

Map of Bosnia and Herzegovina



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# **Bosnia and Herzegovina**

## **“Better keep quiet”: ill-treatment by the police and in prisons**

“They bring them to the isolation cell, even if it’s the one with rubber walls, you can hear the ‘music’. That is where they beat people”.

**A prisoner in Zenica Prison.**

### **1. Introduction**

Amnesty International is concerned about numerous allegations of ill-treatment by police officers as well as prison guards in Bosnia and Herzegovina (BiH). Such allegations are often not investigated, and those responsible are seldom disciplined and very rarely brought to justice. Victims of ill-treatment rarely receive adequate reparation including compensation.

Ill-treatment by the police forces and in prisons is not only the result of a culture of impunity which often prevails among law enforcement officers, prison staff and prosecutorial organs. It is also the consequence of structural and institutional impediments, such as fragmented and divided police forces and prison systems, which hinder the functioning of the prison system and the activities of the police in the Federation of Bosnia and Herzegovina (FBiH) and the Republika Srpska (RS), the two semi-autonomous entities of which the country is comprised. Such institutional failures are reflected in a range of other problems affecting the human rights of people deprived of their liberty. These include a high incidence of violence between prisoners in some prisons, lack of adequate medical care and in some cases overcrowding and poor material conditions.

This report details Amnesty International’s concerns with regard to ill-treatment by the police forces and in prison establishments in BiH. It raises concern about the failures of the authorities to take measures to safeguard against ill-treatment, and to ensure adequate medical care and adequate conditions for persons deprived of their liberty. It highlights the obligations placed on the BiH authorities under international law to prohibit torture and other cruel, inhuman or degrading treatment or punishment. It identifies gaps in the fulfilment of those obligations and presents the organization’s recommendations to the authorities in BiH, as well as to those elements of the international community active in BiH.

This report is based on visits by Amnesty International’s delegates in June 2007 to detention facilities in both the FBiH and the RS, including police stations and prisons.<sup>1</sup> During all visits to prisons, with the exception of the Tunjice Prison, near Banja Luka, Amnesty International delegates met in private with inmates.<sup>2</sup> When visiting prisons and police stations, Amnesty International’s delegates received information from police officers, including local police commanders, prison management, guards and other staff. Amnesty International also spoke with people not in custody who alleged they had been ill-treated by the police, as well as with their legal representatives. The organization received information from agencies of the international community and intergovernmental organizations monitoring the human rights situation in BiH and assisting the BiH authorities in prison and police reform. These include the Organization for Security and Co-operation in Europe (OSCE) Mission to BiH, the Council of Europe and the European Union Police Mission (EUPM).

Amnesty International is grateful to the authorities in the FBiH and RS for having been granted access to all detention facilities it requested to visit and for the high level of cooperation extended to its delegates by prison staff and police officials. The organization wishes to thank all the individuals and organizations who assisted in the research and provided information to Amnesty International. In particular the organization would like to thank the prisoners, as well as former prisoners and detainees, who provided information to Amnesty International delegates. In this report their identity and other information which could identify them has been withheld, at their request, in order to respect their privacy, to protect them from reprisals and to ensure that any information made public on their cases does not influence ongoing criminal proceedings against them.

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<sup>1</sup> Amnesty International delegates visited in June 2007 the Novo Sarajevo and Mostar Centre police stations in the FBiH and the Doboj Centre and Banja Luka Centre police stations in the RS. Moreover, the organization’s delegates visited the Sarajevo Prison (Kazнено-popravni dom Sarajevo), the Mostar Prison (Kazнено-popravni dom Mostar), the Zenica Prison (Kazнено-popravni dom Zenica), including its Forensic Psychiatric Annexe, in the FBiH, and the Tunjice Prison (Kazнено-popravni dom Tunjice), the Foča Prison (Kazнено-popravni dom Foča) and the Doboj Prison (Okružni zatvor Doboj), in the RS. The visit to the Tunjice Prison (Kazнено-popravni dom Tunjice) was limited to an inspection of the building only and did not involve interviews with detainees or with the prison management. While conducting research for this report Amnesty International delegates also visited the Educational Home in Hum (Zavod za vaspitanje muške djece i omladine Hum) in the FBiH and the Reformatory in Tunjice (Vaspitno-popravni dom Tunjice) in the RS.

<sup>2</sup> Amnesty International could only interview convicted prisoners due to provisions limiting visits to remand prisoners.

## 2. Ill-treatment by the police

“I was arrested, they brought me to the police station [in Prijedor] and there they threatened and beat me. [...] They began with slaps and then they started beating me”.

### **A man detained by RS police in Prijedor in December 2006.**

Following the signing of the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Agreement), which ended the 1992-95 war, BiH remained divided into two entities with significant devolved powers, the FBiH and the RS.<sup>3</sup> Each of them has its Ministry of Internal Affairs and its police forces. The FBiH is further divided into 10 cantons; each canton has its own police and Ministry of Internal Affairs. The competency of the entity-level FBiH Ministry of Internal Affairs is limited to “inter-cantonal” and organized crime, as well as terrorism.

In addition to the police forces in the two entities, a state-level security agency, the State Investigation and Protection Agency (Državna agencija za istrage i zaštitu, SIPA), has been operational since 2005. SIPA investigates crimes under the jurisdiction of the BiH State Court, including organized crime, terrorism, trafficking in persons, serious financial crime as well as “highly sensitive” cases of war crimes.

Problems negatively affecting the functioning of police forces in BiH, which fall beyond the scope of this report, include their fragmentation, politicization, and ongoing division along ethnic lines.<sup>4</sup> Although cooperation between the RS and the International Criminal Tribunal for the Former Yugoslavia (Tribunal) has recently improved, there remain also concerns about the capacity and willingness by the RS Police to assist in investigations for war crimes (committed against non-Serbs) and, in some cases, about deliberate obstruction by members of the RS police forces.

To tackle these systemic problems, the European Union (EU) has insisted that BiH carries out a reform of its police forces based on the principles of exclusive competence for all police matters at the state level; no political interference in policing; and local police regions designed on the basis of purely technical considerations. In particular, the EU has made the conclusion of a Stabilisation and Association Agreement between the EU and BiH conditional on progress in the area of police reform. Lengthy negotiations between BiH politicians on police reform have mostly focused on the geographical aspects of police structure and on the distribution of powers between entity and state. Regrettably, issues relating to human rights

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<sup>3</sup> The Brčko District was given a special status as a single administrative unit of local self-government under the sovereignty of the BiH state and international administration, after international arbitration settled its constitutional status in 1999.

<sup>4</sup> See International Crisis Group, *Bosnia’s Stalled Police Reform: No Progress, No EU*, Europe Report 164, 6 September 2005.

protection in the context of police work have been virtually absent from discussions surrounding police reform.

As part of the engagement of the international community in BiH, the EU operates a police mission in BiH, the EUPM. Its mission is “through mentoring, monitoring and inspecting, to establish in BiH a sustainable, professional and multiethnic police service operating in accordance with best European and international standards”.<sup>5</sup> In particular, the EUPM assists local authorities in planning and conducting major criminal investigations, with a particular focus on organized crime.

## ***The prohibition of torture and other ill-treatment***

### **International law and standards**

According to international human rights law, the authorities in BiH are required to prevent and prohibit torture or other ill-treatment. These obligations, which are enshrined in a number of treaties to which BiH is a party, also include the duties to investigate allegations of ill-treatment and to ensure that victims have access to redress and adequate reparation, including compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition.<sup>6</sup> Treaties binding on BiH include the International Covenant on Civil and Political Rights (ICCPR),<sup>7</sup> the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)<sup>8</sup> and the Convention on the Rights of the Child.<sup>9</sup>

The Convention against Torture and Other Cruel Inhuman or Degrading Treatment (Convention against Torture)<sup>10</sup> stipulates that states “shall take effective legislative,

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<sup>5</sup> EU Council Joint Action, 2005/824/CFSP, 24 November 2005, Article 2.

<sup>6</sup> Amnesty International is not aware of any recent cases where victims of torture or other ill-treatment by members of the police or by prison staff received compensation following proceedings before courts in BiH. A Human Rights Chamber was created after the 1992-95 war as part of the Human Rights Commission for Bosnia and Herzegovina and remained operational until 31 December 2003. It had jurisdiction to address cases of violations of the European Convention on Human Rights and Fundamental Freedoms and violations of a range of other human rights treaties. In a number of cases the Human Rights Chamber had found that the authorities both in the FBiH and the RS had violated the rights of detained persons, including by subjecting them to torture or other ill-treatment, and awarded compensation to the victims. See for example *Muharem Odošević against the RS*, Decision on Admissibility and Merits, Case no. CH/98/1786, 5 November 1999; *Velimir Pržulj against the FBiH*, Decision on Admissibility and Merits, Case no. CH/98/1374, 13 January 2000; *Aleksandar Bajrić against the FBiH*, Decision on Admissibility and Merits, Case no. CH/98/1373, 10 May 2002; *Zoran Aleksić against the RS*, Decision on Admissibility and Merits, Case no. CH/00/3642, 8 November 2002.

<sup>7</sup> To which BiH became a party on 1 September 1993 by succession from the Socialist Federal Republic of Yugoslavia (SFRY). See Articles 7, 10 and 2.

<sup>8</sup> To which BiH became a party on 12 July 2002. See Articles 3 and 13.

<sup>9</sup> To which BiH became a party on 1 September 1993 by succession from the SFRY. See Articles 37, 4, 19 and 39.

<sup>10</sup> To which BiH became a party on 1 September 1993 by succession from the SFRY.



administrative, judicial or other measures to prevent acts of torture” (Article 2) and “shall undertake to prevent [...] other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture [...] when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”<sup>11</sup> (Article 16). Article 4 of the Convention against Torture sets out the state’s duty to criminalize torture.

Other international standards including the UN Code of Conduct for Law Enforcement Officials<sup>12</sup> and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,<sup>13</sup> highlight actions that states must take to prevent and prohibit torture and other ill-treatment. For example, the UN Code of Conduct for Law Enforcement Officials states that “[n]o law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment” (Article 5). Moreover, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment<sup>14</sup> includes the prohibition of taking “undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person” and of subjecting a person deprived of their liberty to violence, threats or methods of interrogation which impair the capacity of decision or the judgement of the person being interrogated (Principle 21).

## **Domestic law**

The prohibition of torture and other ill-treatment is also enshrined in the BiH Constitution. Article II(3), guarantees the right not to be subjected to torture or to inhuman or degrading treatment or punishment. Provisions prohibiting torture and other ill-treatment are also included in the constitutions of the two entities.<sup>15</sup>

The BiH Criminal Code covers a range of serious offences at the state level; persons charged with crimes under the BiH Criminal Code are brought to trial in the BiH State Court. The BiH Criminal Code criminalizes torture and other ill-treatment; when committed in peace time, as a war crime when committed during armed conflict and as a crime against humanity

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<sup>11</sup> The Convention against Torture defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity” (Article 1).

<sup>12</sup> Adopted by the UN General Assembly on 17 December 1979.

<sup>13</sup> Adopted by the UN General Assembly on 9 December 1988.

<sup>14</sup> Adopted by the UN General Assembly on 9 December 1988.

<sup>15</sup> Article 14 of the RS Constitution, in guaranteeing the right not to be subjected to torture, cruel, inhuman or degrading treatment or punishment, specifically prohibits any extortion of confession or statement.

when committed as part of a widespread or systematic attack directed against any civilian population.

The FBiH Criminal Code prohibits the use of force, threats or other unlawful methods to extract a statement or other information from a suspect, accused, witness, expert witness or others (Article 181). Article 182 prohibits ill-treatment in discharge of duty defined as the action of a public official who, in discharge of his/her duty, ill-treats, inflicts serious physical or mental suffering, intimidates or insults another person. Similar provisions are contained in the RS Criminal Code which, in Article 358, prohibits the extraction of statements using force, threats, or other unlawful methods. Article 359 criminalizes the action of a public official who, abusing his/her office or official authority, ill-treats, intimidates, inflicts bodily injuries or treats another person in a manner offensive to his/her dignity.

However, Amnesty International is concerned that neither the FBiH Criminal Code nor the RS Criminal Code include a specific offence criminalizing torture as defined in Article 1 of the Convention against Torture.<sup>16</sup>

### **Ill-treatment in police custody**

Despite the obligations of the authorities in BiH to prevent and prohibit torture and other ill-treatment of torture and other ill-treatment set out in both international standards and domestic law, ill-treatment by members of the police forces appears to be disturbingly common. The authorities in the FBiH acknowledge that between January 2004 and mid-2007 345 complaints alleging ill-treatment by the various police forces of the entity were filed, while in the RS 156 similar complaints were received. Such figures are likely to be merely the tip of the iceberg, given that many victims of ill-treatment are not aware that they can file a complaint, or do not complain, having little confidence in existing mechanisms to deal with complaints against the police (see below).

A number of cases of alleged ill-treatment by the police came to the attention of Amnesty International during research conducted for this report.

