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CONTENTS

1. IMPUNITY FOR WAR CRIME OF SEXUAL VIOLENCE	4
2. REFUGEE AND MIGRANT RIGHTS	7

Amnesty International is presenting this submission to the European Commission ahead of the preparation of its 2021 Enlargement Package, including the Opinion on Bosnia and Herzegovina's (BiH) application for membership in the European Union.

1. IMPUNITY FOR WAR CRIME OF SEXUAL VIOLENCE

SLOW RATE OF PROSECUTION AND BACKLOG OF CASES

The prosecution of war crimes cases, including cases of wartime rape and sexual violence, continues to be slow. As of April 2021, there were still close to 600 war crimes cases pending before various courts in BiH.¹ Systemic deficiencies in the Prosecutor's Office, including a persistent backlog of cases, ineffective case management and a remarkable decline in conviction rates, threaten to leave many victims without justice, truth and reparation.²

In September, the BiH Council of Ministers adopted the long-delayed revised War Crimes Strategy, which sets new deadlines for the completion of backlog cases. Without urgent and decisive action to improve the allocation of cases among different courts and address persisting management challenges, however, meeting the target of completing all war crimes cases will be extremely difficult.

CHALLENGES IN ACCESSING REPARATIONS

Victims of wartime rape and sexual violence continue to face numerous challenges in accessing all forms of reparation, including compensation for the harms suffered and regular assistance by the authorities. The few positive measures related to the provision of special monthly allowances - connected to the status of a victim of war - and support for the victims, remain fragmented and differ vastly from jurisdiction to jurisdiction perpetuating the sense of legal uncertainty. BiH still does not have a state-level Law on Protection of Victims of Wartime Torture. The current situation whereby the rights of victims of wartime torture, including victims of sexual violence, are regulated at the level of entities, Federation of BiH and Republika Srpska (RS), and the Brčko District is inherently discriminatory, with civilian victims of war's status and access to social benefits and support being dependent on their place of residence, rather than universally guaranteed by the state.

COMPENSATION IN CRIMINAL PROCEEDINGS

Financial compensation granted to victims in criminal proceedings remains difficult to enforce. While courts have ruled in dozens of cases to order perpetrators to pay compensation to the victims of conflict-related sexual violence, in only one case to date the decision has actually been implemented.³

The perpetrators often lack funds, making it impossible for the courts to enforce such decisions. BiH does not have a victim compensation fund or alternative mechanism to compensate survivors of criminal acts in cases when the convicted perpetrators are not able to pay damages, leaving the victims unable to effectively enforce their right to compensation.

COMPENSATION IN CIVIL PROCEEDINGS – APPLICATION OF STATUTE OF LIMITATIONS

The vast majority of victims are still required to pursue compensation claims in separate civil proceedings and do so before local courts that lack adequate witness protection.⁴ Separate civil

¹ OSCE Press Release, "OSCE Mission presents Judge Korner's report on war crimes processing at state level in Bosnia and Herzegovina," 16 September 2020, <https://www.osce.org/mission-to-bosnia-and-herzegovina/463764>.

² Judge Joanna Korner, "A Follow-up Report 'Improving war crimes processing at the state level in Bosnia and Herzegovina,' September 2020, <https://www.osce.org/files/f/documents/6/4/463728.pdf>

³ In March 2021, a survivor of wartime rape in Novi Travnik received financial compensation, the first such award in criminal proceedings.

⁴ For discussion of challenges of seeking compensation in civil proceedings, see TRIAL, "Enforcement of damage compensation claims of victims of war in criminal proceedings in Bosnia and Herzegovina, Situation, Challenges and Perspectives", Sarajevo 2016, and, TRIAL, "Compensating survivors in criminal proceedings: Perspectives from the field,

proceedings often compromise the privacy of witnesses and expose victims to unnecessary re-traumatization when they have to, yet again, provide their testimonies. While pursuing claims before civil courts, victims bear the burden of proof, have to hire a lawyer and, until recently, have been responsible for the payment of prohibitively high court fees in instances when their claims have been dismissed. Although in March 2018, the BiH Constitutional Court issued a decision⁵ stating that court fees imposed on unsuccessful claimants posed an excessive burden on the victims of wartime sexual violence, the judicial practice, which has so adversely affected victims, continues.⁶

What makes the situation of claimants even more precarious is the fact that those who pursue compensation claims in separate civil proceedings routinely face rejection of their cases, owing to the widespread application of the statute of limitations to reparation claims by all courts in BiH. Although in BiH the statute of limitation does not apply for the crimes under international law, the courts across the country issued decisions stating that, if directed at the state or the entities, the claims for pecuniary damages resulting from war crimes were subject to statute of limitations.

That view has resulted in widespread dismissal of compensation claims filed by the survivors before courts in all parts of the country in civil proceedings, forcing survivors to pay high court fees or face administrative seizure of their assets.⁷ BiH Constitutional Court's position on statute of limitations stands in the way of survivors' ability to realise their right to reparation and is contrary to international standard and practice.

In August 2020, the UN Committee for Elimination of Discrimination against Women (CEDAW) ruled in a wartime rape case that BiH failed to ensure an impartial and effective investigation and adequate reparation to the victim.⁸ The Committee called on BiH to provide immediate and comprehensive support to survivors of wartime sexual violence and emphasized that survivors' compensation claims cannot be subjected to statute of limitations.

