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1. INTRODUCTION

"I went out into the main street, and there were around four or five hundred soldiers in the road. One of them said, 'Stop or I will kill you,' and then—and I will never forget this—he said, 'Turn back because now we are beginning'. We closed our eyes and turned back into the yard where the men were waiting, and we told them what had been said. We locked the gate, but after 10 minutes between 30 and 35 policemen came in. They were wearing blue uniforms with Serbian insignia and officers' stripes on their shoulders. They ordered the women and children into the road, and the men were ordered to stay inside. MN was saved because he was carrying his paralysed mother on his shoulders. They arrested 11 men: Ilir Berisha, the youngest at 17; Tahir Sharani, Yusuf Sharani, Shkifer Sharani and his two sons, Valon and Visar, and Mentor Sharani; Yusuf Saracini; Agim Saracini, Veli Saracini and his son Arben, they were all taken away that day."

Sanje Berisha, mother of Ilir Enver Berisha, Gjakovë/Đakovica, February 2009. Gjakovë/Đakovica experienced a particularly high level of violence and destruction at the hands of Serbian forces. More than 1,200 people were arrested over a five-day period in June 1999, 400 of whom were taken to prisons in Serbia. The body of Ilir Enver Berisha was found in a mass grave in Batajnica in Serbia and reburied in Kosovo on 21 September 2006.

Ten years after the end of the war in Kosovo impunity for enforced disappearances and abductions remains one of the most serious violations of human rights 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 or a war crime.

During the war in Kosovo, more than 3,000 ethnic Albanians were the victims of enforced disappearances by Serbian police, paramilitary and military forces. An estimated 800 Serbs, Roma and members of other minority groups were abducted, reportedly by members of the Kosovo Liberation Army (KLA), during and after the war.

Amnesty International distinguishes enforced disappearances -- in which state agents are directly or indirectly involved -- from abductions carried out by non-state actors, such as armed opposition groups.

In 1999 and 2000, Amnesty International interviewed relatives of the disappeared and abducted on both sides of the conflict. In 2009 representatives of the organization 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 those responsible been brought to justice?

Amnesty International found an overwhelming lack of progress. Although the bodies of around half of the victims of enforced disappearance or abductions have been found and returned to their relatives, as of April 2009 some 1,911 families in Kosovo and Serbia still await news of

the fate and whereabouts of their family member.¹ Of equal concern, in cases where the body of a family member had been recovered and returned, few families were aware of any criminal investigations by the police or of any prosecutions in either Kosovo or Serbia. Ten years after the armed conflict, those responsible for enforced disappearances and abductions have not been brought to justice.

In this report, published on the tenth anniversary of the end of the war in Kosovo, Amnesty International raises concerns about the failure of the authorities in Kosovo and Serbia to abide by their obligations, as set out in international law applicable in both Serbia and Kosovo, to investigate and prosecute enforced disappearances and abductions, and to bring the perpetrators on both sides to justice. The report makes recommendations aimed at ending the impunity enjoyed by the perpetrators and calls on the authorities in both Serbia and Kosovo to bring justice to the relatives of the missing.

Impunity literally means exemption from punishment and reparations.

When used by Amnesty International it refers to the failure of the state to redress human rights abuses by investigating and, where there is sufficient admissible evidence, prosecuting suspected perpetrators in accordance with international human rights law and standards and to otherwise provide reparations for the harm suffered by victims. Allowing perpetrators to commit abuses, clearly prohibited by law, without consequences for themselves, perpetuates their crimes. By contrast, ensuring that perpetrators are brought to justice sends a message throughout a society that abuses of human rights will not be tolerated, thereby helping to prevent future abuses. Impunity denies justice to the victims of human rights abuses, robbing them a second time of their rights. Impunity denies the victims and their relatives the right to have the truth established and acknowledged, the right to see justice done and the right to an effective remedy.

The report documents the failure over the past decade of both the Serbian government and the responsible authorities in Kosovo – until December 2008 the UN Interim Administration Mission in Kosovo, (UNMIK) – to investigate and prosecute those responsible for enforced disappearances and abductions.

The report also documents the contributory role of the North Atlantic Treaty Organization (NATO)-led Kosovo Force (KFOR) and the International Criminal Tribunal for the former Yugoslavia (Tribunal) in these failures. It reveals a history of undocumented exhumations, a confusion of efforts by different agencies, lost documentation, aborted investigations and political interference in the justice system. These factors have combined to deny the relatives of the missing the right to access to justice.

The report includes extracts of interviews with the relatives of the missing conducted by Amnesty International in 1999-2000 and in 2009. Amnesty International dedicates this report to them and to all the relatives of the missing in Serbia and Kosovo and those who live elsewhere as refugees. In doing this, Amnesty International recognizes that the pain and suffering caused to the relatives by the failure of the authorities to provide them with the truth about the fate and whereabouts of their family members is in itself a human rights violation: the violation of their right to be free from cruel, inhuman and degrading treatment.

THE WARS IN KOSOVO AND ON SERBIA

In 1999 Kosovo was a province of the Republic of Serbia, which was then a republic within the Federal Republic of Yugoslavia (FRY).² Previously, in 1989, the Serbian government had revoked Kosovo's autonomous status, but in 1991, following a referendum, Kosovo Albanians declared independence. There followed almost a decade of systematic human rights violations against Kosovo Albanians primarily by the Serbian police.³

By the mid-1990s the Kosovo Albanians' strategy of non-violent resistance and parallel institutions, under the leadership of Ibrahim Rugova, was increasingly challenged by some Kosovo Albanians who began to take up arms against Serbian forces. In 1998 the frequency and intensity of human rights violations perpetrated by FRY and Serbian security forces and paramilitaries primarily against Kosovo Albanians increased. An internal armed conflict erupted in Kosovo, between members of the KLA and other armed groups that had formed to fight for an independent Kosovo, and FRY forces, Serb police and paramilitary groups.

The vast majority of victims of human rights violations were ethnic Albanian civilians. Such violations included arbitrary arrests, alleged torture or ill-treatment, unlawful killings and other deliberate and indiscriminate attacks on civilians. By June 1998 an estimated 60,000 ethnic Albanians had fled or been forced from their homes and were either internally displaced in Kosovo or seeking international protection. Serbs also suffered human rights abuses, such as abductions, beatings and executions, at the hands of armed ethnic Albanian groups including the KLA.

In early 1999, the international community, including in particular the US authorities, facilitated a series of meetings at Rambouillet in France that aimed to broker an agreement on resolving the conflict between the FRY and representatives of Kosovo's ethnic Albanians. The failure of these talks led to an internationalized internal armed conflict (where the international community intervened in what had been an internal armed conflict). In March 1999, NATO commenced a bombing campaign against FRY forces, Serb police and paramilitaries with the declared aim of preventing a humanitarian catastrophe in Kosovo. From 24 March to 10 June the NATO air campaign against the FRY, codenamed Operation Allied Force, conducted over 38,000 combat sorties, including 10,484 strike sorties, against targets in Serbia proper, the provinces of Kosovo and Vojvodina and the Republic of Montenegro, then part of the FRY.⁴

However, human rights violations by FRY military forces, Serb police and paramilitary groups increased and hundreds of thousands of ethnic Albanians and members of minority communities fled Kosovo into Albania and Macedonia, or were displaced inside Kosovo.

The campaign of armed violence against the Kosovo Albanian civilian population, between March and June 1999, aimed to drive people from their homes, either by directly ordering them to leave (including by forcing them onto trains which took them to the Macedonian border) or by creating an atmosphere of terror to effect their departure. More than 9,000 men, women and children, the majority of them ethnic Albanian civilians, were killed by Serb forces. Others were taken from their homes and never seen again, and many women were raped or subjected to other forms of sexual violence. Across Kosovo villages were shelled and houses were burned. By 4 May 1999 the UN Office of the High Commissioner for Refugees

(UNHCR) estimated the number of refugees and displaced persons at more than 677,000 including 396,000 in Albania, 204,000 in Macedonia and 62,000 in Montenegro.⁵

In June 1999, NATO ceased its bombing campaign after concluding a Military Technical Agreement (Kumanovo Agreement) with the governments of the Republic of Serbia and the FRY.⁶ Under the agreement NATO ground forces entered Kosovo as the Yugoslav Army (Vojska Jugoslavije, VJ), Serbian police and paramilitary forces withdrew from Kosovo before the end of July 1999.

UNMIK AND KFOR

In June 1999 the United Nations Interim Administration Mission in Kosovo (UNMIK) was established by UN Security Council Resolution 1244/99 (UNSCR 1244/99) and mandated to administer Kosovo. Under Article 11(j) of this resolution UNMIK, was charged with the responsibility for “protecting and promoting human rights.” The Secretary-General of the UN further emphasized this responsibility, stating: “UNMIK will be guided by internationally recognized standards of human rights as the basis for the exercise of its authority in Kosovo.”⁷

The NATO-led Kosovo Force (KFOR) was charged under UNSCR 1244/99 to: “Establish a safe and secure environment in which refugees and displaced persons can return home in safety...”; with “Assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo”; and with “... [securing] conditions for a peaceful and normal life for all inhabitants of Kosovo.”⁸ UNMIK and KFOR were also charged with re-establishing the rule of law in Kosovo.⁹ In addition, the Special Representative of the UN Secretary General (SRSG) issued UNMIK Reg. 1/1999 on 25 July 1999, providing UNMIK with powers to issue legislative acts, which set out the duty of public persons to “observe internationally recognized human rights standards.”¹⁰

ENFORCED DISAPPEARANCES OF ETHNIC ALBANIANS

M.K., a 32-year-old shopkeeper and former geologist from Vuçitrn/Vushtrri,¹¹ had fled to Smrekovnica/Smrekonicë in a column of displaced persons in late April 1999. On 3 May Serb police and paramilitaries rounded up M.K. and his group, along with other ethnic Albanians, in the centre of Smrekovnica/Smrekonicë. He told Amnesty International that men and older boys were separated from the women and children and then beaten: “They chose intellectuals, those with trades, or businessmen. They beat me with an iron bar until I lost consciousness.” M.K. said he knew the police officers in charge: “They came by my shop all the time.” He named the police commander in Vuçitrn/Vushtrri as “the main person who carried out beatings of intellectuals,” and said his superior ordered the beatings outside the prison: “I actually heard him give the orders.” M.K. also gave the nicknames of two other regular police officers who took part.¹²

More than 3,000 ethnic Albanians, the majority of them males but also including women and children, are considered to have been the victims of enforced disappearances by Serb police, paramilitary and military forces.¹³ The majority of disappearances took place between March and June 1999 during the NATO bombing of Serbia and Kosovo. In most cases the victims were last seen being taken into custody by Serbian police. Many were stopped in the street or taken from columns of internally displaced people fleeing to Albania or Macedonia. Others were taken into custody from their homes, or from the homes of relatives where they had sought refuge. Some of these arrests were reportedly accompanied by ill-treatment. Typically, men were separated from women, children and the elderly and marched or driven away. In

some cases the men were taken only a short distance before being killed, while in other cases they were taken to a police station or an improvised detention centre in Kosovo. Investigations have revealed that some of those detained were released, others were taken to prisons in Serbia and still others were killed in detention.¹⁴

Some others later found to have been killed in their homes are also considered to be the victims of enforced disappearances; their bodies were among at least 800 mortal remains which were removed from Kosovo by the Serbian police and transported to Serbia, where they were reburied in a massive cover-up operation.