AB was arrested by the RS police in December 2006 on suspicion of having taken part in a bank robbery in 2005. Minutes of the preliminary proceedings hearing held the day after the arrest report AB's statement that he had received a violent blow on his back at a Banja Luka

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<sup>16</sup> In 2005 the Committee against Torture (CAT) expressed concern “at the lack of congruity between the definitions of torture in the State and entity laws and that the definitions, particularly in the laws of the Republika Srpska and Brcko District, do not accord fully with the definition contained in article 1 of the Convention”. The CAT recommended that BiH “incorporate the crime of torture, as defined in the Convention, into the domestic law throughout the State and ensure that the legal definitions in the Republika Srpska and Brcko District are harmonized with the Criminal Code and the Criminal Procedure Code of Bosnia and Herzegovina through any necessary legal amendments”. See CAT, *Consideration of Reports Submitted by States Parties under Article 19 of the Convention. Initial reports of States parties due in 1993. Addendum. Bosnia and Herzegovina*, CAT/C/21/Add.6, 29 July 2005, para. 9.

police station.<sup>17</sup> While still in custody, the day after his arrest he was brought to the Banja Luka Health Centre where a doctor recorded a bruise on his back. In the following months AB, who was in detention in the Tunjice Prison, continued to complain about pain at his left kidney. Medical tests carried out four months after the arrest revealed the presence of blood in his urine.<sup>18</sup> AB filed a complaint with the Inspectorate for Internal Control of the RS Ministry of Interior (see below) in April 2007. The complaint alleges that AB was thrown down to the floor, repeatedly punched on his back by members of the RS police, threatened by having a gun put in his mouth, repeatedly insulted and finally forced to drink three bottles of beer and to take sedatives. According to the complainant, all this was done in order to extract a confession.

CD was arrested in November 2006 after being caught allegedly burgling a flat in Sarajevo. He claims that during arrest three members of the Sarajevo Canton police beat him by punching and kicking him, and hitting him with rubber batons. He alleges he was further beaten in the police station in Sarajevo where he was detained in police custody. On the day of his arrest he was brought by the police to the Sarajevo University Clinic where he was examined at the Unit for Maxillofacial Surgery. Medical records document bruises and wounds on his face as well as a broken nose.<sup>19</sup> On the following day CD was transferred to the Sarajevo Prison, where during his initial medical examination his bruises and wounds were recorded, along with a mention that CD stated he had been beaten by the police. CD's allegations are also recorded in detail in the statement he gave to the Sarajevo Canton Prosecutor 15 days following his arrest. CD stated that the three policemen allegedly responsible for the ill-treatment had removed their badges and that he did not offer any resistance during and after arrest, making the use of force completely unnecessary.

In an interview with Amnesty International delegates, EF, who had been arrested by the RS police in December 2006 on suspicion of having unlawfully produced and sold narcotics, alleged he had been taken to a police station in Prijedor. During interrogation he was repeatedly threatened and slapped. Police officers then tied him to a chair and beat him. An OSCE monitor who interviewed EF soon after noted a large bruise clearly visible around his left eye.<sup>20</sup>

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<sup>17</sup> Under the FBiH and RS Criminal Procedure Codes police custody must not last more than 24 hours, following which a person in police custody must be brought before the competent prosecutor. The prosecutor can then file a request for custody of the suspect to the preliminary proceedings judge who, within 24 hours, must issue a decision in this regard.

<sup>18</sup> Amnesty International considers that presence of blood in the urine may be a consequence of the blow AB allegedly received on his back. Amnesty International is in possession of copies of the relevant medical records. Information on this case was provided to the organization by AB's family and legal representative in June 2007.

<sup>19</sup> Amnesty International considers that such injuries may be consistent with CD's allegations. Amnesty International is in possession of copies of the relevant medical records. Information on this case was provided to the organization by CD and his legal representative in June 2007.

<sup>20</sup> Information from the OSCE Mission to BiH, June 2007.

These cases are illustrative examples and do not constitute an exhaustive list of cases of alleged ill-treatment reported to Amnesty International. In interviews with other people formerly in police custody Amnesty International received further allegations of ill-treatment by the police during and immediately after arrest, as well as during questioning.<sup>21</sup> Such allegations, although not corroborated by medical records, appear to fit in a pattern of ill-treatment by the police forces. A 20-year-old man suffering from drug addiction told Amnesty International that during questioning by the police in Zenica in November 2006 he was slapped and repeatedly threatened by a police officer and that this appeared to be directed at compelling him to sign a confession. In the RS, other cases of ill-treatment were reported in the Doboje and Banja Luka areas. One person currently in prison in the RS told Amnesty International that following an escape he was recaptured by the RS police in September 2006 and ill-treated by police officers. After being detained and handcuffed he was beaten and received blows to his head, apparently in an attempt to extract information about the whereabouts of another person who had also escaped.

Amnesty International received information about a highly publicized case of alleged ill-treatment by members of the police in FBiH, which came to the attention of the public in February 2007 following the internet broadcast of a video allegedly filmed by a member of the Sarajevo Canton police on his mobile phone. The video showed a man in uniform, allegedly a member of the Sarajevo Canton police, repeatedly kicking and hitting a young man near a police car. The victim was then forced to strip naked while the beating continued. The events recorded in the video allegedly took place in October 2006.<sup>22</sup> The victim told BiH media that the events recorded in the video were the continuation of beatings that had already started in the police car.<sup>23</sup> He said that after having been beaten, he was left unconscious on the street and stated to the media: “at some point I fell unconscious and they [the police officers] left. I was laying for a few hours until I regained consciousness and went home. Then my father brought me to the hospital”<sup>24</sup> This is one of the few cases where criminal proceedings have been opened against police officers suspected of ill-treatment. The trial against the policemen suspected of having ill-treated the man began in April 2007 in the Sarajevo Municipal Court and was ongoing, as of December 2007.

Other cases of alleged ill-treatment by the police, both in the FBiH and in the RS, were recently reported in BiH media. In one case, a man was stopped by the police in February 2006 while he was driving his car near Banja Luka.<sup>25</sup> He was pulled out of the car and beaten by a police officer. He also reported that he was tied to a tree and the beating continued. The attack stopped only when another police officer realized they had mistaken his identity. In another case, a Romani man was reportedly beaten by the police in Bihać (FBiH) after he went to the local police station to enquire about the detention of his brother. He stated that he

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<sup>21</sup> Interviews were conducted in June 2007.

<sup>22</sup> “Aldin Čamo: Ostavili me bez svijesti na ulici”, *Nezavisne novine*, 4 February 2007.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> ““Tukli me, pa rekli da je u pitanju greška””, *Nezavisne novine*, 16 February 2007; “Ko su batinaši sa značkom”, *Nezavisne novine*, 17 February 2007.

was beaten by six police officers, who kicked and punched him and hit him with their batons.<sup>26</sup>

Information available to Amnesty International, as well as media reports, are consistent with the findings of the OSCE Mission to BiH, which has been monitoring criminal cases, following arrest, throughout BiH since September 2006. OSCE monitors who have interviewed criminal suspects shortly after their arrest have reported receiving a significant number of allegations of ill-treatment by the police, both in the RS and in the FBiH, including in some cases where wounds and signs of possible ill-treatment were clearly visible.<sup>27</sup> At the time of research, the OSCE reported that, after having followed 80 cases of criminal investigations and having conducted interviews with 32 suspects, in approximately two thirds of cases interviewees claimed to have been subjected to some form of ill-treatment.<sup>28</sup>

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited BiH in March 2007. Its preliminary observations note that “[i]n the course of the visit, the delegation received a considerable number of allegations of physical ill-treatment by the police; the allegations mostly concerned kicks and punches to various parts of the body as well as blows with batons”.<sup>29</sup> According to the CPT, the majority of such allegations concerned ill-treatment during police questioning. For example, two persons alleged to the CPT that, over the course of 48 hours, they were repeatedly punched and kicked by police officers, and received verbal threats that their bones would be broken. One of them alleged that he was hit with the butt of a pistol. In another case, a person alleged that he had had the barrel of a pistol inserted into his mouth during questioning.<sup>30</sup>

## ***The duty to investigate torture and other ill-treatment***

### **International law and standards**

Under international law and standards, authorities in BiH are required to ensure a prompt, independent, impartial and thorough investigation into credible allegations of torture or other ill-treatment. This duty is enshrined in the ECHR (Articles 3 and 13),<sup>31</sup> the ICCPR (Articles 2

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<sup>26</sup> Ibid.

<sup>27</sup> Interviews with OSCE officials, June 2007.

<sup>28</sup> Information from the OSCE Mission to BiH, June 2007.

<sup>29</sup> CPT, *Preliminary observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which visited Bosnia and Herzegovina from 19 to 30 March 2007 and Response of the authorities of Bosnia and Herzegovina*, CPT/Inf (2007) 34, 16 July 2007, p. 5.

<sup>30</sup> Ibid.

<sup>31</sup> See for example *Assenov and others v. Bulgaria*, Application no. 24760/94, Judgement, 28 October 1998. The European Court of Human Rights held that in “circumstances, where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State unlawfully and in breach of Article 3, that provision, read in conjunction with the State’s general duty under Article 1 of the Convention to ‘secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention’, requires by implication that there should be an effective

and 7) and the Convention against Torture (Articles 12, 13 and 16). This duty investigate is triggered not only when a complaint is made but also when there is reasonable ground to believe that an act of torture or other ill-treatment has been committed.<sup>32</sup> The UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>33</sup> further clarified that even in the absence of an express complaint, an investigation shall be undertaken if there are other indications that torture or ill-treatment might have occurred (Principle 2).

Furthermore, the UN Code of Conduct for Law Enforcement Officials places a duty on law enforcement officials to report incidents of torture and other ill-treatment as well as other violations. Article 8 of the UN Code of Conduct for Law Enforcement Officials states that “Law enforcement officials who have reason to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power”.

## **Domestic law and police complaint framework**

The laws of BiH, FBiH and the RS require prosecutors to initiate criminal investigations as soon as there are reasonable grounds for suspicion that a criminal offence has been committed. This duty applies to cases of torture or other ill-treatment.

The BiH Criminal Procedure Code sets out the duty of the BiH Prosecutor to initiate an investigation as soon he/she becomes aware that there are grounds for suspicion that a criminal offence has been committed (Article 35(a)). According to Article 45(2(a)) of the FBiH Criminal Procedure Code the Prosecutor has the right and duty “as soon as he/she becomes aware that there are grounds for suspicion that a criminal offence has been committed, to take necessary steps to discover it and investigate it, to identify the suspect, guide and supervise the investigation, as well as direct the activities of authorized officials pertaining to the identification of suspect and the gathering of information and evidence”. A very similar provision is contained in Article 43(2(a)) of the RS Criminal Procedure Code.

Domestic laws and regulations also define the system for internal investigations of complaints against the police. The Ministries of the Interior of the two entities, as well as of the 10 cantons, have Offices for Citizens’ Complaints (OCC) or Professional Standards Units (PSU), to which complaints against the police can be addressed, including in cases of alleged torture or other ill-treatment by members of the police forces. OCC and PSU units forward complaints to the competent Section/Inspectorate for Internal Control at the cantonal/local level and oversee their investigations, which may result in disciplinary proceedings against police officers. In practice, OCC or PSU units and the Sections for Internal Control are in

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official investigation” [...] “capable of leading to the identification and punishment of those responsible” (para. 102).

<sup>32</sup> See Article 12 of the Convention against Torture.

<sup>33</sup> Adopted by the UN General Assembly on 4 December 2000.

some cases composed of the same officers and are in fact the same organizational unit with no effective supervision of the investigation.<sup>34</sup> In those cases where there are reasonable grounds to suspect that police officers committed grave disciplinary breaches and/or criminal acts, they maybe suspended from duty,<sup>35</sup> pending the outcome of the investigation.

### **The failure by the authorities in BiH to investigate ill-treatment by the police**

Despite these obligations under international and domestic law, Amnesty International research reveals that in fact prompt, independent, impartial and thorough investigations into ill-treatment are rarely conducted. Lack of investigations and prosecutions for acts of ill-treatment by police officers denies justice to victims and leads police to believe that they can carry out such acts without fear of punishment. In effect, it has led to a situation in which some perceive that a certain amount of ill-treatment by the police is considered normal, or even acceptable.

Even before a complaint against the police may be made (see below), allegations or evidence of ill-treatment by the police can come to the attention of prosecutors and judges who preside over preliminary proceedings shortly after the arrest of a suspect. However, Amnesty International research indicates that in such cases action is rarely taken to investigate the conduct of police officers.

In the case of AB, detailed above, the minutes of the hearing before the judge for preliminary proceedings state that “...the suspect reports that he feels pain in a part of [his] back as a consequence of the fact that, after having been detained, he received a violent blow directly to [that] part of [his] back in the police station in Banja Luka”. The Office of the Banja Luka District Prosecutor was informed, including by AB’s legal representative, of the allegations of ill-treatment. As mentioned before, medical records dating from the day following his arrest confirmed the presence of a bruise on his back. Nevertheless, as of December 2007, an investigation into these allegations had not been conducted by the Office of the Banja Luka District Prosecutor. Amnesty International was however informed that the Prosecutor had requested twice from AB’s lawyer original copies of the relevant medical records, apparently unsuccessfully.

In the case of CD, reportedly no action was taken by the Office of the Sarajevo Canton Prosecutor to investigate CD’s allegations of ill-treatment by the Sarajevo Canton police

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<sup>34</sup> The internet site of the FBiH Police Administration, for instance, reports contact information for the Central Bosnia Canton Ministry of Internal Affairs “Internal Control/Office for Complaints” as one organizational unit.

<sup>35</sup> For example, the FBiH Regulation on the Office for Citizens’ Complaints states that the FBiH OCC can recommend the suspension of a [police] officer (Article 15). The West-Herzegovina Canton Regulation on the Office for Citizens’ Complaints specifically provides for the suspension from duty of police officers in those cases where their conduct is investigated in connection inter alia with the death or serious injuries of a person in police detention (Articles 10 and 7).

during and following arrest, which were supported by medical evidence. According to CD’s lawyer, in cases of alleged ill-treatment by the police “prosecutors stay quiet and do not conduct any investigation”.<sup>36</sup> It is worth noting as well that CD’s legal representative, despite repeated requests, was not able to obtain from the Sarajevo Canton Ministry of Internal Affairs and from the Office of the Sarajevo Canton Prosecutor copies of photographs of CD taken after arrest, which could provide further evidence in support of allegations of ill-treatment.

