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Revoking Citizenship in the Name of Counterterrorism: The Citizenship Review Commission Violates Human Rights in Bosnia and Herzegovina

Stephanie Zosak*

I. INTRODUCTION

¶1 In November 2005, the government of Bosnia and Herzegovina¹ passed a series of amendments to its citizenship law, which affected the mandate of the Citizenship Review Commission (CRC).² Originally established in 1998 through the country's first post-war citizenship law, the CRC is composed of six Bosnian and three international members who are tasked with reviewing naturalizations.³ The 2005 amendments limited the CRC's mandate to reviewing the legal status of foreign citizens who acquired Bosnian citizenship between April 6, 1992 and January 1, 2006.⁴ Since the amendments took effect, the CRC has concentrated on reviewing the citizenship status of former *mujahideen* who entered Bosnia and Herzegovina to fight alongside the Muslim Bosniaks in the 1992-1995 war that followed the country's declaration of independence from Yugoslavia.⁵ The CRC has revoked the citizenship of hundreds of former *mujahideen* and has commenced deportation proceedings that would send them back to their countries of origin in the Middle East and Africa.⁶ This scrutiny of the *mujahideen* is a direct response to pressure the international community has put on the Bosnian government to take action against these individuals due to concerns that they may use Bosnia and Herzegovina as a base for promoting and perpetrating acts of terrorism.

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¹ Bosnia and Herzegovina is the English language spelling of *Bosna i Hercegovina*, the country's official name in the Bosnian language. Short forms include Bosnia-Herzegovina, Bosnia or BiH. This article will use Bosnia and Herzegovina for purposes of clarity and simplicity. CENTRAL INTELLIGENCE AGENCY, WORLD FACTBOOK: BOSNIA AND HERZEGOVINA (2008), available at <https://www.cia.gov/library/publications/the-world-factbook/geos/bk.html> [hereinafter C.I.A. WORLD FACTBOOK].

² This is a simplified translation from the Bosnian language title of the CRC: *Državna komisija za reviziju odluka o naturalizaciji stranih državljana*.

³ Law on Citizenship of Bosnia and Herzegovina art. 40(2) (1998), <http://www.unhcr.org/refworld/type,LEGISLATION,,BIH,3ae6b5174,0.html> [hereinafter 1998 Citizenship Law].

⁴ Law on Amendments to the Law on Citizenship of Bosnia and Herzegovina art. 7 (2005), <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=4bab789f2&page=search> [hereinafter 2005 Citizenship Law].

⁵ See Honouring of Obligations and Commitments by Bosnia and Herzegovina, EUR. PARL. DOC. 11700 (2008) [hereinafter Honouring of Obligations]. See also Tarik Borogovac, *Bosnia Violates Own Citizens' Human Rights by Revoking Their Citizenship in a Political Process*, ONLINE NEWSL. OF THE NAT'L CONG. OF THE REP. OF BOSN. & HERZ., Jan. 31, 2008, <http://republic-bosnia-herzegovina.com/?p=487> (last visited June 18, 2010).

⁶ Anes Alic, *Bosnia Rules to Revoke Citizenships*, INT'L RELATIONS & SEC. NETWORK, July 14, 2006, <http://www.isn.ethz.ch/isn/Current-Affairs/Security-Watch/Detail/?id=52180&lng=en> (last visited June 18, 2010).

¶2 In an effort to comply with the international community's post-9/11 counterterrorism objectives, the CRC has violated the human rights of Islamic naturalized citizens within Bosnia and Herzegovina by denying them certain procedural rights and protections that are guaranteed under international human rights law. These include the right of due process, the right to appeal, the right to be free from discrimination based on race and religion, and the right to not be deported to a country where they would be subjected to torture and other cruel, inhuman, or degrading treatment or punishment. Bosnia and Herzegovina should pursue counterterrorism measures and comply with international security standards, but it must do so in a way that does not violate its obligations under international human rights law.

II. CONFLICT IN BOSNIA AND HERZEGOVINA

¶3 Bosnia and Herzegovina was once one of six republics of the Socialist Federal Republic of Yugoslavia. Of the six, it was also the most multiethnic and multi-religious republic. The 1990 census showed that 43.5 percent of Bosnians were Bosniaks, 31.2 percent were ethnic Serbs, and 17.4 percent were ethnic Croats.⁷ Muslim Bosniaks, Catholic Croats, and Orthodox Serbs were dispersed throughout the republic and lived in close proximity to one another. In the early 1990s, corruption scandals and the fall of communism in the Soviet Union led to calls for decentralization and weakened the Yugoslav government's power over its republics.⁸ By February 1992, ethnic relations had deteriorated and tensions were high as uncertainty grew over Bosnia and Herzegovina's future political status. In the midst of these tensions, Bosniak and Croat leaders called for a referendum on independence from Yugoslavia. Over ninety-nine percent of the Bosniaks and Bosnian Croats who participated in the referendum voted for independence.⁹ The majority of the Serb population expressed its opposition to independence by refusing to participate in the referendum.¹⁰ Thus, as a result of the vote, Bosnia and Herzegovina declared its independence from Yugoslavia in April 1992, without the support of the Bosnian Serbs.¹¹

¶4 The decision to declare independence immediately triggered skirmishes and eventually gave rise to full-blown combat.¹² The war in Bosnia and Herzegovina lasted from 1992 to 1995 and was characterized by grave human rights abuses committed by each of the three warring ethnic groups. Each faction resorted to large-scale expulsions of civilians, systematic rape, and mass murder in order to exert control over the territory of Bosnia and Herzegovina.¹³ Those who

⁷ Fran Markowitz, *Census and Sensibilities in Sarajevo*, 49 COMP. STUD. IN SOC'Y & HISTORY 40, 42 (2007) (citing Statisticki Godisnjak/Ljetopis Federacije Bosne i Hercegovine (Sarajevo, Federalni Zavod Za Statistiku 2003)); STEVEN L. BURG, *Ethnic Conflict and the Euro-Atlantic Community: The Case of Yugoslavia, in WAR OR PEACE?: NATIONALISM, DEMOCRACY, AND AMERICAN FOREIGN POLICY IN POST-COMMUNIST EUROPE* 43, 60 (Steven L. Burg ed., 1996).

⁸ ROBERT BAUMANN ET AL., ARMED PEACEKEEPERS IN BOSNIA 21-22 (2004).

⁹ Ayaki Ito, *Politicisation of Minority Return in Bosnia and Herzegovina—The First Five Years Examined*, 13 INT'L J. REFUGEE L. 98, 100 (2001).

¹⁰ *Id.*

¹¹ *Id.*

¹² The war was triggered on March 1, 1992, by the murder of two guests of a Serbian wedding party in the Muslim section of Sarajevo. Within hours, "up to a dozen people were killed in fighting that soon spread to other regions of the republic." LENARD J. COHEN, *The Dissolution of the Second Yugoslavia: Balkan Violence and the International Response, in BROKEN BONDS, YUGOSLAVIA'S DISINTEGRATION AND BALKAN POLITICS IN TRANSITION* 227, 237 (Lenard J. Cohen ed., 1995).