More than a year after the UN Committee against Torture issued a landmark ruling in a case concerning compensation for a victim of wartime rape,⁹ the authorities in BiH have not implemented any measures of reparation. In April, BiH Council of Ministers adopted a motion that gives BiH 90 days to put in place a plan to compensate and publicly apologize to a victim of wartime sexual violence, as requested by the Committee.

RS LAW ON PROTECTION OF VICTIMS OF WARTIME TORTURE

While the adoption in 2018 of the long-delayed RS Law on the protection of victims of wartime torture was a positive development, applicants have faced a number of obstacles in the process over the past two years of the implementation.

First, the survivors who were under identity protection measures assigned to them in criminal proceedings in wartime trials faced difficulties when applying for the status and were required to disclose their identity. This is highly problematic. In order to successfully apply, such

December 2016", available at: https://trialinternational.org/wp-content/uploads/2016/11/TRIAL-International_compensation-publication_EN_web.pdf.

⁵ Klix, "Ustavni sud BiH: Žrtva silovanja ne mora platiti sudske troškove," 3 April 2018.

<https://www.klix.ba/vijesti/bih/ustavni-sud-bih-zrtva-silovanja-ne-mora-platiti-sudske-troskove/180403049>.

⁶ TRIAL International, *Strategic judgment of the Constitutional Court of BiH*, April 2018, <https://bit.ly/2PLfJov>

⁷ Interview with Jasmin Mešković, president of the BiH Association of Camp Inmates, 11 November 2016 and 28 March 2017, Sarajevo.

⁸ UN Committee on the elimination of discrimination against women (CEDAW), Views adopted under Article 7 (3) of the Optional Protocol in case S.H. v BiH., 09 July 2020, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2f76%2fD%2f116%2f2017&Lang=en

⁹ UN Convention against Torture, Decision adopted by the Committee under article 22 of the Convention, CAT/C/67/D/854/2017, 11 September 2019. In the ruling, the Committee stated that the victims should not be prevented from receiving integral redress, including compensation, on the basis of the statute of limitations, because the perpetrators were unknown or unable to pay compensation awarded by courts. Insisting that the state had subsidiary responsibility in these cases, the Committee requested BiH to provide adequate compensation to the victims, ensure their immediate access to medical and psychological care, and establish an effective reparation scheme at the national level to provide redress to all victims of torture, including sexual violence.

survivors would first need to obtain a court decision allowing specific civil servant processing their claims to access the survivor's identity data, which can be a long and sensitive procedure. Indeed, many survivors who are under identity protection measures are reluctant to disclose their identities due to persistent stigma associated with rape and the risk of threats or intimidation, in particular when they have to file applications in their places of residence where the torture had originally taken place.

Additionally, many survivors find it difficult to obtain the required medical documentation, which – according to the law – has to date from the 1996-2006 period. This particularly adversely affects survivors of wartime rape with court-appointed identity protection measures. Due to the nature of the crime, many were unable to get medical help when the crime took place, while others could not retrieve medical records from that period from the hospitals in the areas where the torture had occurred.

The law further limits the list of evidence determining the torture to documents issued by the official bodies of the RS, while excluding evidence collected or available to bodies or institutions not based in the entity, including those from the Brčko District, Federation BiH or the institutions at the level of BiH. Such restrictive provisions create insurmountable obstacle for the survivors whose cases were not documented in the RS, but were recorded elsewhere in BiH, and could potentially result in discrimination.¹⁰

Finally, the law provides a strict five-year cut-off limit from the day the law entered into force for submitting applications. Any time limitations for applications, in particular for the survivors of wartime sexual violence, many of whom remain reluctant to speak publicly about their experience, would limit their ability to obtain the status or the reparation. International standards are explicit about the obligation of states to ensure that victims are granted access to their rights regardless when the violation took place.¹¹ Neither the law regulating this area in Republic of Croatia, nor the legislation in the Federation of BiH, includes restrictive timelines for the application. This strict time limit for the applications should be removed from the RS law.

RECOMMENDATIONS

To the authorities of Bosnia and Herzegovina:

- Put in place a comprehensive state-wide rights-based framework for redress for civilian victims of war, including survivors of wartime sexual violence, including by adopting the Draft Strategy for Transitional Justice, Programme for Victims of Sexual Violence in Conflict and BiH Framework Law on Protection of Victims of Torture;
- Remove legal and practical obstacles to enforcing decisions on compensation and put in place measures to ensure that the right to compensation in civil and criminal proceedings is enforceable in practice;
- Ensure that the measures of reparation indicated in the 2019 UN Committee against Torture Decision on A. v BiH are fully implemented;

¹⁰ The principle of non-discrimination is a general principle in the protection of human rights and fundamental to the interpretation of legal instruments. See UN *Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Basic Principles)*, A/RES/60/147, principle 25, United Nations Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *General Comment no. 3*, para. 32.

