



Organization for Security and
Co-operation in Europe
Mission to Bosnia and Herzegovina

**Torture, Ill-treatment and Disciplinary Proceedings
in Prisons of Bosnia and Herzegovina**

**An assessment of the human rights situation in penitentiary institutions in
Bosnia and Herzegovina**

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“The degree of civilization in a society can be judged by entering its prisons.”

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Executive Summary

Within the BiH justice sector, the enforcement of criminal sanctions is a crucial component in assessing the sector's overall functionality, effectiveness, and compliance with international human rights standards. Further, an effective and credible system of execution of criminal sanctions secures individual rights of incarcerated persons, the public's safety, and improves the confidence of citizens in the justice sector as a whole. For these reasons, the Organization for Security and Co-operation in Europe Mission to BiH (Mission) has engaged its justice sector monitoring programme in assessing the prison system in BiH.

While the Mission's monitoring of prison institutions in BiH since 2008 encompasses a number of aspects, **this report focuses on allegations of torture, ill-treatment and inappropriate use of disciplinary proceedings.** This monitoring, along with the Mission's other prison advocacy and reform, form part of the broader effort to establish a National Preventative Mechanism, as prescribed by the Optional Protocol for the Convention Against Torture, as well as to support the expeditious implementation of the BiH Justice Sector Reform Strategy.

This report consists of six sections. The introductory sections provide background on the Mission's engagement in prison issues and monitoring methodology, as well as an overview of the prison system in BiH. The following section looks at standards and allegations of torture and ill-treatment, and covers such issues as treatment and professionalism of prison staff and inter-prisoner violence. Section IV examines prisoners' complaints and disciplinary proceedings given the important links between these and the prevention of ill-treatment. Likewise, section V canvases the channels of communication within prison personnel structures and with prisoners.

Finally, recommendations directed towards prison directors, administrations and relevant ministries can be found in Section VI. These extensive recommendations range from ensuring adequate treatment programmes for prisoners to revising ineffective complaint mechanisms. The recommendations aim to alleviate the following identified contributing factors towards violence against prisoners by prison staff, as well as inter-prisoner violence:

- prison overcrowding;
- the lack of sufficient numbers of prison staff, guards in particular;
- the lack of professionalism of prison personnel, again, guards in particular;
- the lack of effective accountability mechanisms, and knowledge thereof;
- the lack of use of and trust in the complaints mechanisms;
- the lack of appropriate treatment for drug addiction;
- the lack of meaningful activities, in particular work opportunities and education.

Additionally, a meaningful and prompt response by prison management towards any form of violence within the prison walls was also identified as key towards reducing violence. Fundamentally, this issue, and the aforementioned concerns, are all exacerbated by the fragmentation of the BiH prison system which allows for considerable autonomy within each prison. The Mission intends for this report to serve as a capacity building tool for future endeavours in prison monitoring, but first and foremost, it is hoped that this report will encourage those within the prison system to tackle the identified concerns to create a prison system free from ill-treatment and which respects the basic human rights of incarcerated persons.

Section I. Introduction

1. Background

According to Article XIII of Annex 6 of the General Framework Agreement for Peace in Bosnia and Herzegovina (BiH) and its subsequent documents,¹ the Organization for Security and Co-operation in Europe Mission to BiH (the Mission) closely monitors the human rights situation in the country. The Mission takes a comprehensive approach in the assessment of BiH's adherence to international human rights norms with respect to the criminal justice process by monitoring all stages of criminal proceedings, as well as the system of enforcement of criminal sanctions.

OSCE Missions are traditionally involved in prison monitoring and reform efforts² and this is even more so with the recent focus on the establishment of National Preventive Mechanisms (NPM) in line with the Optional Protocol to the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Optional Protocol) within the OSCE region. The Mission's prison monitoring and advocacy seeks to support the establishment of such a mechanism in BiH, to assist in the implementation of the Justice Sector Reform Strategy, and to assist the authorities in identifying ways to improve compliance with human rights standards within prisons, as well as combat reoccurring problems, such as prisoner escapes.³

It should be noted at the outset that the Justice Sector Reform Strategy⁴ includes a significant focus on **ameliorating** the effectiveness of the prison system throughout BiH. Pillar II, devoted to the execution of criminal sanctions, outlines a number of specific activities to develop a more harmonized system of criminal sanctions compliant with human rights standards. These activities are divided into three sub-sections that focus on: 1) more effective and harmonized management of criminal sanctions;⁵ 2) reducing prison overcrowding;⁶ and 3) enhancing application of international standards within prisons in BiH.⁷

¹ See in particular the Budapest Ministerial Decision MC (5), which elaborates on the OSCE's mandate to monitor the human rights situation in BiH.

² See e.g. Final Report from the OSCE Supplementary Human Dimension Meeting on Prison Reform, July 2002, and the OSCE Human Dimension Commitments elaborated in the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (1990). Both documents are available here: <http://www.legislationline.org/topics/organisation/3/topic/13>.

³ For example, Radovan Stanković, a convicted war criminal, escaped from Foca prison on 25 May 2007 and is still at large. Karray Kamel bin Ali, also known as Abu Hamza, failed to return from a 16 day leave from Zenica prison in July 2009. At the time of his escape, Abu Hamza was serving a sentence of four years for robbery, threatening of a prosecutor as well as domestic violence in a Zenica prison; he became notorious for alleged connections to Al-Qaeda. He was apprehended and returned to prison on 7 August 2009.

⁴ The Justice Sector Reform Strategy, adopted in 2008, represents an agreed upon framework for reform within the justice sector over the period 2008-2012, and includes 69 specific strategic programmes with 207 activities in total. The Strategy's activities are divided into five main areas: 1) judicial system; 2) execution of criminal sanctions; 3) access to justice; 4) support to economic growth; and 5) coordination, management and accountability. More information on the Strategy and its accompanying Action Plan may be found at: <http://mpr.gov.ba/en/str.asp?id=434>.

⁵ Strategic programmes include harmonization of all standards and regulations pertaining to criminal sanctions execution in Bosnia and Herzegovina, establishment of prison administrations using harmonized legislation and standards, and re-categorization of the prisons and classification within the prisons.

⁶ Strategic programmes include development of conditional release system, achievement of recognition for execution of alternative sentences and implementation of the "community service" institute, and improvement of conditions by reconstructing existing prisons, abandoned military facilities and construction of the state prison

⁷ Strategic programmes include advancement of the system of treatment for specific categories of prison population (minors, women and persons under obligatory treatment), advancement of the system of health protection for the entire prison population, establishment of a system of independent prison inspection in Bosnia

The findings in this report further underline the importance of speedy implementation of Pillar II of the Justice Sector Reform Strategy, and it is hoped that the problems identified herein will be addressed by relevant authorities through the Strategy's implementation and otherwise.

2. Methodology

This report summarises the findings of the Mission's monitoring of penitentiary institutions in Banja Luka, Foca, Mostar, Sarajevo, Tuzla, Zenica and Bijeljina from July 2009 to May 2010. The focus on torture, ill-treatment and disciplinary proceedings stems from the Missions' initial appraisal of all 14 penitentiary institutions in 2008, both closed type and semi-open ones.

The interviews conducted for this report, in each of the aforementioned facilities, were held with at least 15 prisoners and with around five prison staff, including directors and guards.⁸ In total, there were 147 interviews; 113 were with prisoners and 34 with prison staff. The interviews were carried out using questionnaires and a carefully defined methodology.⁹ Interviews lasted for approximately one hour per person. In order to obtain the broadest possible picture in regard to the situation of human rights in BiH prisons, interviews were held with, whenever available, prisoners of all ethnic and domestic minority affiliations, prisoners who had experienced disciplinary sanctions, juveniles, female prisoners, prisoners sentenced for different categories of crimes, drug addicts and others.

One of the major challenges of any prison monitoring programme is obtaining reliable and credible information as a basis for objective conclusions. Overall, the interviewees and information obtained gave a **differentiated and balanced picture**, highlighting negative aspects while still noticing positive developments. Mission staff also verified information by cross-checking it with different interviewees, while also looking for corroborating background information and details that support respective statements, whenever available.