The bodies of about a half of those ethnic Albanians believed in 1999 to have been the victims of enforced disappearances have subsequently been recovered. But in 2009 the fate and whereabouts of more than 1300 ethnic Albanians, who were last seen in the hands of Serbian forces, remains to be established.

ABDUCTION OF SERBS, ROMA AND MEMBERS OF OTHER MINORITY COMMUNITIES

The withdrawal of the VJ and Serbian police from Kosovo between June and July 1999 was accompanied by escalating human rights abuses on the part of armed groups of Kosovo Albanians. Serbs, Roma and members of other minority ethnic groups (and including some Kosovo Albanians perceived as associating with the Serbian authorities) were abducted or killed. Women were raped and houses burned. At the time Amnesty International expressed its concern about these human rights abuses and urged KFOR to do its utmost to protect all minority populations in Kosovo in keeping with its mandate "to create a safe and secure environment in Kosovo." In the absence of any law enforcement authority -- the Serbian police having departed with the VJ -- Amnesty International urged all states contributing to UNMIK to deploy civilian police trained in the relevant human rights standards, as a matter of urgency, to establish the rule of law and protect the human rights of the civilian population.¹⁵

By the end of August 1999, the majority of Kosovo Albanians who had fled or had been forcibly expelled to Albania and Macedonia by Serbian forces had returned to Kosovo. Many found that family members were either missing or dead, and that their homes had been deliberately damaged or destroyed by Serbian forces. Some of the human rights abuses against members of minority communities may have been carried out by individuals or communities seeking revenge on their former neighbours; the evidence also suggests that armed Kosovo Albanian groups systematically targeted members of the Serbian and Romani communities after June 1999.

The Serbian government took the official position of encouraging Serbs to stay in Kosovo, but thousands of Serbs had left Kosovo and moved into Serbia even before the Serbian police and VJ had fully withdrawn. By the end of August 1999, more than 230,000 Serbs and other minorities had left Kosovo.¹⁶ Many of those who remained moved to the northern municipalities or into mono-ethnic enclaves within Kosovo.

THE FAILURE TO PROTECT

Many of the Serbs who stayed in Kosovo after the VJ and Serbian police departed did so because they believed KFOR and UNMIK would protect them. Many of them were abducted

or killed under the eyes of KFOR.

Andrija Tomanović remained in the capital Pristina, continuing to work as a surgeon at Pristina Hospital, where he had worked for 36 years. He was abducted outside the hospital on 24 June 1999 by a group of men who dragged him into a car and drove off. He has not been seen since. His wife told Amnesty International: *“My husband was devoted to saving lives, no matter what their nationality or religion. He was a great man and I am proud of him: a humanist, a surgeon, a member of the medical association. He stayed to carry on; he believed that [UNSC] Resolution 1244 meant something”*.¹⁷

In September 1999, the UN Special Rapporteur for Bosnia and Herzegovina, Croatia and the FRY stated: “In a law and order vacuum, human rights violations in Kosovo have occurred with virtual impunity, despite efforts of UNMIK to establish a temporary judiciary. Killings, abductions, destruction of property, particularly the burning of houses, and continued displacements of non-Albanians and ‘politically suspect’ Kosovo Albanians reflect the failure of the international community to place the territory under control, secure the peace, and provide the basic services and protections of government.”¹⁸

Despite the responsibilities placed by the UNSC on UNMIK and KFOR to protect and promote human rights, attacks against members of minority communities continued on a daily basis after June 1999. Amnesty International reported in October 1999 that “an atmosphere of intolerance in Kosovo, characterized by intimidation, harassment and discrimination, has resulted in severe restrictions on freedom of movement and impeded access to primary services, such as health care and education, for many minority communities... Victims of such abuses are frequently the elderly or ill, who are unable or unwilling to leave their homes.”¹⁹

The number of those killed or believed to have been abducted by Kosovo Albanians in the aftermath of the armed conflict in Kosovo remained contentious, with a considerable disparity between figures quoted by different authorities. UNMIK reportedly stated in September 1999 that around 170 Serbs had been killed in the three months since June 1999, but the FRY Minister of Foreign Affairs, Zivadin Jovanović, in a press conference held in New York on 28 September, put the number as high as 400.²⁰ KFOR reported on 10 December 1999 that 414 individuals had been murdered since the end of June 1999—150 ethnic Albanians, 140 Serbs and 124 people of unknown ethnicity.²¹

Although the incidence of abductions and killings decreased in line with the departure and displacement of minority populations, abductions continued to be reported until at least 2000. In total an estimated 800 Serbs, Roma, Ashkalia, Bosniaks and members of other minority communities were abducted in Kosovo.²²

Marijan Melonaši was a journalist with the Serbian department of Radio Television Kosovo (RTK). Of mixed Serbian and Albanian ethnicity, he also worked for the multi-ethnic Radio Kontakt. He was last seen leaving the RTK office in Pristina just after 2pm on 9 September 2000. He had just completed his daily half-hour Serbian language programme. According to a shopkeeper across the road, he got into an orange taxi in Mother Theresa Street, the main street in Pristina. Colleagues and friends suspected that he was abducted for speaking Serbian in public in Pristina. According to his mother, *“He was 24 years old, he was born there, he lived there and he wanted to stay there.”*²³ His grandfather, with whom Marijan Melonaši lived, made immediate efforts to find him. He contacted the Kosovo Police Service (KPS) and UNMIK police and met with

Hashim Thaçi, then a member of the Interim Administrative Council, and Bernard Kouchner, the Special Representative of the UN Secretary General (SRSG) who was then head of UNMIK. International journalists' organizations also made appeals to the authorities to find him. Marijan Melonaši has not been seen since September 2000, his body has never been discovered; no one has been brought to justice.

Amnesty International considers that the international community was woefully unprepared to recognize the potential for, and to take measures to address, the human rights abuses of minorities that followed the end of the armed conflict.²⁴

2. A CONTINUING VIOLATION OF HUMAN RIGHTS

INTERNATIONAL HUMAN RIGHTS LAW

Amnesty International considers that an enforced disappearance has occurred whenever there are reasonable grounds to believe that

- a person has been deprived of their liberty (including by arrest, detention or abduction)
- this has been undertaken by state agents or with the consent, acquiescence, authorization or support of the state,
- and thereafter the authorities deny that the victim is in custody, or conceal or refuse to disclose information about the person's whereabouts or fate, placing the person outside the protection of the law.²⁵

In cases where a person or persons have been deprived of their liberty by non-state actors (including armed groups) the organization considers them to have been abducted.

Enforced disappearances and abductions are crimes in all circumstances. Under international law, the acts constituting enforced disappearances are considered as a continuing offence as long as those responsible continue to conceal the fate and whereabouts of the individual and the facts remain unclarified.²⁶

Under international human rights law, an enforced disappearance is a grave violation of, *inter alia*, the right to recognition as a person before the law, the right to liberty and security of person, and the prohibition against torture and other cruel, inhuman or degrading treatment or punishment guaranteed under Articles 16, 9 and 7 of the International Covenant on Civil and Political Rights (ICCPR) and Articles 5 and 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Enforced disappearances constitute a grave threat to a person's physical integrity and frequently result in unlawful killing, in violation of the right to life (guaranteed under Article 6 of the ICCPR and Article 2 of the ECHR). They also violate the right of the victim and their family to respect for family life (Article 17 of the ICCPR and Article 8 of the ECHR). As enforced disappearances can violate several human rights simultaneously, they have been referred to as "multiple" or "cumulative" human rights violations.

At the time of the conflict in 1988-9 the FRY (which included Serbia and Kosovo) was a state party to the ICCPR. Serbia and Montenegro did not become party to the ECHR until April 2004.²⁷ In Kosovo the ECHR was defined as part of applicable law after June 1999.²⁸

When they are carried out in the context of an armed conflict, such as in Kosovo, enforced

disappearances and abductions also violate international humanitarian law (governing armed conflict) which applies concurrently with international human rights law. They violate or frequently result in violations of the prohibitions set out in international humanitarian law of violence to life and person, including torture and other cruel treatment, murder, and other rights of persons deprived of their liberty.²⁹

Amnesty International considers that the enforced disappearances and abductions carried out in the context of the armed conflict in Kosovo constituted war crimes. Under international law, the widespread or systematic practice of enforced disappearance or abduction directed against any civilian population, with knowledge of the attack constitutes a crime against humanity.³⁰

The Statute of the International Criminal Tribunal for the former Yugoslavia (Tribunal) does not expressly include the specific crime of enforced disappearance but grants the Tribunal jurisdiction to prosecute crimes which are constituent acts of enforced disappearance and abduction, including: under Article 2 as grave breaches of the Geneva Conventions (war crimes): unlawful confinement of a civilian; torture or inhuman treatment; wilful killing of a protected person; under Article 5, as crimes against humanity when committed in an armed conflict against any civilian population: murder, torture, other inhumane acts, imprisonment; and under Article 3: violations of the laws and customs of war.