¹¹ See for example, UN Committee against Torture, *General Comment no.3*, para. 40. Victims of wartime rape and sexual violence are notoriously reluctant to speak publicly about their experience. Such provisions would particularly be detrimental to male victims, only a few of whom have as yet identified themselves, received counselling, and face specific risks and additional stigma coming forward. Strict deadlines limiting the ability of victims to exercise their rights contravene UN Basic Principles which state that access to administrative reparation programmes should not be unduly time restricted. It is also against the spirit of the *Nairobi Declaration on Women's and Girl's Right to Remedy and Reparation*, which stresses that "[r]eparation process must allow women and girls to come forward when ready. They should not be excluded if they fail to do so within a prescribed time period." See *Nairobi Declaration on Women's and Girl's Right to Remedy and Reparation*, 2007, Section G.

- Adopt measures that put an end to the application of statute of limitations to civil claims for non-pecuniary damage;
- Ensure that the BiH Constitutional Court ruling from April 2018 freeing from court fees the victims of wartime sexual violence who seek compensation in civil proceedings is respected in all other courts dealing with similar cases;
- Establish a victim compensation fund for the survivors of wartime sexual violence, including to address cases where convicted perpetrators are not able to pay the damages.

To the authorities of Republika Srpska:

- Put in place additional measures to ensure that the provisions in the 2018 Law on Civilian Victims of Wartime Torture do not restrict its application or exclude any victims of wartime sexual violence from obtaining the status of civilian victims of war and accompanying social and welfare benefits, including (i) taking more proactive role in promoting the law and developing and disseminating accessible information about the procedures for obtaining the status and (ii) developing a rulebook with standard procedures for implementation that apply to all municipalities;
- Amend the Law on protection of victims of wartime torture to provide for a special procedure for victims under identity protection measures to be allowed to submit their claims directly to the Ministry of Labour and War Veterans;
- Amend the Law on protection of victims of wartime torture to remove the restrictive provision that limits medical documentation required as evidence of torture to the period between 1996-2006;
- Amend the Law on protection of victims of wartime torture to replace the word “republic” in Article 16, paragraph 3 with “competent” in order to broaden the list of evidence that could be used to determine the status of the survivor to all competent bodies and institutions, including those based outside of RS;
- Remove the strict five-year time limit on submission of applications for the victims of wartime rape and any other crime under international law.

2. REFUGEE AND MIGRANT RIGHTS

The authorities in Bosnia and Herzegovina failed to ensure effective access to international protection and provide adequate reception conditions for refugees, migrants and asylum-seekers.¹² Since early 2018, tens of thousands of people have travelled through BiH, most of them intending to seek international protection in the EU. The authorities and UN agencies registered over 16,000 arrivals in 2020,¹³ which marked a considerable reduction from 29,000 arrivals registered in 2019.¹⁴ Travel restrictions imposed due to COVID-19 across the

¹² Amnesty International conducted research missions (and remotely) in Bosnia and Herzegovina between July 2018 and January 2021, including visiting informal squats in Sarajevo and Una Sana Canton, as well as temporary accommodation centres in Bihać and Velika Kladuša and interviewing residents, management, authorities and representatives of civil society. This submission is based on the findings of these missions, some of which were previously published in Amnesty International, “Pushed to the edge: Violence and abuse against refugees and migrants along the Balkans Route,” 13 March 2019, EUR 05/9964/2019, <https://www.amnesty.org/en/documents/eur05/9964/2019/en/>.

¹³ Inter-agency operational update, Bosnia and Herzegovina, December 2020, available at: <https://bosniaherzegovina.un.org/sites/default/files/2021-03/IA%20December%20Final.pdf>

¹⁴ Inter-agency operational update, Bosnia and Herzegovina, 1-30 November 2019, available at: <https://bosniaherzegovina.un.org/sites/default/files/2019-12/Inter-agency%20November%202019.pdf>. Also, IOM Migration Flows, figures as of 31 December 2019, <https://migration.iom.int/europe?type=arrivals>

region played a role in the lower number of arrivals. Over 8,000 people were stranded in BiH in March, approximately 6,000 of whom lived in temporary reception centres, which are co-managed by International Organization for Migration (IOM) and BiH authorities.¹⁵ An estimated 2,500-2,700 people were sleeping rough in January, forced to seek shelter in abandoned factories, houses and even forests. About 900 people remain at the provisional camp Lipa.¹⁶

The overall increased number of refugees, migrants and asylum-seekers over the past years has revealed deep systemic and institutional deficiencies in BiH as well as significant lack of political will and ability to manage the situation. Despite significant financial and technical assistance provided by the EU, the authorities at all levels struggled to provide adequate reception conditions and other assistance to the people in need and failed to cooperate to find systemic solutions for reception and ensure effective access to asylum procedures.

BiH Ministry of Security, including its Sector for Asylum (SA) and Service for Foreigners' Affairs (SFA), is responsible for coordinating migration matters in BiH. Yet, the Ministry has not been able to coordinate activities with the authorities at other levels, identify additional suitable facilities for accommodation of new arrivals or ensure that their urgent protection needs are met. Despite the predictable humanitarian emergency in the winter months of 2020 and the lack of reception capacities, the Ministry was late to engage and show leadership to find solution for thousands of people who were sleeping outside of official reception centres in December or were to be evicted from the existing ones by the local authorities.

