

# **Bosnia-Herzegovina**

## **Unlawful detention of six men from Bosnia-Herzegovina in Guantánamo Bay**

On the night of 17 to 18 January 2002, Bosnian Federation<sup>1</sup> police removed six Algerian men (Bensayah Belkacem, Hadj Boudellaa, Saber Lahmar, Mustafa Ait Idir, Boumediene Lakhdar and Mohamed Nechle), who had been living in Bosnia-Herzegovina, from Sarajevo prison and handed them over to US custody; they were subsequently transferred to Camp X-Ray located in Guantánamo Bay, Cuba. The transfer took place a day after the order for their release from investigative detention had been issued by the Bosnian Supreme Court, and in violation of an order by the Bosnia-Herzegovina Human Rights Chamber that four of the men should not be transferred to the US. The men have reportedly been detained in Guantánamo Bay ever since.

Amnesty International is extremely concerned that the six men are being arbitrarily detained in violation of their rights under the International Covenant on Civil and Political Rights (ICCPR) to which the US is a party. They face the possibility of trial before a special military commission in proceedings which Amnesty International believes would violate international standards guaranteeing the right to a fair trial. The organization is also concerned that they may face the possibility of the death penalty if they are eventually tried for a capital offence.<sup>2</sup>

### ***Arrested***

The six detained men originate from Algeria. Most of them came to Bosnia-Herzegovina during the 1992-1995 war in order to join the Bosnian Muslim Army. After the war they remained in Bosnia-Herzegovina and were granted either Bosnian citizenship or the right to residency in Bosnia-Herzegovina. All but one of the men married local women, and they worked in a range of occupations, mainly for Islamic charities working in Bosnia-Herzegovina.

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<sup>1</sup> Under the Dayton Agreement, Bosnia-Herzegovina is made up of two entities – the Federation and Republika Srpska – each having their own police force and justice system.

<sup>2</sup> For details of Amnesty International's concerns for all detainees in Guantánamo Bay, see for example, "Memorandum to the US Government on the rights of people held in US Custody in Afghanistan and Guantánamo Bay", AI Index: AMR 51/053/2002, April 2002, and update "Beyond the Law", AI Index: AMR 51/184/2002, December 2002, located at:

(<http://web.amnesty.org/library/Index/ENGAMR510532002> and <http://web.amnesty.org/library/Index/ENGAMR511842002>).

In October 2001, the six men were arrested by the Bosnian Federation police on suspicion of involvement in an alleged plot to launch attacks on the Embassies of the United States of America and United Kingdom in Sarajevo. Following a request for an investigation by the Federation public prosecutor on 19 October 2001, they were detained on the order of the Investigative Judge of the Federation Supreme Court, pending an investigation into their alleged participation in the crime of “international terrorism” under s.1, Article 168 (1) in conjunction with Article 20 (1) of the Federation Criminal Code.<sup>3</sup>

While they were in detention, measures were taken to revoke the citizenship or residency of the six men: on 23 November 2001, the Ministry of Human Rights and Refugees terminated the permanent residence of Saber Lahmar and ordered his expulsion for a period of ten years, on the basis of a previous criminal conviction, the sentence for which had been served. Notices of revocation of citizenship by the Federation Interior Ministry were served on Bensayah Belkacem, Hadj Boudellaa, Mustafa Ait Idir and Mohamed Nechle on 16 November 2001 and by the Federal Interior Ministry on Boumediene Lakhdar on 20 November 2001.

In late November 2001, Amnesty International wrote to the Federation Interior Ministry in relation to the proceedings against the six men. At that point, the organization urged that, in case of their future extradition to Algeria or the USA, the authorities should not extradite them without having received assurances from the relevant US/Algerian authorities that should the men be extradited, they would not be subjected to torture, ill-treatment, unfair trial or the death penalty. On 17 January 2002, a day before the detention period of the men ran out, Amnesty International urged the Bosnian authorities not to transfer the men to Algerian or US custody in the absence of extradition proceedings before a court of law and without having obtained guarantees that their human rights would be protected.<sup>4</sup>

On that same day the investigative judge of the Supreme Court ordered the release of the men, on the basis that there were no further grounds for their detention. Although the US Embassy had indicated that it had evidence linking the men to *al-Qa'ida* networks and substantiating the allegations of planning the embassy attacks, they did not submit any such evidence to the Supreme Court. The order of the Supreme Court was delivered to Sarajevo prison at 5pm; Amnesty International is unaware as to whether it was actually delivered to the detained men. Fearing for their safety, around 500 people – including the families of the detained men – demonstrated outside the prison through the night.

