publicly available (while taking account of privacy) and authorities should develop policies to combat all forms of discrimination on the basis of such data.[189]

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threats against Women in Black and GSA, Žene u crnom, Belgrade, *Repression over Women Human Rights Defender*s, 23 April 2014.

[186] According to Women in Black, the Valjevo Municipal Court in Valjevo ruled that the decision on sentencing had failed to adequately consider the gravity of the acts, in accordance with the Law on Criminal Proceedings.

[187] UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, (Declaration on Human Rights Defenders),http://www.ohchr.org/Documents/Issues/Defenders/Declaration/declaration.pdf

[188] The European Court of Human Rights has stated that the failure to take all reasonable steps to unmask this motive amounts to a failure to distinguish between situations which are fundamentally different and so it is a violation of the prohibition of discrimination, Nachova and Others v Bulgaria, Applications nos. 43577/98 and 43579/98, 6 July 2005, Stoica v Romania, Application no.42722/02, 4 March 2008, Šečic v Croatia, Application no. 40116/02, 31 May 2007.

[189] Amnesty International considers that ensuring that the hate motive is identified also makes it possible to collect statistics and develop effective strategies to combat and prevent future hate crimes. More

effective strategies, coupled with denunciations of hate crimes by public officials, help build confidence in targeted groups in the ability and willingness of the state to protect their rights. This in turn promotes reporting of crimes to police by marginalized individuals or members of groups and communities, and facilitates more successful investigations and prosecutions.

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