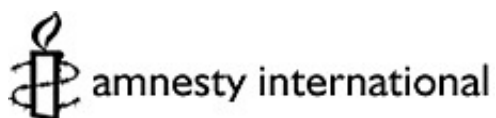


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Amnesty International Annual Report 2012 - Bosnia and Herzegovina

Head of state: rotating presidency – Željko Komšić, Nebojša Radmanović, Bakir Izetbegović

Head of government: Nikola Špirić

Death penalty: abolitionist for all crimes

Population: 3.8 million

Life expectancy: 75.7 years

Under-5 mortality: 14.4 per 1,000

Adult literacy: 97.8 per cent

Nationalistic and divisive rhetoric increased and an agreement to form a coalition government was reached at the end of December, 15 months after the general election. Institutions at the state level, including the judiciary, were weakened throughout the year. The trial of Ratko Mladić began. Prosecution of crimes under international law continued, but progress remained slow and impunity persisted. Civilian victims of war were still denied access to justice and reparations.

Background

Divisive and nationalist rhetoric weakened institutions at the state level, including the judiciary. Unwillingness of the leading political parties to reach a consensus following the general election held in October 2010 resulted in political paralysis. At the end of December, composition of the Council of Ministers was agreed, 15 months after the elections, but a budget was not yet adopted. The state was under temporary financing.

Ratko Mladić, former commander of the main staff of the Army of Republika Srpska was arrested in Serbia in May (see Serbia entry) and transferred to the International Criminal Tribunal for the Former Yugoslavia (Tribunal).

The international community maintained its presence in Bosnia and Herzegovina (BiH). The EU kept its peacekeeping force with approximately 1,300 troops. In June, a decision was made to end the EU Police Mission to BiH by the end of June 2012. The pre-accession negotiations with the EU continued and the EU-BiH Structured Dialogue on Justice, a formal consultative process

on justice matters, began in June. In September, Peter Sørensen formally assumed office as the EU Special Representative to BiH, consolidating the EU presence in BiH.

The separate role of the UN High Representative in BiH, still held by Valentin Inzko, as the "final authority in theatre regarding the interpretation of civilian implementation of the Peace Agreement" was reaffirmed by the UN Security Council in a resolution adopted in November.

International justice

At the end of 2011, six war crimes cases concerning BiH were pending before the Trial Chamber of the Tribunal. In addition, three cases were on appeal.

- In September, after a trial lasting over two years, the Tribunal found former chief of the general staff of the Yugoslav Army, Momčilo Perišić, guilty of committing crimes against humanity and violations of the laws or customs of war by aiding and abetting murders, inhumane acts, persecutions on political, racial or religious grounds, and attacks on civilians in Sarajevo and Srebrenica. He was sentenced to 27 years' imprisonment. In November, Momčilo Perišić appealed on 17 grounds.
- Proceedings against former Bosnian leader Radovan Karadžić continued. In 2011, the Tribunal examined evidence around crimes in north-west BiH, including "Manjača" and "Trnopolje" camps and unlawful killings at the Korićanske cliffs, as well as many other crimes committed during the 1992-5 conflict.
- On 31 May, Ratko Mladić, former commander of the main staff of the Army of Republika Srpska was transferred to the Tribunal. An amended indictment against him, containing charges of genocide, crimes against humanity and war crimes, was filed in October. Originally charged in a single indictment, both Radovan Karadžić and Ratko Mladić had been indicted for genocide, as well as extermination, murder, persecution, deportation, inhumane acts, acts of violence, terror, unlawful attack on civilians and taking of hostages amounting to crimes against humanity and war crimes. In December, the Tribunal agreed with the Prosecution proposal to reduce the indictment against Ratko Mladić from 196 to 106 crimes, and to limit the number of municipalities concerned from 23 to 15.

Justice system – crimes under international law

The domestic justice system continued to work on the large backlog of open war crimes cases. The implementation of the National Strategy for War Crimes Processing was delayed, primarily due to a lack of political and financial support. Progress in resolving war crimes cases was also hampered by political obstacles to improving regional co-operation, including failure to dismantle legal barriers to extradition of war crimes suspects between BiH, Croatia, Serbia and Montenegro. A proposed bilateral agreement between Serbia and BiH to resolve parallel investigations in war crimes cases reached a stalemate in June.

Six cases relating to 10 mid- and low-level defendants transferred by the Tribunal to the BiH State Court, known as 11bis cases, were completed. However, generally, prosecution of crimes under international law continued before the domestic judiciary in BiH at a slow pace. The continued practice of non-harmonized application of criminal law in war crimes cases, due to the use of the 1976 Criminal Code in cases tried in courts in the different entities, resulted in serious obstacles to the fair and efficient delivery of justice. These included: inability to charge acts as crimes against humanity; failure to prosecute command responsibility; and inequality before the law owing to the low mandatory minimum and maximum sentences for war crimes.

The War Crimes Chamber of the BiH State Court continued to play the central role in war crimes prosecutions in BiH. However, verbal attacks on this and other judicial institutions dedicated to investigating and prosecuting war crimes, along with the denial of war crimes –

including the genocide in Srebrenica in July 1995 – by high-ranking politicians, undermined the country's efforts to prosecute war crimes cases. In addition, the authorities failed to collect data on the total number of investigations and prosecutions at all levels of crimes under international law.