Section II. Overview of the prison system in Bosnia and Herzegovina

The BiH prison system today is characterized by fragmentation, both in terms of organizational structure and controlling legislative framework. The execution of criminal sanctions is distributed among three levels of government under the responsibility of the Ministry of Justice of BiH and the entity Ministries of Justice¹⁰.

There are fifteen prison establishments in Bosnia and Herzegovina¹¹, which according to the latest data made available for this report, accommodates 2,580 persons.¹² The total of 2,580

and Herzegovina, development and implementation of a coherent system of education and training for prison staff in Bosnia and Herzegovina, development of a legally defined and harmonized system of amnesty and pardoning in accordance to international standards

⁸ Due to the limited allegations of human rights violations in Bijeljina prison, only 10 prisoners were interviewed.

⁹ A detailed questionnaire, interview methodologies and analysis guidelines are included in the Annex.

¹⁰ In the Brčko District of BiH there is no prison facility for execution of criminal sanctions. The pronounced sanctions are executed in the entities' prisons. The legal basis for this is a Memorandum of Understanding between the Brčko District and the entities. Brčko District of BiH has a detention unit.

¹¹ This figure includes Detention Unit of the Court of BiH, eight prisons in the Federation of BiH and six in the Republika Srpska.

¹² Council of Europe: Annual Prison Statistics, SPACE I-2009 courtesy of CoE Field Office Sarajevo. This figure includes detainees.

prisoners for a country with a population of about 4 million¹³ means that the prison population rate (at 64,5 per 100,000) is low by European standards. Figures across Europe are generally rising and there have been significant recent rises in Croatia and Serbia.¹⁴

Prisons in BiH are classified as “closed-type” or “semi-open” according to the respective Laws on Execution of Criminal Sanctions. These classifications indicate differences in the level of security and execution regime for prisoners; closed-type institutions are meant for prisoners who have committed more serious crimes, and prisoners live with significantly more restrictions. There are two such facilities in the Republika Srpska (Foca and Banja Luka) and one in the Federation of BiH (Zenica).

The map below depicts the location of each of the penitentiary institutions in BiH.

Figure 10: Overview of prisons in BiH by locality



(Made available courtesy of Council of Europe, Sarajevo Office.)

Section III. Torture and Ill-treatment

1. Torture and physical ill-treatment by prison staff

1.1. Human rights norms and standards

According to international human rights standards directly applicable in Bosnia and Herzegovina, there is a clear prohibition on the use of torture and ill-treatment. Under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Conven-

¹³ The figure of four million for the population of Bosnia and Herzegovina is used by the Council of Europe in its Annual Prison Statistics.

¹⁴Please compare CoE Annual Prison statistics, Survey 2005 and 2007 available at: http://www.coe.int/t/dghl/standardsetting/prisons/SPACEI/PC-CP_2009_%2001Rapport%20SPACE%20I_2007_090505_final_rev%20.pdf

tion against Torture), BiH is obliged to take effective measures to prevent acts of torture; defined as the intentional infliction of severe pain or suffering, whether physical or mental for a certain purpose.¹⁵ This obligation is further bolstered by Article 7 of the International Covenant on Civil and Political Rights, which supports the right not to be subject to torture or to cruel, inhuman, or degrading treatment or punishment.¹⁶ Similarly, BiH is obliged to prohibit torture or inhuman and degrading punishment as set out by Article 3 of the European Convention on Human Rights (ECHR).¹⁷

Additionally, according to these same instruments, BiH is also obliged to prevent and prohibit acts that may be of lesser severity than torture. Sharp distinctions between the differences in torture and ill-treatment have not been and should not be drawn.¹⁸ However, the European Court of Human Rights has provided that for treatment or punishment to reach the threshold of inhumane treatment, there needs to be bodily injury, or intense physical and mental suffering.¹⁹ Alternatively, degrading treatment is recognized by the Court as treatment that humiliates and debases an individual, and “showing a lack of respect for, or diminishing, his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance”.²⁰

Accompanying these standards, international law also compels BiH to prohibit and prevent acts of torture or ill-treatment when they are specifically “committed by, or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”, as set forth in the Convention against Torture.²¹ This is additionally emphasized in such international standards as the UN Code of Conduct for Law Enforcement Officials.²² Persons within prisons are particularly vulnerable due to the dependent and subordinate relationship they have with persons acting in an official capacity.

¹⁵ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1987). Article 2 (1) requires State parties to take effective legislative, administrative, judicial or other measures to prevent acts of torture. Article 1(1) defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

¹⁶ International Covenant on Civil and Political Rights, UN Doc. A/6316 (1966). Article 7, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”

¹⁷ Article 3 ECHR provides: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

¹⁸ Human Rights Committee, General Comment 20, Article 7, U.N. Doc. HRI/GEN/1/Rev.1 at 30 (1994). Para 4: “The Covenant [ICCPR] does not contain any definition of the concepts covered by Article 7, nor does the Committee consider it necessary to draw up a list of prohibited acts or to establish sharp distinctions between the different kinds of punishment or treatment; the distinctions depend on the nature, purpose and severity of the treatment applied.”

¹⁹ *Pretty v United Kingdom*, ECtHR, 29 April 2002 at para. 52.

²⁰ *Pretty v United Kingdom* at para. 52.

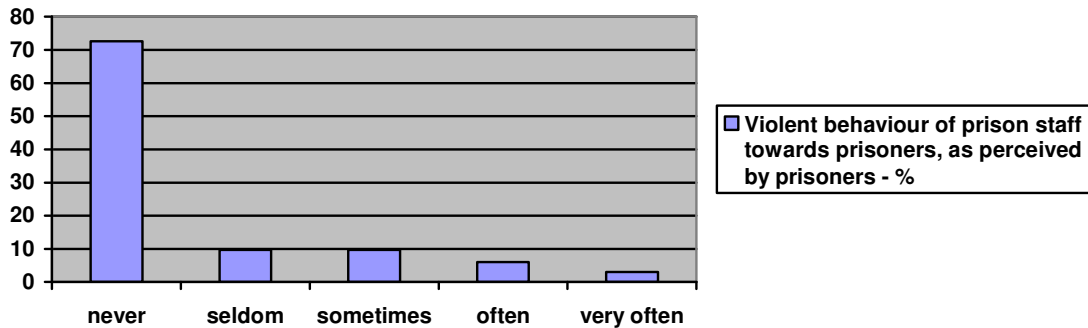
²¹ Convention Against Torture, Article 1, “[a]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person.... when such pain or suffering is *inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.*” (emphasis added).

²² UN Code of Conduct for Law Enforcement Officials, General Assembly resolution 34/169 of 17 December 1979, Article 5: “[n]o law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment”.

1.2. General overview

Use of excessive force against prisoners that may amount to torture and ill-treatment occurs, although it does not appear to be on a widespread basis. Some prisons, for instance Bijeljina or Tuzla, appear to have very few problems with respect to allegations of ill-treatment, whereas in other facilities, such as Banja Luka, Foca and Zenica, interviewed prisoners have provided credible claims of ill-treatment by prison staff.

Overall, nearly one-quarter of the interviewed prisoners reported that they experienced physical violence and ill-treatment at the hands of prison staff while more than 70 interviewed persons reported that they have never been subjected to violent behaviour by prison staff. The interviewed prisoners who reported mistreatment gave credible testimonies of beatings, such as being slapped in the face and punched. According to the interviewees, most of the physical mistreatment did not require medical treatment. However, medical treatment was necessary in one case where prisoners reported having been severely beaten with truncheons, which resulted in considerable injuries and additional psychological distress.



With respect to allegations of ill-treatment by prison personnel, as well as other findings that will be presented in this report, consistent differences were found between closed-type and semi-open institutions. As mentioned above, these classifications indicate differences in the level of security and regime for inmates. Closed-type institutions are for prisoners who have committed more serious crimes, and prisoners live with significantly more restrictions. There are two such facilities in the Republika Srpska (Foca and Banja Luka) and one in the Federation of BiH (Zenica). Based on Mission interviews, physical abuse appears to be significantly more prevalent in closed-type institutions. This was further confirmed to be the case by prisoners who were transferred from closed-type to semi-open facilities for the rest of their sentence. For example, half of the interviewees from Zenica Prison stated that there were cases of physical violence directed against prisoners by prison staff. The situation in the closed-type facilities tends to be exacerbated due to a combination of factors, including the lack of space, the limited activities available to inmates, and the fact that the majority of the inmates are sentenced for serious crimes.