As of April, the BiH National Strategy for Migration Management (2021-2026) has not been adopted although a working group tasked with its drafting has been established. In fact, both state and local authorities continue to outsource their responsibilities to the international community and civil society, who have managed, or managed jointly with other authorities, five out of eight reception centres across BiH.¹⁷ Where the authorities have assumed limited responsibility for the reception, as in the case of the provisional camp Lipa, the transition from IOM to Service of Foreigners' Affairs took place hastily without ensuring that the Service had resources, expertise and the capacity to assume such responsibility without the support of international organisations, they are failing to provide the minimal standards of protection and assistance.

Local authorities, particularly in Una-Sana Canton, doubled down on passing restrictive and discriminatory measures targeting migrants, asylum-seekers and refugees on their territory (see more below).

ACCOMMODATION AND RECEPTION CONDITIONS

The number of migrants and asylum-seekers in the country (which can be anywhere between 8,000-10,000 at one time) continues to exceed the maximum accommodation capacity. Currently, IOM-operated centres can officially accommodate 4,800 people, leaving an estimated 3,000-5,300 migrants and asylum-seekers living in precarious conditions.¹⁸ The

¹⁵ Inter-agency operational update, Bosnia and Herzegovina, January 2021, available at: https://bosniaherzegovina.un.org/sites/default/files/2021-04/Monthly%20Inter-agency%20SITREP_January%202021_0.pdf

¹⁶ Inter-agency operational update, Bosnia and Herzegovina, January 2021, available at: https://bosniaherzegovina.un.org/sites/default/files/2021-04/Monthly%20Inter-agency%20SITREP_January%202021_0.pdf

¹⁷ The International Organization for Migration (IOM) is managing TRC Borići in Bihać, Miral in Velika Kladuša, Sedra in Cazin and Blažuj, while managing jointly with Ministry of Security Ušivak in Hadžići. Delijaš in Trnovo is managed by Sector for Asylum, Salakovac in Mostar by Ministry of Human Rights and Refugees and Ministry of Security's Sector for Asylum, and House for All in Sarajevo by a group of volunteers. BiH Ministry of Security is managing the provisional camp in Lipa.

¹⁸ International Organization for Migration (IOM), Bosnia and Herzegovina Crisis Response Plan 2021, https://reliefweb.int/sites/reliefweb.int/files/resources/2021_Bosnia_and_Herzegovina_Crisis_Response_Plan_2021.pdf

existing centers are overcrowded and accommodation conditions overall remain by and large inadequate.

Amnesty International acknowledges the efforts of IOM and partners to create and maintain dignified living conditions for residents and provide services that are up to standard, including three meals per day and appropriate nutrition, WASH facilities, COVID-19 protection, legal and medical assistance, as well as translation.¹⁹ While in larger facilities residents remain densely accommodated in a shared space without any privacy, with substandard hygiene and with security challenges, smaller facilities that accommodate families and minors, such as Borići and Sedra, provide greater degree of privacy and more dignified conditions. Larger facilities, such as Miral in Velika Kladuša and Blažuj near Sarajevo, remain unsuitable for accommodation of unaccompanied minors.

Following the closure of Bira camp in Bihać in September, which left hundreds of people without shelter and prompted a humanitarian emergency, the authorities recently re-announced the plans to close the Miral camp in Velika Kladuša, which currently accommodates around 850 people and relocate them to camps in other parts of the country.²⁰ Considering the already limited capacity of the existing formal reception centres and growing hostility towards migrants by the Una-Sana Canton population, a poorly managed closure of Miral could create another crisis and leave hundreds of people, including children, without shelter or support.

The authorities in Una-Sana Canton have placed a cap on the number of people who could be accommodated in the Canton to 2,500, but the numbers of asylum-seekers and migrants in the canton are considerably higher, with many sleeping in informal squats.

WINTER EMERGENCY

Following a decision to close the camps in the Canton in September, the Una-Sana authorities forcibly evicted residents from Bira, the official reception centre operated by the IOM in Bihać, leaving close to 400 people without shelter and assistance in deteriorating weather conditions.²¹ In the last days of December 202, around 900 migrants and asylum-seekers were stranded in inhumane conditions and without access to food, water or electricity in the temporary camp Lipa after the authorities failed to agree to their relocation to more suitable facilities in other parts of the country.²²

Although the Ministry of Security and Ministry of Defense subsequently installed 30 heated tents on the campgrounds, the conditions in Lipa remain below minimal standards of reception. As of April, the site – although formally connected to the water supply system – still does not have adequate WASH infrastructure, including functioning showers, sufficient and regularly cleaned toilets, laundry facility or steady supply of electricity. The residents are not able to maintain minimal hygiene or wash their clothes exacerbating scabies infection, which is affecting over half of the people accommodated there. Critical gaps in health services, including limited presence of medical personnel, lack of medical supplies and COVID-19 preventive measures, combined with the inability to ensure the required hygiene, heightens the risks of COVID-19 transmission. The temporary nature of structures in the camp, lack of critical infrastructure, including adequate sanitation and running water, poses risks to the health and safety of people living there.