Witness support services at the state level were extended to cover the period prior to trial in January. However, witness support and protection measures in cases tried at the lower levels, identified in the National Strategy for War Crimes Processing as being necessary, continued to be absent. This situation deterred victims from seeking justice. A proposal to amend the law to allow the entity-level prosecution services to call upon the BiH Witness Protection Programme moved forward but required widespread parliamentary support to be adopted.

The authorities failed to provide a comprehensive programme of reparations for victims of crimes under international law during the conflict.

Women's rights

Survivors of war crimes of sexual violence

The UN Committee against Torture in January recommended that the legislation criminalizing war crimes of rape and other forms of sexual violence be brought in line with international standards but the government failed to introduce the necessary changes. The BiH 2003 Criminal Code required that the victim be subjected to force or threat of immediate attack on his or her life or body. This arguably did not take into account the circumstances of armed conflict, which may be considered coercive and therefore vitiate consent to sexual intercourse.

Despite the increase in the number of prosecutions and investigations involving war crimes of rape and other forms of sexual violence committed during the war since 2010, the number remained low in contrast to the overall high rate of occurrence of crimes of rape and sexual violence during the conflict.

The Prosecutor's Office reported to Amnesty International in June that there were 100 cases with charges of rape and other forms of sexual violence cases currently being investigated by the Prosecutor's Office, and six indictments had been confirmed by the State Court. A final verdict had been delivered in only 21 cases since 2005. The authorities failed to establish the total number of such cases investigated and prosecuted at the entity level.

In most parts of the country, especially in rural areas, survivors were unable to enjoy their right to reparation, and were stigmatized as rape victims. In particular, female survivors were denied access to adequate health care services even if they suffered from medical conditions developed as a result of rape. Only a few of those who suffered from post-traumatic stress disorders were able to seek psychological assistance. Many survivors lived in poverty. Most could not get help to find employment or continue with their education.

Additionally, survivors, like all other civilian victims of war, were discriminated against in access to social benefits in comparison to war combatants. The Ministry for Human Rights and Refugees prepared a draft Law on the Rights of Victims of Torture and Civilian War Victims and established a working group responsible for drafting a Programme for Victims of Sexual Violence in Conflict and beyond, but these measures had yet to be further developed and adopted.

Enforced disappearances

Despite problems with budget allocations for exhumations caused by the absence of the government, exhumations continued. In January, the State Prosecutor's Office assumed control of exhumations previously conducted by local prosecutors, which had a positive impact in expediting the recovery of the remains of missing people from mass and clandestine graves.

Around 10,000 people were still unaccounted for. Unwillingness of insider witnesses to provide information on mass graves remained the biggest obstacle in the process.

In February, the Central Record of Missing Persons was created as a permanent database in BiH. It gathered around 34,000 names from various existing databases and conducted verification of those names. It was expected that the database would help the state-level Missing Persons Institute to strategically address the remaining cases.

Despite the accurate DNA-led identifications made by the International Commission on Missing Persons over the past years, the identification process began to slow down. The Commission reported that around 8,000 bodies had already been identified through the classical methods of identification. However, due to the existence of hundreds of secondary, tertiary and quaternary mass grave sites, the recovery of body parts of already identified and buried people could continue for years.

Despite progress made in the recovery and identification of disappeared people and the prosecution of perpetrators, victims' families were still denied the rights to justice and reparation.

The non-implementation of the 2004 Law on Missing Persons led to problems for the families of the disappeared, including the lack of independent functioning of the Missing Persons Institute and the non-existence of the Fund for Providing Assistance to the Families of Missing Persons. In addition, many judgements of the Constitutional Court of BiH in cases involving enforced disappearances remained unimplemented.

Refugees and internally displaced people

The official figures from the UN of over one million returnees across BiH did not reflect the number of refugees and internally displaced people who actually returned to their pre-war homes. The sustainability of return remained an issue for those who wanted to return, as they would face discrimination in accessing their rights to health care, pensions, social protection and employment.

According to UNHCR, the UN refugee agency, almost 8,600 people still lived in 159 collective centres or other temporary accommodation 16 years after the war. Basic facilities, including running water, heating and electricity, were lacking in the collective centres. Durable solutions were not yet found for particularly vulnerable people living in the collective centres.

Discrimination

Minority rights

The authorities failed to implement the December 2009 judgement of the European Court of Human Rights in the case brought by Dervo Sejdić (a Romani man) and Jakob Finci (a Jewish man).

The applicants had complained that, as they did not belong to any of the main ethnic groups, they were denied the right to be elected to the state institutions (as under the current legal framework this right was restricted to Bosniaks, Croats and Serbs). The Court had ruled that the constitutional framework and the electoral system discriminated against the applicants and the authorities were obliged to amend it.

At the end of 2011, the Parliament established another temporary commission to draft the amendments to the relevant legislation.

Rights of lesbian, gay, bisexual and transgender people

In its 2011 Progress Report, the European Commission reported widespread discrimination

against lesbians, gay men, bisexual and transgender people, threats and harassment of lesbian, gay, bisexual and transgender activists, and hate speech and intolerance towards the community by media and politicians. No progress was made by the end of 2011.

Counter-terror and security

The state authorities continued to violate the rights of some people who had settled in BiH during or after the war and who had subsequently been granted BiH citizenship. As a result of decisions by the State Commission for the Revision of Decisions on Naturalization of Foreign Citizens, some of them lost their citizenship and deportation procedures were initiated against them. The recommendations by the UN Committee against Torture relating to forcible return had not been implemented.

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