Unsurprisingly, the prison staff perceived that prisoners were being treated adequately and, by and large, did not confirm cases of excessive force. In exceptional cases, prison staff stated that unjustified incidents of physical violence do occur but only occasionally. It was interesting to note that a number of the prisoners interviewed perceived this treatment as “deserved” in some instances.

1.3 Victims of Physical Abuse

1.3.1. International Standards

There is a positive obligation to protect inmates who may be vulnerable to physical abuse. For instance, the Convention against Torture requires that effective preventative measures against torture and ill-treatment not only includes legislative, administrative and judicial measures, but also includes other measures.²³ Such measures, for example, include ensuring the physical safety of the inmates at risk by having an adequate number of staff at all times, guaranteeing that all prison staff have had the appropriate training in order to protect inmates from other inmates wishing to cause them harm and, more generally, having procedures in place to reduce the overall risk of violence in prisons. These standards are set forth in various instruments including the UN Human Rights Committee General Comments, the Council of Europe's European Prison Rules²⁴ and the European Committee for the Prevention of Torture (CPT).²⁵

1.3.2. General observations

Most inmates who claimed to have been subjected to physical violence were frequently persons sentenced to prison terms of five years or less. Both prisoners and prison staff alike explained that inmates serving long term sentences tend to adapt their behaviour in a manner which does not provoke or induce physical violence by prison guards.

The majority of the inmates interviewed who had been victims of physical abuse deny that there is an established trend of harassment due to their ethnicity. However, belonging to an ethnic group that represents a minority in a particular prison may exacerbate an already difficult situation. On occasion prisoners reported harassment because of their ethnic origin:

Example: One prisoner, interviewed in spring 2010, described in detail how he was mistreated by prison guards based on his ethnicity. He was also badly beaten up by other prisoners. As a result of this he spent most of his time in a solitary cell for his own protection. The prisoner consequently displayed significant signs of psychological distress. After being transferred to a different prison facility he stated that he was no longer harassed by prison staff.

²³ Convention against Torture, Article 2 (1) Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

²⁴ Council of Europe Committee of Ministers Rec (2006) 2 on the European Prison Rules; Rule 52.2 provides that, "procedures shall be in place to ensure the safety of prisoners, prison staff and all visitors and to reduce to a minimum the risk of violence and other events that might threaten safety."

²⁵ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 11th General Report of 3 September 2001: "The duty of care which is owed by custodial staff to those in their charge includes the responsibility to protect them from other inmates who wish to cause them harm. In fact, violent incidents among prisoners are a regular occurrence in all prison systems; they involve a wide range of phenomena, from subtle forms of harassment to unconcealed intimidation and serious physical attacks. Tackling the phenomenon of inter-prisoner violence requires that prison staff be placed in a position, including in terms of staffing levels, to exercise their authority and their supervisory tasks in an appropriate manner. Prison staff must be alert to signs of trouble and be both resolved and properly trained to intervene when necessary. The existence of positive relations between staff and prisoners, based on the notions of secure custody and care, is a decisive factor in this context; this will depend in large measure on staff possessing appropriate interpersonal communication skills."

Interviewees gave examples of “vulnerable prisoners” who were subject to harassment from both prison staff and other prisoners. Another especially vulnerable group prone to abuse are drug addicts, in particular those who are under the influence of narcotics or suffering withdrawal symptoms. They are not only victims of physical violence but have also been identified as instigators of violence.

Other examples of prisoners more likely to be prone to abuse by both staff and prisoners include inmates who cannot afford protection through social or financial means. Several inmates indicated that prison staff tend to treat prisoners differently depending on where the prisoner habitually resides; it was noted that more privileges are given to those residing in the area near the prison. Prisoners who do not have any family and friends located near the prison appear to be rarely visited and find themselves in a more vulnerable position than those who spend their sentence in a prison located in their residential area. This seems to be due to the fact that prisoners and staff know each other from the past, but also that the prison staff feel socially pressured by their community members to treat friends or relatives within the prison accordingly.

Some prisoners highlighted that continuous prison inspection and monitoring, including those carried out by international organizations, and which have a tendency to focus on ethnic minorities, do effectively provide some form of protection and security for those at risk of abuse and harassment.²⁶

The following is an example of a severe incident involving alleged mistreatment in the Banja Luka prison.

Case example of physical abuse: Banja Luka riots

In March 2008, a serious incident of ill-treatment occurred in the Banja Luka prison. According to a report of the Ministry of Justice of the Republika Srpska, a group of 66 inmates rebelled by blocking access to a floor by putting tables, chairs and beds on the staircase. These events did not cause any injuries to the inmates or any great damage to property. The reasons for the blockade related to health services, the organization of education and work in the institution, their dissatisfaction with the work of the commission for conditional release, as well as the quality of food and the work of the canteen.

When prisoners allegedly threatened to repeatedly block access to the floor and resume riots, prison staff intervened by separating prisoners and placing 22 of them in isolation cells. At this time, several prisoners had been brought to the so-called C-department, which was located in the basement of one of the prison buildings and was without any security cameras. One prisoner described how he was brought alone to a room in the basement where he faced several prison guards. He was then pushed to the ground, stripped of his shoes and beaten on his feet and back with rubber batons. The interviewee understood that this violence was the punishment for participating in the prison riots. According to his statement, “all of this happened after the prison inspector and the TV cameras had left the prison”. Since this event, the interviewee claims to suffer psychological distress and to have become addicted to tranquilizers and painkillers. Four prisoners additionally claimed to have received bodily injuries,

²⁶ In the prison system of Bosnia and Herzegovina governmental inspection is carried out by the appointed inspectors within the Ministries of Justice at all levels. Monitoring should also be conducted by independent commissions established under the Law on Execution of Criminal Sanctions of BiH and RS. The BiH Ministry of Human Rights and Refugees also established two independent commissions for prisons and residential institutions. Monitoring is also conducted by BiH Ombudsman and Helsinki Committee of BiH.

which were recorded by the doctor. Subsequent interviews undertaken with prisoners by the Department have confirmed these claims.

As a result of this incident, the Minister of Justice of the Republika Srpska discharged the prison director and reinstated the previous director in this position. Most interviewees, including those beaten up, agreed that the situation significantly improved with the change of prison directors, particularly in relation to security and the general treatment of prisoners. Initially, the disciplinary proceedings against prison guards did not produce any significant results. Nonetheless, according to the prison director, ultimately some measures were imposed against certain staff; the exact sanctions, however, were not possible to ascertain. Further, interviewed prisoners were not aware of any measures taken against guards.

In such cases of violence, it was also credibly asserted that prison guards remained with the prisoners during the doctor's examination of their wounds and injuries, thereby possibly discouraging prisoners from notifying the respective physician of physical mistreatment. This course of action, which not only prevents access to adequate health care but also violates the right to a prisoner's confidentiality, was justified by prison authorities as a means of protecting physicians from dangerous prisoners.²⁷ The Banja Luka Prison Director noted that this practice had been abandoned since then.

While this is one example that occurred outside of the Mission's research process, it was mentioned during interviews, and it represents a significant incident both in terms of the treatment experienced, as well as the ensuring follow up from the Republika Srpska Ministry of Justice.

1.4 Victims of psychological or mental abuse

1.4.1. International Standards

The UN Human Rights Committee recognizes that an act of torture or cruel, inhuman, or degrading treatment does not always cause physical suffering but can instead be the cause of mental suffering.²⁸ The Council of Europe stipulates that psychiatric treatment or issues of mental health arising in prison requires adequate treatment by properly trained staff and suitable facilities.²⁹ Similarly, the European Court of Human Rights also held that a failure to

²⁷ A prisoner's right to confidentiality is breached when there is the presence of a guard as found in the European Prison Rules, Rule 42.3: "When examining a prisoner the medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to: *a.* observing the normal rules of medical confidentiality." Rule 43.1: "The medical practitioner shall have the care of the physical and mental health of the prisoners and shall see, under the conditions and with a frequency consistent with health care standards in the community, all sick prisoners, all who report illness or injury and any prisoner to whom attention is specially directed." Also see CoE Recommendation No. R (98) 7, Article 13: "Medical confidentiality should be guaranteed and respected with the same rigour as in the population as a whole."

