

Amnesty International

MEDIA BRIEFING

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Serbia/Kosovo: Ten years of impunity for enforced abductions and disappearances

Ten years after the end of the war in Kosovo impunity for enforced disappearances and abductions remains one of the most serious human rights violations arising from the armed conflict and its aftermath. Enforced disappearances constitute a crime and, in certain circumstances defined in international law, a crime against humanity.

An internal war between Serb forces and ethnic Albanian armed groups was said to exist in Serbia (of which Kosovo was a province) from February 1998. In March 1999 when NATO led an air attack on Serbia, with the aim of protecting ethnic Albanians, it became an internationalized armed conflict.

More than 9,000 people were killed in the wars in Kosovo, the majority of them ethnic Albanians, killed or disappeared by Serb forces, or some by their own side. Others were killed or abducted after the war ended in June 1999, when ethnic Albanians who had been refugees in Macedonia and Albania returned to Kosovo. Some sought revenge on the Serbian community, and on the Roma, considered to be Serbian allies. Many of these people were abducted under the eyes of the NATO-led Kosovo force, (KFOR).

This media briefing summarises Amnesty International's concerns on impunity for enforced disappearances and abductions in Kosovo. A report will be published in June.

Introduction

More than 3,000 ethnic Albanians were "disappeared" by Serbian police, paramilitary and military forces, and an estimated 800 Serbs, Roma and members of other minority groups were abducted, reportedly by members of the *Ushtria Çlirimtare e Kosovës* (UCK, Kosovo Liberation Army, KLA).

In 1999 and 2000, Amnesty International interviewed relatives of the missing on all sides of the conflict. In 2009 the organisation returned to Serbia and Kosovo to find out what had happened in the intervening years. Had missing relatives been found? Had their bodies been returned for burial? Did the families know what had happened to their son or father or brother or sister or daughter or mother? Had the perpetrator been brought to justice?

Amnesty International found an overwhelming absence of progress: although the bodies have been found of around half of those who disappeared or were abducted, around 1,900 families in Kosovo and Serbia still await the news of the fate and whereabouts of their family member. Even where the bodies had been returned, few families were aware of any ongoing investigations by the police, or of any prosecutions. Few perpetrators have been brought to justice in either Serbia or Kosovo.

In June 2009, to mark the tenth anniversary of the end of the armed conflict, Amnesty International will publish a detailed report on ten years of impunity for enforced disappearances, and launch a year long-campaign to challenge that impunity and ask the authorities in Serbia and Kosovo to bring the truth to the relatives of the missing.

The report will document the failure of both the Serbian government and the Kosovo authorities (including the UN Interim Administration Mission in Kosovo (UNMIK)) to investigate and prosecute enforced disappearances and abductions.

The report will also document the role of KFOR and the International Criminal Tribunal for the former Yugoslavia (Tribunal). The report will document a history of undocumented exhumations, lost reports, political interference in the justice system, aborted investigations, and a confusion of effort by different agencies, which have combined to deny the relatives of the missing access to justice and redress.

Exhumations and Identifications

In December 2008, according to the International Committee of the Red Cross (ICRC), some 1,918 missing people are unaccounted for in relation to Kosovo. Until 2002 exhumed bodies were identified by traditional means, usually through identification of a person's clothing or personal belongings.

Exhumations began very quickly in Kosovo. By October 1999, ad hoc teams working for the International Criminal Tribunal for the former Yugoslavia (Tribunal) had begun to gather evidence for the prosecution of the Serbian leadership. As many as 2,000 bodies may have been exhumed for evidential purposes; some were identified by traditional means and some taken by families for burial, others were reburied without being identified. In some cases KFOR documented burial sites, but not all information about these sites is available. The UNMIK Office of Forensics and Missing Persons (OMPF) subsequently assumed responsibility for the exhumation, forensic examination and identification of mortal remains ¹.

Over 800 bodies of ethnic Albanians have been exhumed in Serbia, from mass or individual graves on Serbian Ministry of Interior land at Batajnica outside Belgrade and Bajna Basta. Others were dredged from Lake Perućac. These were the mortal remains of the ethnic Albanians who were killed in Kosovo. In a massive cover-up operation in May 1999, their bodies were loaded into refrigerated trucks and transported to Serbia where they were reburied.