¹³ Internal Displacement Monitoring Centre, *Bosnia and Herzegovina* (2005), [http://www.internal-displacement.org/8025708F004CE90B/\(httpCountries\)/C8DEEFACFF6821AD802570A7004C6A42?OpenDocume](http://www.internal-displacement.org/8025708F004CE90B/(httpCountries)/C8DEEFACFF6821AD802570A7004C6A42?OpenDocume)

fled across the front lines to seek refuge in an area controlled by their ethnic group often had to pass through minefields and were sometimes shot, robbed, and assaulted by soldiers.¹⁴

¶15 When media reports publicized these human rights abuses, a significant number of Islamic foreign soldiers came to Bosnia and Herzegovina from the Middle East and Africa to fight alongside the Bosniaks.¹⁵ It is estimated that approximately 3000 Muslim men entered Bosnia and Herzegovina during the three-year war.¹⁶ These *mujahideen* decided to help the Bosniaks fight against their “oppressors” and were motivated by what they saw as a Christian assault on their “Islamic brothers” and a failure by the West to put an end to the human rights abuses.¹⁷ *Mujahideen* were first absorbed into the Seventh Muslim Mountain Brigade of the Third Corps Army of Bosnia and Herzegovina (*Armija Republike Bosne i Hercegovine*) when it was established on November 19, 1992. However, on August 13, 1993, Supreme Commander Rasim Delic ordered the establishment of the *El Mujahed* unit comprised strictly of *mujahideen* in the Third Corps area of operations in the Army of Bosnia and Herzegovina.¹⁸ This unit remained part of the Third Corps until its disbandment on December 12, 1995 at the end of the war.¹⁹

¶16 After the war, many Islamic foreign soldiers remained in Bosnia and Herzegovina despite the Dayton Peace Agreement’s insistence on the withdrawal of all forces not of local origin.²⁰ The number of *mujahideen* who stayed in the country is unknown, but estimates vary from 700

nt (last visited June 10, 2010).

¹⁴ Ivanisevic estimates that out of a population of 4.5 million, approximately 100,000 people were killed. Over half of Bosnia and Herzegovina’s population became refugees, and 1.3 million were internally displaced. Between 10,000 to 15,000 people are still believed missing. BOGDAN IVANISEVIC, THE WAR CRIMES CHAMBER IN BOSNIA AND HERZEGOVINA: FROM HYBRID TO DOMESTIC COURT 3 (2008), available at <http://www.ictj.org/images/content/1/0/1088.pdf>.

¹⁵ In the late twentieth century and early twenty-first century, especially after 9/11, the term *mujahideen* became popular in the media to describe terrorists or various militant Islamists participating in extremism. However, the literal translation of *mujahideen* from Arabic is “one who struggles.” It refers to someone who participates in a *jihad*. For a discussion of *mujahideen*, see generally SACHIKO MURATA & WILLIAM CHITTICK, THE VISION OF ISLAM (1995). Professor Rudolph Ware stresses that the term *mujahideen* is not inherently violent but has received such a connotation from political leaders and the media. Interview with Rudolph Ware, Professor, Northwestern University in Evanston, Ill. (Jan. 5, 2006). In fact, a Muslim can wage a peaceful *jihad*, such as the struggle against the *nafs* or spirits who tempt one’s soul into straying from the straight path of Islam. *Id.* The best-known *mujahideen* are those men who fought against the Soviet Union and Afghan government in Afghanistan in the late 1970s. *Id.*

¹⁶ Roughly 700 *mujahideen* entered Bosnia and Herzegovina in 1992, but by late 1995 they numbered 3000 strong. Steven Oluic, *Radical Islam on Europe’s Frontier—Bosnia & Herzegovina*, 1-2 NAT’L SEC. & THE FUTURE 35, 38 (2008).

¹⁷ *Id.*

¹⁸ Prosecutor v. Delic, Case No. IT-04-83-PT, Indictment, ¶¶ 13-14 (Mar. 17, 2005).

¹⁹ The *El Mujahed* unit was said to be responsible for some of the most heinous crimes committed during the war. Prosecutors at the International Criminal Tribunal for the Former Yugoslavia have accused the *El Mujahed* unit of murder, ritual execution, beheading, torture, and imprisonment of Bosnian Serb and Bosnian Croat civilians and armed forces. See *id.*

²⁰ Their presence was contrary to provisions of the Dayton Peace Agreement, also known as the General Framework Agreement for Peace in Bosnia and Herzegovina (GFAP). The GFAP ended the war in Bosnia and Herzegovina when it was signed by all parties on December 14, 1995. Annex 1A, Article III, states: “All Forces in Bosnia and Herzegovina as of the date this Annex enters into force which are not of local origin, whether or not they are legally and militarily subordinated to the Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, or Republika Srpska, shall be withdrawn together with their equipment from the territory of Bosnia and Herzegovina within thirty (30) days. Furthermore, all Forces that remain on the territory of Bosnia and Herzegovina must act consistently with the territorial integrity, sovereignty, and political independence of Bosnia and Herzegovina.” General Framework Agreement for Peace in Bosnia and Herzegovina, Dec. 14, 1995, 35 I.L.M. 89, annex 1A, art. III (1996) [hereinafter General Framework for Peace]. As described in the text, Bosniak officials and *mujahideen* circumvented this provision within the thirty-day time limit.

to more than 1000.²¹ The Bosnian president Alija Izetbegovic and his government awarded them citizenship as a reward for their military services.²² However, there are also some reports alleging that they bribed Bosnian officials for citizenship.²³ In the fifteen years since the end of the war, *mujahideen* men have married Bosniak women and started families. At first, they settled in villages near Maglaj and Bocinja in central Bosnia and Herzegovina that were formerly inhabited by Serbs.²⁴ They lived there under *sharia*²⁵ law until the Bosnia and Herzegovina government forcibly evicted them in 2000 to make room for returning Serb refugees.²⁶ Since then, the former *mujahideen* community has dispersed throughout central Bosnia and Herzegovina.

III. INTERNATIONAL PRESSURE TO REMOVE THE *MUJAHIDEEN*

¶7 After the 9/11 terrorist attacks in the United States, Bosnia and Herzegovina found itself among those countries associated with terrorist activities. There are several reasons for this association. First, reports indicate that *al-Qaeda* has been active in Bosnia and Herzegovina since as early as 1993. President Izetbegovic, the political leader of the Bosniaks at the time, gave Osama bin Laden a Bosnian passport in 1993 when he visited Sarajevo.²⁷ Khalid al-Mihdhar and Nawaf al-Hazmi, two of the 9/11 hijackers, trained and fought in Bosnia and Herzegovina.²⁸ Khalid Sheikh Mohammed, described by the 9/11 Commission as the principal engineer of the 9/11 attacks, also trained in Bosnia and Herzegovina and financed some of the *mujahideen* operations.²⁹ Second, the resurgence of radical Islamic political groups and organizations in Bosnia and Herzegovina since the end of the war has contributed to the view that Bosnia and Herzegovina is a safe haven for terrorists. Following the 9/11 attacks, some former *mujahideen* and leaders of the Active Islamic Youth (*Aktivna Islamska Omladina*) began inciting their followers to support *jihad* around the globe.³⁰ On March 11, 2002, U.S. treasury secretary Paul O'Neill shut down all of *al-Haramain's* branches in Bosnia and Herzegovina after its Sarajevo office had come under the control of the Egyptian Islamic Group, of which terrorist

²¹ STEVEN WOEHLER, ISLAMIC TERRORISM AND THE BALKANS 3 (2006), available at <http://www.fas.org/sgp/crs/terror/RL33012.pdf>.

²² Oluic, *supra* note 16.

²³ WOEHLER, *supra* note 21, at 3.

²⁴ Alix Kroeger, *Bosnia's Holy Warriors Ready to Fight Evictions*, GUARDIAN, July 23, 2000, available at <http://www.guardian.co.uk/world/2000/jul/23/balkans>.

²⁵ Literally, *sharia* means "path" or "path to water." In the religious sense, it means God's law, which will provide a path to salvation if followed. According to Islamic teaching, *sharia* is manifested in divine signs that humans must interpret. There are four main sources of *sharia*: the Quran, Islam's holy book, considered the literal word of God; the *hadith*, or record of the actions and sayings of the Prophet Mohammed; *ijma*, the consensus of Islamic scholars; and *qiyas*, a form of reasoning that uses analogies to apply the holy texts to problems or issues not covered by them. See Lauren Vriens, *Islam: Governing Under Sharia* (Mar. 23, 2009), <http://www.cfr.org/publication/8034/> (last visited June 18, 2010).