EF was questioned in December 2006 in Prijedor by the Prosecutor in the presence of an OSCE monitor. During questioning, EF alleged he had been ill-treated by members of the RS Police and, as noted above, the OSCE Monitor noted a big bruise clearly visible around the suspect’s left eye. According to the OSCE, however, the Prosecutor reportedly failed to record EF’s allegations in the minutes of the hearing<sup>37</sup> and there is no indication that any action has been taken to investigate such allegations.

Instances of inaction and passivity by prosecutors appear to form part of a worrying pattern where allegations of ill-treatment by the police rarely lead to a criminal investigation. Following the CPT’s visit to BiH in 2003 which recorded allegations of ill-treatment by members of the police forces, the CPT highlighted that “[i]n the light of the delegation’s findings, it is clear that public prosecutors and/or other relevant authorities should supervise more closely the activities of the police”.<sup>38</sup> The CPT recommended that “whenever criminal suspects brought before an investigating judge or public prosecutor at the end of police custody or thereafter allege ill-treatment by the police, the judge or prosecutor should record the allegations in writing, order immediately a forensic medical examination and take the necessary steps to ensure that the allegations are properly investigated”.<sup>39</sup> However, the response of the BiH authorities to the CPT failed to address this specific point.<sup>40</sup>

More recently, monitoring conducted by the OSCE Mission to BiH has recorded a significant number of cases where public prosecutors failed to investigate allegations of ill-treatment by members of the police forces in BiH. Despite the fact that such allegations have been relatively common, in 2005 and 2006 no official investigations were opened (and as a consequence no indictment was issued), both in the FBiH and the RS, for “extraction of

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<sup>36</sup> Interview with CD’s legal representative, June 2007.

<sup>37</sup> Information from the OSCE Mission to BiH, June 2007.

<sup>38</sup> CPT, *Report to the Government of Bosnia and Herzegovina on the visit to Bosnia and Herzegovina carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 April to 9 May 2003*, CPT/Inf (2004) 40, 21 December 2004, para. 25.

<sup>39</sup> *Ibid.* The CPT further recommended that, even in the absence of an express allegation of ill-treatment, the judge or prosecutor should order a forensic medical examination whenever there are other grounds to believe that a person brought before him could have been the victim of ill-treatment.

<sup>40</sup> See CPT, *Response of the Government of Bosnia and Herzegovina on the visit to Bosnia and Herzegovina carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 April to 9 May 2003*, CPT/Inf (2004) 41, 21 December 2004, where no mention is made to the need to ensure that prosecutors record and act upon allegations of ill-treatment by the police.



statement” offences.<sup>41</sup> In the FBiH, in the period 2004-06, 62 investigations were opened for charges of ill-treatment in discharge of duty (Article 182 of the FBiH Criminal Code) of which five led to an indictment.<sup>42</sup> In the RS, in the period 2005-2006, six investigations for “Violation of Human Dignity through Abuse of Office or Official Authority” (Article 359 of the RS Criminal Code) were opened, of which two were closed, one resulted in an indictment and three were still ongoing as of June 2007.

According to information provided to Amnesty International by the authorities in the FBiH, since 1 January 2004 two police officers have been convicted after criminal proceedings which included charges “related to the use of force”.<sup>43</sup> The RS authorities informed Amnesty International that in 11 cases the competent prosecutor was informed of complaints alleging ill-treatment of persons in police custody, although provided no information on the outcome of any criminal proceedings that may have been initiated.<sup>44</sup>

Inaction on the part of prosecutors is in contravention of their duty, under current provisions in domestic legislation, to initiate investigations if there are reasonable grounds to suspect that members of the police forces have been responsible for torture or other ill-treatment. It appears that in many cases this is inter alia due to the prosecutors’ dependence on evidence provided by the police to build their case.<sup>45</sup> According to lawyers Amnesty International interviewed in BiH when conducting research for this report, evidence often takes the form of a confession which is then used to negotiate a plea agreement with the suspect.

Amnesty International was informed that in June 2007, the FBiH and RS Chief Prosecutors issued binding instructions to cantonal and district prosecutors’ offices recalling the obligation of prosecutors to initiate an investigation whenever there are credible allegations that police officers or other law enforcement officials may have been responsible for ill-treatment. Such instructions mentioned the findings of pre-trial monitoring carried out by the OSCE Mission to BiH which, as noted above, highlighted a number of instances where ill-treatment allegations were not followed by an investigation. Amnesty International welcomes the binding instructions as a recent positive development towards ending impunity for ill-treatment by the police forces in BiH and trusts that the instructions will be implemented robustly.

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<sup>41</sup> Criminalized in Article 181 of the FBiH Criminal Code and 358 of the RS Criminal Code. Information from the OSCE Mission to BiH, June 2007.

<sup>42</sup> Information from the OSCE Mission to BiH, June 2007.

<sup>43</sup> Correspondence from FBiH and Cantonal Ministries of Internal Affairs, September-October 2007.

<sup>44</sup> Correspondence from RS Ministry of Internal Affairs, 7 November 2007.

<sup>45</sup> Interviews with OSCE and EUPM officials and with legal representatives of alleged victims of ill-treatment, June 2007.

### **Recording medical evidence of ill-treatment by the police**

The UN Standard Minimum Rules for the Treatment of Prisoners<sup>46</sup> (Rule 24) and the UN Body of Principles for the Protection of All Persons under Any Form of Detention (Principle 24) call for detainees and prisoners to be given or offered a medical examination as promptly as possible after admission to a place of detention. Doctors should record signs of torture or other ill-treatment, not only because medical evidence can be key in the investigation and prosecution of cases of ill-treatment, but also because initial medical examinations provide a baseline for a person’s health status on entry into the prison system.

During visits to a number of prisons in the FBiH and the RS, Amnesty International’s delegates were informed that all inmates receive a medical examination upon entry into prison. The BiH initial report on measures to give effect to the rights enshrined in the Convention against Torture notes that “the medical personnel in some of the investigation detention units have confirmed that, from their experience, a certain number of the persons admitted to their institutions, after having been detained in the police, indeed state that they were mistreated and they also show the injuries which are consistent to their statements”.<sup>47</sup> In some cases, allegations of ill-treatment by the police and their alleged medical consequences have been recorded in the medical records of inmates in prison remand sections (including for instance in the case of CD, discussed above).

Nevertheless, this does not appear to be standard practice in all prison establishments in BiH. During a visit to the Foča Prison in June 2007, Amnesty International delegates were told by the prison management that “many inmates come to prisons with wounds, broken bones, and so on”, including in those cases where they were arrested and brought to prison by the police. However, prison officials told Amnesty International that it was not up to the prison to look into what happens outside.<sup>48</sup> Similarly, the management of the Mostar Prison told Amnesty International that prison doctors do not go beyond recording wounds, or any other health problems which become apparent when inmates first arrive in prison. EF, who alleges he was ill-treated by the RS police in Prijedor, told Amnesty International that when he underwent a medical examination immediately after having been detained on remand, the doctor explicitly told him that he was not interested in wounds he had received outside prison.<sup>49</sup>

Amnesty International is aware of the dilemmas faced by prison doctors, who have to take into consideration the best interest of the patient and their duty of confidentiality, when confronted with medical evidence suggesting ill-treatment by the police (as well as by prison guards). However, the UN Manual on the Effective Investigation and Documentation of

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<sup>46</sup> Approved by the UN Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

<sup>47</sup> CAT, *Consideration of Reports Submitted by States Parties under Article 19 of the Convention. Initial reports of States parties due in 1993. Addendum. Bosnia and Herzegovina*, CAT/C/21/Add.6, 29 July 2005, para. 553.

<sup>48</sup> Interview with Foča Prison management, June 2007.

<sup>49</sup> Interview with EF, June 2007.

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)<sup>50</sup> notes that “the moral arguments for the [prison] doctor to denounce evident maltreatment are strong, since prisoners themselves are often unable to do so effectively”.<sup>51</sup> Moreover, doctors are under a general obligation to society to report torture and other ill-treatment even if individual patients refuse to make a complaint, or when making a complaint on the patient’s behalf may not be in his/her best interest.<sup>52</sup> In those cases, they should report the matter, without exposing the case of individual patients, to the competent authorities or relevant international agencies.

As mentioned earlier, systems of complaints against the police and internal investigation of such complaints exist both in the FBiH and in the RS. This report is not intended to discuss in detail the effectiveness of such mechanisms in the two entities and in the 10 FBiH Cantons. However, it is possible to highlight a number of systemic problems affecting the functioning of existing mechanisms of internal police accountability.

A first problem appears to be lack of knowledge of existing mechanisms of police accountability. Some individuals interviewed by Amnesty International, who alleged they had been ill-treated by the police, appeared to be unaware that they could file a complaint. Others clearly felt that filing a complaint would be pointless. The existing climate of impunity and lack of confidence in the capacity by police to “police itself” means that many victims of ill-treatment have little or no confidence in the complaints system, in the absence of a truly independent mechanism of police accountability. In the case where the alleged ill-treatment was recorded on video, the victim asserted in media interviews that he initially did not want to report his case: “[I] was afraid, and I knew that the police would be believed more than me, a drug addict”.<sup>53</sup>

However, when his mother went to the local police station to denounce what happened to her son, she was first reportedly told that she could not file a complaint because she was not the injured party. Then two weeks later she was informed in writing that her complaint had been rejected as unfounded.<sup>54</sup> The case was subsequently reopened when the video footage recording the events was made public and criminal proceedings started in April 2007 and were ongoing as of December 2007.

Police complaints are often received in the same local police authority where the police officers who allegedly committed human rights violations are employed, and the investigation is conducted locally in that authority. Moreover, the distinction between the organizational

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<sup>50</sup> Office of the United Nations High Commissioner for Human Rights, *Istanbul Protocol. Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Professional Training Services No.8/Rev. 1, 2004.

<sup>51</sup> Para. 72.

<sup>52</sup> *Ibid.*, paras 66 and 67.

<sup>53</sup> “Aldin Čamo: Ostavili me bez svijesti na ulici”, *Nezavisne novine*, 4 February 2007. See also “Ko su batinaši sa značkom”, *Nezavisne novine*, 17 February 2007.

<sup>54</sup> *Ibid.*

unit that should supervise the investigation and the one that conducts it is often blurred, resulting in a situation wherein those who should supervise the investigation are the very officers conducting it. As a result internal investigations into complaints against the police are not independent and are often inconclusive or ineffective.

An International Crisis Group (ICG) report, published in 2002, noted that Professional Standards Units reports are often “thrown away or not forwarded to prosecutors”.<sup>55</sup> The report further observed: “[p]olice officers still go unpunished, even if they have violated the law or committed disciplinary offences. When called to account, punishments can be either disproportionately slight in comparison to the offence or simply reflect the personal whim of the local chief”.<sup>56</sup>

The situation does not appear to have significantly improved more recently. Media in BiH reported in 2007 that “nearly all disciplinary measures [against the police in BiH] wind up being overturned and policemen accused of wrong-doing are let go with no consequences”.<sup>57</sup> The number of police officers disciplined following complaints alleging ill-treatment in police custody in general remains low, particularly in the FBiH.

Amnesty International requested from the authorities of both BiH entities statistics on complaints against the police alleging ill-treatment, as well as on internal disciplinary and criminal proceedings which followed such complaints.<sup>58</sup> As noted above, between 1 January 2004 and mid-2007, some 345 complaints alleging ill-treatment by police officers of the various FBiH police forces were filed. Police officers were disciplined following such complaints in fewer than 20 cases.<sup>59</sup> Notably, rates at which complaints against the police are judged to have grounds for consideration and led to the punishment of police officers vary significantly between cantons. For example, in the Zenica-Doboj Canton approximately 23 per cent of the complaints have led to disciplinary sanctions against police officers, but elsewhere this rate is zero, or much lower.<sup>60</sup>

In the RS, of 156 complaints of ill-treatment by members of the entity’s police force, 39 led to disciplinary sanctions against the officers found responsible for ill-treatment.<sup>61</sup> In three cases the sanctions involved a dismissal from the police. Even if in general the rate at which police officers in the RS are disciplined following ill-treatment complaints is significantly higher than in the FBiH, there are cases where internal investigations have proven to be

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<sup>55</sup> ICG, *Policing the Police in Bosnia: A Further Reform Agenda*, Balkans Report No. 130, 10 May 2002, p. 37.

<sup>56</sup> Ibid.

<sup>57</sup> Center for Investigative Reporting, *Internal Affairs System Rarely Curbs Bad Officers*, 7 June 2007.

<sup>58</sup> See Appendix (below) for detailed statistics.

<sup>59</sup> Correspondence from FBiH and Cantonal Ministries of Internal Affairs, September-October 2007. Amnesty International received incomplete information from the cantonal authorities on the number of cases where the competent prosecutor was informed of allegations of ill-treatment. However, data at the disposal of Amnesty International indicate that such number is extremely small.

<sup>60</sup> In the Sarajevo Canton, for example, out of 124 complaints three (approximately 2 per cent) led to disciplinary sanctions against police officers.