²⁸ Human Rights Committee, General Comment 20, Article 7 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 30 (1994). Para. 5. "The prohibition in Article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim. In the Committee's view, moreover, the prohibition must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure."

²⁹ Council of Europe Committee of Ministers Recommendation No. R (98) 7 of the Committee of Ministers to Member States Concerning the Ethical and Organizational Aspects of Health Care in Prison, para. 55 provides that: "Prisoners suffering from serious mental disturbance should be kept and cared for in a hospital facility which is adequately equipped and possesses appropriately trained staff." The European Prison Rules also

provide adequate treatment to a psychiatrically unwell prisoner equates to inhuman and degrading treatment.³⁰

1.4.2. General Observations

Outside the realm of explicit violence, other circumstances may contribute to conditions amounting to inhuman and degrading treatment. Shortcomings within the BiH prison system are particularly apparent when it comes to the treatment of prisoners suffering from mental illness, both those residing in specialised psychiatric wards and those residing within the mainstream prison system. Care and treatment programmes for mental disorders and substance abuse are almost non-existent.

Moreover, the Federation of BiH lacks any accommodation for female prisoners placed in forensic psychiatric wards³¹, and even the available spaces for male psychiatric prisoners in Zenica Prison's Psychiatric Annex require significant improvements in order to satisfy international standards. In 2008, the Committee on the Prevention of Torture (CPT) identified conditions in the Psychiatric Annex of Zenica Prison as amounting to inhumane and degrading treatment.³² Improvements have been noted recently with the opening of a new building to allow for better conditions, however, full compliance with international human rights standards are still lacking, as confirmed by the prison director. It is hoped that with the establishment of a cross entity Psychiatric Facility in Sokolac in the near future, the situation for such individuals throughout BiH will improve.³³

Case example of mental suffering: M.K.

M.K. is a female prisoner who is serving a multi-year sentence for a violent crime in the Tuzla Prison. A team of psychiatric experts evaluated M.K.'s case and recommended referral to a forensic psychiatric ward. However, these observations have not been taken into account by the respective court and M.K. was not sentenced for mandatory psychiatric treatment in a closed institution, but instead was sent to Tuzla Prison to spend her sentence in a regular institution.

Due to her ongoing violent outbreaks and threats of suicide when she is in contact with other prisoners, it is not surprising that attempts to socially integrate her within the prison community have continuously failed. M.K. is serving her sentence in isolation in a cell outside the female ward.

Prison management and staff are concerned about the condition of M.K. which appears to be deteriorating over the years and they themselves do not have the medical and psychological expertise to treat prisoners with severe mental disturbances accord-

provide that prison authorities are responsible for the health of prisoners and shall provide psychiatric treatment to prisoners in need (see paras. 39 and 47.2).

³⁰ Keenan v United Kingdom (2001) 33 EHRR 913.

³¹ This refers to offenders who were found to be mentally ill and where the court has ordered mandatory psychiatric treatment in a specialized health facility for offenders.

³² See Report to the Government of BiH on the visits to BiH carried out by the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment from 11 to 15 May 2009, at p.30.

³³ On 10 July 2008 the Government of the Republika Srpska passed the *Decision on Establishment of Special Forensic Psychiatry Hospital at Sokolac*. In order to regulate inter-entity use of this facility, on 17 June 2009 the Council of Ministers of Bosnia and Herzegovina considered and adopted the Agreement on Accommodation and Compensation of Costs for Execution of Safeguards Pronounced in the Criminal Proceeding and Other Procedure in which the Measure of Medical Treatment was pronounced. It is planned that the reconstruction of the facility will be finalized by the end of 2010.

ingly. Communication with M.K. is hardly possible; signs of strong psychological distress and confusion are more than obvious. She has refused to take medication for the past two years and her physical condition is rapidly deteriorating due to her refusal of proper food intake.

The Mission's staff assessed her appalling living conditions. For instance, they noted that on a regular basis M.K barricades herself in her very messy cell wherein her basic hygiene needs are not properly taken care of. While prison authorities, and recently also the BiH Ombudsman Office, brought the case to the attention of the respective Ministry of Justice, no concrete actions to improve her condition have been taken.

For over four years, competent authorities have not been able to protect M.K.'s basic human rights. This situation is not only concerning for the well-being of this individual, but it is also indicative of the inability of the prison system in BiH to provide adequate care for persons suffering from mental illness due to lack of adequate institution for accommodation of such persons.

2. Professionalism of prison staff

2.1. International and domestic norms and standards

“The cornerstone of a humane prison system will always be properly recruited and trained prison staff who know how to adopt the appropriate attitude in their relations with prisoners and see their work more as a vocation than as a mere job. Building positive relations with prisoners should be recognized as a key feature of that vocation”.³⁴ The CPT reached the conclusion that “real professionalism of prison staff requires that they should be able to deal with prisoners in a decent and humane manner while paying attention to matters of security and good order.”³⁵ The UN Basic Principles for the Treatment of Prisoners and a Council of Europe Recommendation further outline that there shall be no discrimination in the treatment of prisoners.³⁶

2.2. General Observations

The Mission has observed practices which do not amount to acts of physical torture or ill-treatment but which are nevertheless inappropriate and harmful to the psychological well-being of prisoners. These practices are often even more damaging as prisoners lack awareness on how to report on such practices.

³⁴ Compare 34 CPT /inf/E(2002)1-Rev.2009. The CPT Standards “Substantive sanctions of the CPT’s General reports; see as well CPT/Inf (2001) 16 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) 11th General Report on the CPT’s activities covering the period 1 January to 31 December 2000 Strasbourg, 3 September 2001, para 26.

³⁵ See precedent.

³⁶ Basic Principles for the Treatment of Prisoners adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990. Article 2, “there shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” CoE No R (97) 12 of the Committee of Ministers to member states on staff concerned with the implementation of sanctions and measures, under ‘Ethical requirements in general’ I, para. 7. Staff concerned with the implementation of sanctions and measures must respect the rights of their colleagues, whatever their race, ethnic or national origin, colour, language, religion, age, gender, sexual inclination or physical or mental condition. They must not under any circumstances take part in any form of harassment or discrimination, or even attempt to excuse such behaviour.

Overall, the general treatment of prisoners by prison staff seems to be one of the most critical points of concern for inmates, especially with regard to the professional behaviour of prison guards. This did not necessarily relate to incidents of physical violence, but more to disrespect, psychological pressure, and degrading treatment aimed at inmates. While prison directors, educators and heads of security often have been described as professional and rule-abiding in their behaviour, critical remarks pertained regularly to the performance of prison guards, and in some cases, also against educators. Again, the quality of the performance of prison guards differs significantly from prison to prison; and while there is an acknowledgement of the positive work of the majority, there are negative instances that are worth noting.

Complaints range from rude and insulting behaviour towards prisoners to alleged discriminatory treatment. Prisoners reported being spoken to and treated like small children and times when guards have entered cells at night yelling at prisoners without any apparent reason. Instances of inappropriate behaviour of the guards is seen to arise when alcohol has been involved; as one prisoner expressed, “some of them [guards] could get difficult after a few drinks during the night shift”. Allegations of discriminatory treatment were also recorded. This was most frequently mentioned in relation to possible cases of corruption, that is, where several inmates confirmed that specific amounts of money can be paid to obtain preferential treatment and benefits.³⁷

Prisoners have also pointed out instances where their requests have been continuously ignored or have not been forwarded to the relevant authority, without any further explanation. Prisoners remarked that often prison guards “bring their frustrations into prisons” and display a “lack of education and proper upbringing”.

Prison guards receive minimal training, if any, at the commencement of their professional duties. Continuous education essentially does not exist, apart from the occasional training sessions provided by international organizations. Several prisoners have indicated that for some thousands of Euros, a person can buy the position of prison guard, a job seen as having security and a reasonable income. In Federation of BiH, on a positive note, prison management has introduced some form of entry tests and thus taken steps to establish a more transparent employment procedure.