¹⁹ NGOs and civil society representatives have regular office hours and presence in the centres, provide assistance and organize a range of activities for the residents. Refugees and migrants accommodated in Bira and Miral, however, frequently complained about the absence of or irregular visits by the Service for Foreigners' Affairs, which prevented them from completing the initial registration.

²⁰ Vlada Unsko-sanskog kantona, Operativna grupa za koordiniranje aktivnosti i nadzora nad migrantskom krizom na području Unsko-sanskog kantona, Zaključci, 07 April 2021, <http://vladausk.ba/v4/novost/operativna-grupa-za-koordiniranje-aktivnosti-i-nadzora-nad-migrantskom-krizom-na-podrucju-unsko-sanskog-kantona/3252>

²¹ Amnesty International, Authorities create gratuitous suffering for hundreds left without shelter, 1 October 2020,

²² Amnesty International et al., "Systemic solutions and meaningful EU support, including safe pathways, could prevent recurring humanitarian emergencies," 12 January 2021, <https://www.amnesty.org/en/documents/eur63/3505/2021/en/>

Since January 2021, Lipa camp has been managed by Ministry of Security's SFA, while IOM, DRC and other organisations providing round-the-clock protection or the necessary medical and other support no longer have presence there. Media and humanitarian organisations are not permitted access to the site and it is difficult to independently assess the current conditions. However, interviews with residents and representatives of organisations with limited access to the site indicate that due to overcrowding and lack of infrastructure, some people are left outside of the heated tents; provision of hot meals remains inconsistent and portions insufficient; and even supply of drinking water is limited.²³

Amnesty International is additionally concerned about the plans to turn Lipa into a permanent facility of a "mixed type," i.e., a center that includes both open and closed sections, and the possibility of it accommodating mixed populations of migrants, including single men, families and unaccompanied minors. The remote location of the camp, with closest village and accessible infrastructure, such as shops and other services, nearly 20 km away, Lipa is particularly unsuitable for accommodation of families with children and unaccompanied minors. Unless the conditions, including more permanent infrastructure and more transparent management, are not secured, a facility of this type would further erode the already minimal standards of protection and assistance. If the authorities have plans to erect more permanent structures on the site, the people accommodated there should be relocated to centres that meet international standards until such works are completed.

BiH authorities have the responsibility to provide the minimum guarantees, including ensuring the right to housing and shelter, water and sanitation, health and social protection to people who are in the country. The humanitarian emergency of the last winter and the continually increasing numbers of people in Una-Sana Canton who no longer have accommodation should prompt Ministry of Security (as well as the BiH Council of Ministers) to facilitate an urgent agreement with entity and cantonal authorities on systemic solutions to accommodate migrants and asylum-seekers in all parts of the country – before the next winter.

The authorities should work closely with the European Commission and international organisations to ensure a careful and phased transition of the existing reception centres from IOM to Ministry of Security. While the Ministry showed more leadership since the December crisis, there is a growing concern that the handover of Lipa camp from IOM to SFA took place too quickly and without the necessary transition period, which would allow the SFA to build capacity and expertise to manage a large facility and organize and coordinate service provision. The lack of or limited presence of the organisations providing medical and other assistance to the residents of Lipa, the restricted access to media and human rights organisations threaten to further erode the standards of reception and protection on the site.

ACCESS TO ASYLUM PROCEDURES

Amnesty International recognizes that BiH is not a primary destination for most refugees. Nevertheless, the existing asylum system is not serving those who seek international protection in BiH and is in fact creating strong disincentives for anyone trying to settle in the country.

Out of approximately 16,000 refugees and migrants who transited through the country in 2020, 15,139 expressed intention to apply for asylum, with only 1.6 % (244) actually managing to formally lodge their claims.²⁴ According to UNHCR, at any given time, hundreds

²³ Interviews with a representative of organizations providing assistance in the camp, 23 March and 15 April 2021. See also, InfoMigrants, "We live like animals", 25 March 2021, <https://www.infomigrants.net/en/post/31073/we-live-like-animals-migrants-stuck-in-bosnia-say>

²⁴ UNHCR, South Eastern Europe – Refugees, asylum-seekers and other people in mixed movements 2020, January 2021, https://reliefweb.int/sites/reliefweb.int/files/resources/UNHCR_SEE_Overview_MM_AS_20201231.pdf

of people have been waiting for the registration of their asylum claims, a process that could take months.²⁵ Numerous bureaucratic obstacles, both in law and practice, impede effective access to the procedure.

The legal requirement to formally lodge claims with the Ministry of Interior's Sector for Asylum within 14 days after the original intention²⁶ has been expressed is unreasonably short. Asylum-seekers experience difficulties in completing the initial registration with Service for Foreigners Affairs in places with high volume of people, as in Una-Sana Canton, where until recently SFA was not regularly present and registration took place infrequently.²⁷

Potential asylum-seekers are also required to provide an official proof of residency and an address in BiH in order to register an asylum claim, which presents an insurmountable obstacle for thousands of people who are not accommodated in formal reception centres. Additionally, extensive restrictions on freedom of movement of asylum-seekers and migrants imposed by the local authorities in Una-Sana Canton pose additional challenge to timely registration and further inhibit access to asylum procedures.

