



UPR Submission on Bosnia and Herzegovina August 2009

This submission highlights Human Rights Watch's concerns in Bosnia and Herzegovina (BiH). These include obstacles to fair and effective war crimes trials before cantonal and district courts; inadequate safeguards in national security expulsions; the treatment of refugees and internally displaced persons (IDPs); threats and violence against sexual minorities; and ethnic and religious discrimination in the political system.

1. Impediments to Accountability for War Crimes in Local Courts

Bosnia's War Crimes Chamber continues successfully to pursue its mandate of prosecuting those responsible for war crimes. But the large backlog of cases, which could involve as many as 10,000 suspects, mean that fair and effective prosecutions in local cantonal and district courts are crucial to ensure accountability for wartime abuse.

There has been some progress in prosecuting cases before cantonal and district courts, especially in Federation BiH cantonal courts. But local courts face serious obstacles in their efforts to prosecute war crimes cases, including: a lack of witness protection capabilities and witness support in most courts; insufficient staffing and a lack of specialization among cantonal and district prosecutors; a lack of harmonization of the legal codes used in war crimes trials at the state and entity levels; limited cooperation between prosecutors and police, as well as between police across entity lines; a lack of trust between some victims and prosecutors, exacerbated by insufficient outreach.

Citing the absence of provisions in Bosnian law enabling the extradition of its citizens, the State Court of Bosnia and Herzegovina refused on June 23, 2009 to extradite Branimir Glavas to Croatia, where the Zagreb County court had sentenced him to ten years in jail for crimes against Serbian civilians in Osijek (in his presence). A naturalized Bosnian citizen, Glavas is a high ranking Croatian politician and a former major general of the Croatian army. The

case illustrates the continuing absence of effective mechanisms for regional cooperation on war crimes cases, especially in relation to extradition requests.

Human Rights Watch hopes that in the upcoming Universal Periodic Review of Bosnia and Herzegovina, the Government will commit to:

- Ensure that justice systems in the Federation and Republika Srpska are equipped with adequate, trained prosecutors, judges, and staff to fairly and efficiently process war crimes cases in cantonal and district courts within a reasonable time frame.
- Prioritize the creation of witness protection and support services within the entity justice systems.
- Improve cooperation on war crimes cases with neighboring states, including by amending the criminal procedure code to allow the extradition of Bosnian citizens.

2. Lack of Due Process in the Citizenship Review process and Inadequate Safeguards against *Non-refoulement* in National Security Expulsions

There are concerns about the functioning of the Bosnian state commission established to review wartime decisions on the naturalization of foreign citizens. Around 300 persons have already had their citizenship revoked. Those who are stripped of their citizenship face deportation from Bosnia.

While the process is said to be motivated solely by concerns over irregularities in naturalization decisions, it appears to be linked to concerns about the presence in Bosnia of alleged Islamist radicals with links to terrorism. The original decisions were taken by the commission behind close doors and the final decisions did not contain detailed justifications. The individuals undergoing the reviews did not have an opportunity to participate in the procedures at any point or, in particular, to challenge the information used against them. The appeals are being processed by officials of the Ministry of Internal Affairs, which is the same body under which the citizenship review commission operates. The individuals undergoing the appeal procedure do not have a chance to be present at any point during the procedure. The final decisions also do not contain detailed justifications.

Some of those whose citizenship has been revoked left Bosnia voluntarily. Many have appealed against the loss of their citizenship

and have been allowed to remain in Bosnia pending the outcome of those appeals.

Bosnia lacks adequate safeguards against the risk of return to serious human rights abuse, including torture or ill-treatment, for those subject to deportation. In addition, the right to a judicial appeal to challenge a deportation or expulsion order with automatic suspensive effect against removal is necessary to ensure that Bosnia is in compliance with its international human rights obligations.

Six North African and Middle Eastern men deemed a threat to national security are currently detained in the Lukavica immigration center pending deportation to their countries of origin. Benkhira Aissa, an Algerian whose Bosnian citizenship was revoked, was twice sentenced to death in Algeria in 1998 and 1999 on charges related to "conspiracy against the state and activities within a terrorist group." The other five persons awaiting deportation are Imad Al Husin (Syrian), Ammar Al Hanchi (Tunisian), Aiman Awad (Syrian), Omar Frendi (Algerian) and Abdullah Baura (Iraqi). Al Husin's deportation to Syria was halted in January 2008 following the intervention of the European Court of Human Rights. In the case of Aiman Awad, whose Bosnian citizenship was revoked in July 2007, local and international NGOs raised concerns about the risk of *refoulement*, considering Syria's record of torture and ill-treatment in detention and interrogation centers.

Three of the six Algerian national security suspects illegally transferred by the US military to Guantanamo Bay detention center in 2002 with the complicity of the Bosnian authorities were returned to Bosnia in December 2008. The three are naturalized Bosnian citizens. Their cases were among those considered by the US Supreme Court when it ruled in June 2008 that detainees held at Guantanamo have the right to challenge their detention in civilian courts in the United States. It is unclear at this writing whether the men will be subject to a citizenship review process.