Meanwhile, later that same day, the Human Rights Chamber of Bosnia-Herzegovina (Chamber) also issued an interim order for provisional measures to be taken to prevent the deportation, expulsion or extradition of four of the men from Bosnia-Herzegovina, following applications made to the court by the four men on 14 and 16 January 2002. At the time, the men had feared that they would be extradited to Algeria, where they believed that they would be subjected to torture and ill-treatment by the Algerian authorities

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<sup>3</sup> Article 20 (1) concerns an attempted offence.

<sup>4</sup> *Bosnia-Herzegovina: Transfer of six Algerians to US custody puts them at risk*, News Service Nr. 10, AI Index: EUR 63/001/2002.

### ***Released into US Custody***

At 11.45pm, the men were released from the prison, but were immediately taken into the custody of the Federation Police, who along with Sarajevo Cantonal Police, handed the men over to US forces at 6am on the morning of 18 January 2002.

On 18 January Amnesty International wrote to the US Ambassador to Bosnia-Herzegovina, expressing the organization's urgent concerns that the transfer of the men into US custody had been carried out in violation of Bosnian and international human rights law. In particular Amnesty International was disturbed that an order of the Human Rights Chamber had been violated by the Bosnian authorities<sup>5</sup> and that the USA's involvement in this matter undermined the rule of law in the country.<sup>6</sup> Amnesty International urged the US authorities to immediately inform the men's families and their lawyers of the place of their detention, and to grant the men access to an independent tribunal to challenge the legality of their detention, and for them to be brought promptly before a judicial body.

In late January US authorities confirmed that five Algerian men, and one man with joint Algerian-Yemeni nationality, had all been transferred to Camp X-Ray at Guantánamo Bay in Cuba after they had been arrested in Bosnia-Herzegovina.<sup>7</sup>

### ***Human Rights Chamber of Bosnia-Herzegovina***

On 11 October 2002, the Human Rights Chamber of Bosnia-Herzegovina issued its decision on the admissibility and merits of the application brought by Hadj Boudellaa, Boumedienne Lakhdar, Mohamed Nechle and Saber Lahmar. The Chamber concluded, *inter alia*, that the treatment of the four men by the Bosnian Authorities violated several of their rights guaranteed under the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and its Protocols. These include the right to liberty and security of person (Article 5) and the right not to be arbitrarily expelled in the absence of a fair procedure (Article 1 of Protocol 7). The Chamber also ruled that the failure of the Bosnian authorities to seek assurances that the men would not be sentenced to death before handing them over to US forces violated Article 1 of Protocol 6 to the ECHR (concerning the abolition of the death penalty). The Chamber ordered both the State and Federation authorities to undertake a number of measures in light of the violations of these men's rights.

The Chamber ordered the State and Federation authorities to "use diplomatic channels in order to protect the basic rights of the applicants, taking all possible steps to establish

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<sup>5</sup> Under the General Framework Agreement for Peace in Bosnia and Herzegovina, the Human Rights Chamber is vested with the authority to issue decisions binding upon both entities as well as the state authorities of Bosnia-Herzegovina. The decision by the Bosnian authorities to hand the men over to US custody ignores the Human Rights Chamber's order and undermines respect for this institution as well as adherence to international human rights law as prescribed by the Framework Agreement.

<sup>6</sup> *Bosnia-Herzegovina: Letter to the US Ambassador regarding six Algerian men*, News Service no 11, AI Index: EUR 63/003/2002.