<sup>61</sup> Correspondence from RS Ministry of Internal Affairs, 7 November 2007.

ineffective or inconclusive. In the case of AB described above, the Inspectorate for Internal Control of the RS Ministry of Internal Affairs, in response to a complaint filed against the RS Police in April 2007, following an investigation replied in August 2007 that, in the absence of sufficient elements either corroborating or refuting the ill-treatment allegations, the case remained “unresolved”.<sup>62</sup>

In police stations visited by Amnesty International, the organization’s delegates discussed complaints against the police with the local commander or with other police officers. In all cases it was reported to the organization that no complaints had been filed in recent years specifically involving ill-treatment, or that exact statistics on the number of such complaints were not readily available. In Mostar, the local commander told Amnesty International that since 2001 “one or two” complaints alleging ill-treatment had been filed, none of which was considered to be founded.<sup>63</sup>

In conclusion, inaction by prosecutors, coupled with a mechanism for complaints against the police which often remains ineffective, leave victims of torture or other ill-treatment by police officers with no justice, while members of the police who committed such acts enjoy impunity.

## ***Informing detainees, keeping records, and other safeguards after arrest***

### **International law and standards**

The authorities in BiH are bound under the ICCPR (Article 9(2)) to ensure that anyone who is arrested is informed, at the time of arrest, of the reasons for the arrest and promptly informed of any charges against him/her.<sup>64</sup> Principle 13 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention requires that those arrested shall be provided with information on their arrest and, in addition, on their rights and on how to avail themselves of such rights. Principle 17 states that detained persons shall be entitled to have the assistance of legal counsel, shall be informed of their right by the competent authority promptly after arrest, and shall be provided with reasonable facilities for exercising it.<sup>65</sup>

Accurate record-keeping after arrest is recognized as an important safeguard to protect the rights of those in police detention and to ensure the accountability of law enforcement officers.

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<sup>62</sup> Telephone interviews with AB’s legal representative, September 2007 and December 2007.

<sup>63</sup> However, police officers in Mostar were frustrated at the existing complaints mechanism which, in their view, did not provide sufficient guarantees for police officers who felt “harassed” by the number of complaints.

<sup>64</sup> See also Article 5(2) of the ECHR.

<sup>65</sup> The CAT has recommended “that counsel be permitted to be present during interrogation, especially since such presence would be in furtherance of the implementation of article 15 of the Convention [against Torture]” (*Consideration of Reports Submitted by States Parties under Article 19 of the Convention. Conclusions and Recommendations of the Committee against Torture*, A/52/44, 10 September 1997, para. 68).

Principle 12 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states that when an individual is arrested records shall be made of the reasons for the arrest; the time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority; the identity of the law enforcement officials concerned; and precise information concerning the place of custody. Such records are to be communicated to the detained person, or his counsel (Principle 12(2)).<sup>66</sup>

The audio or video recording of interrogations is an additional valuable safeguard to protect against torture and other ill-treatment. These procedures also provide protection for law enforcement officials from false allegations. The UN Special Rapporteur on torture has stated that “[a]ll interrogation sessions should be recorded and preferably video-recorded, and the identity of all persons present should be included in the records”.<sup>67</sup>

## Practice in BiH

Police in both the FBiH and the RS use custody registers which record information such as the date of arrest; name of person deprived of liberty; date of birth, address and personal identification number; time of and reasons for depriving the person of liberty; when the person arrived at the police station; when informed of rights; signs of injury, health problems, and signs of drug or alcohol use; when offered food; when interrogated; contacts with and/or visits by next of kin, lawyer, doctor, or other persons; when transferred to a court or another institution; when released.<sup>68</sup> In all police stations visited by Amnesty International delegates such registers were in use.

In 2003 the CPT, while commending as “excellent” the layout of custody registers, found that in many cases the custody registers were filled in a haphazard manner and noted that “more worryingly, there were a few instances where they did not contain any record of a person’s stay in a police establishment”.<sup>69</sup> During visits to police stations in 2007, Amnesty International delegates were able to inspect custody records and similarly found that, while in some cases such records appeared to have been kept accurately, elsewhere custody registers

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<sup>66</sup> See also CPT, *The CPT standards. ‘Substantive’ sections of the CPT’s General Reports*, CPT/Inf/E (2002) 1 – Rev. 2006, p. 7, para. 40.

<sup>67</sup> UN General Assembly, *Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment*, A/56/156, 3 July 2001, para. 39(f). The CPT has stated that “the electronic recording of police interviews is another useful safeguard against the ill-treatment of detainees (as well as having significant advantages for the police)”. See CPT, *The CPT standards. ‘Substantive’ sections of the CPT’s General Reports*, CPT/Inf/E (2002) 1 – Rev. 2006, p. 7, para. 39.

<sup>68</sup> See CPT, *Report to the Government of Bosnia and Herzegovina on the visit to Bosnia and Herzegovina carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 April to 9 May 2003*, CPT/Inf (2004) 40, 21 December 2004, para. 32.

<sup>69</sup> *Ibid.*

were incomplete or lacked the signature of the person in police custody acknowledging having received the relevant information from police officers. The situation was particularly problematic in the Mostar Centre police station, where the register had several gaps, including missing information on dates of arrest and release. Moreover, in a significant number of cases, records reported that those in police custody in the Mostar Centre police station “refused to sign” to acknowledge that they had been informed of their rights, an indication that they may not have been adequately informed of them.

The cases of ill-treatment mentioned in this report were reported during or immediately after arrest, when the suspects’ legal representatives were not present.<sup>70</sup> In addition, Articles 79 and 155 of the BiH Criminal Procedure Code, Article 93 of the FBiH Criminal Procedure Code and Article 66 of the RS Criminal Procedure Code all require that the questioning of a suspect, as a rule, be audio or video recorded. In practice, this happens very rarely, including because police stations, as noted during visits by Amnesty International delegates, lack the necessary equipment.

## ***The duty to provide training to law enforcement officers to prevent human rights violations***

### **International law and standards**

International human rights standards require BiH to ensure that law enforcement officials are trained on the relevant provisions in national and international law prohibiting torture and other ill-treatment. Article 10(1) of the Convention against Torture provides that “[e]ach State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment”.

The UN Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials<sup>71</sup> state that governments shall adopt the necessary measures to instruct law enforcement officials, in basic training and all subsequent training and refresher courses, in the provisions of national legislation incorporating the Code of Conduct for Law Enforcement Officials and other basic texts on human rights.

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<sup>70</sup> The BiH Criminal Procedure Code (Article 39), the FBiH Criminal Procedure Code (Article 53) and the RS Criminal Procedure Code (Article 47) all enshrine the right of a suspect to have access to a lawyer during criminal proceedings.

<sup>71</sup> Adopted by the UN Economic and Social Council on 24 May 1989.

## Practice in BiH

According to official information from the authorities in BiH, human rights related subjects are incorporated in the curricula in both the FBiH and the RS police academy.<sup>72</sup> In the RS, for instance, the subject of “Human Rights and Values” is covered during the first phase of the training received at the Police Academy, lasting eight months and consisting of a total of 1,007 taught hours. Of those, 30 are devoted to the subject of “Human Rights and Values”. The FBiH Police Academy informed Amnesty International that both subjects related to human rights and specifically the prohibition of torture, as well as topics related to communication, psychology, and situations of conflict, are included in the training curricula for police officers.<sup>73</sup>

In addition, members of the police forces have received after the 1992-95 war training by the UN Mission to BiH and by the UN-led International Police Task Force which, until 2002, supervised the activities of local police forces. Courses included subjects such as “human dignity” and “democratic policing”.<sup>74</sup> Moreover, in the FBiH, the non-governmental organization (NGO) Association for the Rehabilitation of Torture Victims/Centre for Torture Victims contributed to seminars on the prevention of torture and the rehabilitation of torture victims, held in Sarajevo for teachers at the Sarajevo Police Academy and for police cadets.<sup>75</sup>

However, there remain concerns that training for police officers has not been provided consistently across BiH and that in some cases such training has been inadequate, with basic courses lasting only a few weeks.<sup>76</sup> In 2005, the CAT noted that “the education and information provided to police and prison officers in the different entities and the practical implementation of the knowledge and skills acquired through training vary [in different parts of the State party]”.<sup>77</sup> The CAT recommended that the authorities in BiH conduct, on a regular basis, education and training of law enforcement personnel, including those in police and prison establishments, to ensure that all officers were fully aware of the provisions of the Convention, that breaches would not be tolerated and would be investigated, and that offenders would be prosecuted.

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<sup>72</sup> CAT, *Consideration of Reports Submitted by States Parties under Article 19 of the Convention. Initial reports of States parties due in 1993. Addendum. Bosnia and Herzegovina*, CAT/C/21/Add.6, 29 July 2005, paras. 396 and ff.

<sup>73</sup> Correspondence from the FBiH Police Academy, 3 October 2007.

<sup>74</sup> ICG, *Policing the Police in Bosnia: A Further Reform Agenda*, Balkans Report No. 130, 10 May 2002, pp. 6, 33.

<sup>75</sup> CAT, *Consideration of Reports Submitted by States Parties under Article 19 of the Convention. Initial reports of States parties due in 1993. Addendum. Bosnia and Herzegovina*, CAT/C/21/Add.6, 29 July 2005, para. 404.

<sup>76</sup> ICG, *Policing the Police in Bosnia: A Further Reform Agenda*, Balkans Report No. 130, 10 May 2002, p. 33.

<sup>77</sup> CAT, *Consideration of Reports Submitted by States Parties under Article 19 of the Convention. Conclusions and Recommendations of the Committee against Torture. Bosnia and Herzegovina*, CAT/C/BIH/CO/1, 15 December 2005, para. 13.



To Amnesty International’s knowledge, no comprehensive measures have been taken by the authorities in BiH to implement the recommendations of the CAT and to provide ongoing human rights training to police officers.

### **3. Cruel, inhuman or degrading treatment or punishment in prisons**

“I was sitting on a stool near the window to get some fresh air and a prison guard asked me to get down from it. [...] I didn’t and because of that they took me away and beat the hell out of me. [...] They were five prison guards. I did not make a complaint: better keep quiet, if you complain, things get worse”.

#### **A former prisoner in the Tunjice Prison**

BiH’s division into two semi-autonomous entities is reflected in its prison system, which is composed of three separate components. At the entity level, the two Ministries of Justice are responsible for remand and convicted prisoners in each entity’s prisons establishments. In addition, in 2005 a BiH detention unit was opened, under the responsibility of the BiH Ministry of Justice, where persons in pre-trial detention are held pending the completion of proceedings before the BiH State Court. Presently, prisoners serving their sentences following proceedings before the BiH State Court are held in the entities’ prison, although the BiH Ministry of Justice remains the authority responsible for the execution of sanctions at the state level. Plans have been made to build a state-level prison with an expected capacity for approximately 340 prisoners. The plans are conditional upon the willingness of international donors to finance most of the costs associated with the project.

The fragmentation of the prison system in BiH is compounded by the fact that the management of each prison establishment enjoys considerable autonomy<sup>78</sup> which, especially in the F BiH, borders on a lack of effective control on the part of the entity authorities given that no prison inspection is functioning in the entity (see below). A complex and decentralized prison system has allowed individual prisons to adopt good practice in certain areas, but has made efforts to promote a systemic reform of the prison system more difficult. Such efforts have been led in BiH by the Council of Europe which, in cooperation and with the support of international donors and other agencies of the international community, has organized training for prison staff and worked to promote reform in areas such as legislation, the provision of health care in prisons, systems of risk and needs assessment for prisoners, as well as complaints mechanisms.

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<sup>78</sup> United Kingdom Department for International Development (DFID), *Examination of the Effectiveness of Efficiency of the Execution of Criminal Sanctions*, 2006, p. 24.

A number of other problems affect the functioning of prisons in both the FBiH and in the RS, with detrimental consequences for the human rights of persons deprived of their liberty. Inadequacies in the management and administration<sup>79</sup> of the prison system are manifested in the relative frequency of prison riots in recent years, as well as in events such as the escape from Foča Prison in May 2007 of convicted war criminal Radovan Stanković.<sup>80</sup>

In interviews with Amnesty International delegates, the management of prisons in both the FBiH and in the RS complained about lack of resources to hire sufficient number of staff to manage prisons effectively. Of greatest concern, there appears to be lack of certain specific categories of staff, namely of security staff and especially of staff to provide healthcare to prisoners.<sup>81</sup> Conversely, administrative personnel make up a higher proportion of prison staff than in similar prison systems.<sup>82</sup>

Overcrowding, while not extreme when judged by the standards of the overall prison population of BiH and the overall capacity of BiH prisons,<sup>83</sup> becomes a serious problem in certain prison establishments, especially in remand sections in the FBiH. For example, in 2006 the total population in the remand section of the Busovača Prison (Kazneno-popravni zavod Tomislavgrad, Odjeljenje u Busovači) in the FBiH, exceeded its capacity more than twice.<sup>84</sup> The director of the Sarajevo Prison told Amnesty International that the capacity of the remand section is of approximately 110 detainees living in collective dormitories, based on the basic standard of living space for persons deprived of their liberty recommended by the CPT (four square meters per person). However, in June 2007, the remand section of the Sarajevo Prison was occupied by 153 detainees.<sup>85</sup>

Also because of overcrowding, high and low risk prisoners are held together in the same prison establishments. The Council of Europe has piloted a project on individualized risk and needs assessment for prisoners in a number of prisons in BiH. However, the implementation of these protocols has only recently started and is limited to those prison establishments which

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<sup>79</sup> During visits to prisons in BiH, Amnesty International delegates also received some allegations of corruption among prison officials.

<sup>80</sup> The case of Radovan Stanković was the first case which had been transferred for prosecution from the International Criminal Tribunal for the Former Yugoslavia to BiH. His case was transferred to the BiH in 2005 and, following proceedings at the War Crimes Chamber of the BiH Court, he received a final sentence of 20 years' imprisonment in April 2007. Following his conviction, Radovan Stanković escaped from prison in May 2007, while he was being escorted to a medical examination outside the prison. After the escape, the director and the deputy director of the Foča Prison, where he was detained, were fired by the RS Minister of Justice and criminal charges were brought against prison guards who were escorting Radovan Stanković when he escaped. As of December 2007, he remained at large.