²⁶ *Bosnia Evicts 'Holy War' Settlers*, BBC NEWS, July 24, 2000, <http://news.bbc.co.uk/2/hi/europe/848808.stm> (last visited June 18, 2010).

²⁷ Gordon Bardos, *Balkan Blowback? Osama bin Laden and Southeastern Europe*, 13 MEDITERRANEAN Q. 44, 48 (2002).

²⁸ Centre for Peace in the Balkans, *Bosnia, 1 Degree of Separation from Al-Qaeda* (2003), available at <http://www.balkanpeace.org/index.php?index=/content/analysis/a15.incl>.

²⁹ Brendan O'Neill, *The Bosnian Connection: Observations on Terrorism*, NEW STATESMAN, Aug. 2, 2004, at 13.

³⁰ "AIO has a single goal: spreading Wahhabism, in such a way that its members oppose not only the laws and constitution of Bosnia-Herzegovina, but the established Islamic community structure." Stephen Schwartz, *A Crime in Bosnia*, WKLY. STANDARD, Jan. 16, 2003, available at <http://www.weeklystandard.com/Content/Public/Articles/000/000/002/121utlvh.asp>.

Ayman al-Zawahiri is a member.³¹ Third, there is some evidence that former *mujahideen* constructed terrorist training camps within Bosnia and Herzegovina. The international press has reported that the village of Gornja Maoca holds a training camp for members of *al-Qaeda*.³² Finally, the international community views Bosnia and Herzegovina, given its location and its lack of political and economic stability, as a perfect transit country for terrorists seeking to enter Europe.³³

18 In light of that evidence, the international community put pressure on the government of Bosnia and Herzegovina to adopt strict counterterrorism measures that address resurging Islamic radicalism and the presence of *mujahideen* sympathetic to terrorist activities.³⁴ In October 2001, U.S. charge d'affaires Christopher Hoh met with Alija Behmen, the Prime Minister of the Federation of Bosnia and Herzegovina,³⁵ and warned him that the U.S. would withdraw its forces and sever diplomatic relations if six individuals suspected of terrorism were not arrested.³⁶ In January 2002, Bosnia and Herzegovina handed over the "Algerian Six," four of whom held Bosnian citizenship, to the U.S.³⁷ One of the six was Bensayah Belkacem, believed to be a high-ranking member of *al-Qaeda*.³⁸ Although it was pleased with Bosnia and Herzegovina's willingness to hand over suspected terrorists, the international community wanted a more substantial commitment to counterterrorism.³⁹ Accordingly, in order to comply with the international community's continued pressure, Bosnia and Herzegovina decided upon a more permanent solution to address the presence of *mujahideen*. That solution was to modify the purpose of the CRC.

IV. CITIZENSHIP REVIEW COMMISSION

19 In November 2005, the Bosnian government amended its citizenship laws to serve counterterrorism purposes.⁴⁰ That amendment, officially titled the Law on Amendments to the

³¹ *Id. Al-Haramain*, a Saudi-based organization, came to Bosnia and Herzegovina promising to rebuild minarets and mosques but have been identified with terrorist funding. The organization "reportedly gave AIO some \$55,000 from January 1999 to September 2001, but \$400,000 more was funneled to the organization through Kuwait." *Id.*

³² *Bosnian Police Raid Muslim Houses*, ALJAZEERA.NET, Feb. 3, 2010, <http://english.aljazeera.net/news/europe/2010/02/201022184657620696.html> (last visited June 10, 2010).

³³ Oluic, *supra* note 16, at 36, 40-41.

³⁴ According to one Western diplomat, "The presence of foreign fighters isn't particularly useful for building a modern democratic state." Nicholas Wood, *Bosnia Plans to Expel Arabs Who Fought in Its War*, N.Y. TIMES, Aug. 2, 2007, at A3.

³⁵ The Dayton Peace Agreement divided Bosnia and Herzegovina into two entities: The Federation of Bosnia and Herzegovina and the Republika Srpska. *See* General Framework for Peace, *supra* note 20, annex IV, art. I(3); C.I.A. WORLD FACTBOOK, *supra* note 1.

³⁶ Marc Perelman, *From Sarajevo to Guantanamo: The Strange Case of the Algerian Six*, MOTHER JONES ONLINE, Dec. 4, 2007, <http://www.motherjones.com/politics/2007/12/sarajevo-guantanamo-strange-case-algerian-six> (last visited June 10, 2010).

³⁷ Borogovac, *supra* note 5. The six men were originally imprisoned at Guantanamo Bay, Cuba. They challenged their detention in U.S. federal courts, which forced the U.S. government to withdraw almost all of its charges against them. Five were released. *See* Boumediene v. Bush, 579 F. Supp. 2d 191 (D.D.C. 2008).

³⁸ Borogovac, *supra* note 5.

³⁹ Bosnia and Herzegovina's willingness to hand over terrorist suspects to the United States government in the "Algerian Affair" did not go unnoticed. President George Bush was so appreciative that he mentioned the episode in his 2002 State of the Union address as a good example of cooperation in the War on Terror. *See* Robert Fisk, Op-Ed., *Scandal of Six Held in Guantanamo Even After Bush Plot Claim Is Dropped*, INDEP., Oct. 31, 2008, at 26.

⁴⁰ In 1997, the Office of the High Representative in Bosnia and Herzegovina, acting as the country's executive after the war, created the country's first citizenship law. The original law was later approved by the Bosnia and Herzegovina Parliament and went into effect in January 1998. *See* 1998 Citizenship Law, *supra* note 3.

Law on Citizenship of Bosnia and Herzegovina (*Zakon o izmjenama i dopunama zakona o drzavljanstvu Bosne i Hercegovine*), narrowed the mandate of the CRC. Specifically, the Amendment charged the CRC with reviewing the status of foreign citizens who acquired Bosnian citizenship between April 6, 1992 (the start of the conflict) and January 1, 2006 (the date at which the amendments took effect)⁴¹ and to withdraw citizenship in situations where “regulations in force in the territory of Bosnia and Herzegovina at the time of the naturalization had not been applied.”⁴² The amendment originally applied for only one year, but the Office of the High Representative (OHR) extended it on February 15, 2007 so that the CRC could fully complete its review.⁴³

¶10 The CRC can propose to the Bosnia and Herzegovina Council of Ministers that it revoke the citizenship of individuals who obtained their citizenship in one of two ways: not according to the relevant regulations or on the basis of false information.⁴⁴ The CRC may not propose revocation in either case if the individual would be rendered stateless.⁴⁵ The 1998 Law on Citizenship required the CRC to demonstrate that the individual being reviewed was clearly aware of the irregularity in his citizenship status.⁴⁶ Those under review were also allowed to keep their Bosnia and Herzegovina citizenship if they later met requirements for naturalization.⁴⁷ The 2005 amendments eliminated these provisions of the original law.⁴⁸ Once the Council of Ministers approves the CRC’s decision on citizenship, Bosnia and Herzegovina can move ahead with deportations. It is estimated that the CRC’s work affects approximately 1500 individuals within Bosnia and Herzegovina,⁴⁹ most of whom are former *mujahideen* who came to Bosnia and Herzegovina during the war.⁵⁰

¶11 Due to the secretive nature of the CRC’s review process, there is a wide range of estimates as to how many people’s citizenship the CRC has revoked thus far. In July 2006, Vjekoslav Vukovic, president of the CRC, confirmed that the CRC had revoked dozens of people’s citizenship but refused to provide any further details.⁵¹ As of September 2007, a commission from the European Parliament indicated that the CRC had revoked the citizenship of 613 people, most originating from Islamic countries, with the largest numbers having immigrated from Turkey (137), Egypt (63), Syria (49), and Algeria (37).⁵² By December 2008, the CRC had revoked the citizenship of fifty further people, bringing the estimated total to above 660, of which 400 were individuals of Islamic origin.⁵³ According to a high-ranking police source close

⁴¹ See 2005 Citizenship Law, *supra* note 4, art. 7.