Thus, in cases of enforced disappearances of ethnic Albanians the Tribunal has indicted and convicted FRY and Serbian officials for crimes against humanity and violation of the laws and customs of war.³¹ Kosovo Albanians charged with the abduction of Serbs, Roma and other Albanians have been indicted by the Tribunal for crimes against humanity and violations of the laws and customs of war, on counts including imprisonment, cruel treatment and murder. These cases are discussed in section 4, below.³²

Applicable laws in Serbia and Kosovo did not expressly criminalize enforced disappearance, but criminalized the constituent acts. In Serbian courts charges related to enforced disappearances and abductions (by ethnic Albanians) have included: killings, attacks against the civilian population resulting in death, torture, inhuman treatment, infliction of bodily injuries, rape, illegal detention and deprivation of the right to a fair and impartial trial.³³ In the Kosovo courts, charges related to abductions have included murder, kidnapping, and “terrorism”.³⁴

The authorities have a duty to promptly initiate independent, impartial and thorough investigations into allegations of enforced disappearance and abduction or whenever they have reasonable grounds to believe that either has taken place.³⁵ The purpose of the investigation is to secure the effective implementation of the laws which protect the right to liberty and security of the person, the prohibition against torture and the right to life, and to ensure the accountability of those responsible for violations of such rights. The investigation must be effective in the sense that it is capable of leading to the identification and punishment of those responsible.³⁶

International standards also require that the authorities take measures, when necessary, to ensure that the complainant, witnesses, and relatives as well as those participating in the investigation and lawyers are protected against reprisals and intimidation as a consequence

of the complaint or any evidence given.³⁷

The duties to investigate and prosecute are set out in the International Convention for the Protection of All Persons from Enforced Disappearance.*

Article 3: Each State Party shall take appropriate measures to investigate acts defined in Article 2 [see definition, above] committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice.

Article 12 (1): Each State Party shall ensure that any individual who alleges that a person has been subjected to enforced disappearance has the right to report the facts to the competent authorities, which shall examine the allegation promptly and impartially and, where necessary, undertake without delay a thorough and impartial investigation. . . . (2). Where there are reasonable grounds for believing that a person has been subjected to enforced disappearance, the authorities referred to in paragraph 1 of this article shall undertake an investigation, even if there has been no formal complaint.

Article 9 (1): Each State Party shall take the necessary measures to establish its competence to exercise jurisdiction over the offence of enforced disappearance: (a) When the offence is committed in any territory under its jurisdiction . . . (b) When the alleged offender is one of its nationals.

* Serbia signed the Convention on 6 February 2007, but has yet to ratify it.

The failure of the relevant authorities to conduct prompt, impartial independent and thorough investigations into reports of enforced disappearances and abductions in Kosovo and to bring those responsible to justice constitute violations of the rights to liberty and security of the person, to life and the prohibition against torture and other ill-treatment under the ICCPR and the ECHR, as well as the right to an effective remedy guaranteed (respectively) under Articles 9,6,7 and 2 of the ICCPR and Articles 5,2,3 and 13 of the ECHR.

THE RIGHTS OF THE RELATIVES

"It is us, all the friends and relatives; we are the victims of this crime". D. M., a Kosovo Serb woman whose 17-year-old son Ivan was abducted in Kosovo on 19 August 1999.

Article 24 of the International Convention on the Protection of All Persons from Enforced Disappearance defines victims as "the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance".

Article 8 of 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 states: "For purposes of the present document, victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term "victim" also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization".

Family members of the disappeared and abducted may also be considered victims, a fact

reflected in international law. Under international human rights law the surviving family members have a right to be informed of the progress and results of the investigation and the fate of the disappeared or abducted person.³⁸

Amnesty International considers that the failure of the authorities to inform family members of the fate and whereabouts of a person subjected to enforced disappearance, and the attitudes and reactions of the authorities and their failure to conduct prompt impartial independent and thorough investigations into cases of enforced disappearance and abductions can amount to a violation of family member's right not be subjected to inhuman or degrading treatment (under Article 7 of the ICCPR and Article 3 of the ECHR).

The European Court of Human Rights has ruled that a state's continued failure to investigate cases of persons missing following a military intervention, during which many persons were killed or taken prisoner and where the area was subsequently sealed off and became inaccessible to the relatives, resulted in a continuing violation of the prohibition against torture and other ill-treatment set out in Article 3 of the ECHR. The Court stated 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".³⁹

Furthermore, in accordance with international standards, the relatives of those disappeared and abducted in the context of the armed conflict in Kosovo, abuses which constitute respectively gross violations of international human rights law or serious violations of international humanitarian law, have the right to equal access to justice and adequate and effective reparation, which is proportionate to the gravity of the crimes committed and the harm suffered.

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 enumerate five forms of reparation: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.⁴⁰

As elaborated below, Amnesty International considers that the relevant authorities in Serbia and Kosovo have failed, in most cases, to abide by their obligations under international law to: ensure the effective investigation of the enforced disappearances and abductions that occurred during the conflict in Kosovo and its aftermath; bring to justice those responsible in fair proceedings and ensure adequate reparation for the relatives. This view has been shared *inter alia* by the Human Rights Committee, the independent body of experts which monitors the implementation of the ICCPR by States Parties.

SERBIA AND UNMIK'S FAILURE TO HONOUR THEIR INTERNATIONAL OBLIGATIONS

Following their examination in July 2004 of Serbia and Montenegro's implementation of its obligations under the ICCPR,⁴¹ the Human Rights Committee expressed concern about continuing impunity for war crimes, including in cases of enforced disappearances, and made strong recommendations to the state party:

9. The Committee is concerned at the persistence of impunity for serious human rights violations, both before and after the changes of October 2000. Although the Committee appreciates the declared policy of the State party to carry out investigations and to prosecute perpetrators of past human rights violations, it regrets the scarcity of serious investigations leading to prosecutions and sentences commensurate with the gravity of the crimes committed (arts. 2, 6, 7). **The State party is under an obligation to investigate fully all cases of alleged violations of human rights, in particular violations of articles 6 and 7 of the Covenant during the 1990s and to bring to trial those persons who are suspected of involvement in such violations. The State party should also ensure that victims and their families receive adequate compensation for violations. Persons alleged to have committed serious violations should be suspended from official duties during the investigation of allegations and, if found guilty, dismissed from public service in addition to any other punishment.**

10. While noting the effective work regarding exhumations and autopsies of some 700 bodies from mass graves in Batajnica, the Committee is concerned at the lack of progress in investigations and prosecutions of the perpetrators of those crimes (arts. 2, 6). **The State party should, along with the exhumation process, immediately commence investigations into apparent criminal acts entailing violations of the Covenant. The particular needs of the relatives of the missing and disappeared persons must equally be addressed by the State party, including the provision of adequate reparation.**⁴²

Similarly, in 2006 following its consideration of UNMIK's implementation of the ICCPR in Kosovo,⁴³ the Human Rights Committee expressed similar concern about UNMIK's failure to address impunity, including in "all cases of disappearances and abductions". The Human Rights Committee made the following observation and recommendations to UNMIK:

12. The committee is concerned about the continuing impunity enjoyed by some perpetrators of war crimes and crimes against humanity committed prior to UNMIK's mandate and about ethnically motivated crimes perpetrated since June 1999, including those committed in March 2004, as well as the failure to effectively investigate many of these crimes and bring perpetrators to justice. The Committee regrets the failure of UNMIK to fully cooperate with the International Criminal Tribunal for the Former Yugoslavia. (arts. 6, 7, 2(3))

UNMIK, in cooperation with the PISG, should investigate all outstanding cases of war crimes, crimes against humanity and ethnically motivated crimes committed before and after 1999, including where the perpetrators may have been Kosovo Albanians, ensure that the perpetrators of such crimes are brought to justice and that victims are adequately compensated. It should provide effective witness protection programmes, including by means of witness relocation, and extend full cooperation to ICTY prosecutors.

13. The Committee, while acknowledging the work done by the Office of Missing Persons and Forensics, is concerned that some 1,713 ethnic Albanians and 683 non-Albanians, including Serbs, Roma, Ashkali and Egyptians, continued to be reported as missing as of May 2006, that low priority has been given to investigations of disappearances and abductions by the Missing Persons Unit of the UNMIK police and, since 2003, by the Central Criminal Investigative Unit, and that in closed cases of disappearances and abductions perpetrators were rarely, if ever, prosecuted and brought to justice. (arts. 6, 7 and 2(3))

UNMIK, in cooperation with the PISG, should effectively investigate all outstanding cases of disappearances and abductions and bring perpetrators to justice. It should ensure that the relatives of disappeared and abducted persons have access to information about the fate of the victims, as well as to adequate compensation.⁴⁴

3. FINDING THE BODIES: EXHUMATIONS AND IDENTIFICATIONS

Amnesty International is concerned at the continued failure of the authorities in both Serbia and Kosovo to locate and make public the whereabouts of the bodies of over 1,900 persons listed as missing by the International Committee of the Red Cross (ICRC). These figures include persons subject to enforced disappearances, and abductions both during and in the aftermath of the armed conflict. The right of relatives to be informed of the fate and whereabouts of their family members who have suffered enforced disappearances and abductions is recognized in international human rights standards, and set out in the International Convention for the Protection of All Persons from Enforced Disappearance.

In cases of both enforced disappearances and abductions the authorities are obliged to effectively investigate all credible reports received of such crimes. Amnesty International considers the failure to locate the mortal remains of the disappeared and abducted to be a serious obstacle to the investigation and prosecution of these crimes.

While some relatives may continue to hope that their missing loved one is still alive, in the overwhelming majority of cases the victims of enforced disappearances or abductions who are still missing may now be assumed to be dead. Thus the process of revealing the fate of any missing person begins with the exhumation and identification of their mortal remains. Yet, by April 2009, according to the ICRC, the mortal remains of some 1,911 persons, registered as missing following the conflict in Kosovo, remained unaccounted for.

For the families of the victims of enforced disappearances and abductions, the return of the body for burial is the first step towards achieving justice. From the perspective of some families, this may be the most important step.

This chapter identifies the authorities and institutions responsible for tracing persons reported missing after the armed conflict, for the location and exhumation of grave sites in Kosovo and Serbia proper, and for the subsequent identification of mortal remains. It shows how significant obstacles have arisen in securing evidence for the criminal investigation of cases due to the plethora of institutions receiving reports of missing persons, especially in the immediate aftermath of the war in Kosovo, as well as acts of deliberate concealment by the Serb authorities and the failure of all authorities to provide investigators with evidence. The chapter also shows how the continued lack of certainty about the numbers of persons reported missing or exhumed, and issues related to identification, has delayed the return of the mortal remains of disappeared and abducted persons to their relatives.