<sup>81</sup> DFID, *Examination of the Effectiveness of Efficiency of the Execution of Criminal Sanctions*, 2006, p. 30.

<sup>82</sup> *Ibid.*

<sup>83</sup> It is estimated that the overall prison population in BiH exceeds by 5 per cent the total capacity of the prison system. DFID, *Examination of the Effectiveness of Efficiency of the Execution of Criminal Sanctions*, 2006, p.26.

<sup>84</sup> *Ibid.*

<sup>85</sup> Interview with Sarajevo Prison management, June 2007.

are part of this project. In interviews with Amnesty International delegates, the management of some prisons indicated that a very mixed prison population composed of prisoners serving very long sentences held together with those having committed less serious crimes, including in low-security prisons, is a risk factor increasing the incidence of violence between prisoners (see below).<sup>86</sup>

In addition, it is a matter of serious concern that there are still young persons, including children, in detention on remand, as well as young persons, including children, serving juvenile imprisonment sentences, who are held in the same prisons with male adults.<sup>87</sup> According to the director of the Zenica Prison, for instance, at the time of an Amnesty International visit in June 2007 “10 or 12” prisoners were serving a juvenile imprisonment sentence in the prison, one of them younger than 18. Those serving juvenile imprisonment sentences were reportedly placed together in the same pavilion with adult prisoners who “were behaving well”.<sup>88</sup>

Adequate health care is not always provided in prisons, in part as a result of a lack of staff. In 2003 the CPT found that staffing levels in the provision of health care were insufficient in the Sarajevo and Zenica Prisons.<sup>89</sup> In BiH, the Foča Prison has the highest rate of inmates per staff providing health care<sup>90</sup> and, indeed many inmates in Foča complained to Amnesty International delegates about the lack of satisfactory medical care in prison.<sup>91</sup> Other factors limiting the availability of health care in prisons appear to be the lack of integration between the health care and prison systems as well as the absence of any coordination between entities. In addition, no guidelines or advice is available to healthcare staff and no standards are available for the delivery of healthcare services in prison. Despite attempts by the Council of Europe to tackle these problems in the context of its prison reform projects, no significant progress in this regard has been made in the past few years. In addition, of particular concern

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<sup>86</sup> The situation appeared to be particularly problematic in this respect in the Doboj Prison. Interview with Doboj Prison management, June 2007.

<sup>87</sup> Special juvenile criminal provisions apply in BiH for those who committed a crime under the age of 18 and, exceptionally, to those who have committed a crime as young adults (defined as those under the age of 21).

<sup>88</sup> Interview with Zenica Prison management, June 2007.

<sup>89</sup> CPT, *Report to the Government of Bosnia and Herzegovina on the visit to Bosnia and Herzegovina carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 April to 9 May 2003*, CPT/Inf (2004) 40, 21 December 2004, para. 77.

<sup>90</sup> DFID, *Examination of the Effectiveness of Efficiency of the Execution of Criminal Sanctions*, 2006, p. 84.

<sup>91</sup> Interviews with Foča Prison detainees, June 2006. The CPT, in its preliminary observations issued following a visit to BiH in 2007 has requested an investigation into the circumstances surrounding the death of a prisoner who died in Pavilion II of Zenica Prison after he had been brought back from the hospital, where he had been treated for a drug overdose. See CPT, *Preliminary observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which visited Bosnia and Herzegovina from 19 to 30 March 2007 and Response of the authorities of Bosnia and Herzegovina*, CPT/Inf (2007) 34, 16 July 2007, p. 7.

is the situation in the Forensic Psychiatric Annexe of the Zenica Prison where psychiatric treatment for inmates is completely inadequate (see below).

Material conditions in some prisons in BiH are poor and many of the buildings still in use as prisons date back to the period of the Austro-Hungarian Empire.<sup>92</sup> In 2003 the CPT described material conditions in the remand section of the Sarajevo Prison as “appalling”, noting that cells were unhygienic and often extremely overcrowded.<sup>93</sup> A report financed by the European Commission on the BiH justice sector expressed concern at the fact that many of the prisons in BiH are unsuitable to provide a safe and a secure environment for their inmates.<sup>94</sup> When Amnesty International delegates visited the Sarajevo Prison in June 2007, they were informed by the prison staff that since the CPT visit in 2003 nothing had been done to improve material conditions in the building, apparently due to a lack of resources.<sup>95</sup> Although Amnesty International delegates were not permitted to interview detainees on remand,<sup>96</sup> a simple inspection of the building made it clear that conditions were poor. Indeed the CPT, in its preliminary observations issued following its 2007 visit to BiH, noted: “at Sarajevo Remand Prison the appalling conditions described in the report on the 2003 visit persist; a progressive renovation of the cellular accommodation throughout the prison is necessary. Certain of the establishment’s isolation cells are in such a poor condition that they are currently not suitable for holding human beings”.<sup>97</sup> Material conditions in the Forensic Psychiatric Annexe of the Zenica Prison are also unacceptable (see below) and, during a visit to the Dobojski Prison, Amnesty International delegates noted a lack of sufficient natural light in the prison’s dormitories.

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<sup>92</sup> The territory corresponding to today’s BiH was ruled as part of the Austro-Hungarian Empire between 1878 and 1918.

<sup>93</sup> CPT, *Report to the Government of Bosnia and Herzegovina on the visit to Bosnia and Herzegovina carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 April to 9 May 2003*, CPT/Inf (2004) 40, 21 December 2004, para. 63.

<sup>94</sup> European Commission, *Functional Review of the BiH Justice Sector*, p. 119.

<sup>95</sup> Interviews with Sarajevo Prison staff, June 2007.

<sup>96</sup> Due to provisions limiting visits to remand detainees.

<sup>97</sup> CPT, *Preliminary observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which visited Bosnia and Herzegovina from 19 to 30 March 2007 and Response of the authorities of Bosnia and Herzegovina*, CPT/Inf (2007) 34, 16 July 2007, p.8.

## ***The prohibition of torture and other cruel, inhuman or degrading treatment or punishment***

### **International law and standards**

As noted above, BiH is required by international standards and domestic law to prevent and prohibit torture and other ill-treatment. Furthermore, Article 10 of the ICCPR required the authorities to ensure that all persons deprived of their liberty are “treated with humanity and respect for the inherent dignity of the human person”. International standards relating to persons deprived of their liberty expand on the meaning of these obligations. The UN Standard Minimum Rules for the Treatment of Prisoners state that “[c]orporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences” (Rule 31).

### **Domestic law**

Provisions in domestic legislation, including those dealing with offences by public officials, prohibit torture and other ill-treatment. The BiH Law on the Execution of Criminal Sanctions, Detention and Other Measures provides that “[t]he treatment of detainees and prisoners must be humane and with respect for their human dignity, preserving their physical and mental health, taking into account the maintenance of necessary order and discipline” (Article 45(1)) and that “[n]o one shall be subjected to torture, inhuman or degrading treatment or punishment” (Article 45(2)). The Law on the Execution of Criminal Sanction in the FBiH (Article 8) and the RS Law on the Execution of Criminal and Misdemeanour Sanctions both prohibit torture and inhuman and degrading treatment by prison officials (Articles 9 and 163).

### **Ill-treatment in prisons**

Amnesty International is concerned that cases of ill-treatment in prison continue to be reported in both the FBiH and in the RS. As noted above, Amnesty International delegates visited a number of prison establishments in BiH in June 2007. During some prison visits the organization’s delegates heard accounts of how prison guards physically ill-treated prisoners. The situation varied significantly between prisons. In the Mostar and Sarajevo prisons, for instance, all prisoners interviewed stated that they had been treated correctly by prison staff and did not report any instances of ill-treatment.<sup>98</sup>

The situation in the Zenica Prison appears to be the most serious. In discussions with Amnesty International delegates, the prison director admitted that cases of ill-treatment of prisoners by prison guards are reported.<sup>99</sup> The prison director added that ill-treatment of prisoners is unacceptable and should be punished, but that there is little the prison management can do to pursue effective investigations of such cases (see below). Interviews

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<sup>98</sup> Interviews with Mostar Prison and Sarajevo Prison detainees, June 2007.

<sup>99</sup> Interview with Zenica Prison management, June 2007.

with prisoners seemed to confirm the existence of a worrying pattern of ill-treatment of prisoners by prison guards in Zenica. Prisoners who have made such allegations have been and remain imprisoned in the Zenica Prison and, to protect them from possible reprisals, details of individual episodes of ill-treatment are kept confidential. However, from a number of interviews Amnesty International held with prisoners in Zenica, it appears that prisoners who are held in isolation cells as a result of disciplinary measures are in some cases beaten, including with truncheons, by prison guards.<sup>100</sup> In one case, Amnesty International obtained medical records consistent with allegations that a prisoner who complained of being beaten by prison guards received a number of blows on his legs, back and face. Allegedly, episodes of ill-treatment usually happen in one padded cell with rubber walls and are more frequent during weekends, apparently to reduce the number of potential testimonies at a time when less staff are present and some prisoners are allowed to spend time outside prison. Despite these “precautions”, prisoners who have been held in isolation cells and who stated to Amnesty International that they had not been personally ill-treated, reported to the organization’s delegates that they repeatedly heard noises and screams suggesting that someone was being beaten in the isolation cell where typically the beatings are reported to take place.

During the visit to the Zenica Prison, the Amnesty International delegation was at times approached by a prison guard who appeared to be in a state of intoxication, and who told the organization’s delegates that “prisoners would say anything” and that he was “even accused of having sexually harassed them”. In interviews with Amnesty International, some prisoners identified him as one of the prison guards usually involved in ill-treatment against prisoners.

Amnesty International’s findings on ill-treatment in Zenica Prison are corroborated by similar observations by the CPT which, in 2007 received “numerous allegations of prisoners having been ill-treated by prison staff” in Zenica Prison and noted that the alleged ill-treatment consisted mainly of kicks, punches and blows with truncheons apparently taking place in, or during transfer to, the disciplinary cells.<sup>101</sup> The CPT noted that some of the allegations were supported by medical evidence.<sup>102</sup>

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<sup>100</sup> Interviews with Zenica Prison detainees, June 2007.

<sup>101</sup> CPT, *Preliminary observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which visited Bosnia and Herzegovina from 19 to 30 March 2007 and Response of the authorities of Bosnia and Herzegovina*, CPT/Inf (2007) 34, 16 July 2007, p.7.

<sup>102</sup> *Ibid.*

### **The Forensic Psychiatric Annexe of the Zenica Prison**

The Zenica Prison complex includes a Forensic Psychiatric Annexe where individuals are held following a court order for mandatory psychiatric treatment in a closed institution. Patients held in the Forensic Psychiatric Annexe have typically been accused of involvement in violent crimes such as murders or attempted murders and have been diagnosed with severe mental health problems.<sup>103</sup> During its visit in 2003 the CPT found a number of serious problems with regard to the Zenica Prison Forensic Psychiatric Annexe. In particular, the CPT reported some allegations of ill-treatment against patients; grossly insufficient living space in two large dormitories; “totally inadequate [staffing levels] to provide an appropriate quality of care to some 70 chronic psychiatric patients, some of whom were disturbed or requiring constant nursing care (geriatric patients/incontinent patients)”; treatment limited to pharmacotherapy only; and very limited access to organized activities.<sup>104</sup>

In 2004, a patient in the Zenica Prison Forensic Psychiatric Annexe, Fikret Hadžić, filed an application at the European Court of Human Rights complaining inter alia about the conditions of his detention and the quality of his medical treatment. He alleged that the Annexe was not an appropriate institution for the detention of psychiatric patients, that he could see a doctor only once every three months and he pointed to an incident in September 2004, when he had been beaten up by another prisoner.<sup>105</sup> A settlement was reached in the case to the effect that the BiH authorities agreed to make an ex gratia payment to Fikret Hadžić and to “move all patients held in the Zenica Prison Forensic Psychiatric Annexe [...] to an adequate facility as soon as possible but no later than 31 December 2005”.<sup>106</sup>

Amnesty International was informed that the BiH, FBiH and RS authorities have agreed in principle to establish a single, state-level institution for the mandatory psychiatric treatment of

<sup>103</sup> In some cases patients were convicted for such acts (e.g. for manslaughter) although they were found as having diminished responsibility.

<sup>104</sup> CPT, *Report to the Government of Bosnia and Herzegovina on the visit to Bosnia and Herzegovina carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 April to 9 May 2003*, CPT/Inf (2004) 40, 21 December 2004, paras. 84 and ff.

<sup>105</sup> European Court of Human Rights, *Fikret Hadžić v. Bosnia and Herzegovina*, Application no. 11123/04, Final decision, 11 October 2005.

<sup>106</sup> Ibid. In addition, in 2006 the Human Rights Committee (HRC) inter alia expressed concern at “poor material and hygienic conditions, lack of qualified staff and inadequate, pharmacotherapy-based treatment of mental health patients and inmates, in particular at Zenica Prison Forensic Psychiatric Annex and also at Sokolac Psychiatric Hospital”. The HRC called on BiH to “improve the material and hygienic conditions in detention facilities, prisons and mental health institutions in both Entities and ensure sufficient staffing levels, as well as regular exercise and out-of-cell activities for inmates, and adequate treatment of mental health patients”. Moreover, the HRC called for the transfer of all patients from Zenica Prison Forensic Psychiatric Annexe. See HRC, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant. Concluding Observations of the Human Rights Committee*, CCPR/C/BIH/CO/1, 22 November 2006, para. 19.

patients in a closed institution.<sup>107</sup> Nevertheless, such agreement has not been followed by concrete steps to relocate the patients and the Annexe remains in use.