The bodies, subsequently exhumed in Serbia under the supervision of the International Commission for Missing Persons (ICMP), had been returned to Kosovo by 2005, and the majority returned to their families after identification through DNA matching. Questions remain about whether all possible burial sites in Serbia have been fully investigated or whether, as some evidence suggests, other bodies were burned in the smelter at Mačkatica.

A few bodies are thought to be buried just across the Macedonian and Montenegrin borders. Allegations made by the former Chief Prosecutor to the Tribunal, now under investigation by the Serbian War Crimes Prosecutor and Senator Dick Marty of the Council of Europe, suggesting that Serbs abducted by the KLA were transferred to Albania, where they were killed. Without cross-border agreements, no burial sites have been identified and exhumations have not yet been conducted.

Since 2002 the identification of mortal remains has been conducted by the International Commission for Missing Persons (ICMP), using DNA matching. Taking blood samples from the relatives of the missing, they compare the DNA taken from the blood with that found in bone samples taken from the remains of the dead. This technique does not allow for identifications where no organic material remains in the bones or where the bones that remain are too small to sample. In several cases the remains of some individuals cannot and may not ever be identified.

¹ Formerly part of the UNMIK Department of Justice; OMPF was in 2007 transferred to the Kosovo Ministry of Justice, and in 2008 transferred to the EULEX mission.

Some 437 unidentified bodies remain unidentified in the OMPF morgue in Pristina. None can be matched with blood samples donated by relatives. The reason may lie in an unknown number of misidentifications made by traditional means in the aftermath of the war before DNA identification was introduced.

Criminal Investigations

All authorities are required to hold criminally responsible any persons suspected of involvement in enforced disappearances, including those with superior responsibility who ordered the disappearance or failed to prevent those under their control from committing such acts. Yet both the Serbian police and prosecutors and UNMIK police and prosecutors (charged with the investigation of war crimes in Kosovo) have failed to initiate prompt, independent, thorough and impartial investigations into cases of enforced disappearance and abduction.

Primary responsibility lies with the Serbian police for investigations and prosecutions of the enforced disappearance of ethnic Albanians by the Serbian police, military and paramilitary authorities. Yet there has been a lack of political will to investigate while parties sympathetic to the Milosevic government remained in power. Further, there has been little cooperation between Serbian police and the UNMIK police in sharing information related to such investigations.

Despite some progress in investigating some cases of enforced disappearances by Serbian forces, only one indictment has been issued in connection with the investigation opened in 2000 into the transfer to Serbia of bodies from Kosovo in refrigerated trucks. There appears to be political interference in this case, and obstruction by the /Serbian Ministry of Interior.

Relatives of those disappeared by Serb forces had not received any information about current investigations, from either the Serbian police or UNMIK.

Until November 2008, an international UNMIK Police War Crimes Unit (WCU) was responsible for the investigation of abductions of Serbs, Roma and members of other minority communities, as well as for crimes committed against ethnic Albanians. Yet Amnesty International has established that UNMIK police in many cases has failed to open investigations, or to conduct more than perfunctory investigations in others. One man interviewed by Amnesty International in 2009 said that he had not been contacted by a police officer since 2003; others said that they had never been approached by UNMIK police, or been informed of any ongoing investigation.

In other cases, according to a local NGO, witnesses and relatives were asked to provide their testimonies every six months, when personnel changed at the WCU, and a new UNMIK police officer was appointed to the case.

According to the European Union Rule of Law mission in Kosovo (EULEX²), police, who took over investigative responsibility from UNMIK in December 2008, some 1,200 cases had been opened, although in only 550 were there any signs of active investigation by UNMIK police.

Impunity

Few of those responsible for enforced disappearances and abductions have been brought to justice in international or national courts. In February 2009 five of the major architects of Serbian war crimes in Kosovo – senior politicians, military and police officials - were convicted and sentenced by the Tribunal for crimes against humanity and war crimes, including for their combined criminal enterprise in the killing of ethnic Albanians. In April 2008 former Prime

² The European Union Rule of Law Mission in Kosovo (EULEX), the civilian mission to assist and support the Kosovo authorities in policing and judicial matters, with specific responsibilities for the investigation and prosecution of war crimes.