THE ROLE OF THE ICRC

The ICRC's responsibility for tracing persons missing after armed conflict is based in provisions of Article 26 of the Fourth Geneva Convention and Article 33 (3) of Protocol I to

the Geneva Conventions relating to international armed conflict, which empower the ICRC to inquire into the whereabouts of missing persons.⁴⁵

The ICRC in Kosovo, as elsewhere in the region, systematically collects tracing requests provided by families of missing persons, along with ante-mortem data, including the date of the person's enforced disappearance or abduction. This information is then submitted to the relevant authorities on behalf of the families. According to the ICRC, the authorities have a legal responsibility to provide information on the whereabouts of the missing person.

In the immediate aftermath of war, the number of missing persons from Kosovo originally registered with the ICRC was around 5,165. In total 6001 tracing requests were opened by the ICRC. Some of the missing have since been found alive, including around 1,400 Kosovo Albanians who had been held by Serbian forces in Kosovo between the end of March and the beginning of June 1999 before being transferred to prisons in Serbia. By 2001 the majority of these detainees had been released.

In May 2000 the ICRC published the first edition of the *Book of the Missing*, which listed some 3,525 persons who remained unaccounted for, including around 300 non-Albanians.⁴⁶ In April 2001, after the ICRC had received further reports, the number of non-Albanians registered as abducted had increased to 500.⁴⁷

A CONFUSION OF AUTHORITY

Testimony of Nesrete Kumnova, whose son Albion, aged 21, was taken by Serbian police from his mother's house in Đakovica/Gakovë, along with five others, on 31 March 1999.

"I saw a Serbian police car passing by. I raised my hand and stepped in front of the car, as M.M. was inside that car. She said 'Is that you Nesrete?' I told her that my son and five other men were abducted. She asked who took them away and I replied that the Serbian police did. She asked me if I had any of my son's documents so she could check whether he was involved in anything, so I gave her his ID. The next day I went with my sister to meet M.M. and asked to see M.M. She did not dare to show me Albion's ID in front of [another police official], but she took me into the yard and said, 'Your son is absolutely clean, but maybe he has been sent somewhere in Albania.' I said he does not have any money with him, so he cannot go to Albania. Then she said he does not need money to go there, but perhaps he might have been sent to Peja. I asked her if she knew anyone in Peja who could give her information and she answered, 'No, now is a state of war and nobody travels.' Every day we went to ask for any news of our sons. We thought the Serbian policemen would tell us something, as I knew all the Serbs who lived in Đakovica at that time and we never thought that local Serbs would commit such crimes against us. Later I met M.M. again and asked if there was any news. She said, 'No, I am sorry.' And then she added, 'You will come to know your son's fate in a year or two, because that's how it goes in wartime.'" Albion's body has never been found.

The Serbian police were the only authority to whom Kosovo Albanians could report enforced disappearances up until 10 June 1999 when UNMIK took over responsibility for the administration of Kosovo. However, in the immediate aftermath of the war UNMIK was unable to establish a rule of law across Kosovo, and until November 1999 had insufficient police officers to establish a law enforcement body to investigate reports of enforced disappearances and the continuing abductions of Serbs, Roma and other minorities.⁴⁸ In the absence of a police force, many family members reported these crimes to KFOR, who were also involved in the recovery and reburial of bodies.⁴⁹ It is not known how much of the

information received from family members, or evidence recovered with bodies found by KFOR was informally handed over to UNMIK but, at the time of writing, KFOR archives relating to such reports had not been made available to investigators in Serbia or Kosovo.

"It was in July. There were three of them. They had black trousers, black T-shirts and baseball caps, and they came in a beige colour Mercedes. [Another] two stayed in the street. My mother took the registration number of the car. They said that they had come to take my brother and my father for an informative interview; they had not been drafted. My father had broken his leg and was using crutches; they had not been in the war. They said they were taking them for 15 minutes. Immediately I went to report what had happened to German KFOR. They were less than 30 minutes away. I told them what the men were wearing and described the car. KFOR asked me to bring pictures. I carried on going to KFOR for six months, and then I went to live in Belgrade. Then I told the ICRC." R.D., from Prizren, now living in Belgrade, speaking about the abduction of her father and brother in July 1999. Their bodies were exhumed in 2004 and 2005 (see box, p.18-19).

While the ICRC retained overall responsibility for documenting reports by families unable to trace their relatives, in the years immediately following the conflict there was massive confusion over the number and identity of missing persons. In addition to the ICRC, reports of missing persons were both received and actively solicited by the UNMIK Bureau for Detainees and Missing Persons, the Victim Recovery and Identification Commission (VRIC) of the Organization for Security and Co-operation in Europe (OSCE), several international and local non governmental organizations (NGOs), as well as associations of relatives of the disappeared and abducted.

The plethora of agencies and lack of clarity about to whom reports of missing persons should be made, led to a massive delay in establishing the numbers and identities of missing persons, and a consequent delay in opening criminal investigations. In April 2002, the UNMIK Bureau for Detainees and Missing Persons was still in the process of compiling a Consolidated List of the Missing for Kosovo, comparing lists produced by different sources, including the ICRC. Initial drafts of a Consolidated List of Kosovo Albanians and one of Kosovo Serbs were then to be circulated for verification by family associations, and it was planned to make a Consolidated List publicly available in July 2002. As far as Amnesty International can establish the Consolidated List was not completed until some time between September 2002 and February 2003.⁵⁰ Based on this list, at the end of 2004 UNMIK's Office of Missing Persons and Forensics (OMPF) reported that some 3,192 persons remained unaccounted for. They included 2,460 Kosovo Albanians, 529 Kosovo Serbs and 203 members of other ethnic groups. By this time some 439 persons had been found alive, and 893 mortal remains had been returned to their families.⁵¹

Amnesty International considers that the failure of the UNMIK authorities until at least 2004 to accurately establish the numbers of victims of enforced disappearances and abductions created a substantial impediment to the process of exhumation and identification, and to the prompt initiation of criminal investigations.

EXHUMATIONS BY THE TRIBUNAL

From June 1999, exhumations were conducted by ad hoc teams of international forensic experts working for the International Criminal Tribunal for the former Yugoslavia (Tribunal), established by the UN Security Council in May 1993, which had jurisdiction over war crimes in Kosovo.⁵² The aim of these exhumations was to gather evidence for the prosecution of

members of the Serbian leadership who had been indicted in May 1999 by the Tribunal for war crimes in Kosovo.⁵³ Between June and November 1999 some 2,108 bodies were exhumed from 195 sites. According to Carla del Ponte, Chief Prosecutor to the Tribunal:

“This figure [2,108 bodies] does not necessarily reflect the total number of actual victims, because we discovered evidence of tampering with graves. [There was] a deliberate attempt on the part of the Serbian and Yugoslav government to destroy evidence and remove bodies. There are a significant number of sites where the precise number of bodies cannot be counted. In these places, steps were taken to hide the evidence. Many bodies have been burned, but at those sites the forensic evidence is nevertheless consistent with the accounts given by witnesses of the crimes.”⁵⁴

In a second phase conducted between April and November 2000 the Tribunal exhumed a further 1,557 bodies and 258 incomplete remains from 325 sites. On 17 July 2001, the Tribunal reported that it had exhumed a total of 4,392 bodies from 876 grave sites in Kosovo. Autopsies were conducted by the teams of forensic experts working for the Tribunal on 3,620 of these bodies, of which 2,099 were identified and reportedly returned to their families for burial. Approximately 1,500 unidentified bodies were then reburied in two UNMIK cemeteries and other municipal cemeteries for identifications “at a later date.”⁵⁵

Progress in finding and identifying the bodies which had been exhumed and subsequently reburied by the Tribunal’s teams of investigators was impeded for almost seven years by the refusal of the Tribunal to transfer documentation relating to its investigations to UNMIK.

In 2007 the SRSG for Kosovo reported to the UN Security Council that: *“In this process, 4,019 bodies were exhumed, out of which 2,001 were identified. Unidentified 2,018 bodies (sic) were later buried in unknown locations. The Hague Tribunal did not transfer to UNMIK, which has jurisdiction over these issues in the province, the documentation about exhumations, identifications and the locations of burial of unidentified persons. The Working Group for Missing Persons has twice asked The Hague Tribunal to deliver this documentation, without any success.”⁵⁶*

It was not until 2008, after negotiations between the Office of the Tribunal and the ICRC in its capacity as chair of the Working Group on Missing Persons, that documentation relating to exhumations, missing persons and possible grave sites gathered in 1999-2000 by investigators working for the Tribunal was received by the UNMIK Office for Missing Persons and Forensics (OMPF), see below, p.35.

Amnesty International is concerned that the failure of the Tribunal to provide UNMIK with detailed documentation of the locations of all unidentified bodies exhumed or otherwise located has delayed the identification process and caused additional distress to family members.

R.D., (see p.17), told Amnesty International in 2009 that her family did not receive the bodies of her father and brother until six years after their original discovery: *“I was told that my brother and father were found in October 1999. UK KFOR found them in a village called Novaki. My brother was found on the ground, headless; his head was cut off. They were not in graves. They were not identified. They were each placed in a body bag with a number and they were buried as Albanians.”*

"I then saw the [ICRC] book with the photo of my brother's coat, in 2003. My sister-in-law was given my brother's shoes and their clothes, which had been washed. We gave DNA in 2003 and then again in 2005. I gave the sample here [in Belgrade]; 10 members of the family gave samples. They gave us the results in 2005, and we buried them in 2005 in a village near Leskovac."