During a subsequent visit in 2007, the CPT did not record any allegations of ill-treatment and reported an improvement in the situation with regard to overcrowding.<sup>108</sup> However, the CPT noted that “material conditions have continued to deteriorate and remain wholly unacceptable for a health care institution” and that “[t]he treatment relied virtually exclusively upon pharmacotherapy”.<sup>109</sup> Moreover, the CPT noted that “conditions in the isolation room remain very unsafe for the placement of disturbed psychiatric patients” and that there was an almost total lack of any meaningful activity for patients.<sup>110</sup>

Amnesty International delegates visited the Zenica Prison Forensic Psychiatric Annexe in June 2007. The Zenica Prison director acknowledged the huge problems faced by the institution, including the extremely poor material conditions, the lack of adequate medical care and the state of idleness and inactivity in which the patients are kept. An inspection of the Annexe and some conversations with the patients, who are still kept in two large dormitories, confirmed this. Medical staff in the Annexe told Amnesty International that the only form of treatment provided to patients continued to be the administration of medications. When Amnesty International delegates enquired about the placement of patients in the isolation room (which, as noted above, was found by the CPT as being very unsafe), medical staff replied that it was only used voluntarily by patients, upon their request, or “for a few hours”, to “calm down particularly aggressive inmates”. However, an inspection of the register used to record the placement of patients in the isolation room suggested that patients were kept in the room in some cases for up to 10 days.

Amnesty International considers that conditions in the Forensic Psychiatric Annexe of the Zenica Prison, due in particular to the lack of adequate medical care to psychiatric patients and the very poor material conditions in which they are held, amount to inhuman and degrading treatment.

Amnesty International also received allegations of ill-treatment in some prisons in the RS. A few former inmates of Tunjice Prison, now transferred to other prisons, alleged they had been ill-treated by guards while imprisoned there.<sup>111</sup> Some stated that they had been beaten after having protested against widespread corruption in the prison. In one case a former prisoner in Tunjice gave a detailed account of an episode when, in 2006, five prison guards allegedly

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<sup>107</sup> Interview with Zenica Prison management, June 2007. See also CPT, *Preliminary observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which visited Bosnia and Herzegovina from 19 to 30 March 2007 and Response of the authorities of Bosnia and Herzegovina*, CPT/Inf (2007) 34, 16 July 2007, p.10.

<sup>108</sup> *Ibid.*, p.9.

<sup>109</sup> *Ibid.*

<sup>110</sup> *Ibid.*, pp. 9, 10.

<sup>111</sup> Interviews with former Tunjice Prison detainees, June 2007.



severely beat him with truncheons following what was deemed to be an infringement of the prison’s discipline rules. Ill-treatment allegations have also been made by some prisoners in the Doboj Prison, who stated that beatings by prison guards take place in the isolation cells. The vast majority of the prisoners interviewed by Amnesty International in the Foča Prison stated they were treated correctly by prison guards, although a small number reported episodes of ill-treatment.<sup>112</sup>

## ***The duty to prevent inter-prisoner violence***

### **International law and standards**

International human rights standards require BiH to ensure the safety of persons deprived of their liberty including from violence by other inmates. The European Court of Human Rights has clarified that this obligation is inherent in the duty to prevent and prohibit torture and other ill-treatment.<sup>113</sup> The CPT has also clarified that “[t]he duty of care which is owed by custodial staff to those in their charge includes the responsibility to protect them from other inmates who wish to cause them harm”.<sup>114</sup> Moreover, the European Prison Rules<sup>115</sup> require that procedures be in place to ensure the safety of prisoners, prison staff and all visitors and to reduce to a minimum the risk of violence and other events that might threaten safety (Rule 52.2).

### **The failure by the authorities in BiH to prevent inter-prisoner violence**

Both legislation and internal prison regulations establish the duty of prison staff to maintain order in prisons and the need to ensure that prisoners are not attacked by other inmates. However, inter-prisoner violence is disturbingly common in prisons in BiH.

The CPT in 2003 heard accounts of inter-prisoner violence and bullying in the Sarajevo and Zenica prisons which, in Zenica, included a sexual assault on a 17-year-old inmate by

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<sup>112</sup> Interviews with Foča Prison detainees, June 2007.

<sup>113</sup> European Court of Human Rights, *Pantea v. Romania*, Application no. 33343/96, 3 September 2003, para. 189.

<sup>114</sup> CPT, *11th General Report on the CPT's activities covering the period 1 January to 31 December 2000*, 3 September 2001, para. 27.

<sup>115</sup> Council of Europe, *Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules*, 11 January 2006.

another adult inmate.<sup>116</sup> During its visit to BiH in 2007 the CPT again found that inter-prisoner violence “appears to be prevalent in the prisons visited”.<sup>117</sup>

In all prisons visited by Amnesty International in June 2007, with the exception of Mostar Prison,<sup>118</sup> the organization received reports of prisoner-on-prisoner violence. Violence between prisoners in the Zenica Prison was of particular concern, with the prison director acknowledging that it is a “relatively big problem”.<sup>119</sup> In one case in Zenica, a prisoner told Amnesty International that he had been victim of an assault by another prisoner in October 2006 when, during the night, one inmate entered the dormitory where he was sleeping and attacked him with blows on his head, before prison staff could intervene. The victim had to receive treatment in hospital, where part of his ear was amputated.<sup>120</sup> He complained to Amnesty International of having been placed in an isolation cell following the incident, apparently in order to protect him from his attacker. The prisoner’s account was substantially confirmed by Zenica Prison staff.<sup>121</sup> Other prisoners in Zenica, as well as former Zenica Prison prisoners currently held in other prison establishments, gave accounts of other, less serious episodes of violence between inmates.

In March 2007 a riot took place in the Doboj Prison, accounts of which were given to Amnesty International by the prison’s management and inmates.<sup>122</sup> Information received by Amnesty International in Doboj Prison is consistent with the published findings of an investigation conducted by the RS Ministry of Justice following the incidents.<sup>123</sup> Reportedly, the riot was sparked by a conflict between two prisoners, which then escalated in a much more serious incident. The disturbance saw a crowd of prisoners attempting to kill two other inmates, who found refuge in the administration wing of the prison. While trying to defend himself, one of the prisoners managed to obtain possession of firearms meant for the use of prison staff and discharged them in the direction of a door behind which were inmates seeking to attack him. From the investigation conducted by the RS Ministry of Justice it emerges that during the riot prison staff were almost completely unable to exert control over the prisoners

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<sup>116</sup> CPT, *Report to the Government of Bosnia and Herzegovina on the visit to Bosnia and Herzegovina carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 April to 9 May 2003*, CPT/Inf (2004) 40, 21 December 2004, para. 53.

<sup>117</sup> CPT, *Preliminary observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which visited Bosnia and Herzegovina from 19 to 30 March 2007 and Response of the authorities of Bosnia and Herzegovina*, CPT/Inf (2007) 34, 16 July 2007, pp.7, 8.

<sup>118</sup> In Tunjice Prison Amnesty International did not carry out interviews with detainees.

<sup>119</sup> Interview with Zenica Prison management, June 2007.

<sup>120</sup> Interviews with Zenica Prison detainees, June 2007.

<sup>121</sup> Interviews with Zenica Prison staff, June 2007.

<sup>122</sup> Interviews with Doboj Prison detainees and management, June 2007.

<sup>123</sup> See CPT, *Preliminary observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which visited Bosnia and Herzegovina from 19 to 30 March 2007 and Response of the authorities of Bosnia and Herzegovina*, CPT/Inf (2007) 34, 16 July 2007, pp. 25 and ff.

some of whom “broke into almost all offices in the administration part of the building [...] broke a part of office equipment and almost all glass surfaces”.<sup>124</sup>

Inter-ethnic tensions appear to play a role in some episodes of inter-prisoner violence. A former Sarajevo Prison inmate, currently held in Foča Prison, told Amnesty International that in January 2007 he was repeatedly assaulted in ethnically motivated attacks by other prisoners.<sup>125</sup> In the most serious incident, he alleges he was beaten by four other prisoners and had to hide under his bed before prison guards intervened. Following each incident he was transferred to a different dormitory but he stated that no action was taken to discipline or criminally prosecute the inmates responsible for the attacks. Other ethnically motivated incidents of violence between prisoners were reported to Amnesty International in Zenica Prison and, in a small number of cases, in Foča Prison.<sup>126</sup>

As we have noted, a lack of staff and in particular a lack of security staff has been cited by members of prison management as one of the reasons for incidents of prisoner-on-prisoner violence. The CPT agreed with this assessment, having identified understaffing as one of the causes of violence between prisoners, both in 2003<sup>127</sup> and in 2007. In the case of the Dobož riot, the CPT in particular noted that “[u]nfortunately, such incidents are to be expected given the inadequate prison estate, combined with insufficient staffing and a lack of a coherent prison policy and clear prison procedures”.<sup>128</sup>

Amnesty International is also concerned at the failure by the BiH authorities to ensure that appropriate risk assessment procedures for prisoners are in place and are used systematically. This would provide appropriate solutions for different categories of prisoners, and its lack is another reason for the high incidence of inter-prisoner violence and disturbances in BiH prisons. Lack of suitable accommodation for different categories of prisoners, including a lack of high security units for high risk prisoners, as well as overcrowding, further aggravate the problem.

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<sup>124</sup> CPT, *Preliminary observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which visited Bosnia and Herzegovina from 19 to 30 March 2007 and Response of the authorities of Bosnia and Herzegovina*, CPT/Inf (2007) 34, 16 July 2007, p. 26.

<sup>125</sup> Interviews with Foča Prison detainees.

<sup>126</sup> Interviews with Foča Prison and Zenica Prison detainees, June 2007.

<sup>127</sup> CPT, *Report to the Government of Bosnia and Herzegovina on the visit to Bosnia and Herzegovina carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 April to 9 May 2003*, CPT/Inf (2004) 40, 21 December 2004, paras. 53 and 57.

<sup>128</sup> CPT, *Preliminary observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which visited Bosnia and Herzegovina from 19 to 30 March 2007 and Response of the authorities of Bosnia and Herzegovina*, CPT/Inf (2007) 34, 16 July 2007, p. 8.

Indeed, the investigation conducted by the RS Ministry of Justice into the incidents in Dobož noted that more than half of the prisoners in Dobož<sup>129</sup> on the day the riot started were there in contravention of existing criteria on the placement of convicted prisoners. Among them were the organizers of the riot who “[b]y all criteria [...] should have been sent to closed departments with high level of security which unfortunately does [sic] not exist in the prisons of RS”.<sup>130</sup> (There is no high security unit for high risk prisoners in the FBiH prison system either).

## ***The duty to investigate ill-treatment in prisons***

### **International law and standards**

The BiH authorities are required to ensure that prompt, independent, impartial and thorough investigations into allegations of torture and other ill-treatment in prisons are conducted. In addition to international law standards already discussed above, the UN Standard Minimum Rules for the Treatment of Prisoners state that every prisoner should be able to make complaints to the prison director, to prison inspectors, to the prison administration and to the judicial authority, and that every complaint should be dealt with and replied to without undue delay (Rule 36).

### **Domestic law and framework for prison inspections, complaints by prisoners and the investigation of allegations of torture and other ill-treatment**

A key role in addressing complaints by prison inmates throughout BiH is assigned to the BiH Human Rights Ombudsman who, according to existing legislation, can consider and investigate complaints related to human rights violations committed by any governmental body at the entity or state level (Article 2, Law on the Human Rights Ombudsman of Bosnia and Herzegovina).<sup>131</sup> Article 30 of the Law on the Human Rights Ombudsman of Bosnia and Herzegovina provides that when the Ombudsman, in the exercise of his/her duties, becomes aware of conduct or acts which may constitute criminal offences, he/she may inform the competent prosecuting authority. Moreover, following an investigation, the Office of the BiH Ombudsman can inform the competent authorities and make recommendations. Where the competent authority fails to take action, the Ombudsman may, in substitution for this authority, institute disciplinary proceedings against the official responsible or, where

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<sup>129</sup> Dobož Prison is a small establishment originally intended for inmates serving short sentences of up to one year. Interview with Dobož Prison management, June 2007.

<sup>130</sup> *Ibid.*, p. 27.

<sup>131</sup> This is recognized in the BiH Law on the Execution of Criminal Sanctions, Detention and Other Measures which explicitly provides that detainees and prisoners have the right to communicate confidentially with the BiH Ombudsman (Article 68(1)) and that all detainees and prisoners may communicate any complaints or allegations of mistreatment to the BiH Ombudsman (Article 68(5))

appropriate, bring the case before a criminal court (Article 31(3), Law on the Human Rights Ombudsman of Bosnia and Herzegovina).

Legislation at the state level, as well as in the two entities, defines systems for prison inspection by the competent ministries of Justice. Under BiH legislation the BiH Ministry of Justice is responsible for the supervision of the treatment of persons deprived of their liberty by the order of the BiH Court.<sup>132</sup> At the moment, in the absence of a state level BiH prison, these include detainees serving a sentence in the entities' prisons following proceedings before the BiH Court. BiH law provided that detainees and prisoners deprived of their liberty by the order of the BiH Court have the right to communicate confidentially with the [prison] Inspector.<sup>133</sup> Moreover, detainees and prisoners have a right to file requests, appeals and other submissions to the competent authorities for the protection of their rights and to have their requests and complaints dealt with without delay.<sup>134</sup>

In Articles 152-155, the Law on the Execution of Criminal Sanctions in the FBiH include provisions on the FBiH prison inspection carried out by the FBiH Ministry of Justice (although it does not explicitly recognize that inmates should be able to communicate confidentially with prison inspectors). It also recognizes the rights of inmates to lodge complaints before the competent authorities (Articles 53, 92).