⁴² 1998 Citizenship Law, *supra* note 3, art. 41(4). See also Amnesty International, *Bosnia and Herzegovina: Withdrawal of Citizenship Must Not Result In Human Rights Violations*, AI INDEX EUR 63/011/2006 (2006), available at <http://www.amnestyusa.org/document.php?lang=e&id=ENGEUR630112006> [hereinafter *Withdrawal of Citizenship*].

⁴³ Office of the High Representative, *Decision Enacting the Decision Extending the Mandate of the State Commission for the Review of Decisions on Naturalization of Foreign Citizens*, Feb. 15, 2007, http://www.ohr.int/print/?content_id=39147 (last visited June 18, 2010).

⁴⁴ 2005 Citizenship Law, *supra* note 4, art. 8.

⁴⁵ *Id.* See also *Withdrawal of Citizenship*, *supra* note 42.

⁴⁶ 1998 Citizenship Law, *supra* note 3, art. 41(4).

⁴⁷ See 1998 Citizenship Law, *supra* note 3, art. 41(4).

⁴⁸ See 2005 Citizenship Law, *supra* note 4, art. 8.

⁴⁹ Honouring of Obligations, *supra* note 5.

⁵⁰ Borogovac, *supra* note 5.

⁵¹ Alic, *supra* note 6.

⁵² Honouring of Obligations, *supra* note 5.

⁵³ See *Bosnian Commission Head Outlines Results of Citizenship Review Probe*, BBC MONITORING, Dec. 15, 2008 (Bosnian national public broadcaster BHTV1 via BBC Monitoring). Human Rights Watch estimated in 2008 that

to the CRC, as many as forty percent of the 1500 naturalized citizens involved in the review process will eventually lose their citizenship and be deported to their countries of origin.⁵⁴

¶12 Deportation proceedings have already started for an unknown number of these individuals. In September 2006, Bosnia and Herzegovina authorities deported Badreddine Ferchichi, a Tunisian whose nationality had been revoked. Ferchichi was reportedly tortured upon his return to Tunisia⁵⁵ and later charged in a military tribunal for violating an article of Tunisia's military justice code.⁵⁶ In December 2007, Atau Mimun was deported to his native Algeria after having lost his Bosnia and Herzegovina citizenship.⁵⁷

¶13 In response to criticisms of the citizenship review and deportation process, Bosnian officials explain that their current policies simply reverse decisions that were illegally made at the end of the war.⁵⁸ However, some Bosnian politicians and international officials say that the revocations and deportations are primarily motivated by a different concern—that Bosnia and Herzegovina does not want to be seen internationally as a haven for Islamic terrorists and other radicals.⁵⁸ The Peace Implementation Council Steering Board, a body that works directly with the Office of the High Representative in Bosnia and Herzegovina, welcomed the establishment of the CRC and emphasized the CRC's "critical importance for the counter-terrorism agenda."⁵⁹ Moreover, the U.S. government has lauded the 2005 amendments as "critical...to address[ing] the problem of foreign extremists who obtained Bosnian citizenship illegally."⁶⁰ Such positive reinforcement has undoubtedly been a motivating force behind the actions of the CRC.

V. CONCERNS ABOUT THE CITIZENSHIP REVIEW COMMISSION AND ITS COMPLIANCE WITH INTERNATIONAL HUMAN RIGHTS LAW

¶14 Those individuals who obtained Bosnian citizenship between the years 1992 to 1995 must have their citizenships scrutinized. During that period, Bosnia and Herzegovina was a transitional state, and the political environment at the end of the war was one in which individuals could easily have abused the citizenship system. However, the procedures of the

roughly 300 individuals had their citizenship revoked by the CRC. HUMAN RIGHTS WATCH, WORLD REPORT 2008: BOSNIA AND HERZEGOVINA EVENTS OF 2008 3 (2008).

⁵⁴ Alic, *supra* note 6.

⁵⁵ See Amnesty International, *In the Name of Security: Routine Abuses in Tunisia*, AI INDEX MDE 30/007/2008, 30-31 (2008), available at <http://www.amnesty.org/en/library/asset/MDE30/007/2008/en/b852a305-3ebc-11dd-9656-05931d46f27f/mde300072008eng.pdf> [hereinafter *In the Name of Security*]. "He was arrested upon return to Tunisia and detained incommunicado for six days, during which he alleged he was beaten, suspended upside down and in the *poulet rôti* position in order to force him to give information about whether he has been involved in terrorist activities or has connections with terrorist groups abroad." *Id.*

⁵⁶ *Id.*

⁵⁷ U.K.-Algeria Deal to Deport Suspects is Fig-Leaf for Torture, HUM. RTS. WATCH, Mar. 7, 2006, <http://www.hrw.org/en/news/2006/03/07/uk-algeria-deal-deport-suspects-fig-leaf-torture> (last visited June 10, 2010) [hereinafter *Deal to Deport Suspects*]. Bosnian Deputy Security Minister Dragan Mektic "told western media outlets that Mimun's citizenship had been revoked after evidence that the Algerian had contacts with some figures linked to terrorism. He offered no further details." *Bosnia Begins Deportations*, INT'L REL. & SEC. NETWORK, Jan. 9, 2008, available at <http://www.isn.ethz.ch/isn/layout/set/print/content/view/full/73?id=54003&lng=en>.

⁵⁸ See *Bosnian Commission Head Outlines Results of Citizenship Review Probe*, *supra* note 53.

⁵⁸ See Borogovac, *supra* note 5; Schwartz, *supra* note 30.

⁵⁹ Office of the High Representative and EU Special Representative, *Communique by the PIC Steering Board*, Mar. 15, 2006, available at http://www.ohr.int/pic/default.asp?content_id=36760.

⁶⁰ U.S. DEPT. OF STATE, U.S. GOVERNMENT ASSISTANCE TO AND COOPERATIVE ACTIVITIES WITH CENTRAL AND EASTERN EUROPE: COUNTRY ASSESSMENT – BOSNIA 3 (2007), available at <http://www.state.gov/p/eur/rls/rpt/92672.htm>.

CRC do not yet conform to international or domestic human rights law standards. Furthermore, Bosnia and Herzegovina's motivations for revocation and deportation may also violate international human rights law and domestic human rights standards.

A. *Lack of Due Process*

¶15 Several aspects of the CRC's review procedure raise due process concerns. The CRC does not disclose to individuals when or even if it is reviewing their citizenship status. Only after the CRC decides to revoke an individual's citizenship is he or she notified of the review. Revocation takes the form of a one to two page letter mailed to the individual's last known address.⁶¹ The case of Raffaq Jalili is illustrative. Jalili was a former Moroccan customs officer who came to Bosnia and Herzegovina to fight in the war.⁶² He served in the *El Mujahed* unit of the Army of Bosnia and Herzegovina. After the war, Jalili remained in Bosnia and Herzegovina and acquired citizenship through marriage to a Bosniak woman. Jalili, his wife, and two children settled in Zenica and now live on his disabled veteran's pension from the Bosnian government.⁶³ In 2006, the CRC notified Jalili by mail that it had revoked his citizenship and that deportation proceedings had commenced against him.⁶⁴ However, he never knew that the CRC was in the process of reviewing his citizenship in the first place.