Human Rights Watch hopes that in upcoming Universal Periodic Review of Bosnia and Herzegovina, the Government will commit to take the following steps:

- Ensure that persons are not deported from Bosnia if doing so would subject them to a real risk of persecution, torture or ill-treatment.
- Suspend the work of the Citizenship Review Committee and conduct a transparent and independent review of its activities to date, including giving those who lost their citizenship a right to a fair appeal before an independent court, with the opportunity to confront the evidence on which the decision to revoke their citizenship was based.
- Ensure that appeals by foreigners challenging their deportation have automatic suspensive effect on their deportation while their cases are decided.

3. Treatment of Refugees and IDPs

Returns of refugees and internally displaced persons (IDPs) to their areas of origin continued to decline throughout 2009. As of June 2009, more than 117,795 Bosnians remained internally displaced. 66,215 displaced persons remain in Republika Srpska (almost all of them are ethnic Serbs), while 50,468 IDPs remain in the Federation (around 90% of them are Bosniaks and around 10% are Croats) and 1,112 in the Brcko District. Around 7,500 Bosnian IDPs continue to live in collective centers. There are no reliable estimates of the numbers who remain refugees outside Bosnia. During the first six months of 2009, the United Nations High Commissioner for Refugees registered only 191 returns by Bosnian IDPs or refugees.

The trend of IDPs remaining or moving to areas where their ethnic group constitutes a majority continues. Most permanent returnees are elderly persons returning to rural areas. Lack of economic opportunities and lack of adequate housing (including access to electricity and water) continue to be the main impediments to returns. The increasing political tensions and ethnic divisions in Bosnia make the climate for returns even less favorable. Access to health care, pensions and welfare to returnees continues to be difficult.

While the rate of direct attacks on returnees continues to decline, the fact that many persons suspected of war crimes remain at large continues to deter potential returnees.

In March 2009, Ivo Miro Jovic, current Croat representative of the Bosnia and Herzegovina tripartite presidency, stated that Bosnian Croats feel "unsafe and humiliated" with many of them wanting to leave the country "that seems to have been set up for two other

peoples.” This statement followed information by Bosnian Croats organizations that around 500 Croat families had left Sarajevo since the beginning of 2008.

Roma refugees in Bosnia, the majority of who come from Kosovo, remain vulnerable and dependent on periodic extensions of their temporary status.

Human Rights Watch hopes that during the upcoming Universal Periodic Review of Bosnia and Herzegovina The Government will commit to:

- Provide adequate, safe housing for IDPs.
- Ensure access to health care, pensions, and livelihoods for returnees.
- Assist Roma refugees from Kosovo in obtaining necessary documentation and protected status.

4. LGBT Rights

The inauguration of Bosnia's first cultural festival for lesbian, gay, bisexual, and transgender people in September 2008 met with widespread denunciation by some media and NGOs and anonymous death threats. Violence at the opening injured at least eight participants; organizers were forced to make the rest of the festival a private event. There was no official condemnation from government authorities. The police opened an investigation but to date no-one has been indicted or prosecuted for making the threats.

On June 11, 2009, Bosnia's Inter-Religion Council, representing the country's main religious communities (Islamic, Orthodox, Catholic and Jewish) has made an official statement in protest against a law that could legalize gay marriages. The draft non-discrimination law has already been adopted in the first reading in the Bosnia and Herzegovina's House of Representatives.

Human Rights Watch hopes that in the upcoming Universal Periodic Review of Bosnia and Herzegovina the Government will commit to:

- Ensure freedom of assembly and association for LGBT communities in Bosnia.
- Condemn unequivocally any attacks on these groups.
- Pass the anti-discrimination law without any amendments, which includes the legalization of gay marriages.

5. Ethnic and Religious Discrimination in the Political System

Bosnia continues to prohibit absolutely of members of communities other than Bosniaks, Serbs and Croats from standing for election to the Presidency of BiH, or becoming members of the House of Peoples. This prohibition constitutes unlawful discrimination.

Two Bosnian citizens, a Roma and a Jew, have challenged this prohibition before the European Court of Human Rights. Their case, *Sejdic and Finci v Bosnia-Herzegovina*, was heard by the Grand Chamber of the European Court of Human Rights on 3 June 2009. BiH has ratified Protocol 12 of the European Convention of Human Rights, which prohibits discrimination in any "right set forth by law." A ruling is expected later this year. Bosnia will hold elections in 2010.

Human Rights Watch hopes that during the upcoming Universal Periodic Review of Bosnia and Herzegovina, the Government will commit to:

- Amend the Bosnian constitution and election laws to permit members of communities other than Bosniaks, Serbs and Croats, from standing for the Presidency or becoming members of the House of Peoples.
- Comply fully and prior to the 2010 elections with any finding of a violation of the European Court in the case of *Sejdic and Finci*.