<sup>7</sup> *AFP*, "Belgians, Swedes next in line for access to Guantanamo detainees", 28 January 2002.

contacts with the applicants and to provide them with consular support".<sup>8</sup> The authorities were further instructed to take all possible steps to prevent the death penalty from being pronounced against and executed on the applicants, including attempts to seek assurances from the US via diplomatic contacts that the applicants will not be subjected to the death penalty.

The Bosnian authorities were also ordered to ensure that each of the men's rights were protected by retaining and paying for lawyers while they remain in custody, and in case they should stand trial. The authorities were also instructed to pay compensation to the four men; the compensation to be paid to their relatives if the men have not been returned to Bosnia-Herzegovina by November 2003. Similar decisions were issued by the Chamber on 4 April 2003 in the cases of Bensayah Belkacem and Mustafa Ait Idir.<sup>9</sup> In the case of Mustafa Ait Idir, Bosnia-Herzegovina was also ordered to take all possible steps to obtain the release of the applicant.<sup>10</sup>

On 14 October 2002, the Bosnia-Herzegovina Foreign Ministry reportedly announced that it would take the steps ordered by the Chamber, and on 18 October, the Bosnian authorities reportedly met with the US ambassador, Clifford Bond.<sup>11</sup> Steps were taken in November 2002 to assess whether any lawyers registered with the Bosnian Bar association were qualified to represent the men before foreign or international courts, which apparently revealed that most of the lawyers already representing the men had such qualifications. As far as the organization is aware, the Bosnian State and Federation authorities have taken no other measures to implement the orders of the Chamber.

***Amnesty International's concerns about the conduct of US officials in Bosnia-Herzegovina***

In addition to the organization's concerns at the failure of the Bosnian authorities to implement the decision of the Human Rights Chamber, the organization remains seriously concerned about the undermining of the rule of law in Bosnia-Herzegovina by the United States government whose forces are stationed in Bosnia-Herzegovina as part of the post-war Stabilization Force (SFOR),<sup>12</sup> and which at the time also had a significant number of intelligence officials operating inside the country. The organization has serious concerns about the role and responsibility of US officials in relation to the transfer of the men into US custody, and to Guantánamo Bay, which violated the men's human rights. In a letter which the organization sent to the US Ambassador to Bosnia and Herzegovina on 18 January 2002, Amnesty International expressed its concerns about violations of the men's right to a fair trial, including the failure of the US authorities to grant them access to a court to challenge their

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<sup>8</sup> Para. 330, *Human Rights Chamber for Bosnia and Herzegovina, Decision on Admissibility and Merits*, 10 October 2002, Case Nos: CH/02/8679, CH/02/8689, CH/02/8690 and CH/02/8691.

<sup>9</sup> *Human Rights Chamber for Bosnia and Herzegovina, Decision on Admissibility and Merits*, 2003, Case Nos: CH/02/9499 and CH/02/8961, 4 April 2003.

<sup>10</sup> CH/02/8961, para. 168.

<sup>11</sup> Federation News Agency, Sarajevo, 14 October 2002; AFP, 19 October 2002.

<sup>12</sup> For Amnesty International's concerns about other arrests by SFOR see, for example, Amnesty International News Service No. 218, *Bosnia-Herzegovina: SFOR detention violates human rights*, AI Index: EUR 63/019/2002, 27 November 2002.

deprivation of liberty. The organization also asked questions about the legal basis on which US forces - as part of SFOR - had taken custody of the men. No reply has been received by Amnesty International to date.

The implementation of the Chamber's decisions and orders has been one of the top priorities for human rights officers in Bosnia-Herzegovina working for inter-governmental organizations and the international community, including delegates from, and of, the USA. Amnesty International fears that the blatant flouting of an order of the Chamber by the US authorities in this case set a dangerous precedent which may have far-reaching consequences for future adherence to applicable national and international law and implementation of the Chamber's decisions. The organization deeply regrets the involvement of the US authorities in such a potentially destructive step, and urges the US authorities in the future to ensure respect for Human Rights Chamber decisions.