BiH continues to have extremely low admission rates, with a single decision granting a refugee status and only 31 decisions granting subsidiary protection made in 2020.²⁸ Sector for Asylum continues to suffer from persistent lack of human resources with only two staff working on registering and processing claims. The average length of time required for asylum decisions is over 300 days, which is unreasonably long especially considering the months-long wait to register the claims.

Combined with the above challenges, the overall limited access to services, including translation and legal assistance and scarce support services and assistance to potential asylum-seekers, such as accommodation,²⁹ severely restrict access to asylum.

In late 2020, BiH signed a Readmission Agreement with Republic of Pakistan which is awaiting ratification. At the time of the signing, the former BiH Minister of Security hailed an agreement as a means of securing an “organized return” of Pakistan nationals whom he considered “economic migrants” rather than refugees.³⁰ Considering such government rhetoric which a priori labels an entire group as economic migrants and the inadequate capacity in the BiH Ministry of Security, a proper identification of migrants and asylum-seekers (most of whom do not have valid ID documents) could be an insurmountable challenge for the authorities. Moreover, an arbitrary deportation or accelerated expulsion of any person who wishes to seek an international protection without considering his/her claims through a fair and efficient asylum procedure would increase a risk of refoulement. If an expulsion affected a group of people whose claims were not examined individually, it would constitute a collective expulsion. BiH has a duty to uphold the right of persons entering its territory to seek asylum, provide adequate procedural safeguards and ensure the prohibition of collective expulsions.

²⁵ See UNHCR, Bosnia and Herzegovina Monthly Operational Updates January-December 2020.

²⁶ A person first needs to express intention to seek asylum with the Service for Foreigners Affairs (SFA), after which, the applicant needs to formally register an asylum claim with the Sector for Asylum within 14 days, which can happen upon invitation only. Following successful registration, the Sector for Asylum is responsible for the evaluation of applications and decision on the status.

²⁷ Amnesty International interviews in Bira in Bihać, 10 January 2020, and Miral in Velika Kladuša on 11 January 2020.

²⁸ UNHCR, Bosnia and Herzegovina, Monthly Operational Update, February 2021, <https://reliefweb.int/sites/reliefweb.int/files/resources/BiH%20UNHCR%20Operational%20update-%20January%202021.pdf>

²⁹ United Nations High Commissioner for Refugees (UNHCR), Refugee and migrants situation in Bosnia and Herzegovina: The multi-clustered/sector initial rapid assessment (MIRA) report, May 2018, <https://data2.unhcr.org/es/documents/download/63869>. Also, see UN OHCHR, End of visit statement of the UN Special Rapporteur on the human rights of migrants, Felipe González Morales, 1 October, 2019, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25088&LangID=E%20and>

³⁰ Faktor.ba, “Sporazum o readmisiji omogućit će povratak migranata u Pakistan,” 04 November 2020, <https://faktor.ba/vijest/cikotic-sporazum-o-readmisiji-omogucit-ce-povratak-migranata-u-pakistan/103459>

FREEDOM OF MOVEMENT

General restrictions and restrictions on freedom of movement of migrants and asylum-seekers originally imposed by Una-Sana Canton authorities in October 2018 remained in place.³¹

Such measures were not based in law and were adopted as government conclusions.

Throughout 2020, the Cantonal operational group for migration continued to pass increasingly more restrictive measures, including the complete prohibition of new arrivals into the Canton, ban on transporting migrants and asylum-seekers, including in public transport and taxis, ban on gathering in public places or providing migrants with private accommodation.³² These measures targeted specifically people who were not accommodated in the official reception centers.

In August 2020, police set roadblocks to prevent new arrivals, raided squats and private houses and forcibly removed people without providing them alternative accommodation. The measures and the general hostile anti-migrant rhetoric, including by local government officials, encouraged local vigilantes who intercepted buses and pulled off migrants and asylum-seekers leaving many of them, including families with children, stranded in non-man's land between the two entities.³³

With these restrictions still in place in April 2021, and renewed efforts by the authorities to "extinguish illegal squats," on the territory of the Canton,³⁴ there are increasing reports about local police, accompanied by SFA officers, using excessive force to clear abandoned buildings and squats, remove migrants and asylum-seekers and forcibly transfer them to the provisional – and already dangerously overcrowded – camp Lipa.³⁵

NGOs also report that the conditions of between 200-300 people, including families with children, who are living in informal squats in the village of Bosanska Bojna, on the very border with Croatia, are extremely precarious. Due to remoteness of the village and the police blocking migrants and asylum-seekers from leaving the area, obtaining food and hygiene products presents an insurmountable challenge. Local authorities have also prevented international organisations, including IOM and DRC, from delivering assistance to this community, who now fully depend on assistance provided by local activists and solidarity groups.

Restrictions on freedom of movement of refugees, migrants and asylum-seekers are not limited to Una-Sana Canton. The RS authorities continue prohibiting migrants and asylum-seekers from entering or remaining in the entity and publicly rejecting any possibility of reception centres opening on its territory.³⁶

³¹ Not based in law, the measures were adopted by the Cantonal operational group for migration in form of operational conclusions. The measures included police checks of buses and trains entering the Canton and removal of newly arrived people, including families and children, from trains and buses at the entry of the Canton, leaving them with no choice but to walk for hours in order to reach one of the reception centres.