3. Inter-prisoner violence

3.1. International human rights standards

An inherent obligation for prison staff is to protect those in their charge from other inmates who wish to cause them harm.³⁸ In one report, the CPT recommended that “it is necessary to render prison staff particularly attentive to signs of such violence and to ensure that they intervene in a determined and effective manner, at as early a stage as possible.”³⁹ The European Prison Rules also underline the key role prison guards play in ensuring safety and reducing the risk of violence and other events that might threaten the prisoner’s safety.⁴⁰

³⁷ During spring of 2010, the Mission completed a series of prison visits focused on the issue of corruption and the granting of privileges; the findings of these visits are not included in this report.

³⁸ CPT, 11th general report on the CPT activities; it is explicitly stated that “[t]he duty of care which is owed by custodial staff to those in their charge includes the responsibility to protect them from other inmates who wish to cause them harm”.

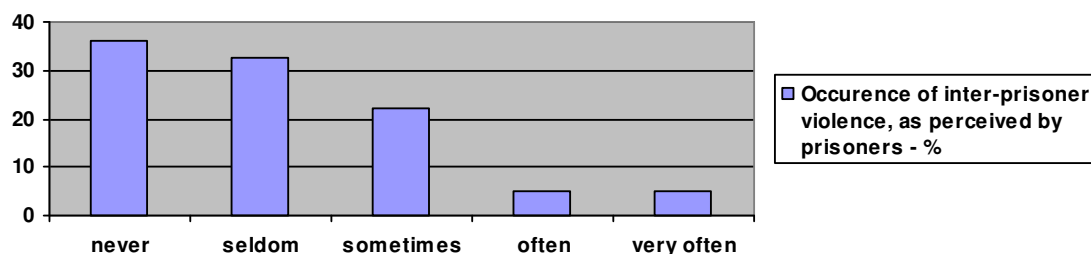
³⁹ Report to the Icelandic government

⁴⁰ Compare CoE, Rec (2006)2, Rule 52.2.

3.2. General observations

Cases of ill-treatment among prisoners happen on a much more frequent basis than ill-treatment by prison staff, although the frequency again differs dramatically from prison to prison. For instance, in Zenica prison all interviewed prisoners acknowledged the existence of inter-prisoner violence, whereas only sporadic cases of inter-prisoner violence were noted in Bijeljina prison. However, in total, almost two thirds of all interviewed prisoners in all institutions acknowledged some level of inter-prisoner violence.

How often are prisoners physically maltreated by other prisoners?



Causes of inter-prisoner violence relate mostly to the extortion of money, cigarettes and other items of daily use. Sometimes other inmates are also forced to wash clothes or provide other forms of labour for their fellow prisoners. In several interviews, incidents of sexual violence have been indicated by prisoners; it was, however, impossible to obtain any details due to the delicate nature of the topic and the refusal of prisoners to discuss this subject any further.

Inmates that are especially vulnerable are those who have not committed violent crimes but are rather sentenced for negligent behaviour, such as causing traffic accidents. Prisoners referred to those as “normal” or “nice” people, essentially meaning those who are easy targets for aggression. In addition, it was stated that the younger the prisoner is, the more economically and socially weak he is, and consequently the higher the probability of threats and abuse.

Example: A 21-year old inmate belonging to an ethnic minority was allegedly forced by other prisoners to hide several mobile phones before an expected search of their cells. After the mobile phones had been detected and confiscated in his cell, the prisoner received death threats coercing him to pay a certain amount of money, that neither he nor his family could arrange. As a consequence, the prisoner was taken into isolation in the intensified supervision department for his own protection. Again, this resulted in drastic cuts to his regime and privileges, which effectively led to a situation where he was treated as if he was under disciplinary measures.

Moreover, inter-prisoner violence is often related to drug abuse, especially through drug users, who are willing to engage, at the order of other prisoners, in violence and threats in order to obtain illegal substances.

Example: In January 2010, the department for female prisoners experienced a level of considerable inter-prisoner violence, which was mainly caused by a group of prisoners who had an apparent drug-addiction. Until that point, there had been no separation of female prisoners into certain categories. It took an outburst of violence, which required medical attention for some of the attacked prisoners, to establish a system whereby the female prisoners requiring treatment for drug addiction are completely

separated from the other female prisoners. The prison director conceded that such a course of action should have been pursued much earlier.

3.3. Response of authorities and circumstances

The way prison authorities react to inter-prisoner violence largely depends on the level of violence and the capacity of the institution to respond appropriately and promptly. It needs to be emphasized that the situation in regard to inter-prisoner violence greatly differs between so called “closed institutions” and “semi-open” ones. In closed institutions prison staff do not interfere to the extent needed to prevent and manage physical violence. The reasons may differ but a commonly noted one is that these institutions are operating above their maximum capacity and lack sufficient staff. For example, as of April 2010, Zenica prison suffered from significant overcrowding with 800 prisoners, although its official capacity is 600. Due to difficult living conditions and limited activities, inmates may also face psychological problems, evidenced recently by two suicides in the Zenica facility. The preliminary reports suggest psychiatric problems and drug overdose. During interviews with prison management, concerns regarding understaffing and the psychological health of prison staff were expressed.

As a matter of some concern, prison authorities overly use the department of intensified supervision in Foca as the only protective measure for prisoners in danger. This *de facto* isolation is not a consequence of any disciplinary measure but rather as a protective measure. Some prisoners are placed under close supervision in order to create a separation of different prisoners, which results in reducing the respective prisoners’ regime and privileges, and, ultimately may constitute a form of discrimination.

In semi-open institutions it was reported that immediate disciplinary action is regularly taken in response to inter-prisoner violence, normally resulting in solitary confinement. Prisoners who have been transferred from a closed institution to a semi-open one also confirmed that the prospect of being re-transferred to closed institutions due to disciplinary violations strongly discourages violent behaviour. It was also observed, in semi-open prisons, that some prison directors introduced a zero tolerance policy, meaning that there was an automatic initiation of criminal procedures against prisoners who allegedly committed violent acts inside prison walls.

Section IV. Complaints and Disciplinary proceedings

1. Complaint procedures and remedial action regarding ill-treatment

1.1. International human rights standards

Prisoners should have avenues of complaint open to them both within and outside the context of the prison system, including the possibility of having confidential access to an appropriate authority. UN Standard Minimum Rules for the Treatment of Prisoners elaborate on the rights of prisoners to be allowed to address requests or complaints “without censorship as to substance but in proper form, to the central prison administration, the judicial authority or other proper authorities through approved channels”. The following section addresses both complaint procedures, as well as more formal disciplinary procedures, as both may be important mechanisms to reduce and manage instances of ill-treatment.

1.2. Observations regarding complaints procedures

As a general rule, prisoners are informed about possible complaints procedures. This is normally done in a formal matter by referring to rules that would be available upon request or displayed in certain areas of the prisons. Upon arrival, prisoners are informed about the house rules which usually include information about complaint procedures.

The general feedback from prisoners was that they were, by and large, aware of the existence of complaint procedures; however, they considered them to be ineffective, non-transparent and unfair. As a result, complaint procedures are not often used. In several prisons, the majority of interviewed prisoners stated that they were not aware of how these procedures functioned, and moreover, what rights they were generally entitled to. In addition, BiH Ombudsman institution is, to date, seen as generally ineffective, and many prisoners were not even aware of their existence. Therefore, there is a tendency to directly address outside actors, like journalists or international organizations, whenever possible rather than use the formal complaint procedures available.

In practice, as in other areas, the use of complaint procedures differs and depends on the initiative and creativity of the respective prison management. For example, the prison in Mostar introduced several complaint boxes to which only the prison director has access to, and which is emptied on a daily basis. Other prisons also use similar systems; however, prisoners must be sure that complaints are not intercepted by prison staff. Some systems are rendered ineffective as prisoners are convinced that their complaints would either not reach the prison director, not have any effect, or would result in repressive action.

As another innovative solution, prisons such as Bijeljina and Banja Luka introduced prisoner councils where representatives chosen by the prisoners meet on a regular basis with prison staff to discuss any issues that might arise within the prison context. These councils have been positively received by prisoners and they are seen as an effective channel of communication for complaints and suggestions.