### ***Arbitrary and unlawful detention***

The six men have now been detained in Guantánamo Bay for over a year, in violation of their rights not to be arbitrarily detained under Article 9 (1) of the ICCPR. They have not been provided with access to a court which has jurisdiction to rule on the legality of their detention, as required by Article 9 (4) of the ICCPR, a right which the UN Human Rights Committee has clarified may not be derogated from even in a time of national emergency.<sup>13</sup>

Like the other detainees in Guantánamo Bay, the six men from Bosnia-Herzegovina are being held in a "legal limbo", outside legal norms, as a result of US conduct and policy. In a letter dated 13 August 2001(*sic*) to Nadja Dizdarević the second wife of Hadj Boudellaa, Clifford Bond, US Ambassador to Bosnia-Herzegovina, informed her that he could not provide her with details relating to any of the individuals detained in Guantánamo. He wrote, "My government views individuals detained in Guantánamo as enemy combatants captured in connection with an ongoing armed conflict and related attacks against the United States." The Ambassador said that the detainees would not be released "until the end of hostilities".

From the outset of the prisoner transfers to Guantánamo Bay, Amnesty International, the UN High Commissioner for Human Rights, the International Committee of the Red Cross (ICRC), the Inter-American Commission for Human Rights and many others have argued that the majority of the detainees, taken into custody in the context of international armed conflict in Afghanistan, should have enjoyed the presumption of prisoners of war status under the Geneva Convention, and that a competent tribunal should have been allowed to determine questions of status in any disputed cases. Amnesty International has since called for the voluntary repatriation of all those detained as combatants during the conflict in Afghanistan, as required under the Geneva Conventions, unless they are to be charged with criminal offences or would face serious human rights abuses if returned to their country.

As the organization has repeatedly urged, all of the Guantánamo detainees, including the six men from Bosnia-Herzegovina, should be charged with recognizably criminal offences and tried within a reasonable time and in accordance with fair trial standards without recourse

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<sup>13</sup> Human Rights Committee, General Comment 29.

to the death penalty, or released, but not returned to any country where they would be at risk of torture, execution or other serious human rights abuses. A small number of prisoners have been released from Guantánamo Bay, but more than 650 people from around 40 countries remained held there without charge or trial at the time of writing.

The US government has raised the prospect of holding detainees indefinitely without charge or trial on the basis that the threat from *al-Qa'ida* across state boundaries continues. Amnesty International maintains that there is no basis for this in international humanitarian law, and that the USA's action against those operating outside the arena of armed conflict is a matter for national law enforcement, and should be carried out within the context of criminal proceedings, which fully respect international law and standards for fair trial.

The six men remain arbitrarily detained at Guantánamo Bay. Amnesty International considers that their continued detention violates Article 9 of the ICCPR to which the US is a party. They also face the possibility of trial before a special military commission: Amnesty International believes that trials before such commissions would violate international law, such as the ICCPR, which guarantees the right to a fair trial and freedom from discrimination. The military commissions apply only to non-US nationals, have the power to hand down death sentences, and allow for no appeals against conviction or sentence to any court.

Amnesty International understands that, following the men's transfer to Guantánamo Bay, the US Embassy in Bosnia-Herzegovina has provided some information to their families, who have been able to write to some of the men through the assistance of the ICRC. However, Nadja Dizdarević has not heard from her husband Hadj Boudellaa since January 2003.

#### **Recommendations**

Amnesty International reiterates its call to the US authorities to either immediately release the six men or charge them with a recognizable criminal offence and try them in independent and impartial courts, which respect their right to a fair trial and do not impose the death penalty.

The organization also urges the US to facilitate communication between the detainees and their families, in accordance with international standards.

Amnesty International calls on the government of Bosnia-Herzegovina and the government of the Federation of Bosnia-Herzegovina to immediately take measures without delay to ensure protection of the rights of the detained men, including by implementing the decisions of the Human Rights Chamber in the cases of Hadj Boudellaa, Boumediene Lakhdar, Mohamed Nechle, Saber Lahmar, Bensayeh Belkacem and Mustafa Ait Idir.

The organization also calls on the government of Bosnia-Herzegovina to urge the US authorities to either release the six men, or to charge them with a recognizable criminal offence and try them in independent and impartial courts, which respect their right to a fair trial and do not impose the death penalty.