¶16 Because Jalili and other individuals subject to the CRC's mandate do not know if or when their citizenship status is under review, they do not have a right to appear before the CRC when the review process is underway.⁶⁵ They have no right to give oral testimony to support their citizenship or to challenge the review process. The CRC simply meets behind closed doors and makes a private decision as to the individual's legal status in Bosnia and Herzegovina. With the consent of the Bosnia and Herzegovina Council of Ministers, the CRC can commence deportation orders immediately after notifying the individual of his or her citizenship status.

¶17 This review process denies individuals whose citizenship the CRC scrutinizes the right of procedural due process guaranteed under international human rights law. On July 12, 2002, Bosnia and Herzegovina became a signatory to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), thereby legally binding itself to the provisions and rights contained therein. Article 6 of the ECHR, entitled "Right to a Fair Trial," provides: "In the determination of his *civil rights* and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law" (emphasis added).⁶⁶ This article indicates that States Parties are legally obligated to grant due process in situations outside of the traditional criminal context if a civil right such as citizenship is at issue. Therefore, by denying individuals under review a fair and public hearing on their citizenship status, the CRC infringes on their right to procedural due process, which it is required to respect under international human rights law.

¶18 Bosnia and Herzegovina's duty to respect the due process rights enshrined in the ECHR is further reinforced by the text of the General Framework Agreement for Peace in Bosnia and

⁶¹ Wood, *supra* note 34.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ HELSINKI COMMITTEE FOR HUMAN RIGHTS IN BOSNIA AND HERZEGOVINA, REPORT ON THE STATUS OF HUMAN RIGHTS IN BOSNIA AND HERZEGOVINA (2006), available at <http://www.bh-hchr.org/Reports/reportHR2006.htm> [hereinafter HELSINKI REPORT].

⁶⁶ European Convention for the Protection of Human Rights and Fundamental Freedoms art. 6, Sept. 3, 1953, 213 U.N.T.S. 222 [hereinafter ECHR].

Herzegovina (GFAP). The GFAP is the international treaty signed by all ethnic groups that officially ended the 1992-1995 war in Bosnia and Herzegovina. In Annex VI, Bosnia and Herzegovina obligated itself to provide to all individuals “the highest level of internationally recognised human rights and fundamental freedoms, including the rights and freedoms provided in the European Convention on Protection of Human Rights and Fundamental Freedoms and in its Protocols and the other international agreements....”⁶⁷ Bosnia and Herzegovina therefore violates its commitment to the GFAP by allowing the CRC’s review process to disregard procedural due process rights and protections in the ECHR.

¶19 Bosnia and Herzegovina’s denial of procedural due process to individuals whose citizenship status is under review by the CRC is a violation of domestic human rights standards as well. Bosnia and Herzegovina directly implemented the human rights and fundamental freedoms in Article II of the ECHR in its own constitution, indicating that the European Convention on Human Rights is to have priority over all other domestic laws.⁶⁸ Thus, denying individuals’ procedural due process before the CRC is not only a violation of the European Convention on Human Rights, but also a violation of the rights guaranteed to individuals in the Bosnia and Herzegovina Constitution.

B. *No Right to Appeal an Adverse Decision*

¶20 Decisions to withdraw citizenship may not be subject to an effective appeal. Once the CRC notifies an individual that it revoked his or her citizenship, the individual essentially has no right to challenge the CRC’s decision. Fadhil Hamdani’s experience provides a specific example. Hamdani came to Bosnia and Herzegovina from Iraq when he was 18 years old to study engineering in Zenica.⁶⁹ He remained in the country after his studies, and by the time the war broke out in 1992, he was married with two children.⁷⁰ Hamdani believed that it was only natural to fight for his adopted country, as Bosnian Serb forces attacked Bosniaks throughout Bosnia and Herzegovina.⁷¹ In February 1995, nine months before the end of the war, the Bosnian government granted him citizenship.⁷² More than ten years later, Hamdani, like Jalili, received a notice in the mail from the CRC that his citizenship had been revoked and deportation proceedings had commenced against him.⁷³ As in the initial review process, Hamdani was denied the opportunity to appeal his decision before the CRC or to present evidence on his own behalf.⁷⁴ Hamdani is currently awaiting his deportation order.⁷⁵

¶21 The CRC’s denial of an individual’s right to appeal the decision on his or her citizenship violates international human rights law. Human Rights Watch “believes that at the very least the right to a judicial appeal to challenge a deportation or ministerial expulsion order with automatic suspensive effect against removal is necessary to ensure that Bosnia and Herzegovina is in

⁶⁷ General Framework for Peace, *supra* note 20, annex 6, art. 1; Oluic, *supra* note 16.

⁶⁸ Article II(2) of the Constitution of Bosnia and Herzegovina states: “The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law.” Ustav Bosne i Hercegovine [Const. Bosn. & Herz.] [Constitution] art. 2 (1995) [hereinafter Ustav Bosne i Hercegovine].

⁶⁹ Wood, *supra* note 34; Schwartz, *supra* note 30.

⁷⁰ Wood, *supra* note 34.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* See also 2005 Citizenship Law, *supra* note 4, art. 8.

⁷⁵ Wood, *supra* note 34.

compliance with its international human rights obligations.”⁷⁶ The right to appeal is a component of the right to a fair trial and public hearing, protected in Article 6 of the ECHR. However, the ECHR also provides a specific right to an appeal from a violation of any Convention right. Article 13 makes it clear that a person subject to forced removal should have access to an effective remedy before a national authority.⁷⁷ Therefore, the CRC’s denial of procedural due process is a violation under Article 6, which triggers a right to appeal before a national authority under Article 13. As Bosnia and Herzegovina does not provide for an appeal of an adverse decision by the CRC, it is infringing on the right to an appeal guaranteed under Article 13 of the ECHR.

¶22 In addition to guaranteeing the right to procedural due process, international human rights treaties guarantee the right to appeal criminal convictions. Those treaties and the rights to appeal set forth therein might be persuasive in the non-criminal context of citizenship revocation. For example, Article 14 of the International Covenant on Civil and Political Rights (ICCPR) guarantees that “[e]veryone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.”⁷⁸ Although the CRC does not convict individuals of crimes, it does deny individuals within Bosnia and Herzegovina the fundamental right of citizenship. Article 14 could be persuasive in arguing that the right to appeal is such an important right in international human rights law that the CRC should respect it in the context of the citizenship review process.

C. Discriminatory Motivation

¶23 The CRC claims that it is revoking the citizenships of individuals who obtained them at the end of the war because those citizenships were invalid when obtained. According to the CRC, the Bosnian government was neither a legitimate government nor a properly functioning government immediately after the war, so the citizenships it issued were not legitimate or even legal.⁷⁹ However, in reviewing the demographic profiles of individuals from whom the CRC has revoked citizenship, it appears that race and religion may have been the CRC’s motivation for revoking citizenship. It must be acknowledged that this allegation is based on circumstantial evidence, and there is no indication of an official discrimination policy by the government. Nonetheless, the CRC’s motivation in scrutinizing citizenship deserves examination since further evidence may one day come to light.

¶24 The individuals being targeted for citizenship review, revocation, and deportation are mostly of Arab or Arab-African origin. As discussed in Part II, it is unknown how many people of Islamic origin remained in Bosnia and Herzegovina after the war, though estimates range from 700 to 1000.⁸⁰ These individuals represent approximately five to six percent of all

⁷⁶ Letter from Holly Cartner, Executive Director, Europe and Central Asia Division of Human Rights Watch, to Bosnian Authorities (Mar. 25, 2008), *available at* <http://www.hrw.org/en/news/2008/03/25/follow-letter-bosnian-authorities-treatment-terror-suspects>.

⁷⁷ ECHR, *supra* note 66, art.13 (“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”).

⁷⁸ International Covenant on Civil and Political Rights art. 14(4), Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

⁷⁹ Daria Sito-Sucic, *Bosnia Revokes Citizenship of Islamic Ex-Soldiers*, REUTERS, Apr. 11, 2007, *available at* <http://www.alertnet.org/thenews/newsdesk/L1151505.htm>.