2. Disciplinary proceedings

2.1. International and BiH standards

The UN Standard Minimum Rules for the Treatment of Prisoners states that, “No prisoner shall be punished unless he has been informed of the offence alleged against him and given a proper opportunity of presenting his defence. The competent authority shall conduct a thorough examination of the case.”⁴¹ The European Prison Rules also require prison authorities to abide by basic fair trial standards when charging a prisoner with a disciplinary offence, such as notice of charge, adequate time and facilities to prepare a defence, access to legal aid in defending oneself, and the right to call and examine witnesses.⁴² Moreover, for some charges serious enough to be considered criminal, all the fair trial protections in Article 6 of the European Convention on Human Rights may apply.⁴³

⁴¹ Article 29(2) of the UN Minimum Standards.

⁴² European Prison Rules, Article 59.

⁴³ *Ezeh and Connors v the United Kingdom* [2003] ECHR 485 (9 October 2003) states, in para. 58, that in regards for Article 6 to apply to disciplinary proceedings, “it suffices that the offence in question is by its nature to be regarded as ‘criminal’ from the point of view of the Convention, of that the person concerned is liable to a

Disciplinary proceedings are regularly conducted throughout all prisons in BiH but depend upon the different procedures and standards set out in the Laws on Execution of Criminal Sanctions at the entity and BiH levels. These Laws prescribe the acts which constitute severe and minor disciplinary offences, except the BiH Law on Execution of Criminal Sanctions that does not recognize this difference. Further there are certain discrepancies among these three laws which raise serious concern over the equal treatment of prisoners.⁴⁴ Disciplinary proceedings are conducted by a commission appointed by the prison director⁴⁵ and the convicted person has a right to appeal the decision under different deadlines.⁴⁶ Appeals are decided by the director. Although the relevant laws do not specify the rights of the persons under disciplinary procedure it can be assumed that the general right to defence also provides for more specific rights such as the right to call witnesses or legal aid etc.

In practice, disciplinary procedures are usually initiated for offences like possession of a mobile phone, drug possession, violent outbreaks, or the repeated breaking of prison rules such as not getting up on time or smoking in prohibited areas. Disciplinary sanctions include written warnings, reduction, or even the complete cessation, in the use of privileges⁴⁷ and solitary confinement.⁴⁸

2.2. Proceedings

As a matter of concern, it was observed that disciplinary sanctions were imposed immediately after an offence was committed, therefore rendering any kind of disciplinary proceeding meaningless. In many instances, by the time the disciplinary sentence was determined, the sentence had already been served. The number of appeals submitted appears to depend on the perception of effectiveness of the appeals proceedings. For instance, the prison management in Banja Luka recalled only one appeal in 2009 against a disciplinary decision, whereas the prison director in Mostar frequently receives appeals, through which he regularly reduces the imposed sentence. For the most part, prisoners expressed doubtfulness about the fairness and effectiveness of disciplinary proceedings. Extensive examination of the application of fair trial standards to disciplinary proceedings in prisons was not the subject of this research; this remains an issue which needs to be further explored by domestic authorities or monitoring bodies, as it appears that there may be a serious discrepancy with the applicability of basic fair trial standards to disciplinary sanctions.

sanction which, by its nature and degree of severity, belongs in general to the 'criminal' sphere." See also *Campbell and Fell v. the United Kingdom*, Judgment of 28 June 1984.

⁴⁴ For example, the new RS Law on Execution of Criminal Sanctions proscribe in details what constitutes the offence while the FBiH Law on Execution of Criminal Sanctions provides only for severe disciplinary offences while the list of minor offences shall be proscribed by the house rules of particular institution.

⁴⁵ Article 97 FBiH LECS; Article 130 RS LECS and Article 103 BiH LECS.

⁴⁶ While in RS and BiH LECS this deadline is 3 days in FBiH LECS is 15 days.

⁴⁷ Privileges according to the relevant laws may be within or outside of the institution (including leave for 24 hours to vacation with the family.)

⁴⁸ Please note that the relevant laws prescribe differently the sanctions that may be pronounced. Convicted persons may also be placed in a different category according to internal prison rules, or transferred to a different prison facility.

2.3. Use of solitary confinement

International human rights standards prescribe that solitary confinement is to be used only in exceptional cases.⁴⁹ Thus, as a matter of some concern, it was observed that the most common disciplinary sanction is solitary confinement, particularly prevalent in the Republika Srpska. The maximum period of time to be held in solitary confinement within the Republika Srpska is now 20 days pursuant to the Law on Execution of Criminal Sanctions.⁵⁰ Similarly, in the Federation of BiH, a sentence of up to 20 days is possible. In contrast, prisoners convicted by the State Court who serve their sentences in entity prisons in accordance with the BiH Law on Execution of Criminal Sanctions may be confined for a maximum of ten days.

Individual cases of repeated solitary confinement have been observed. In order to circumvent the maximum of 10 days of solitary confinement, prisoners, after serving this maximum period are immediately sent back into solitary confinement. It was alleged that those prisoners have allegedly committed a breach of the disciplinary rules on their way back from solitary confinement to their cell. In individual cases it was indicated that a “wrong look” or a “loud laugh” might bring one back into the isolation cell.

3. Means of restraint

Overall, the use of means of restraint was not identified as problematic. Prisoners confirmed that handcuffs are used at times of dissolving physical violence among prisoners or when transferring prisoners to outside institutions or to isolation cells. The use of pepper spray, tear gas or other means of restraint occurs on an exceptional basis. In one case, a prisoner claimed to have been chained with handcuffs to a metal bar when in solitary confinement; such course of action, however, seems to constitute the exception.

1.1.1. Conclusions

The overly frequent use of solitary confinement, use of repeated solitary confinement, and lack of appropriate process to impose sanctions were identified as key concerns. In addition, both complaint procedures and disciplinary procedures are not clearly understood by prisoners, and are in any case seen as ineffective. This situation is exacerbated by some prison staff, on occasion openly discouraging prisoners from using remedial action, and by not forwarding their requests to the relevant authority.

Regarding the cases of ill-treatment committed by guards or fellow prisoners, they are usually not reported out of fear of reprisal. Coupled with this, it was found that some prison staff, by giving “friendly advice”, openly discourage prisoners from using remedial action and complaint procedures; they imply that their usage may potentially have a detrimental effect to the complainant. It was additionally noted that the majority of prisoners were unaware of any disciplinary procedures conducted against prison staff or any outcomes thereto. An aura of impunity prevails whenever allegations of ill-treatment have been raised.

⁴⁹ European Prison Rules, Rule 60.5.

⁵⁰ The maximum solitary confinement in RS is no longer 10 days – it was changed to also to 20 days pursuant to new Law on the Execution of Criminal Sanctions from February 2010.

In summary, complaint and disciplinary procedures are seen as ineffective, unfair and non-transparent, and thus may not serve as optimal tools to respond to instances of inter-prisoner violence or ill-treatment at the hands of prison staff.

Section V. Channels of communication

One issue that typically falls short of due consideration and which directly impacts all the above-mentioned concerns, refers to the channels of communication that are established between prisoners and prison management. Firstly, this relates to the communication channels within the management structures themselves and secondly, those between prison staff and prisoners. As noted by the CPT standards, “[t]he development of constructive and positive relations between prison staff and prisoners will not only reduce the risk of ill-treatment but also enhance control and security”.⁵¹

On the subject of communication, over the years each prison has developed different mechanisms and habits. While some prison directors conduct daily staff meetings, others direct messages and orders through chains of command. This again greatly depends on the size of the prison, but more importantly, on the individual style of the respective prison director.

1. Communication within prison personnel structures

The relationship between the prison directors and their staff is of key importance. In some prisons, for example in Sarajevo, prison staff work under difficult conditions, restrained by understaffing and a lack of space. Such working conditions can at least be alleviated by the establishment of an effective and continuous dialogue between prison management and staff. It was observed that a cohesive appearance of prison staff is of paramount importance, and is seen to reduce potential conflicts and outbursts of violence between prison staff and prisoners, as well as between prisoners themselves. It was found that the manifestation of a divided prison management negatively reflects on the relationship between staff and inmates, as the authority of some prison personnel will inevitably be undermined.

2. Channels of communication with prisoners

Constant dialogue with prisoners is one effective way to decrease levels of violence and tensions. Likewise, recourse to disciplinary action is less likely to be needed if effective communication channels are in place, which work towards pre-emptively de-escalating potential troubles.