According to the OMPF, the bodies of Dragomir Dukanović and Jovica Dukanović were exhumed from the Shiroko cemetery in Suharekë/Suva Reka, where they had apparently been buried by investigators working for the Tribunal. Their bodies, along with 70 other mortal remains of other Serbs and Roma, were re-exhumed by the OMPF in November 2003.⁵⁷

CO-OPERATION BETWEEN SERBIA AND UNMIK

The International Convention on the Protection of all Persons from Enforced Disappearances requires states to "afford one another the greatest measure of mutual assistance ... in the event of death, in exhuming and identifying them and returning their remains."⁵⁸

On 5 November 2001, following pressure from Kosovo Serbs and the FRY and Serbian governments prior to the Kosovo assembly elections, UNMIK signed the UNMIK-FRY Common Document, which renewed the commitment on both sides to establish the fate of those who had been victims of enforced disappearances and abductions.⁵⁹ In February 2002, UNMIK and FRY signed three protocols⁶⁰ establishing collaboration between the parties on cross-boundary repatriation of identified remains, exchange of forensic expertise and joint verification teams on hidden prisons.⁶¹

With the establishment of a High Ranking Working Group, co-operation was achieved on the repatriation of mortal remains, yet there has been little subsequent co-operation on the exchange of information relating to the whereabouts of missing persons and location of grave sites. Information provided by Serbia on the mass graves in Serbia proper, discussed below, pre-dated this agreement.⁶²

In order to facilitate dialogue between the authorities, in October 2003 the ICRC established and has subsequently continued to facilitate, a Working Group on persons unaccounted for in relation to the events in Kosovo between January 1998 and December 2000. The ICRC Working Group is composed of members of the respective commissions on missing persons,⁶³ and representatives of associations of the families of missing persons attend as observers. However, little or no progress was made, as the International Commission on Missing Persons (ICMP) reported in 2006: "The sessions of the ICRC chaired *Working Group on Persons Who are Unaccounted for in Connection with the Events in Kosovo* underscore the reluctance of the former parties to the conflict to share information on persons unaccounted for and on the possible location of graves."⁶⁴

EXHUMATIONS BY THE UNMIK OMPF

Following the completion of exhumations by the Tribunal, the UNMIK Police Missing Persons Unit (MPU), established in February 2001, assumed responsibility for the identification of potential burial sites. The MPU was also responsible for seeking court orders authorizing exhumations and for conducting exhumations, along with forensic archeologists and/or anthropologists.⁶⁵ In April 2002, UNMIK reopened the forensic institute in Orahovac/Rahovec, which had served as the Tribunal's temporary mortuary facility, and in

May, Jose Pablo Barbayar was appointed to head the OMPF, which began operations in June 2002.⁶⁶

The OMPF was expected to conduct a “vigorous exhumation and identification programme” (as agreed in the UNMIK/FRY Common Document), under its mandate to “[determine] the fate of persons who disappeared (sic) as a result of the conflict and its aftermath.” This included the location of burial sites, and the excavation, exhumation, autopsy and identification of mortal remains, so that they might be returned to their families for re-burial.

At the end of 2004 the OMPF reported that since 2002 it had conducted 1,170 exhumations and 858 autopsies, stating: “Most of the bodies of alleged missing persons have been recovered. Though OMPF recognizes its responsibility to continue to search for human remains, the process must now focus on the identification of bodies already recovered.”⁶⁷ Yet, according to the OMPF’s own figures published in December 2004, some 3,192 persons, more than half of those reported as missing, were still unaccounted for. Many of their bodies, including some of those returned from Serbia, in 2004 remained awaiting identification in the dilapidated morgue at Orahovac/Rahovec. Overwhelmed by the numbers of bodies, under-resourced and with little political support, OMPF’s capacity to conduct further exhumations was limited.

The number of exhumations undertaken by the OMPF subsequently declined, their limited capacity compounded by the absence of evidence relating to the whereabouts of further burial sites. In 2005 OMPF exhumed 118 sets of human remains (representing both complete and incomplete bodies); 59 were exhumed in 2006, 73 in 2007 and 53 in 2008.⁶⁸

THE COVER-UP CONSPIRACY: KOSOVO ALBANIANS BURIED IN SERBIA

On 11 June 2001, the Serbian authorities invited the Tribunal to dispatch a forensics team to Belgrade to witness the exhumation of bodies of Kosovo Albanians from a refrigerator truck discovered in the Danube River.⁶⁹ According to the then Serbian Police Minister, Dušan Mihajlović, the truck contained 83 mostly mutilated bodies of ethnic Albanians and three heads without bodies. The truck had been dumped in the river in March 1999, and allegedly accidentally re-discovered in April 2001.

As already noted the Tribunal, and organizations including Human Rights Watch (HRW), had gathered evidence suggesting that burial sites in Kosovo had been tampered with in an effort to conceal the evidence. According to HRW this included “the removal of bodies, the re-interring of bodies from mass graves into individual graves, the burning of corpses, and the removal or exchange of clothing and personal effects in order to complicate the process of identification.”⁷⁰

In April 2001 the extent to which the Serbian authorities had “tampered” with graves, and their attempts to hide the evidence of war crimes, was about to be revealed.⁷¹ The bodies in the truck were just the tip of the iceberg. In total, the remains of at least 900 individuals have since been exhumed in Serbia, from mass or individual graves on Serbian Ministry of Interior land at Batajnica outside Belgrade, Petrovo Selo, and Bajina Bašta, where bodies recovered from Lake Perućac had been reburied in 1999.

They were all ethnic Albanians who had been killed in Kosovo. During April and May 1999, their bodies had been exhumed by Serbian Ministry of Interior employees, loaded into trucks and transported to Serbia, where they were reburied.

The exhumations conducted during 2001 and 2002 were headed by the Belgrade Institute of Forensic Medicine and assisted by members of the Tribunal Prosecution, the ICMP and the OMPF.⁷² Five separate mass graves were found at the former Ministry of Interior police training ground at Batajnica, each apparently representing a separate delivery of bodies from Kosovo. Autopsies conducted by the OMPF revealed that out of 535 bodies exhumed from Batajnica and Lake Perućac, 531 had died of gunshot wounds. A further 70 bodies were exhumed from two mass graves at Petrovo Selo. It was later determined that most of them were civilians, including seven females. Many had their wrists tied together and the majority had been shot.⁷³

Under an agreement with the OMPF the identity of over 90 per cent of these mortal remains was established through DNA matching (see p.24) by the ICMP before their repatriation to Kosovo. All were repatriated by summer 2006.⁷⁴

WHERE ARE THE MISSING BODIES? PART ONE

Amnesty International is concerned that not all burial sites have been exhumed. While according to the ICRC, a larger percentage of the remains of the victims of enforced disappearances relating to Kosovo have been recovered than elsewhere in the region,⁷⁵ this is little comfort for the relatives still waiting for the return of the bodies of their family members.

In 2006, the ICMP expressed concern “that UNMIK has virtually no more information on the possible location of additional mass or illicit grave sites on the territory of Kosovo. In addition, the Government of Serbia seems to have exhausted its search for additional mass or illicit graves in Serbia proper.”⁷⁶

In Kosovo, until December 2008, responsibility for the identification of burial sites lay with the UNMIK police. Amnesty International is concerned that UNMIK police faced serious difficulties in identifying the location of further sites.

According to Veljko Odalović of the Serbian Commission of Missing Persons, and as far as Amnesty International can establish, no information on the location of burial sites in Kosovo containing the bodies of Serbs, Roma and other minorities believed to have been abducted and killed (in the majority of cases after the end of the armed conflict), has ever been provided by former members of the KLA or by other witnesses. According to the ICRC, the culture of fear continues to be an obstacle to the location of burial sites in Kosovo.⁷⁷

It is also possible that burial sites in Serbia have not been fully investigated. For example, between 5 and 8 June 2007, excavations were conducted, in the presence of representatives from UNMIK, the ICRC, ICMP, OSCE and the then Provisional Institutions of Self-Government (PISG), at an abandoned quarry near Majdan (Raška municipality), within the administrative boundary line between Kosovo and Serbia. According to witness statements received by UNMIK, some 400 bodies re-exhumed from Kosovo were believed to have been dumped at the quarry on 2 June 1999. Although no such mass grave was found, questions

remain about where those bodies were buried.

On 23 December 2004 the Humanitarian Law Centre (HLC), based in Belgrade, published detailed allegations that the corpses of Kosovo Albanian civilians had been incinerated in a smelter at the Mačkatica aluminium complex near Surdulica, in southern Serbia, on 16 and 24 May 1999. The HLC reported that the alleged incinerations were part of the same large-scale operation as the burials in mass graves in Serbia proper, at Batajnica, Petrovo Selo and Bajina Bašta.⁷⁸

It is thought that other bodies are buried in countries bordering Kosovo, including Montenegro, where bodies of Kosovo Albanians who died after crossing the border are allegedly buried, or in Kukës in Albania (see also, The “Yellow House” p.38). In 2009 EULEX was reportedly trying to achieve more effective cross-border co-operation so that exhumations might be conducted.⁷⁹

In February 2009, the Albanian-language Macedonian daily newspaper, *Lajm*, reported that the Ministry of Foreign Affairs of Macedonia was ready to co-operate with Kosovo in investigations related to some 20 bodies of Kosovo Albanians allegedly buried in Butel cemetery in the capital Skopje. According to Prentk Getaj, Head of the Kosovo Commission for Missing Persons, it was suspected that the bodies of Kosovo Albanians had been thrown into the river Lepenc, a tributary of the river Vardar, which flows through Skopje.⁸⁰

In December 2008, in a meeting facilitated by the ICMP, associations of the families of missing persons from both Serbia and Kosovo, registered their “discontent with the results achieved in the process of tracing missing persons”. Among other proposals they recommended that the authorities “seek to obtain information during investigations on locations of grave sites and circumstances of disappearances principally while interviewing suspects or witnesses in cases of war crimes;” and “that additional mechanisms be created in order to collect information on the location of grave sites and that the competent institutions of countries in the region request financial support from European Union institutions to support the full functioning of these mechanisms”.⁸¹

IDENTIFICATION OF MORTAL REMAINS

Until 2001 exhumed bodies were identified by traditional means, usually when a family member recognized a person’s clothing or other personal belongings found with the body. Photographs of these items were published by the ICRC and OSCE in a series of “Books of Belongings”.⁸² Since 2001, under an agreement with UNMIK, the identification of mortal remains has been carried out by the ICMP, which by April 2009 had identified 2,174 individuals whose deaths related to the Kosovo conflict. The ICMP, based in Sarajevo in Bosnia and Herzegovina, analyzes the DNA in bone samples received from both the OMPF and the Serbian authorities, and then compares it with the DNA derived from blood samples taken from relatives of the missing. To date ICMP has collected 14,454 DNA samples from family members who have reported a total of 4,240 missing relatives.⁸³

Just as the number of exhumations has declined, so too has the number of successful identifications. In 2008, according to the ICRC only 60 cases were closed—59 of which were due to positive DNA identification and the other because one person, up to that time listed as missing, was located alive. In the same period the OMPF returned the bodies of 76

individuals, including the remains of nine non-Albanians, to their families.⁸⁴ In four cases of Romani individuals, the families could not be traced; it is possible they may be amongst the many Roma who fled Kosovo seeking protection in EU member states.

Under normal conditions a more than 99 per cent correlation across several variables is required to ensure an accurate identification of a body. This threshold has been lowered to 70 per cent in some 60 cases in order to address in part the issue of the 437 unidentified bodies (see below) and other problematic cases. The results will then be compared with available ante- and post-mortem evidence.