⁸⁰ WOEHREL, *supra* note 21.

naturalizations since 1992.⁸¹ However, by December 2008, of the 660 citizenships revoked by the CRC, individuals of Islamic origin represented roughly 400 (sixty percent) of them.⁸² In July 2007, the Bosnian government announced preparations for the deportation of the first group of individuals whose citizenship had been revoked. The group included forty-eight people, all of whom originated from African and Middle Eastern countries.⁸³ For most of these former soldiers, however, there is no evidence that they are terrorists or that they have participated in terrorist activities.⁸⁴ Although individuals of Islamic origin represent a minute number of naturalizations that fall under the CRC's mandate, they represent a majority of denaturalizations, lending credibility to the theory that the CRC discriminates against former *mujahideen* in its review process.

¶25 The attitude of the Bosnia and Herzegovina government only supports the argument that the CRC has a discriminatory motivation. The government has accused former *mujahideen* of promoting radical Islam within Bosnia and Herzegovina and belonging to the strict Wahhabi sect.⁸⁵ Bosnia and Herzegovina has made its distaste of strict sects of Islam well known.⁸⁶ Bosnian officials have criticized the Islamic naturalized citizens for their influence on young Muslim men in Bosnia and Herzegovina. As previously mentioned, a Western diplomat noted that the presence of former *mujahideen* is detrimental to Bosnia and Herzegovina's efforts to build a modern democratic state. *Nezavisne Novine* reported that Miroslav Lajcak, the high representative in Bosnia and Herzegovina, warned Bosnian security chief Tarik Sadovic that he would be fired if his ministry was too slow in reviewing and extraditing "foreigners."⁸⁷

¶26 If the CRC is in fact selecting these individuals for review based on demographic criteria, it is violating numerous international human rights laws. Article 26 of the ICCPR, to which Bosnia and Herzegovina became a party in March 1992, provides: "All persons are equal before the law."⁸⁸ Former *mujahideen* are not equal before the CRC, as the evidence suggests that they represent the majority of individuals whose citizenship have been revoked, despite the fact that they represent a relatively low number of the total citizenships awarded between 1992 and 2006. By treating individuals from different races and religions differently, the CRC violates Bosnia and Herzegovina's obligations under the ICCPR. Although it is not binding international law, the Universal Declaration of Human Rights, in Article 15, provides that "[n]o one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."⁸⁹ The CRC

⁸¹ See *Bosnian Commission Head Outlines Results of Citizenship Review Probe*, *supra* note 53.

⁸² *Id.*

⁸³ Anes Alic, *Foreign Jihadis Face Deportation in Bosnia - Herzegovina*, 5 *TERRORISM MONITOR* 21 (2007), available at http://www.jamestown.org/programs/gta/single/?tx_ttnews%5Btt_news%5D=4532&tx_ttnews%5BbackPid%5D=182&no_cache=1.

⁸⁴ *Id.*

⁸⁵ Wood, *supra* note 34. For a discussion of Wahhabism, see Ameer Ali, *Islamism: Emancipation, Protest and Identity*, 20 *J. MUSLIM MINORITY AFF.* 11-28 (2000). Wahhabism is an orthodox form of Islam that views popular Sufi spirituality and religious practices, such as the veneration of saints and their tombs, as idolatry and superstitions. *Id.* at 13. It attempts to purify Islam by removing un-Islamic beliefs and modern innovations that have infiltrated the lives of Muslims. Paul Rajashekar, *Islamic Fundamentalism*, 41 *ECUMENICAL REV.* 64, 66 (1989). Wahhabism emphasizes the text of the Quran and the *hadith* of the Prophet from a literalist and extremely conservative perspective. *Id.* For the Wahhabis, *sharia* is the only law which Muslims are required to obey, and like other Islamist movements they advocate for Islamic governments in every Muslim state. *Id.*

⁸⁶ See Wood, *supra* note 34; Schwartz, *supra* note 30.

⁸⁷ Adn Kronos International, *Bosnia: High Representative Demands Expulsion of Islamic Radicals* (2007), <http://www.adnkronos.com/AKI/English/Security/?id=1.0.1150259371> (last visited June 18, 2010).

⁸⁸ ICCPR, *supra* note 79, art. 26.

⁸⁹ Universal Declaration of Human Rights art. 15(2), G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., 1st plen. mtg.,

deprives former *mujahideen* of their citizenship based on an arbitrary condition (i.e., race and religion) and thus violates Article 15. Likewise, the CRC violates Article 14 of the ECHR, which prohibits discrimination on the grounds of, among other things, race, color, religion, and national or social origin.⁹⁰

¶27 The CRC's possible discriminatory motives for revoking citizenships would also violate the individual human rights protected in the Bosnia and Herzegovina Constitution. Article 7 of the constitution relates to citizenship. It provides: "No person shall be deprived of Bosnia and Herzegovina or Entity citizenship arbitrarily or so as to leave him or her stateless."⁹¹ Article I(7) also has an anti-discrimination provision. "No person shall be deprived of Bosnia and Herzegovina or Entity citizenship on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."⁹² By revoking the citizenship of individuals based on their race or religion, the CRC would be violating individual human rights guaranteed in Article I(7) of the Bosnia and Herzegovina Constitution.

D. *Deportation to Countries that Condone Torture and Failure to Grant Asylum*

¶28 Immediately after the CRC revokes an individual's citizenship and the Council of Ministers approves the decision, the Bosnian government can begin deportation proceedings. There is a serious danger that those individuals whose citizenship has been revoked would be deported to a country where they would be at risk of suffering human rights violations, including torture and other cruel, inhuman, or degrading treatment or punishment. The deportation of Ferchichi in late 2006 to Tunisia, where he was allegedly tortured, confirmed this fear.⁹³ As previously discussed, the CRC has revoked the Bosnia and Herzegovina citizenship of individuals who held previous citizenships from Egypt, Syria, and Turkey. The governments of these countries have been known to torture their own citizens. For example, Human Rights Watch reports that "torture in Egypt is a widespread and persistent phenomenon. Security forces and the police routinely torture or ill-treat detainees, particularly during interrogation."⁹⁴ On December 16, 2007, Bosnia and Herzegovina deported Atau Mimun to Algeria, a country that Human Rights Watch concluded continues to practice torture, especially during interrogation.⁹⁵ The International Relations and Security Network argues that many individuals who had their citizenship revoked by the CRC will face prison sentences in their countries for alleged dissident activities, membership in banned Islamist groups, or violations of laws prohibiting participation in foreign armies.⁹⁶ Moreover, evidence suggests that the Bosnian government does not stay deportation proceedings where evidence suggests a former *mujahideen* may be at risk of torture. In fact, there has been only one decision by the Constitutional Court of Bosnia and Herzegovina

U.N. Doc. A/810 (Dec. 12, 1948).

⁹⁰ Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms provides: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status." ECHR, *supra* note 66.

⁹¹ Ustav Bosne i Hercegovine, *supra* note 68, art. 7.

⁹² *Id.*

⁹³ See *In the Name of Security*, *supra* note 55, at 31.

⁹⁴ HUMAN RIGHTS WATCH, BRIEFING PAPER: EGYPT'S TORTURE EPIDEMIC 1 (2004), available at http://www.hrw.org/legacy/english/docs/2004/02/25/egypt7658_txt.htm.

⁹⁵ *Deal to Deport Suspects*, *supra* note 57.

⁹⁶ Alic, *supra* note 6.

staying the deportation of a former *mujahideen* whose citizenship had been revoked.⁹⁷ The Bosnian government has also never considered granting asylum to individuals whose citizenship has been revoked and are scheduled to be returned to a country where they may be subject to torture and other cruel, inhuman, or degrading treatment or punishment. Since Bosnia and Herzegovina gained independence, not a single request for asylum has been approved.⁹⁸ If the CRC continues with its deportations, it would send individuals back to countries where they could face torture and other human rights violations.