³² Vlada Unsko-sanskog kantona, Operativna grupa za koordiniranje aktivnosti I nadzora nad migrantskom krizom na području Unsko-sanskog kantona, Zaključci, 19 August 2020, <http://vladausk.ba/v4/novost/operativna-grupa-za-koordiniranje-aktivnosti-i-nadzora-nad-migrantskom-krizom-na-podrucju-unsko-sanskog-kantona/2566>

³³ Amnesty International, "Reckless restrictions of movement leave refugees and migrants stranded without protection," 25 August 2020, <https://www.amnesty.org/en/latest/news/2020/08/bosnia-and-herzegovina-reckless-restrictions-of-movement-leave-refugees-and-migrants-stranded-without-protection/#:~:text=Measures%20include%20the%20complete%20prohibition,providing%20them%20with%20private%20accommodation.>

³⁴ Vlada Unsko-sanskog kantona, Operativna grupa za koordiniranje aktivnosti I nadzora nad migrantskom krizom na području Unsko-sanskog kantona, Zaključci, 07 April 2021, <http://vladausk.ba/v4/novost/operativna-grupa-za-koordiniranje-aktivnosti-i-nadzora-nad-migrantskom-krizom-na-podrucju-unsko-sanskog-kantona/3252>

³⁵ Border Violence Monitoring Network (BVMN), Monthly Report March, 16 April 2021, <https://www.borderviolence.eu/wp-content/uploads/BVMN-Monthly-Report-March-21.pdf>. Also, email exchange with group of local volunteers in Una-Sana Canton, March 2021 and an interview with a senior representative of an organization providing assistance to migrants and asylum-seekers who requested to remain anonymous.

³⁶ Danas, "Dodik: Na prostoru RS neće biti migrantskih centara," 12 January 2021, <https://www.danas.rs/svet/dodik-na-prostoru-rs-neze-biti-migrantskih-centara/>

Measures that target specific groups, such as migrants, asylum-seekers and refugees, and unlawfully and arbitrarily limit persons' freedom of movement and restrict their right to liberty and security violate international human rights law and the laws of BiH.³⁷ Such measures are disproportionate and discriminatory, and further impede effective access to asylum procedures and urgently needed services, including accommodating and healthcare.

RESTRICTIONS TO OUTREACH ACTIVITIES

Since the Ministry of Security's Service for Foreigners' Affairs assumed management of the Lipa camp in January and the re-introduction of restrictive measures in Una-Sana Canton, including the plan to clear illegal squats that provide shelter to thousands of people sleeping rough, local authorities have all but prohibited outreach activities and provision of humanitarian and medical assistance to migrants and asylum-seekers outside of the official reception centers.³⁸ The ban has particularly affected hundreds of people who found shelter in the defunct Krajina Metal factory, an Old Retirement Home in Bihać and the village of Bosanska Bajna. While such measures have been described as temporary by the local authorities, in practice, the people in these locations, including unaccompanied minors and other vulnerable people, have been deprived of any assistance, including healthcare, for weeks.

UNACCOMPANIED MINORS

Children represent 20 percent of refugees and migrants in BiH.³⁹ In January, approximately 1,000 children were in BiH, 500 of whom were unaccompanied or separated minors. Unaccompanied minors who are accommodated in formal reception centres tend to be physically separated from other residents, albeit in conditions that are not suitable for the accommodation of children. Special facilities solely for children are not available in BiH.

In January 2021, an estimated 50 unaccompanied or separated children were staying outside of reception centres, often without adequate shelter or elementary humanitarian assistance and at high risk of potential exploitation and trafficking.⁴⁰ Many children sleeping rough remain unidentified and undocumented due to their precarious status and the prohibition of outreach activities targeting informal squats. In order to be registered and access the necessary services, including being assigned a legal guardian, children have to be accommodated in one of the official reception centres. Save the Children has warned that the threat of further closures of facilities in Una-Sana Canton will increase the number of children who are unable to properly register and as a result deprive them of access to protection and services.⁴¹

Proper identification of children, including age-assessment, remain a challenge for the authorities.⁴² As a result, many unaccompanied minors end up living in dire conditions and often with unrelated adults putting them at risk of exploitation and trafficking. Cantonal Centres for Social Work have assigned a number of social workers to temporary reception centres, with some acting as legal guardians and working alongside UNICEF and Save the Children, who provide on-site protection. Nevertheless, most unaccompanied children do not have a guardian appointed by the authorities.⁴³

³⁷ Amnesty International letter to Una Sana Canton Prime Minister, 15 November 2019.

³⁸ Interviews with staff of organisations providing outreach assistance in Una-Sana Canton who requested to remain anonymous, 14 April, 2021.

³⁹ UN OHCHR, *End of visit statement of the UN Special Rapporteur on the human rights of migrants, Felipe González Morales*, 1 October 2019, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25088&LangID=E%20and>

⁴⁰ Save the Children, *Children sleeping outside during winter nights at risk in Bosnia and Herzegovina*, 28 January, 2021, <https://www.savethechildren.net/news/hundreds-unaccompanied-minors-and-children-families-are-trapped-balkans-facing-pushbacks>

⁴¹ Save the Children, *Children sleeping outside during winter nights at risk in Bosnia and Herzegovina*, 28 January, 2021.