Further identification techniques are being developed for use in cases where there is insufficient bone mass to provide the size of DNA sample normally required for testing. One new technique, in which tests may be made on just 100mg of bone, may assist in identifications of young children, or of bodies that have been burned, where the organic content of the remaining bone fragments is too low for normal methods of DNA sampling.⁸⁵

In several cases the remains of some individuals cannot and may not ever be identified.

THE RIGHT TO KNOW: ALBION KUMNOVA - WHERE IS HIS BODY?

"Nineteen times I waited at the border: all the others [arrested with Albion] came back on 3 September 2001, except Albion. [Their bodies] were all excavated and identified in Perućac cemetery, except Albion. The [Working Group] told me that the cemetery is completely empty, and no one remained there. The other [unidentified] bodies are in OMPF, so where is my son Albion? It is a shame on our institutions. Their obligations are that they should care for us. They have a duty to care for missing persons. There is no harmony in our families, our souls are never quiet. If I would know where my son is, and [was able] to bury him, and put a flower on his grave, I would be in a better place."

Nesrete Kumnova has repeatedly protested against the failure of the authorities to find the remains, not only of her son Albion but also of the other remaining victims of enforced disappearance. On 8 March 2009 she led a protest of the NGO, Mothers' Cries, some of whose members went on hunger strike outside the mortuary at the OMPF where she believes the unidentified bones of her son continue to be held.⁸⁶

In a TV interview she stated: *"I have decided to continue the [hunger] strike till the government and the organizations working on the missing persons sign an agreement stating that all the remains available, even the small pieces of these body remains should be sent immediately to Bosnia to be analyzed. They should be identified and returned to their families."*

A representative of the Office of Forensic Medicine, also interviewed for the same programme, stated: *"As soon as the bodies are identified we will return them to their families, we are not interested in keeping them, even though in most cases (bodies coming from Belgrade), including this specific one, taking into consideration the respect we have for Mrs Nesrete Kumnova and the protest held last summer, there isn't a match. We have submitted blood samples a dozen times, but the real problem is that these [bone] samples do not match with the blood donors."*⁸⁷

WHERE ARE THE MISSING BODIES? PART TWO

At the end of 2008 mortal remains, representing a minimum of 437 individuals, held in the OMPF morgue in Pristina, were still unidentified. Some 395 were exhumed in Kosovo and 42 were among those returned from Serbia proper. None can be matched with blood samples donated by relatives. There are a number of possible reasons for this. For example, some remains cannot be identified by conventional DNA analysis; in other cases the reason for non-identification may lie in the fact that their relatives have never provided blood samples, as they believe that they have already buried the body of their family member.

Evidence has recently emerged to suggest that an unknown number of families may have wrongly identified bodies they believed to be those of their relatives, or were given the wrong body by the Tribunal. As noted above, the Tribunal reportedly exhumed as many as 4,000 bodies in order to gather evidence of the war crimes committed by the FRY military and Serb police and paramilitary forces. Some of these bodies were identified by traditional means, some only on the basis of a visual identification before being taken by or returned to families for burial.

It now appears that some of these bodies may have been misidentified. On 6 April 2009, in a media interview, Dr. Arsim Gerxhaliu, Director of the OMPF, stated: "We have 2,019 cases in which families buried bodies based only on visual identification. You can imagine the potential for mistakes! We had to convince some families they had buried the wrong person, because their relative's body was later recovered elsewhere."⁸⁸

In 2000, for example, a family reportedly went to a graveyard in the village of Rakoš/Rakosh where the Serbian authorities in May 1999 had buried the bodies of men killed at Dubrava prison. There they allegedly removed a body wearing the same brand of jeans worn by their son. The father told the HLC: "We are not very sure that it is our son, but, yes we took the body." UNMIK also reported in 2001 that families were visiting grave sites in the Mitrovica region and "performing illegal exhumations".⁸⁹

For the vast majority of families of those abducted and subjected to enforced disappearances on both sides of the conflict, the possibility that they have buried the wrong person is a source of great stress and anxiety. For the authorities it is a matter that has to be addressed with the greatest tact and sensitivity.

During 2008, in co-operation with both the Serbia and Kosovo Commissions for Missing Persons, a limited number of test exhumations were conducted at the request of family members who wished to confirm whether the person they had buried was indeed a member of their family. Sixty trial exhumations were carried out in south Mitrovica/ë at the request of the local family association, of which six of the bodies exhumed had been incorrectly identified. A further 100 families have requested re-exhumations.⁹⁰

THE RIGHT TO KNOW: DAKA ASANI - HOW DID HE DIE?

In December 2006, the body of Daka Asani, a Romani man, was returned to his family for burial. His son had least seen Daka Asani while they were both shopping in the market in Uroševac/Ferizaj on 1 August 1999. His was one of 176 bodies exhumed in 2000 by the Tribunal from a cemetery at Dragodan in Pristina.

According to OMPF identification documents provided to the family, the body of Daka Asani had been found in a single grave. The date of an autopsy on his body was given as 22 June 2000. Yet by 19 August 1999 the family had notified the ICRC and registered him as missing, so why was Daka Asani's body not identified returned to his family until 2006?⁹¹

An independent expert who was present during the exhumations in 2000 told Amnesty International, "ICTY took the position (unethical in my view) that it had no responsibility for identifications and, as a consequence, some of the lower levels (organizationally and intellectually) had an attitude of not really taking any interest in identifications when a little effort would have made a big difference in some cases."⁹²

According to the death certificate issued to the family by OMPF in 2006, Daka Asani had died from "multiple gunshot wounds to the head and trunk." The family have never received a full autopsy report detailing the cause and manner of his death. They told Amnesty International that they wanted to know if Daka Asani had been executed, whether the wounds were at the front or the back of the body or whether the shots had been fired from a close range.⁹³ According to the independent expert quoted above, "There will definitely be an autopsy report held by the ICTY [Tribunal] ... the autopsy was likely performed by the UK team."⁹⁴

In June and August 2007, Skender Asani, the son of Daka Asani, wrote to the KPS to request an investigation into the murder of his father. Amnesty International also passed on information received from the family, including copies of all relevant documentation, to the UNMIK Police War Crimes Unit (WCU). In August 2008, however, the WCU informed Amnesty International that no criminal report had ever been received in his case.

CONTINUING EXHUMATIONS

On 9 December 2008 a European Rule of Law Mission in Kosovo (EULEX) took over responsibility from UNMIK for the investigation and prosecution of war crimes and other serious crimes.⁹⁵ The OMPF was transferred from UNMIK to the EULEX Justice Component.

By April 2009 EULEX has reported that, despite a break in January and February 2009 due to bad weather conditions, the OMPF had conducted 12 exhumations resulting in the excavation of 11 bodies, and had assessed a further six potential exhumation sites. In addition, EULEX OMPF planned to start an intensive campaign of the re-exhumation of remains buried without proper identification in 1999.

Significantly, work began on the analysis of the documentation relating to exhumations, potential grave sites and missing persons which had been received from the Tribunal by UNMIK in 2008 (above, p 19.) and subsequently transferred to EULEX. As a result, "New potential sites have been identified and will be investigated further in close co-operation with the War Crimes Investigation Unit (WCIU)."⁹⁶

Amnesty International urges EULEX to ensure that the OMPF and WCIU are provided with all the human, technical and financial resources necessary to complete this task.

4: INVESTIGATIONS AND PROSECUTIONS

"We have been cheated by everyone. There is no justice for us, including from Milošević who said we would be protected. Everybody who has stepped on this land has stopped us from getting justice. We are just ordinary people who wanted to stay, with a clear conscience as we had done no harm to anyone. We thought the international forces were there to protect us. We did nothing; we wanted peace."

Kosovo Serb mother, whose son was abducted in Kosovo in 1999 and remains unaccounted for, Amnesty International interview, February 2009.

Under international law applicable in both Serbia and Kosovo, the authorities are required to open prompt, independent, impartial and thorough criminal investigations into all reports of enforced disappearance and abductions. In addition, the authorities should bring to justice in fair proceedings all persons responsible for enforced disappearances and abductions. This should include not only those who carried out the acts. It should also include those who ordered such acts and those with superior responsibility who failed to exercise effective control over those under their authority who committed such acts, or who failed to submit the matter to the competent authorities for investigation and prosecution.

Amnesty International considers that since June 1999 neither Serbian police and prosecutors nor international police and prosecutors in Kosovo, who are charged with the investigation of war crimes, have initiated prompt, independent, impartial and thorough investigations into all reports of enforced disappearances and abductions.

As a result, very few of those responsible for the war crimes and inter-ethnic crimes in Kosovo during and after the armed conflict have been brought to justice in international or domestic courts, and a climate of virtual impunity persists.

This chapter identifies the authorities and institutions responsible for carrying out the criminal investigations and prosecutions; reviews the progress to date and identifies some of the primary obstacles towards ending impunity.

PROSECUTIONS BY THE TRIBUNAL

The International Criminal Tribunal for the former Yugoslavia has jurisdiction to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia (including Kosovo) since 1991. The Statute of the Tribunal granted jurisdiction over the constituent acts of enforced disappearance and abduction rather than these two specific crimes. Hence those indicted in relation to enforced disappearances and abductions were charged with war crimes (grave breaches of the Geneva Conventions), or crimes against humanity.

PROSECUTIONS OF SERBS FOR ENFORCED DISAPPEARANCES

In May 1999, while the war was still in progress, the Tribunal made public an indictment against the then Federal President of the FRY, Slobodan Milošević, along with five others, for war crimes and crimes against humanity in Kosovo.⁹⁷ On 5 September 2002, the Trial Chamber separated proceedings against Slobodan Milošević, also indicted for genocide on charges relating to the wars in Bosnia and Herzegovina and Croatia, from proceedings against the other five co-indicted. Slobodan Milošević was indicted for Kosovo on, amongst other charges, the “[M]urder of hundreds of Kosovo Albanian civilians – men, women, and children, which occurred in a widespread or systematic manner throughout the province of Kosovo”. Proceedings began in February 2002, and were terminated after his death in detention on 11 March 2006.

Proceedings started in July 2006 against six senior political, police and military officials indicted for crimes against humanity and violations of the laws and customs of war.⁹⁸ Former Serbian Deputy President, Milan Milutinović; former Deputy Prime Minister, Nikola Šainović; former General Chief of Staff (later Minister of Defence), Dragoljub Odžanić; former Police Colonel General, Sreten Lukić (later Assistant Interior Minister); and former Yugoslav Army Colonel Generals, Nebojša Pavković and Vladimir Lazarević, were jointly charged with crimes against humanity and grave violations of the Geneva Convention. Their co-indictee, former Police Colonel General, Vlastimir Đorđević, remained at large until 17 June 2007 when he was arrested in Montenegro, in co-operation with the Serbian authorities.