In general, two different management styles were observed. Some prison directors enable prisoners to address them directly, whereas others maintain a strict chain of communication. As examples of the former, some prison directors are in direct contact with prisoners on a weekly basis including weekly visits to the majority of prisoners’ cells or rooms, thereby hoping to display an openness to communicate and encourage feedback. Other prison directors are in favour of maintaining strict chains of command, and do not make attempts to interact directly with prisoners. Further, these directors believe that any other approach undermines the authority of the staff, as it enables prisoners to completely bypass staff and directly complain to the prison director.

⁵¹ See above footnote 13.

The system of effective communication channels demonstrates a consistent and cohesive appearance of prison administration. It also allows prisoners, in exceptional and urgent cases, to address the prison director directly. This had the real potential to assist in dissolving any extant tensions. The notion of prisoner councils (such as those established in Bijeljina and Banja Luka), elaborated above, seems to achieve these purposes.

Section VI. Conclusions and recommendations

1. Closing remarks

As demonstrated in the report, drawing an all-encompassing picture regarding adherence to human rights standards in prisons with respect to torture and ill-treatment is difficult. The fragmentation of BiH's prison system allows for considerable autonomy of each prison facility; thus, the respect for essential human rights standards may vary from prison to prison. The management style and pro-activity of the respective prison administration dictates the environment and responses in each institution. As well, a comprehensive legislative framework is a key element towards securing an overall well-functioning system. In the Republika Srpska, a new Law on Execution of Criminal Sanctions came into force in February 2010⁵², whereas in the Federation, a Draft Law on Execution of Criminal Sanctions is pending adoption. It should also be noted that in all monitored prisons, with the exception of the facility in Tuzla, prison directors were changed during the first half of 2008. Almost all interviewed prisoners, notably those claiming human rights abuses, agreed that the conditions in general, and particularly regarding cases of violence, improved with the introduction of new prison directors.

Nevertheless, the concerns identified in the present report are worthy of further consideration, and the following recommendations are aimed at assisting the prison administrations, ministries of justice, BiH Ombudsmen, and other relevant organizations in ensuring that responses and mechanisms are in place to adequately prevent and address occurrences of torture and ill-treatment.

2. Recommendations

2.1. Towards prevention of ill-treatment

- Harmonise the laws on enforcement of criminal sanctions and by laws throughout the BiH in order to provide adequate and fair treatment of prisoners.

2.1.1 Towards combating violence and ensuring appropriate treatment

To the prison administrations:

- Ensure effective and unbiased investigation into instances of torture and ill treatment.

More specifically:

- Automatically refer cases of violence to relevant authorities to enhance effective accountability mechanisms;

⁵² RS Official Gazette No. 12/10 of 19 February 2010.

- Effectively separate prisoners so as to lower levels of violence; make effective use of transfer of prisoners using facilities throughout BiH as an important safety mechanism;
- Ensure prison guards are not present during medical examinations; except when the security of the medical staff requires;
- Ensure open and transparent procedure for granting privileges;
- Find measures other than placement in intensified supervision to ensure prisoners safety;

To the relevant ministries and other authorities:

- Ensure financial and human resources for developing adequate treatment programmes for prisoners that includes opportunities for meaningful and continued educational activities;
- Consider ways to improve security in prisons through different measures including purchase of additional surveillance cameras and employment of additional staff;
- Consider designing immediate solutions for prisoners placed in forensic psychiatric wards and the ones who incurred mental illness while serving their sentence, until such time as a BiH wide institution that allows for proper treatment is available; especially for female prisoners;
- Ensure high levels of professionalism and competence of prison staff;
- Guarantee transparent selection procedures and competitive qualifying examinations for new personnel in order to raise professional ethics and standards;
- Facilitate comprehensive initial and continuous education for prison personnel, in particular prison guards, on a variety of issues: from basic human rights standards to practical skills training;
- Improve the physical conditions of solitary confinement in line with European Prison Rules;
- Take appropriate measures to ensure that violent prisoners, substance abusers and prisoners placed in forensic psychiatric wards do not pose a threat to others or to themselves.

2.1.2. Towards improving disciplinary and complaint proceedings

To the prison administrations:

- Conduct disciplinary procedures as required by domestic law and international standards in particular Rule 56.1 of the European Prison Rules prior to having prisoner serve any disciplinary measure; except when security issues require otherwise;

- Ensure that legal remedies are available against the decisions of disciplinary commissions and where appropriate, due to the criminal character of certain disciplinary proceedings, ensure that access to legal aid is provided;
- Guarantee that prisoners' complaints receive a proper response;
- Improve the mechanisms for complaints registration and tracking; for example in line with Council of Europe *Training manual for prison staff on complaints procedure (March 2007)*;
- Consider appropriate new channels for internal communication, e.g. complaint boxes and prisoner councils;
- Ensure that any violation of confidentiality or any disclosure of information contained in prisoners' complaints on the part of prison staff is investigated and sanctioned;
- Ensure that prison rules, information about complaints mechanisms and relevant legislation are accessible and understandable to each prisoner;
- Allow prisoners to contact relevant institutions within their working hours.

To the BiH Ombudsman:

- Increase the frequency of visits to penal correctional institutions and simplify complaints procedures, making them understandable and easily accessible to all prisoners.

Annexes

A. Methodology

OSCE Mission to BiH prison visits on torture, ill-treatment and disciplinary proceedings were conducted from July 2009 to May 2010 in the prison facilities of Banja Luka, Foca, Mostar, Sarajevo, Tuzla and Zenica. Interviews were largely focused on the current human rights situation, ranging from 2008 until May 2010. The methodology focused on obtaining first hand information from prisoners and staff regarding the current state of affairs with respect to allegations of torture and ill treatment, comparing this to the legislative framework and other background information, and thereby undertaking an in-depth analysis of possible human rights violations.

In the visits, a team of two OSCE Mission staff members, representing both sexes, conducted interviews with both prison staff and prisoners.⁵³ Visits confirmed that, in the context of prison monitoring, the use of international staff members seemed to be more effective as prisoners sometimes appeared to put more trust in foreign interlocutors. In implementing the monitoring programme, it became apparent that domestic staff members should conduct prison visits outside of their area of responsibility and domicile; on the one hand, this increased the trust of prisoners knowing that the interviewer originates from a different region and therefore is unlikely to have any connection to local actors. On the other hand, such a course of action also reduces security concerns for staff members as they do not return to a social environment that might be closely linked to the interviewee.

In order to obtain the confidence of both prison personnel and prisoners, in each interview the OSCE Mission staff members explained the purpose of the interview, the role that the OSCE Mission plays, what it can and especially can not do in terms of assistance and advocacy, and most importantly, the absolute confidentiality regarding all provided information. Information provided by prisoners has been utilized in a general manner to ensure that individual prisoners can not be identified (unless explicit consent was given and no concerns arise in relation to the prisoner's security and well-being.)

After having obtained the official support of the respective Ministries of Justice, which granted full access to prisoners, the first prison visits took place in July and August of 2009. During these visits, prison directors were introduced to the prison monitoring programme and its methodology. Once all interviews were concluded, the Mission provided immediate feedback to prison directors.

Following its methodology, the OSCE Mission explained in detail to every prison director that it is of utmost importance not to have prisoners approached and questioned about the interview by prison staff after interviews take place. Therefore, interviews with prison directors were conducted to additionally inform them about the content of the interviews to be held with prisoners, in order to warrant as much transparency as possible. While prison directors assured full co-operation, in that they strictly instructed their personnel in this regard, it can not be excluded that, in some cases, intimidation towards prisoners might have taken place; with or against the will of the respective management. This is corroborated by instances where prisoners explained that they were not willing to talk with the OSCE Mission, out of a fear of reprisals. While such behaviour can be grounded in real, and also assumed, threats in

⁵³When required, an interpreter accompanied an international staff member.

one situation it was brought to the Mission's attention that following the visit of the Ombudsman, several prisoners in one penal institution might have been questioned by prison personnel about the content of these interviews. Such behaviour is assumed to constitute the exception. However, this behaviour seriously undermines any kind of prison monitoring programme which must be founded on a relationship of trust between the interviewer and interviewee; and furthermore, it sheds a bad light on prison staff and endorses assumptions of misconduct.

Over all, co-operation with the prison administrations has been largely smooth, and unhindered access to prisoners has been provided in order to conduct interviews in a secure and private atmosphere.