Similarly, the RS Law on the Execution of Criminal and Misdemeanour Sanctions provides that a system of prison inspection is established by the RS Ministry of Justice authorizing prison inspectors to have conversations with inmates without the presence of prison staff (Article 86). Article 124 contains detailed provisions on the rights of inmates in RS prisons to lodge complaints. It also provides that inmates are entitled to lodge confidential complaints with the director about violations of their rights setting up a deadline of 15 days to respond to such complaints. Complaints can also be made to the RS Ministry of Justice and, in confidence, to prison inspectors while they are carrying out their duties.

With regard to criminal investigations of cases of ill-treatment in prisons, as noted above, legislation in BiH stipulates the duty by the competent prosecutor to initiate an investigation when there are grounds for suspicion that a crime has been committed. This general provision clearly applies as well to crimes resulting in the torture or other ill-treatment of prisoners by prison staff.

### **The failure by the authorities in BiH to supervise and monitor prisons and investigate ill-treatment allegations**

The existing legal framework defines supervisory and complaint mechanisms for persons deprived of their liberty. Amnesty International is concerned that, in practice, existing provisions are not implemented in full, often leaving detainees and prisoners with no

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<sup>132</sup> Ibid., Article 40.

<sup>133</sup> Ibid., Article 68(1).

<sup>134</sup> Ibid., Article 68(3) and (4).

possibility to report torture or other ill-treatment they may have been subjected to and to have their complaints investigated.

The Office of the BiH Ombudsman could play a positive role as an independent authority examining complaints by inmates in prisons in BiH. Until 2006 there were three separate ombudsperson institutions, one at the BiH level and two at the entity level. Under pressure from the international community and (in particular the EU and the Council of Europe), plans have been made to merge these institutions into a single, state-level, BiH Ombudsman. Relevant legislation was adopted in 2006 and a unified BiH Ombudsman was supposed to be operational by the end of 2006.

However, there have been delays in the transfer of responsibilities to the BiH Ombudsman while the entity-level ombudsmen have continued to function, albeit with their activities significantly constrained by uncertainties about when and how their role will be taken up by a state-level institution. These delays have been caused by the lack of an action plan for the handover of responsibilities from the entities to the state-level institution and legal uncertainties about the future status of the entities’ ombudsmen.<sup>135</sup> Most importantly, the process has been slowed down by the difficulties in finding agreement in the BiH Parliament on the composition of the Office of the BiH Ombudsman. In September 2007, the BiH House of Representatives failed to endorse the appointment of the Bosniak (Bosnian Muslim) and Bosnian Serb candidates for the position of members of the Office of the BiH Ombudsman and only gave its support to the nomination of the Bosnian Croat candidate.<sup>136</sup> At the end of 2007 members of the ad hoc commission for appointment of the Ombudsman were appointed by the two chambers of the BiH Parliament. The continuous politicization of the process of appointing members of the Office of the BiH Ombudsman is not only preventing the BiH Ombudsman from functioning effectively, but also raises doubts about the future independence of the body.

This protracted transition and open questions about the capacity of the BiH Ombudsman to deal effectively and independently with complaints by BiH citizens have left victims of human rights violations without the important protection provided by an independent human rights institution. In addition, BiH is not yet a party to the Optional Protocol to the Convention against Torture (OPCAT) and has not yet established a system of regular visits by an independent national body to places where people are deprived of their liberty (as required by the OPCAT).<sup>137</sup>

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<sup>135</sup> Council of Europe, *Bosnia and Herzegovina: Compliance with obligations and commitments and implementation of the post-accession co-operation programme. Thirteenth Report (June 2006–March 2007)*, SG/Inf (2007) 3, 7 May 2007.

<sup>136</sup> According to Article 8(7) of the amended Law on the Human Rights Ombudsman of Bosnia and Herzegovina “The Ombudsmen are nominated from the three constituent peoples (Bosniak, Croat and Serb), which does not exclude the possibility of a nomination from the group of Others”. The BiH Constitution mentions in its Preamble Bosniaks, Croats, Serbs as the constituent peoples of BiH (alongside with Others).

<sup>137</sup> Currently, the CPT carries out visits to places of detention in BiH as part of its mandate to “examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the

In addition to an independent human right institution, a functioning system of prison inspections can provide another level of accountability for prison staff and a way for the competent authorities to monitor the situation in prisons. It is a matter of serious concern, therefore, that in the FBiH no such system is functioning. The prison management of all establishments in the FBiH visited by Amnesty International informed the organization that no inspection of their prisons had been carried out for a number of years, because the two posts of prison inspectors at the FBiH Ministry of Justice have been vacant. In these prisons, inspections by the BiH Ministry of Justice take place only with regard to the situation of a small number of prisoners sentenced by the BiH Court and serving their sentence in FBiH prisons. The FBiH Ministry of Justice confirmed that, since mid-2004, no prison inspectors have been employed at the FBiH Ministry. Moreover, Amnesty International was informed that the FBiH Ministry currently employs only one person, at the Assistant Minister level, in its Office for the Execution of Criminal Sanctions, responsible for supervising eight prisons.<sup>138</sup> In contrast, a system of prison inspections appeared to be in place and functioning in the RS.

In general, with the exception of the director of Zenica Prison, the management of prisons did not report having received complaints related to the ill-treatment of prisoners. Amnesty International requested detailed statistics from the FBiH and RS Ministries of Justice on the number of complaints by prisoners alleging ill-treatment by prison staff in the entities' prisons. The FBiH Ministry of Justice replied stating that detailed statistics were not available, including because of the lack of capacity by the Ministry to collect and process data and statistics on prisons in the FBiH (see below).<sup>139</sup> According to the FBiH Ministry of Justice, in four cases disciplinary proceedings were initiated in Zenica Prison against prison guards for alleged ill-treatment of inmates. In all cases, disciplinary proceedings ended with the exoneration of the suspected guards. According to the RS Ministry of Justice, no cases of alleged ill-treatment in RS prisons were reported between 1 January 2004 and 31 August 2007.<sup>140</sup>

Interviewed prisoners told Amnesty International that, in some cases, they had complained about food, accommodation, or other aspects of the prison's everyday life. However, in no case where ill-treatment was alleged was a formal complaint made by interviewed inmates. Prisoners in some cases cited an atmosphere of intimidation preventing them from presenting complaints alleging ill-treatment by prison staff. One former prisoner in the Tunjice Prison stated: "I did not make a complaint: better keep quiet, if you complain, things get worse".<sup>141</sup> With no guarantee that prison guards suspected of having ill-treated prisoners will be suspended from active duty during any investigation, fear of reprisals feeds a

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protection of such persons from torture and from inhuman or degrading treatment or punishment" under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Article 1). BiH became a party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on 12 July 2002.

<sup>138</sup> Correspondence from the FBiH Ministry of Justice, 9 October 2007.

<sup>139</sup> Correspondence from the FBiH Ministry of Justice, 9 October 2007.

<sup>140</sup> Correspondence from the RS Ministry of Justice, 25 September 2007.

<sup>141</sup> Interviews with former Tunjice Prison detainees, June 2007.

culture of impunity. In four cases where Amnesty International had received reliable information suggesting that detainees had been ill-treated by prison staff, the inmates refused to talk in private to the organization’s delegates.

Amnesty International is concerned that there appears to be no formal system in place to ensure that complaints, and in particular those alleging ill-treatment by prison guards, can be made, that they are promptly, independently, impartially and thoroughly investigated, and that complainants are protected from reprisals. Neither in the FBiH nor in the RS is there a common system and standard procedures for dealing with complaints by prison inmates, especially when these are first addressed to the prison administration. In all prisons visited by Amnesty International, directors or the prison management told the organization that inmates can present complaints, including to the prison director, in cases where they think that their rights have been violated. Complaints are often presented verbally to the director or other members of the prison staff and are rarely answered in writing.

The Council of Europe, within its prison reform programme in BiH, has developed a *Training Manual for Prison Staff Dealing with Complaints of Persons Deprived of Liberty*.<sup>142</sup> The model proposed in this document, intended to provide a more coherent system of complaints, distinguishes between ordinary complaints and confidential complaints, the latter normally including possible allegations against prison staff.<sup>143</sup> According to the system envisaged in this model, confidential complaints would be addressed, in the first instance, to the prison director, who would receive them in sealed envelopes and should reply in writing to the complainant. After exhausting this remedy and if not satisfied with how the complaint has been dealt with internally, complainants would be able to make a complaint to the BiH Ombudsman, an external independent body. At the moment, the implementation of the complaints system developed by the Council of Europe has only begun in some prison establishments, where the prisons’ management has expressed interest in putting it into operation.

The absence of an effective in-prison system of dealing with complaints by inmates, the lack of a functioning system of prison inspection (a serious problem in the FBiH), as well as the absence of a fully functioning independent human rights institution, leave inmates without sufficient safeguards and redress in cases of ill-treatment. Moreover, this situation leaves persons deprived of their liberty who have been subjected to ill-treatment at serious risk of reprisal, should they attempt to complain about the behaviour of prison guards.

Information made available to Amnesty International by the FBiH and RS authorities confirms that since January 2004, no criminal proceedings were initiated against prison guards suspected of having ill-treated inmates.<sup>144</sup> A culture of impunity and an atmosphere of

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<sup>142</sup> Council of Europe, *Training Manual for Prison Staff Dealing with Complaints of Persons Deprived of Liberty*, 2007.

<sup>143</sup> *Ibid.*, pp. 12 and ff.

<sup>144</sup> In one case, following the CPT visit to Zenica Prison in 2007, the Zenica-Doboj Canton Prosecutor requested information to the director of Zenica Prison with regard to one case of alleged ill-treatment. See CPT, *Preliminary observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which visited*



intimidation in prisons makes it unlikely that information about ill-treatment in prisons will reach anyone including the competent prosecutor, beyond the prison walls.

## **4. Conclusions and recommendations**

Despite the prohibition of torture and other ill-treatment under domestic and international law, Amnesty International’s research indicates that allegations of ill-treatment by members of the police forces and prison officials in BiH continue to be disturbingly common. A persisting culture of impunity and victims’ fears of reprisal mean that such acts often go unreported, uninvestigated and unredressed.

In those cases where a complaint is made, or where the competent authorities have reasonable grounds to believe that an act of ill-treatment might have been committed, rarely is a prompt, independent, impartial and thorough investigation conducted. This is a result of both the passivity of prosecutorial bodies and the ineffectiveness of internal complaints mechanisms.

In the police forces, internal investigations into police complaints are conducted locally, in the police authority where the complaint was filed. In addition to lacking independence, in those cases which came to the attention of Amnesty International, internal investigations were frequently ineffective or inconclusive. In prisons, inmates have often the single option of making an informal complaint to the director, with no guarantee that their allegations will be investigated or that they will be protected from reprisals by prison staff.

Allegations or evidence of ill-treatment by the police can come to the attention of prosecutors and judges who preside over preliminary proceedings, shortly after the arrest of a suspect. However, Amnesty International’s research indicates that in such cases action is rarely taken to investigate the conduct of officers who may have been responsible for ill-treatment.

In addition, there are a number of gaps in existing safeguards to protect the human rights of persons deprived of their liberty. These include a lack of appropriate training for members of police forces, the failure to keep full records after arrest, the failure to prevent inter-prisoner violence in prisons, and the failure to provide adequate medical care (and in particular appropriate psychiatric treatment) to persons deprived of their liberty.

Amnesty International is concerned that prisons in the FBiH appear to operate virtually without being subjected to any form of effective supervision at national/entity level. That the BiH has yet to establish a national system of regular visits undertaken by an independent expert body to places where people are deprived of their liberty sets further limits to the protection of persons deprived of their liberty. Moreover, the BiH Ombudsman institution is still not fully operational and the protracted transition towards a unified state-level human

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*Bosnia and Herzegovina from 19 to 30 March 2007 and Response of the authorities of Bosnia and Herzegovina, CPT/Inf (2007) 34, 16 July 2007, p. 21.*

rights institution is being delayed by the politicization of the process of appointing members of the Office of the BiH Ombudsman.

Amnesty International urges the authorities in BiH at all levels, with the assistance of the international community supporting the country in reforming its law-enforcement agencies and justice sector, to bring about comprehensive changes in policy and practice to address torture and other ill-treatment. The authorities should take measures to prevent torture and other ill-treatment. Furthermore, the authorities must ensure that allegations of torture or other ill-treatment are investigated, those responsible are brought to justice and the victims have access to effective redress and receive adequate reparations. In particular, Amnesty International calls on

### **the FBiH authorities, as a matter of urgency:**

- to ensure that the currently vacant posts of prison inspectors at the FBiH Ministry of Justice are filled as soon as possible and that a functioning system of prison inspections and monitoring is established;
- pending the relocation of patients of the Forensic Psychiatric Annexe of the Zenica Prison to a state-level facility, to take immediate steps to provide adequate medical care to patients, improve the material conditions in which they are accommodated and to discontinue the use of the isolation cell in the Forensic Psychiatric Annexe.

### **the FBiH and RS authorities:**

#### *on the absolute prohibition of torture*

- to send a clear message, at all levels, that torture and other ill-treatment in prisons and by police officers are contrary to international and domestic law, will not be tolerated and will be punished;
- to amend legislation to ensure that torture, as defined in the Convention against Torture, is included as a separate crime in the entities' criminal codes.