Charges in this case, among others, related to the removal of the bodies of Kosovo Albanians from Kosovo to Serbia in April and May 1999. In February 2009 the Tribunal acquitted Milan Milutinović, but convicted the five others of joint criminal enterprise in crimes against humanity and war crimes, including the forcible deportation and murder of thousands of ethnic Albanians during the conflict in Kosovo. Nikola Šainović, Nebojša Pavković and Sreten Lukić were convicted of deportation, other inhumane acts (forcible transfer), murder and persecutions (including rape) on political, racial or religious grounds and each was sentenced to 22 years’ imprisonment. Dragoljub Ojdanić and Vladimir Lazarević were convicted of deportation and other inhumane acts and sentenced to 15 years’ imprisonment.

In its judgment the Tribunal concluded: “[T]here can be no doubt that a clandestine operation involving the exhumation of over 700 bodies originally buried in Kosovo and their transportation to Serbia proper took place during the NATO bombing.” It stated that the “main personalities involved in organising this large-scale operation were the Minister of Interior, Vlastimir Đorđević; the President of the FRY, Slobodan Milošević; and the Head of the [Public Security Department] RJB at the time, Vlastimir Đorđević.” However, despite its conclusion that the evidence was “very damning of the MUP [Serbian Ministry of Interior] and many of its employees,” the Tribunal did not conclude that any of the five, including Sreten Lukić, was directly responsible for the transportation and concealment of bodies in Serbia.⁹⁹

Trial proceedings against Vlastimir Đorđević opened at the Tribunal on 27 January 2009. As the former Assistant Minister of the MUP and Chief of the Public Security Department (RJB) he had been responsible for all RJB units in Kosovo between 1 January and 20 June 1999. Vlastimir Đorđević was indicted, in relation to the enforced disappearance of ethnic Albanians, for individual and joint responsibility for his participation in “the joint criminal

enterprise... [including that] ...[t]ogether with [Vlajko] Stojiljković¹⁰⁰ and others, he took a lead role in the planning, instigating, ordering and implementation of the programme of concealment by members of the RJB and subordinated units of the crime of murder, in coordination with persons in the RDB [state security] and in the VJ.”¹⁰¹ The proceedings against him remained pending in May 2009.

PROSECUTIONS OF ETHNIC ALBANIANS FOR ABDUCTIONS

The Tribunal issued two public indictments against Kosovo Albanians. The first was on 24 January 2003, when Fatmir Limaj, Haradin Bala and Isak Musliu, members of the KLA, were publicly indicted for crimes against humanity and war crimes. They were charged in connection with the abduction, detention and murder of at least 35 civilians, including Serbs, Roma and ethnic Albanians, during the armed conflict in 1998. Twelve of the victims were killed between 24 June 1998 and 26 July 1998 at the Lapušnik/Llapushnik Prison Camp, and 10 were killed in or around the Beriša/Berisha mountains near the camp. Haradin Bala was convicted of torture, cruel treatment and murder and sentenced to 13 years' imprisonment on 27 September 2007. Fatmir Limaj and Isak Musliu were acquitted.¹⁰²

The Tribunal considered that there was insufficient evidence to prove that each individual known to have been abducted and detained at the Lapušnik/Llapushnik Prison Camp was murdered there. For example, Slobodan Mitrović was last seen on 24 June 1998, and was known to have been held at Lapušnik/Llapushnik. During the trial his wife testified that she had not seen her husband since his disappearance and was confident that he has been killed. He remains listed by the ICRC as a missing person.¹⁰³ However, while the Tribunal Chamber found sufficient evidence to establish that Slobodan Mitrović had been detained at the camp, they concluded that the “evidence does not provide sufficient certainty as to the circumstances of his possible death so as to establish the elements of the offence of murder as charged.”¹⁰⁴

The second public indictment against Kosovo Albanians was issued by the Tribunal in March 2005, and again involved allegations of abductions. It charged Ramush Haradinaj, former KLA commander and subsequently prime minister of Kosovo, Idriz Balaj, a former unit commander, and Lahi Brahimaj, a member of the KLA general staff, with crimes against humanity and war crimes.¹⁰⁵ The indictment alleged that they were joint criminal participants in the unlawful removal and cruel treatment, torture, rape and murder of up to 60 Albanians, Serbs, Roma and Egyptian civilians abducted by the KLA and imprisoned at the KLA's Jablanica compound in 1998. In April 2008 the Trial Chamber acquitted all the accused of crimes against humanity, finding insufficient evidence to conclude there was an attack on the civilian population. Lahi Brahimaj was convicted for war crimes for the cruel treatment and torture of two witnesses and sentenced to six years' imprisonment. Ramush Haradinaj and Idriz Balaj were acquitted of the charges. An appeal by the prosecution remains pending at the Appeals Chamber.

No further indictments were issued by the Tribunal in relation to the enforced disappearances and abductions committed in the context of the conflict in Kosovo and its aftermath. The Tribunal's Chief Prosecutor had in 1999 stated that the Tribunal had “neither the mandate nor the resources to function as a primary investigative and prosecutorial agency for all criminal acts committed in Kosovo.”¹⁰⁶

CRIMINAL INVESTIGATIONS AND PROSECUTIONS IN SERBIA

The authorities have an obligation to initiate a prompt, independent, thorough and impartial investigation and to ensure a remedy in cases of enforced disappearances and abductions. This is inherent in their obligations under the ICCPR and ECHR to afford redress and to respect and protect the right to liberty and security of the person, the prohibition of torture and other ill-treatment, and the right to life.

Amnesty International considers that primary responsibility for investigation of cases of the enforced disappearances of ethnic Albanians by Serbian police and paramilitary forces or by the VJ, lies with the Serbian authorities. This is so as, among other things, they would have ready access to the relevant information about these crimes.

Amnesty International considers that up until at least 2003 the Serbian authorities largely failed to meet these obligations. Indeed, not only were they reluctant to open such investigations but they continued to foster a climate of impunity for war crimes, including the ongoing cover-up of some of the most egregious war crimes committed by the Serbian authorities, including the removal of bodies from Kosovo to Serbia (see p.20 and p.43-4). As a result only a few prosecutions, including by military courts, took place.¹⁰⁷

In July 2003 the Serbian Assembly adopted legislation establishing the Office of the War Crimes Prosecutor (OWCP) and creating the Special War Crimes Chamber (WCC) at Belgrade District Court. The law also established a War Crimes Investigation Service (WCIS) within the Ministry of Interior to act upon requests from the OWCP. Since the establishment of these institutions, some significant progress has been made in the prosecution of war crimes perpetrated by FRY and Serbian forces in BiH, Croatia and Kosovo, although the number of completed prosecutions remains low.

In the absence of a provision specifically criminalizing the offence of enforced disappearances in the Serbian Criminal Code that was in force during 1999, prosecutions related to enforced disappearances have been brought under provisions covering war crimes. These include some of the acts that characterize an enforced disappearance: abduction, unlawful detention, torture and murder.

Since the establishment of the WCC in the Belgrade District Court, investigations by the Chief War Crimes Prosecutor have resulted in three proceedings relating to enforced disappearances in Kosovo.

On 24 April 2009, four members of the Serbian police were convicted and sentenced for the murder of 48 members of the Berisha family and Abdullah Elshani, in Suva Reka/Suharekë, Kosovo, in March 1999. Their bodies had first been buried in military ranges in Prizren, Kosovo. Some, but not all, of the bodies, still bearing their identity cards, were transported to Batajnica in Serbia proper. They were among the first bodies exhumed to be identified. Proceedings opened on 2 October 2006. It was the first case to involve high-ranking police officers and in which, with the assistance of the HLC, some of the surviving children testified in court.¹⁰⁸

Radojko Repanović, the former commander at the Suva Reka police station, and police officer Slađan Čukarić were convicted and sentenced to 20 years' imprisonment. Reserve

policeman Miroslav Petković was sentenced to 15 years and former State Security Inspector, Milorad Nišavić, to 13 years. However, the court acquitted Radoslav Mitrović, former commandant of the 37th Serbian Special Police (PJP) Battalion, and Zoran Petković, assistant commander of the Suva Reka police station and a reserve police officer, of criminal responsibility for the murder.

In August 2006, Sreten Popović and Miloš Stojanović, former commanding officers of the Operational Pursuit Group of the PJP, were indicted for having “deprived their victims of the right to an impartial and fair trial”.¹⁰⁹ Agron, Mehmet and Ilijem Bytici were brothers of Kosovo-Albanian origin; they held US citizenship and had reportedly joined the Atlantic Brigade fighting alongside the KLA. On 8 July 1999 they were released from Prokuplje District Prison, after being convicted and sentenced to 15 days’ imprisonment for crossing into Serbia proper. Following their release they were allegedly detained by the defendants and taken to a training camp at Petrovo Selo where they were shot on 9 July 1999. Their bodies had been found in 2001 at the top of mass graves at Petrovo Selo. The trial opened on 13 November 2006 and continues at the time of writing.

In April 2008, four members of the Paramilitary Group known as the “Scorpions” were indicted for the murder of Albanian civilians in Podujevo/ë. In June 2005, in separate proceedings, one member of the group, Saša Cvjetan, had already been convicted for this crime and sentenced to 25 years’ imprisonment. Proceedings had been transferred from Prokuplje to the Belgrade District Court in 2002.¹¹⁰

The indictment against Željko Đukić, Dragan Medić, Dragan Borojević and Miodrag Šolaja, members of the “Scorpions” unit, alleged that on 28 March 1999, they had taken 20 Albanians -- women, children, and the elderly -- from the house of the Bogujevci family where they were all staying and ordered them to go to the courtyard of the house of Halim Gashi. According to the accounts of the surviving children, as soon as Shefkate Bogujevci entered the courtyard, an unknown member of the “Scorpions” unit fired at her. When they realized that their mother, Shefkate Bogujevci, has been shot, her children, Fatos, Jehona, Ljirije, and Genc Bogujevci, ran to her. At that moment, several “Scorpions” opened fire and started shooting at the three Bogujevci children and the other civilians in the courtyard.¹¹¹ The bodies of the Bogujevci family were buried in mass graves just outside the graveyard in Podujevo/ë. Proceedings opened on 8 September 2008 and continue at the time of writing.