⁴² Council of Europe Human Rights Commissioner Dunja Mijatovic's letter to BiH Council of Minister, 07 December 2020.

⁴³ Council of Europe Human Rights Commissioner Dunja Mijatovic's letter to BiH Council of Minister, 07 December 2020.

The lack of systemic support, including effective cooperation between different levels of authorities and different agencies, continues to undermine adequate protection for children. BiH has an obligation to ensure a reliable and fair system of identification of children, in particular unaccompanied minors; put in place an effective system of referrals and guardianship; provide basic education and integration programs for children on its territory and specialized accommodation for children and guarantee their access to asylum.

COVID-19 PANDEMIC

The Covid-19 pandemic has had a significant impact on migrants, asylum-seekers and refugees. Restrictive measures put in place to reduce the transmission in broader society have further constrained access to health services, both within the reception centres and in public health facilities, for this population. Additionally, the inadequate access to sanitation, hygiene facilities, personal protective equipment and ability to physically distance have increased risks of transmission, particularly among people accommodated in the overcrowded reception centers.

The decision of the authorities in Una-Sana Canton in March 2020 to forcefully transfer people sleeping in squats to the provisional camp in Lipa and confine thousands of asylum-seekers and migrants there without ensuring adequate access to water and sanitation, spaces to self-isolate and accessible medical care was discriminatory and put lives at risk.⁴⁴ Similar measures were reintroduced in April 2021 during the third wave of Covid-19 pandemic that has severely affected BiH.

Danish Refugee Council (DRC) has registered a considerable increase in infection rates among migrants and asylum-seekers in March, but in most cases the people who tested positive had mild or asymptomatic disease.⁴⁵ Despite efforts by IOM and partner organisations to put in place protective measures in official reception centres, in the context of overcrowding with two thirds of the centers operating over their capacity, such measures could only have a limited effect.⁴⁶ The densely populated areas made isolation measures, such as physical distancing, difficult to implement and the restrictions of freedom of movement and the decision to confine the people to the centres for extended periods of time created tensions among the residents and increased the risk of inter-ethnic and gender-based violence.

RECOMMENDATIONS TO THE AUTHORITIES OF BOSNIA AND HERZEGOVINA

- Urgently adopt comprehensive strategy to respond to the increasing number of arrivals, including operational plans to (i) identify without further delay additional reception facilities in all parts of the country, (ii) increase capacities, (iii) ensure adequate reception and accommodation conditions and (iv) enhance access to asylum procedures;
- Address systemic and institutional gaps in the asylum system, including the lack of staff, resources and capacity that undermine Ministry of Security's ability to address asylum claims in a reasonable timeframe;

⁴⁴ Amnesty International, "Decision to confine thousands of migrants into camp inhumane and puts lives at risk," 27 March 2020, <https://www.amnesty.org/en/latest/news/2020/03/bosnia-decision-to-confine-thousands-of-migrants-into-camp-inhumane-and-puts-lives-at-risk/>

⁴⁵ Danish Refugee Council (DRC), Emergency Response to Covid-19, Situation report #50, 12 April 2021, https://drc.ngo/media/0d3pf151/situation-report-covid-19-50-12042021_final.pdf. InfoMigrants, "Covid-19 infection rising in migrant camps," 09 April 2021, <https://www.infomigrants.net/en/post/31430/bosnia-covid-19-infections-rising-in-migrant-camps>.

⁴⁶ Global Detention Project, Submission to UN Committee against Torture (CAT), 23 June 2020, <https://www.globaldetentionproject.org/submission-to-the-committee-against-torture-bosnia-and-herzegovina>

- Ensure that all asylum-seekers have access to fair and effective asylum procedures, including an assessment of their claims for international protection in an individualized procedure;
- Ensure that Service for Foreigners' Affairs staff are regularly present in reception centres and have increased their outreach capacity to ensure timely and efficient registration of asylum claims;
- Amend relevant laws to remove requirements that impede access to asylum procedures for many asylum-seekers, including the 14-day timeframe to lodge asylum application after the initial expression of intent and a proof of residence as a requirement to apply;
- Identify facilities for separate accommodation of children (in particular in Una-Sana Canton) and, in the interim, take concrete steps to improve conditions in the existing facilities, including effective access control and strong safeguarding policies;
- Improve the system of child protection concerning unaccompanied and separated minors, including increasing numbers of social workers and legal guardians and improving their capacity;
- Immediately revoke provisions that target and arbitrarily and unlawfully limit the freedom of movement of refugees, migrants and asylum-seekers across BiH, but in particular in RS and Una-Sana Canton;
- Stop forcibly evicting and using force during removals of migrants and asylum-seekers from informal squats and ensure that all persons who are removed have alternative accommodation in one of the official reception centers;
- Ensure that all reception centers have appropriate spaces for self-isolation, access to testing kits and medical assistance. Migrants, asylum-seekers and refugees should be fully included in any mass vaccination plans once the vaccines become available without discrimination based on their legal status;
- Increase outreach activities and services that target migrants, refugees and asylum-seekers who are accommodated outside of formal reception centres;

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