#### *on complaints procedures and the investigation of ill-treatment allegations*

- to ensure that the respect and protection of human rights are central elements in ongoing discussions about police reform and that such reform leads to the establishment of effective internal and external accountability and oversight mechanisms;

- to ensure that a centralized mechanism of internal investigation of complaints against the police is set up, whereby allegations of torture or other ill-treatment are promptly, independently, impartially and thoroughly investigated by officers removed from the police station or the local police authority where the abuse allegedly took place;
- to ensure that formalised procedures are in place for inmates in all prisons to complain confidentially to prison directors and for these complaints to be addressed and, where relevant, investigated;
- to ensure that prison inmates who lodge complaints, including about torture or other ill-treatment, are protected from reprisal;
- to ensure that police officers and prison staff responsible for torture or other ill-treatment are brought to justice in full and fair disciplinary and/or criminal proceedings;
- to ensure that information is passed to the competent prosecutor of any allegations, including those arising from individual complaints and resulting in internal investigations, involving torture or other ill-treatment by law enforcement officers or prison staff;
- to ensure that competent prosecutors record in writing any allegations of torture or other ill-treatment made during their questioning of a suspect and initiate a prompt, independent, impartial and thorough investigation whenever there are grounds to suspect an act of torture or other ill-treatment has taken place;
- to immediately suspend from active duty law enforcement officers or prison staff who are placed under investigation for acts involving torture or other ill-treatment pending the outcome of the disciplinary and judicial proceedings against them.

*on safeguards in police custody and in prisons*

- to ensure that, following arrest, all persons are promptly informed of their rights, including their right to complain if they are subjected to torture or other ill-treatment at any time during their detention;
- to ensure that all information in police custody registers is fully recorded by police officers following the arrest of a suspect;
- to ensure that all police stations are equipped with audio or preferably video recording devices and that all questioning of suspects is recorded;

- to ensure that all detainees have prompt access to a lawyer without delay following arrest and that, if the suspect so wishes, a lawyer is present during all questioning, including by police;
- to ensure that a proper medical examination is offered to detained or imprisoned persons as promptly as possible after their admission to a place of detention or imprisonment and all medical evidence suggesting possible ill-treatment is recorded;
- to ensure that, in those cases where a medical examination records evident signs of torture or other ill-treatment, the competent authorities are informed with a view to ensuring that an investigation is initiated (unless the doctor believes that such reporting could put the patient at risk or in other ways is not in the best interest of the patient, or where the patient has not given consent to such reporting);
- ensure the establishment of an appropriate classification system which evaluates the risk and the needs of persons deprived of their liberty with a view inter alia to protecting vulnerable persons and preventing inter-prisoner violence;
- in particular, to ensure that young persons who are deprived of their liberty, including while on remand, are held in facilities which are physically separate from those occupied by adults;
- to ensure that staffing levels in prisons, in particular with regard to security and medical staff, are sufficient to guarantee inmates adequate medical care in a safe environment.

*on the training of law enforcement officers*

- to ensure that police officers at all levels receive initial and ongoing training focusing on human rights and the prohibition of torture and other ill-treatment as well as communication skills and methods to deal with situations of conflict, with a view to reducing the need to resort to the use of force; and that initial and ongoing training should be provided on investigative and interrogation techniques, with a view to reducing the incidence of ill-treatment.

*on redress and reparation*

- to ensure that victims of torture and other ill-treatment have access to effective redress and receive adequate reparations, including compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition.

### **the BiH authorities:**

- to ensure the prompt and full implementation of the recommendations by international human rights bodies including the HRC, the CAT and the CPT;
- to set up a system of regular visits undertaken by an independent national body to places where people are deprived of their liberty, and to ratify OPCAT;
- to act to appoint without delay all members of the Office of the BiH Ombudsman ensuring their independence and professionalism and to complete the transition to a state-level Ombudsman institution;
- to ensure that the Office of the BiH Ombudsman has adequate staff and resources to perform its tasks including to carry out prompt, independent, impartial and thorough investigations into allegations of torture or other ill-treatment in prisons and by police officers;
- to ensure that the High Judicial and Prosecutorial Council takes disciplinary action against prosecutors who fail in their duty to initiate an investigation into substantiated allegations of torture or other ill-treatment by law enforcement officers or prison staff;
- to ensure that protection of human rights lies at the core of plans to establish and operate a state-level prison; in particular to ensure that mechanisms are established to prevent, investigate and punish acts of torture or other ill-treatment against prisoners;
- to ensure that patients in the entities’ establishments for the mandatory psychiatric treatment of patients in a closed institution are relocated to a state level secure psychiatric hospital, with sufficient resources to provide adequate accommodation and medical care, including specialized psychiatric treatment.

### **the EU:**

- to ensure that police reform continues to remain a key priority in the context of BiH’s Stabilisation and Association process;
- to ensure that the EUPM effectively monitors, assists and trains local police to combat torture or other ill-treatment by police officers and ensure that effective mechanisms for police accountability are established.

### **the EU and the Office of the High Representative in BiH:**

- to ensure that police reform has as its central elements the protection of human rights and the establishment of effective internal and external accountability and oversight mechanisms;
- to use their influence to ensure that the transition to a fully functioning state-level ombudsperson institution is completed and that members of the Office of the BiH Ombudsman are appointed without delay ensuring their independence and professionalism.

### **bilateral and multilateral donors assisting BiH:**

- to ensure that financial support is provided for training of police officers and prison staff and for other police and prison monitoring and reform projects which have a strong human rights component;
- in particular, to provide support to local NGOs to build their capacity to monitor places of detention;
- to ensure that any financial assistance provided to the BiH authorities to reform its penal system, including by establishing and operating a state-level prison, is made conditional to the incorporation in the relevant plans by the BiH authorities of a strong human rights protection component, and in particular mechanisms to prevent, investigate and punish acts of torture or other ill-treatment against inmates.

## Appendix I: replies by the authorities in BiH to Amnesty International’s request for information on complaints alleging ill-treatment

*Table 1 Complaints against the police alleging ill-treatment  
(1 January 2004 – 31 August 2007)*

Authority	Number of complaints of ill-treatment by police	Number of cases where police officers were disciplined	Number of cases where police officers were convicted after criminal proceedings
FBiH Min. of Interior	15	0	0
RS Min. of Interior	156(a)	39(a)	No information
Una-Sana Canton Min. of Interior	70(b)	1(b)(c)	0
Posavina Canton Min. of Interior	9	0	0
Tuzla Canton Min. of Interior	14	0	0
Zenica-Doboj Canton Min. of Interior	31	7(d)	No information
Bosnia-Podrinje Canton Min. of Interior	3	0	0
Central Bosnia Canton Min. of Interior	32 (e)	No information(f)	No information(g)
Herzegovina-Neretva Canton Min. of Interior	37	7	0
West-Herzegovina Canton Min. of Interior	6	1	0
Sarajevo Canton Min. of Interior	124	3	2(d)
Canton 10 (Livno) Min. of Interior	4	0	No information

(a) data for the period 1 January 2004 – 30 September 2007.

(b) data for the period 1 January 2004 – 20 September 2007.

(c) in three cases complaints were “resolved informally”.

(d) the figure refers to the number of police officers disciplined/convicted.

(e) data for the period 1 January 2004 – 30 June 2007.

(f) in the period 1 January – 30 June 2007 in six case disciplinary proceedings were initiated, no information was provided on their outcome.

(g) in the period 1 January 2004 – 30 June 2007 in four cases criminal proceedings were initiated, no information was provided on their outcome.

*Table 2 Complaints against prison staff alleging ill-treatment  
(1 January 2004 – 31 August 2007)*

Authority	Number of complaints of ill-treatment by prison staff	Number of cases where prison staff were disciplined	Number of cases where prison staff were convicted after criminal proceedings
FBiH Min. of Justice	No information(a)	0	0
RS Min. of Justice	0	0	0

(a) in four cases disciplinary proceedings against prison staff were initiated, which ended with their exoneration.

## **Appendix II: Amnesty International’s 12-point programme for the prevention of torture**

Torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment) are violations of human rights, condemned by the international community as an offence to human dignity and prohibited in all circumstances under international law. Yet they happen daily and across the globe. Immediate steps are needed to confront these abuses wherever they occur and to eradicate them. Amnesty International calls on all governments to implement the following 12-point programme and invites concerned individuals and organizations to ensure that they do so. Amnesty International believes that the implementation of these measures is a positive indication of a government’s commitment to end torture and other ill-treatment and to work for their eradication worldwide.

### *1. Condemn torture and other ill-treatment*

The highest authorities of every country should demonstrate their total opposition to torture and other ill-treatment. They should condemn these practices unreservedly whenever they occur. They should make clear to all members of the police, military and other security forces that torture and other ill-treatment will never be tolerated.

### *2. Ensure access to prisoners*

Torture and other ill-treatment often take place while prisoners are held incommunicado – unable to contact people outside who could help them or find out what is happening to them. The practice of incommunicado detention should be ended. Governments should ensure that all prisoners are brought before an independent judicial authority without delay after being taken into custody. Prisoners should have access to relatives, lawyers and doctors without delay and regularly thereafter.

### *3. No secret detention*

In some countries torture and other ill-treatment take place in secret locations, often after the victims are made to “disappear”. Governments should ensure that prisoners are held only in officially recognized places of detention and that accurate information about their arrest and whereabouts is made available immediately to relatives, lawyers, the courts, and others with a legitimate interest, such as the International Committee of the Red Cross (ICRC). Effective judicial remedies should be available at all times to enable relatives and lawyers to find out immediately where a prisoner is held and under what authority, and to ensure the prisoner’s safety.

### *4. Provide safeguards during detention and interrogation*

All prisoners should be immediately informed of their rights. These include the right to lodge complaints about their treatment and to have a judge rule without delay on the lawfulness of



their detention. Judges should investigate any evidence of torture or other ill-treatment and order release if the detention is unlawful. A lawyer should be present during interrogations. Governments should ensure that conditions of detention conform to international standards for the treatment of prisoners and take into account the needs of members of particularly vulnerable groups. The authorities responsible for detention should be separate from those in charge of interrogation. There should be regular, independent, unannounced and unrestricted visits of inspection to all places of detention.

#### *5. Prohibit torture and other ill-treatment in law*

Governments should adopt laws for the prohibition and prevention of torture and other ill-treatment incorporating the main elements of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) and other relevant international standards. All judicial and administrative corporal punishments should be abolished. The prohibition of torture and other ill-treatment and the essential safeguards for their prevention must not be suspended under any circumstances, including states of war or other public emergency.

#### *6. Investigate*

All complaints and reports of torture or other ill-treatment should be promptly, impartially and effectively investigated by a body independent of the alleged perpetrators. The scope, methods and findings of such investigations should be made public. Officials suspected of committing torture or other ill-treatment should be suspended from active duty during the investigation. Complainants, witnesses and others at risk should be protected from intimidation and reprisals.

#### *7. Prosecute*

Those responsible for torture or other ill-treatment should be brought to justice. This principle applies wherever those suspected of these crimes happen to be, whatever their nationality or position, regardless of where the crime was committed and the nationality of the victims, and no matter how much time has elapsed since the commission of the crime. Governments should exercise universal jurisdiction over those suspected of these crimes, extradite them, or surrender them to an international criminal court, and cooperate in such criminal proceedings. Trials should be fair. An order from a superior officer should never be accepted as a justification for torture or ill-treatment.

#### *8. No use of statements extracted under torture or other ill-treatment*

Governments should ensure that statements and other evidence obtained through torture or other ill-treatment may not be invoked in any proceedings, except against a person accused of torture or other ill-treatment.

*9. Provide effective training*

It should be made clear during the training of all officials involved in the custody, interrogation or medical care of prisoners that torture and other ill-treatment are criminal acts. Officials should be instructed that they have the right and duty to refuse to obey any order to torture or carry out other ill-treatment.

*10. Provide reparation*

Victims of torture or other ill-treatment and their dependants should be entitled to obtain prompt reparation from the state including restitution, fair and adequate financial compensation and appropriate medical care and rehabilitation.

*11. Ratify international treaties*

All governments should ratify without reservations international treaties containing safeguards against torture and other ill-treatment, including the International Covenant on Civil and Political Rights and its first Optional Protocol; and the UN Convention against Torture, with declarations providing for individual and inter-state complaints, and its Optional Protocol. Governments should comply with the recommendations of international bodies and experts on the prevention of torture and other ill-treatment.

*12. Exercise international responsibility*

Governments should use all available channels to intercede with the governments of countries where torture or other ill-treatment are reported. They should ensure that transfers of training and equipment for military, security or police use do not facilitate torture or other ill-treatment. Governments must not forcibly return or transfer a person to a country where he or she would be at risk of torture or other ill-treatment.

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This 12-point programme sets out measures to prevent the torture and other ill-treatment of people who are in governmental custody or otherwise in the hands of agents of the state. It was first adopted by Amnesty International in 1984, revised in October 2000 and again in April 2005. Amnesty International holds governments to their international obligations to prevent and punish torture and other ill-treatment, whether committed by agents of the state or by other individuals. Amnesty International also opposes torture and other ill-treatment by armed political groups.

## **Abbreviations**

BiH	Bosnia and Herzegovina
CAT	Committee against Torture
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
DFID	United Kingdom Department for International Development
EU	European Union
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
EUPM	European Union Police Mission
FBiH	Federation of Bosnia and Herzegovina
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICG	International Crisis Group
NGO	Non-governmental organization
OCC	Offices for Citizens’ Complaints
OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
OSCE	Organization for Security and Co-operation in Europe
PSU	Professional Standards Unit
RS	Republika Srpska
SFRY	Socialist Federal Republic of Yugoslavia
SIPA	State Investigation and Protection Agency
UDHR	Universal Declaration of Human Rights