Minister of Kosovo and KLA leader Ramush Haradinaj was acquitted of the enforced disappearance of Serbs and Roma.

In Kosovo by the end of 2008 UNMIK's International Judiciary and Prosecutor's (IJP) programme had resolved less than 40 war crimes cases; a further 60 war crimes cases in various stages of prosecution have now been handed over to EULEX.

In only two cases were ethnic Albanians convicted of abduction. The lack of prosecutions of ethnic Albanians for the abductions of Serbs and Roma has been attributed to a lack of impartiality by UNMIK, who have appeared reluctant to prosecute former members of the KLA, some in positions of government or authority. The reluctance of witnesses to come forward, their refusal to testify and inadequate witness protection, has combined to construct a climate of almost complete impunity.

Until the establishment in 2003 of the Special War Crimes Chamber (WCC) at Belgrade district court, the number of investigations in Serbia remained pitifully low. With no political support, prosecutorial investigations into the transportation of bodies to Serbia were blocked, allegedly by the Ministry of Interior. Investigations at Mačkatica stopped after investigators were threatened.

Since the establishment of the WCC, investigations by the Chief War Crimes Prosecutor have at last resulted in prosecutions for murder in cases of enforced disappearance. Members of the Scorpion paramilitary group were convicted for the murder of Albanian civilians in Podujevo/ë, and a verdict is shortly expected in the prosecution of police officers for the murder of 46 members of one family in Suva Reka/Suharekë. Serbia has also convicted ethnic Albanian Anton Lekaj for the abduction of a Romani man.

A continuing violation of human rights

Under international human rights law disappearances and abductions are violations of the right to life, the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, and the right to liberty and security of person (Articles 6, 7 and 9 of the International Covenant on Civil and Political Rights (ICCPR), and Articles 1, 3 and 6 of the European Convention on Human Rights and Fundamental Freedoms (ECHR). They also violate the right of the disappeared person to a family life.

International standards and the case law of international and regional human rights bodies has recognized that enforced disappearances and abductions are a continuing violation, including of the rights of the relatives, as long as the fate of the victim is not ascertained and the perpetrator brought to justice.

The European Court of Human Rights has ruled that a [state's] failure to investigate cases of missing persons resulted in a continuing violation of the prohibition against torture and other ill-treatment set out in Article 3 of the ECHR, and that "the silence of the authorities of the respondent State in the face of the real concerns of the relatives of the missing persons attained a level of severity which can only be categorised as inhuman treatment within the meaning of Article 3"³.

Redress and reparations

Ten years after the end of the war, the relatives of the disappeared and missing continue to live in anxiety, not knowing what happened to their loved ones, unable to mourn their deaths or dignify their memory by burying them in proper graves. While those who remain missing are overwhelmingly male, the victims of this continuing violation are most often female, few of whom receive adequate social or economic support or recognition in law from their own

³ Cyprus v Turkey, Judgment of the European Court of Human Rights, 10 May 2001, paragraphs 136 and 156-158.

governments. While Commissions on Missing Persons in both Serbia and Kosovo are supposed to assist the families, many feel that their suffering is forgotten. In addition, for the many Serb and Roma families who live as displaced persons or refugees, continuing impunity is a massive obstacle to their return to Kosovo.

Some relatives of those abducted by the KLA consider that UNMIK is responsible for the failure to clarify the fate of their family member. Several plan to seek a remedy through the Kosovo's Human Rights Advisory Panel, (established in 2006 to address actions and omissions by UNMIK).

Under the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, authorities are required to investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible. They are also supposed to provide victims of human rights abuses or violations of humanitarian law with effective access to justice, and adequate, effective and prompt reparation for harm suffered.

Amnesty International is calling on the authorities in Serbia and Kosovo, including the EU-led rule of law mission EULEX, to cooperate in the investigation of cases in order to inform the relatives of the fate of their loved ones, and to bring the perpetrators to justice.

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