¶29 This practice would violate some of the most fundamental human rights guaranteed under international human rights law. The Convention Against Torture (CAT), succeeded to by Bosnia and Herzegovina on September 1, 1993, provides in Article 3 that “[n]o State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”⁹⁹ Under the ECHR, any deportation to a country where the individual concerned would be subjected to torture and other cruel, inhuman or degrading treatment or punishment is a violation of Article 3. Therefore, the CRC would violate the human rights guaranteed in CAT and the ECHR if it deports individuals from Bosnia and Herzegovina to countries where they may face torture and other cruel, inhuman or degrading treatment or punishment.

VI. THE CASE OF IMAD AL-HUSEIN (ABU HAMZA AL-SURI): AN ILLUSTRATION OF THE CITIZENSHIP REVIEW COMMISSION’S HUMAN RIGHTS ABUSES

¶30 Abu Hamza al-Suri is a Bosnian naturalized citizen of Syrian background who is one of the hundreds of former *mujahideen* facing deportation from Bosnia and Herzegovina after the CRC revoked his citizenship. Al-Suri had lived in the former Yugoslavia since 1980 and served in the *El Mujahid* unit of the Army of Bosnia and Herzegovina during the war.¹⁰⁰ He remained in Bosnia and Herzegovina after the war, acquiring Bosnian citizenship through marriage, and has six children with his Bosniak wife. The CRC originally revoked al-Suri’s Bosnian citizenship in January 2007.¹⁰¹ Al-Suri reports that he received no notice that the CRC was reviewing his citizenship and received his notice of revoked citizenship via mail, a violation of his rights under Article 6 of the ECHR, as established above.

¶31 Having no right to appeal the adverse decision on his citizenship, a violation of Articles 6 and 13 of the ECHR, al-Suri has fought efforts to deport him from Bosnia and Herzegovina through other legal channels.¹⁰² In January 2008, he sued the Bosnian government in the State Court of Bosnia and Herzegovina, which denied his request to reinstate his citizenship or in the

⁹⁷ The only negative decision handed down by the Constitutional Court involved Moroccan Said Atmani, Case No. AP 1788/05. Said Atmani protiv Predsud, Odluku o Dopustivosti i Meritumu [Decision About Dismissal and Merit], AP 1788/05 (Sept. 20, 2006) (Bosn. & Herz.).

⁹⁸ HELSINKI REPORT, *supra* note 66.

⁹⁹ Convention Against Torture art. 3, Dec. 10, 1984, 1465 U.N.T.S. 85.

¹⁰⁰ Human Rights Watch, *Bosnia and Herzegovina: Halt Effort to Deport Syrian at Risk of Torture*, Oct. 23, 2008, available at <http://www.hrw.org/en/news/2008/10/23/bosnia-and-herzegovina-halt-effort-deport-syrian-risk-torture> [hereinafter *Bosnia and Herzegovina: Halt Effort to Deport Syrian at Risk of Torture*].

¹⁰¹ Anes Alic, *Bosnia: Rights, Threats, Politics*, INT’L REL. & SEC. NETWORK, Feb. 5, 2008, available at <http://www.isn.ethz.ch/isn/Current-Affairs/Security-Watch/Detail/?ots591=4888CAA0-B3DB-1461-98B9-E20E7B9C13D4&lng=en&id=54031>.

¹⁰² As previously discussed, the CRC’s citizenship ruling is final and no appeal is allowed. However, according to Article 19 of the Law on Administrative Disputes, administrative proceedings may be initiated against the ruling by filing a lawsuit with the State Court of Bosnia and Herzegovina. See Imad al Husin, AP-1222/07, ¶ 15 (Oct. 4, 2008) (Bosn. & Herz.).

alternative provide him with asylum.¹⁰³ Upon appeal, the Constitutional Court of Bosnia and Herzegovina noted that there was no evidence that al-Suri represented a threat to national security and stated that it considered “the process of [the CRC’s] decision-making to have been less than perfect, giving rise to a suspicion that the decision was made for an ulterior purpose.”¹⁰⁴ The Court upheld al-Suri’s denaturalization but overturned the lower court’s denial of his request for asylum, remanding the case to the State Court of Bosnia and Herzegovina to determine whether removing him from the country and separating him from his children and his wife, who was stricken with cancer, would violate his family rights under the ECHR.¹⁰⁵ Two days after the decision, al-Suri was arrested and placed in the Lukovica immigration detention center, with the Bosnian government explaining that his removal was of vital national interest.¹⁰⁶ However, there have been no charges of terrorism or any other crimes filed against him.¹⁰⁷ In fact, the Bosnian Intelligence and Security Agency has admitted that it has no evidence that al-Suri presents a real national security threat or that he has links to Islamic militant groups.¹⁰⁸ Furthermore, the United States has not asked for his transfer to Guantanamo Bay, as they did for the “Algerian Six,” who were suspected of terrorist activity.

¶32 Al-Suri and others believe that he is being targeted for deportation because of his religion and political leanings, which the government of Bosnia and Herzegovina find undesirable. Al-Suri is a member of the strict Wahhabi sect and started the group *Ansarija*, an organization dedicated to providing legal assistance to former *mujahideen* threatened with deportation to their home countries.¹⁰⁹ Also, he spoke out against the CRC before it revoked his citizenship, even organizing a demonstration in front of a government building in October 2006.¹¹⁰ The lack of evidence that al-Suri is involved with terrorism and the possible political motivations for his deportation, a suspicion that even Bosnia and Herzegovina’s Constitutional Court acknowledged, may violate the anti-discrimination principles in Article 26 of the ICCPR and Article I(7) of the Bosnia and Herzegovina Constitution.

¶33 Al-Suri is currently awaiting deportation from Bosnia and Herzegovina, possibly back to Syria. However, many international organizations and NGOs have put pressure on Bosnia and Herzegovina to halt his deportation. The European Court of Human Rights has warned Bosnia and Herzegovina against deporting al-Suri before it has had an opportunity to consider his appeal.¹¹¹ There is also worry that Bosnia and Herzegovina may violate its international human rights obligations under Article 3 of CAT by deporting al-Suri to Syria, a country known to torture individuals. Syria’s “record of torture against people it considers Islamists is no secret,” according to Human Rights Watch.¹¹² Both Human Rights Watch and Amnesty International

¹⁰³ *Id.*

¹⁰⁴ *Id.* ¶¶ 68, 92.

¹⁰⁵ *Id.* ¶¶ 2-3. See also *Bosnia and Herzegovina: Halt Effort to Deport Syrian at Risk of Torture*, *supra* note 10.

¹⁰⁶ *Bosnia and Herzegovina: Halt Effort to Deport Syrian at Risk of Torture*, *supra* note 100. See also Alic, *Bosnia: Rights, Threats, Politics*, *supra* note 101.

¹⁰⁷ *Bosnia and Herzegovina: Halt Effort to Deport Syrian at Risk of Torture*, *supra* note 100.

¹⁰⁸ Alic, *Bosnia: Rights, Threats, Politics*, *supra* note 101.

¹⁰⁹ Anes Alic, *Al-Qaeda’s Recruitment Operations in the Balkans*, 4 TERRORISM MONITOR 12, Jun. 15, 2006, available at

http://www.jamestown.org/programs/gta/single/?tx_ttnews%5Btt_news%5D=806&tx_ttnews%5BbackPid%5D=181&no_cache=1.

¹¹⁰ Centre for Peace in the Balkans, *Al Qaeda Muslims Protest Over Bosnia Citizenship*, Oct. 2, 2006, <http://www.balkanpeace.org/index.php?index=article&articleid=14015> (last visited June 18, 2010).