B. Methodology checklist for prison visits

The following serves as a check list for staff monitoring of prisons which should be followed as closely as possible. It is designed for interviews with prisoners, but by and large also applicable when interviewing prison staff, doctors, etc. These checklists take into account certain recommendations as published by the Association for the Prevention of Torture⁵⁴.

The following general recommendations should be applicable to all visits:

1. Preparing the visit:

- ✓ **Visits restricted to prisoners:** regarding persons deprived of their liberty, the visits will only include interviews with prisoners, and not with those in detention in order to narrow down the target group and obtain representative figures. The detention regime is different for persons in custody and requires a different monitoring methodology.
- ✓ **15 prisoners to be interviewed per prison per visit on a particular thematic topic (e.g. health care available in prisons):** this is necessary in order to acquire a minimum figure for analysis.
- ✓ **Frequency of visits:** as many as needed to cover the thematic issues with the minimum number of 15 prisoners.
- ✓ **Selection of prisoners:** the aim would be to have wide representation ensuring the inclusion of different vulnerable categories (juveniles, elderly, handicapped, women, ethnic minorities, foreigners, prisoners in solitary confinement, sick prisoners) as well as prisoners from the different internal categorization systems, where applicable.
- ✓ **Announcements of visits:** the visits should be announced at least one week in advance to the prison authorities - the prison director shall be informed in advance of the purpose of the visit and the need for the OSCE Mission to independently select prisoners for interviews.
- ✓ **Composition of visiting team:** as a rule, the visiting teams will consist of two persons and should ideally comprise both sexes as interviewees might prefer to talk to an interviewer of the same sex.
- ✓ **Information:** visiting teams are supposed to make themselves aware of the general situation in the relevant prison, through previous visiting, media reports and other available information and prepare themselves accordingly.
- ✓ **Questionnaires:** the forms shall be filled out in English and stored in a secured locker in the relevant field office - for each interview, a single form should be completely filled out.

2. The visit itself:

- ✓ **Initial talk with the prison director:**

At the start of a visit (round of interviews on a certain theme) an initial talk should be held with the director or (at least) deputy director of the prison. During this initial talk, the following issues should be discussed:

 - introduce the visiting team
 - explain the aim and objectives of the visits
 - explain the absolute need to talk in private with the prisoners and, if possible, the members of staff (mainly security, medical staff and educators)

⁵⁴ Different checklists can be found at: <http://www.apr.ch/>

- explain how the information collected will be used
- request information about the place of detention, including whether there are any groups of prisoners with special needs (for example, deaf prisoners, prisoners with other disabilities) and whether there have been any notable changes or events (particularly violent incidents, deaths or other emergencies) since the last visit
- explain in detail the need to independently choose prisoners for interviews and the confidentiality of those interviews
- emphasize that prisoners do not experience any kind of different treatment or questioning by prison authorities following the interview
- determine the location for the interview: avoid locations that might equate you with prison staff (admin office), try to have interviews with the prisoner in the cell, the courtyard, the visiting room, a library
- ask for the opinion of the person in charge regarding his or her own proposals for improvements on the issue at hand
- fix a meeting to talk about the results of the visit

Dependent on the topic of the thematic visit the following registers, if existent, should be consulted in order to select prisoners:

Registers relating to persons deprived of their liberty:

- by category of prisoners
- entry and exit registers
- registers of disciplinary measures
- medical registers

Registers of material supplies for persons deprived of their liberty:

- food, hygiene, clothes, bedding, etc
- medicines and medical material
- educational, sport, and leisure material

Registers of events from everyday life within the facility:

- use of force or firearms
- the regime: meals, work, exercise, educational activities, etc.
- incidents and disciplinary proceedings

The interview process:

- introduce yourself and the purpose of your thematic visit
- explain to the prisoner in detail what you can do and what you can not do, especially that you can not act as a representative for the interests and needs of the individual prisoner
- do NOT provide the prisoner with your contact details – explain that there will be follow up visits
- stress the confidential nature of the interview – in case advocacy is planned for an individual case, get the approval of the prisoner
- follow the questions of the reporting template but leave enough space for interviewees to feel at ease and come forward with pressing problems that they feel are important
- concentrate on individual talks; in cases of group talks, keep the talk concentrated on the thematic topic, identify other problems as they appear and postpone detailed discussions about those to a later stage
- have the interview outside of hearing of any officials

- one member of the interview team should lead the interview, the other one should take notes

☑ **Final talk with the prison director:**

- end the visit always with a final talk to the director (or set a meeting for the end of the round of visits)
- the aim of the final talk is to transmit a summary of facts found and specific issues identified
- urgent cases, in particular regarding prevention of torture or other forms of ill-treatment, should be raised immediately
- in cases where grave abuses have been noted, the visiting mechanism should address the authorities further up the hierarchy directly, so as not to incur the risk of reprisals against those who provided the information

C. Questionnaire

Reporting template on prison visits: Ill-treatment & Disciplinary measures

Information about observers:

No.	Name and Surname	Title:
1.		
2.		

Monitored Prison: _____ Date of the prison monitoring: _____

Prison Capacity: _____ Number of Male prisoners: _____ Number of Female Prisoners: _____

Interviewed person (warden, guard, doctor, prisoner, other): _____

I. General Information on the Visit

What is the profile of the person interviewed (age, gender etc.)?

- Family Name: _____
- First and other names: _____
- Sex :Male Female
- Date of birth (or age): _____
- Nationality/Ethnicity: _____
- Occupation: _____
- Sentenced for (for prisoners): _____
- Length of sentence (for prisoners): _____
- Years of experience (for staff) _____

Please note: If the person interviewed alleges to have been subjected to ill-treatment himself, please fill out Annex 1

II. Ill-treatment

1. How would you describe the situation regarding ill-treatment of prisoners by staff?

(This question is to assess the awareness from prison staff/prisoners about all existing referral mechanisms – internal/Ombudsman/NGO; if they are used (can they get any assistance thereto), and if not, why, as well as the results thereof)

V. Other issues of relevance regarding ill-treatment

VI. Disciplinary sanctions/Solitary Confinement

1) Describe the system of disciplinary sanctions:

(For prisoners and staff: at least following reference points should be covered: What are usual disciplinary violations? Which disciplinary sanctions are imposed? For how long normally?

For staff: Are all the cases recorded in a register and appropriate authorities notified? For how long are the means of restraint imposed? Do persons have access to a doctor?)

2) Is solitary confinement imposed; if yes, to what length and for which allegations?

3) Are you aware of cases of repeated, prolonged or indeterminate solitary confinement?

Yes No

Comments:

4) Is there the possibility to lodge an appeal and was it used? If not, why not?

5) What regime is available to prisoners in isolation?

VII. Other Issues of relevance regarding Disciplinary sanctions/Solitary confinement

VIII. Means of Restraint

Describe the use of means of restraint:

(For all interviewees: what means of restraint are used? (Handcuffs, chains, straight jackets) and why? Is there any evidence that means of restraint are being disproportionately used in the case of minority groups?)

Additional reference points for staff: Are all the cases recorded in a register and appropriate authorities notified? For how long are the means of restraint imposed? Do persons have access to a doctor?)

X. Other Issues of Relevance regarding means of restraint or use of force

Annex: Please enter in case you interview a prisoner who alleges he/she was subjected to ill-treatment

I. Circumstances surrounding ill-treatment

Please enter the all information by answering at least the following questions:

1. Date and place of event and subsequent torture/ill-treatment _____

2. Who carried out the ill-treatment/torture? (police, prison officials, inmates or other)

3. Has anyone been informed about the ill-treatment? If so, how long after the event?

4. Was there an official response? If so, when? _____

5. Description of ill-treatment: _____

6. What injuries were sustained as a result of the ill-treatment? _____

7. What was believed to be the cause of the ill-treatment? _____

8. Was there an examination by a doctor? If not, why not? _____

9. If so, when? Was the examination performed by a prison or outside of prison doctor?

10. Was appropriate treatment received for injuries sustained as a result of the ill-treatment? If not, why not? _____

11. Was the medical examination performed in a manner which would enable the doctor to detect evidence of injuries sustained as a result of the ill-treatment?

12. Were any medical reports or certificates issued? If so, what did the reports reveal?

13. If the victim died in custody/prison, was an autopsy or forensic examination performed and what were the results? _____