¹¹¹ *Bosnia and Herzegovina: Halt Effort to Deport Syrian at Risk of Torture*, *supra* note 100.

¹¹² *Id.*

have “long documented the extensive use of torture by Syrian security services, including persons of Syrian origin transferred from other countries, such as Canadian citizen Maher Arar and German citizen Mohammed Haydar Zammar.”¹¹³ Deporting al-Suri to a country in which he may face torture would be a violation of Bosnia and Herzegovina’s obligations under international human rights law.

VII. RECOMMENDATIONS

¶34 Given the human rights issues implicated by the citizenship review process, Bosnia and Herzegovina should modify the CRC’s procedures and policies to comport with international human rights law and domestic human rights standards.

¶35 After the war, Bosnia and Herzegovina was a transitional state, and the unstable political environment there could have allowed individuals to take advantage of the citizenship system.¹¹⁴ As such, those individuals who obtained citizenship during the years immediately after the war must have the legality of their citizenship examined by the CRC. In this respect, the CRC should be allowed to fulfill its mandate. However, the review process should include certain procedural protections that abide by international human rights standards. Bosnia and Herzegovina must uphold its obligations under Article 6 of the ECHR, the GFAP, and its own constitution by notifying individuals that their citizenship is being reviewed. More specifically, individuals must be allowed to comment and offer evidence on their behalf that they obtained their citizenship properly. In the interest of promoting fairness and fulfilling Bosnia and Herzegovina’s obligations under Article 6, these proceedings must be open to both the individual under review and the general public. Such procedural protections will build respect in Bosnia and Herzegovina for the citizenship review process and will attach a certain sense of legitimacy and accountability to the government. Additionally, these procedural protections will ensure Bosnia and Herzegovina compliance with the international human rights treaties to which it is a States Party.

¶36 Due to the political environment and the significant number of individuals who gained citizenship after the war, it is likely that at least some did obtain citizenship illegally and will be subject to adverse decisions by the CRC. If the CRC decides to revoke an individual’s citizenship, it must justify to the individual and the public why it is revoking the individual’s citizenship. The individual has a legal right under Article I(7) of the Bosnia and Herzegovina Constitution to know the reasons for revocation. Furthermore, the reasons must fall under the limited permissible criteria for revoking citizenship. These reasons include security concerns due to terrorist or insurgent activity. The government and the CRC must have substantial proof that the individual is in fact a security threat, and the CRC cannot base its reasoning on faulty or insufficient evidence. These protections will ensure that the review process is legitimate and that the Bosnia and Herzegovina government is not seen as a puppet of Western countries in the “War on Terror.” Most importantly, race or religion must not be a reason for revocation. Bosnia

¹¹³ *Id.*

¹¹⁴ Citizenship abuses have been documented and are currently being investigated by Bosnian prosecutors. In 2001, prosecutors in Sarajevo charged several high-ranking officials for abuse of power in connection with the granting of citizenship to former *mujahideen*. Those charged included former Bosniak intelligence chief Bakir Alispahic, Mirsada Zutic-Beganovic, executive at the Sarajevo Canton interior ministry, Sarajevo Canton interior minister Ismet Dahic, and 18 other officials. The majority of illegal naturalizations occurred while those named three were in power. They were charged with giving false documents to Islamist extremists. Federal police investigators filed charges against other officials in 2004 for granting citizenship to people of African and Asian origin. The cases are currently being investigated by the Bosnian State Organized Crimes Prosecutor. See Alic, *supra* note 6.

and Herzegovina should adhere to Article 26 of the ICCPR, Article 14 of the ECHR, and to the anti-discrimination principles set forth in its own constitution.

¶37 There are certain circumstances in which Bosnia and Herzegovina should reinstate citizenship for those individuals who did not obtain citizenship after the war through legal means but now qualify for citizenship. For example, if an individual obtained citizenship illegally but now meets naturalization requirements, the CRC and the Bosnia and Herzegovina government should consider allowing the individual to remain in the country, which was permitted under the original citizenship law. If the individual has married a Bosnian citizen, the CRC should seriously consider maintaining the individual's citizenship and allowing him or her to remain with his or her spouse. Furthermore, if the individual has established a family and has no serious criminal record, Bosnia and Herzegovina should work to keep the family together, upholding its commitment to Article 8 of the European Convention on Human Rights.¹¹⁵ In particular, Bosnia and Herzegovina should consider its obligation to honor Article 8 when deciding whether to deport Abu Hamza al-Suri to Syria.

¶38 If, after considering all these factors, the CRC issues an adverse decision on an individual's citizenship, there are additional procedural rights to which the individual is entitled by virtue of Bosnia and Herzegovina's obligations under international human rights law. The individual should first and foremost be allowed to appeal the decision against him or her, a right that Bosnia and Herzegovina must provide according to Article 6 and Article 13 of the ECHR. The appeal must include the right to present evidence and witnesses, as well as the right to cross-examine. If, after an appeal procedure, it is ultimately determined that the individual must be deported, he or she must be allowed to seek asylum. Bosnia and Herzegovina should also adhere to its commitments to the ECHR and CAT, which require it to not deport an individual to a country in which he or she would face torture or inhuman or degrading treatment. Officials in Bosnia and Herzegovina should not rely on diplomatic assurances against torture from governments in which grave human rights abuses are routine. Research conducted by Human Rights Watch "indicates that diplomatic assurances are inherently unreliable and thus do not provide an effective safeguard against abuse."¹¹⁶

¶39 It would be remiss not to acknowledge that in some cases individuals must have their citizenship revoked and must be deported from Bosnia and Herzegovina, particularly in cases where the CRC rightly determines that the individuals gained their citizenship illegally and where they are a threat to the security of Bosnia and Herzegovina and Europe. However, an alternative to deportation may be arrest and trial, especially if these individuals are violating laws and planning or committing acts of terrorism. Criminal trials, rather than deportation, will show a greater commitment to combating terrorism by the Bosnia and Herzegovina government and the CRC than the current citizenship review process. It will add legitimacy to the new Bosnian judicial system, showing that it is equipped to handle important and serious trials.

VIII. CONCLUSION

¶40 Since it started the review process, the CRC has largely revoked the citizenship of former *mujahideen* who came to Bosnia and Herzegovina to fight in the 1992-1995 war. Stripped of

¹¹⁵ Article 8(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms provides: "Everyone has the right to respect for his private and family life, his home and his correspondence." ECHR, *supra* note 66.

¹¹⁶ *Bosnia and Herzegovina: Halt Effort to Deport Syrian at Risk of Torture*, *supra* note 100.

their citizenship, these individuals now face deportation to countries in the Middle East and Africa where they originated. In an effort to comply with the international community's post-9/11 counterterrorism objectives, Bosnia and Herzegovina's CRC has violated the human rights of Islamic naturalized citizens within their state by denying them certain human rights and protections guaranteed under international human rights law, such as due process, the right to appeal, and the right to not be deported to a country where they would be subjected to torture and other cruel, inhuman, or degrading treatment or punishment.

¶41 Fifteen years ago, Bosnia and Herzegovina was devastated by a three-year civil war that involved grave human rights abuses. Hundreds of thousands of people died, cities and infrastructure were destroyed, and the government was rendered almost non-existent. In light of that history, one would expect the current government of Bosnia and Herzegovina to be particularly vigilant in protecting human rights. However, the CRC, acting as an arm of the government, has carried out policies that blatantly violate the human rights of the *mujahideen* who live in Bosnia and Herzegovina. If the CRC does not change its policies, it will undermine the legitimacy and accountability of the government of Bosnia and Herzegovina, both domestically and internationally. Thus, Bosnia and Herzegovina must ensure that the CRC complies with international human rights law in reviewing the citizenship of people living within its borders.