According to the War Crimes Prosecutor a further 10 cases relating to the enforced disappearances of ethnic Albanians by Serbian forces are currently in pre-trial investigation, with some indictments expected soon.¹¹² Each of these cases relate to identified bodies found in mass graves in Serbia, and include: some 144 of the 287 Kosovo Albanians killed over three days from 27 April 1999 in and around Meja/Mejë; 53 persons killed in Zahac/Zahaq; more than 40 persons killed in Cuška/Çyshk; around 37 persons killed in Trnje/Tërm; and 77 killed in Petrovo Selo/Petrovasellë. According to the OWCP, the WCIS had been requested to identify the perpetrators, including suspected members of a known paramilitary police unit.¹¹³

In February 2009 Amnesty International found that relatives of the victims of enforced disappearances whose bodies had been found in Serbia, had not received any information, from either the Serbian police or UNMIK about these ongoing investigations.¹¹⁴

TRIALS IN SERBIA OF ETHNIC ALBANIANS FOR WAR CRIMES

Serbia has also exercised its jurisdiction over Kosovo and prosecuted two ethnic Albanians suspected of war crimes related to abductions during the conflict and its aftermath. In addition to the case of Anton Lekaj (below, p.46-7), in December 2007 Sinan Morina, a former KLA soldier, was acquitted on all charges of war crimes, including the unlawful detention of Serb civilians in Rahovec/Orahovac in July 1998, during the internal armed conflict.¹¹⁵ A further 10 ethnic Albanians, who were then living in Preševo in southern Serbia, were arrested in December 2008 on suspicion of the abduction of 159 people, mainly Serbs, in Gjilane/Gnilane in Kosovo, and the murder of at least 51 of them in 1999, during armed conflict. They remain in pre-trial detention.¹¹⁶

CRIMINAL INVESTIGATIONS AND PROSECUTIONS BY UNMIK

UNMIK also claimed jurisdiction for the investigation of enforced disappearances and abductions that took place in Kosovo in the context of the armed conflict and its aftermath. Criminal investigations were undertaken until December 2008 by the UNMIK police, initially by the Missing Person's Unit in conjunction with the Central Criminal Investigation Unit (CCIU),¹¹⁷ and later by a dedicated War Crimes Unit (WCU). (This responsibility has been discharged by the EULEX police component since December 2008). The Kosovo Police Service (KPS), established from September 1999 was excluded from these investigations.

Since 1999 Amnesty International members, as part of the organization's campaign for justice for the victims of enforced disappearances and abductions, have regularly requested information from UNMIK on the progress of investigations. In December 2008 the organization was informed that investigations had been opened by UNMIK into the abduction of 26 individuals who are included in Amnesty International's portfolio of 41 emblematic cases of enforced disappearances and abductions. In addition, two cases relating to 17 victims of enforced disappearances had been transferred to the International Prosecutor's Office but no prosecutions had taken place (see Appendix 1: Emblematic cases).¹¹⁸

In April 2004, the then UNMIK Police Deputy Commissioner for Crime, Robbie Pedlow, assured Amnesty International that some "cold cases" were being reviewed by the "cold crimes unit", established in early 2003, but no cases of enforced disappearance or abduction had been referred for prosecution by the end of the year. In April 2006, the UNMIK Police Director of Criminal Investigations, Wayne Hissong, informed Amnesty International that some significant cases might still be investigated where forensic evidence had been secured, but (with priority given to organized crime and corruption) it was unlikely that many investigations would be opened into the remaining cases of enforced disappearances or abductions.¹¹⁹

While UNMIK police have no obligation to provide Amnesty International with details of progress in criminal investigations, the organization is extremely concerned that UNMIK failed to fulfil their obligation to inform the family members of disappeared and abducted persons about the conduct of the investigations. UNMIK has a duty to do so under Article 2 of the ECHR.¹²⁰ Amnesty International has found that in many cases family members, after initially providing a statement to UNMIK police, were not contacted by them for several years. In other cases, they had not been properly informed of progress in the investigation. For example, in the following cases Amnesty International was informed in December 2008 that the file had been sent to the prosecutor's office, but the family had not been told until

Amnesty International informed them in a meeting in February 2009.

Eight members of Ferdonija Querkezi's family are still missing. The bodies of two other family members, Artan and Edmond Querkezi, were returned in December 2005. Ferdonija Querkezi told Amnesty International: "*I received information in 2008 that the case was still open. A policeman visited two or three times, but then he finished his mission.*" But her cousin Laura Ymeraga, whose husband Shpejtım Ymeraga was arrested with the same group, told the organization, "*The police have not been to visit me, but two or three months ago they rang to ask if I was still interested to find the body.*"

The bodies of members of the Dana family were exhumed at Batajnica in Serbia. The body of Afrım Dana was returned to the family on 15 January 2005 and those of five other family members on 25 August 2005. Avni Dana told Amnesty International: "*I doubt that the prosecutor has opened this case or that he has made an indictment. We are not informed of any kind of actions being taken. Unless the police or prosecution contact us and give us detailed information about the case we do not believe that either police or prosecution is doing anything to resolve this case. I do not believe them. Where did these people [the prosecutor or police] find the information about the case of our sons, because we were never contacted by them? Our police [KPS] or UNMIK should have come to ask us how it all happened.*"¹²¹

In another case, Amnesty International was told by family members of another group of men and boys arrested by Serb forces in Gakovë/Đakovica, that although they had provided statements to UNMIK police in 1999 and 2000, in the summer of 2008, UNMIK police contacted them asking them to write their testimonies. In other cases, according to a local NGO, some witnesses and relatives had been asked to provide their testimonies to the police every six months when, because of the short tour of duty of UNMIK police in Kosovo, yet another UNMIK police officer started to work on the case.

The son of Petrija Piljević, a Serbian woman believed to have been abducted from her apartment in Pristina by the KLA on 28 June 1999, told Amnesty International in early 2009 that he had not been contacted by a police officer since 2003. According to D.P., A.K., an UNMIK police investigator, had visited him at his home in Prokuplje, in southern Serbia, and asked him questions about the killing of his mother. D.P. told Amnesty International that shortly after this visit, he received a phone call from A.K, who reportedly told him that he was forced to drop the investigation and was being transferred from Kosovo. UNMIK police have not contacted D.P since then; indeed in December 2008 UNMIK reported that she was not registered in their database as being the subject of a criminal report or investigation.¹²²

Other relatives informed Amnesty International that despite having reported the enforced disappearance or abduction of a relative to the UNMIK police they had never subsequently been contacted by UNMIK police, or otherwise been informed of any investigation.

Amnesty International has established that in many cases UNMIK police had failed to open any investigation, or to conduct more than a perfunctory investigation. The extent of this failure was confirmed to Amnesty International in November 2007 by members of the EU Planning Team (EUPT).¹²³ In December 2008 EULEX police and prosecutors took over responsibility for the investigation and prosecution of war crimes, inter-ethnic and other serious crimes from UNMIK police and the UNMIK's IJP programme. In February 2009 they informed Amnesty International that out of 1,200 criminal investigation files, in only 550 was their any indication of an "active" investigation by UNMIK police.

Amnesty International acknowledges that in contrast to Serbia, where functioning institutions existed, UNMIK initially faced severe problems to establish, organize and equip an international police and judiciary in the immediate aftermath of the armed conflict – including the time it took to determine the applicable law. However, the subsequent lack of progress is of serious concern.

“Please help us to resolve these cases till the end, not like UNMIK did. They left everything unresolved. I will give you the name of the policeman who took my husband and son and then he should tell what he did with them, and how he killed them. I ask from you that those responsible for the crimes should be brought before justice if the law exists.”

Floza Bunjaku, Đakovica/Gjakovë, February 1999. She is the mother of Bekim Bunjaku, (aged 15) and wife of Lufti Enver Bunjaku (47), whose bodies were exhumed at Perućac (Bajna Bašta) in September 2001, and returned to their families on 20 September 2006. In December 2008 UNMIK informed Amnesty International that the case was at a preliminary investigative stage.

PROSECUTIONS IN KOSOVO

In Kosovo, by the end of 2008, UNMIK’s International Judiciary and Prosecutors had resolved around 40 war crimes cases. In 2009, EULEX prosecutors informed Amnesty International that they had taken over from UNMIK approximately 66 war crimes cases at various stages of investigation, prosecution and appeal.¹²⁴

Former Chief of the OSCE Legal Systems Monitoring Section (LSMS) of the Department of Human Rights and Rule of Law, charged with monitoring the legal system in Kosovo,¹²⁵ and another OSCE LSMS legal advisor, both of whom witnessed UNMIK’s attempts at building a judicial system, concluded: “UNMIK failed to develop any coherent strategy for the justice sector, including war crimes cases. It opted instead for a dithering approach that proved catastrophic for defendants and victims alike, particularly Kosovo Serbs.”¹²⁶

Almost half the cases prosecuted by UNMIK relate to 21 cases brought against Kosovo Serbs who had by November 1999 been arrested and detained in Kosovo on war crimes charges under Article 142 of the FRY Criminal Code (war crimes against the civilian population), including on charges of “hostage taking” and compelling persons to engage in forced labour.¹²⁷ Nineteen of these cases had already been completed by mid-2002. Trials began on 5 November 1999, initially before panels of Albanian judges. Following protests and hunger strikes by Serbian suspects detained in Mitrovica prison against the length of their detention (in some cases for up to 10 months without being indicted), and concerns voiced by the OSCE at the lack of impartiality by the Albanian panels in deciding these cases, UNMIK promulgated regulations that introduced panels composed of a majority of international judges. Later UNMIK introduced international prosecutors with competence in cases of war crimes and inter-ethnic crimes.¹²⁸ The majority of these trials had been completed by the end of 2002, although in November 2007, Miroslav Vučković, initially convicted in January 2001, was awaiting a third first-instance trial after several appeals.¹²⁹

Since 2002, no prosecutions for enforced disappearances have taken place—proceedings have almost exclusively been brought against former members of the KLA for the abduction, unlawful detention, torture and murder of other ethnic Albanians suspected by the KLA of collaboration with the Serbian authorities. Each of the following trials was conducted by

UNMIK prosecutors before a panel of international judges.

Idriz Balaj, Daut Haradinaj, Bekin Zekaj, Ahmet Elshani and Ramush Ahmetaj were convicted in the District Court of Peć/Peja on 17 December 2002 of complicity in the unlawful detention of four ethnic Albanians, and complicity and joint criminal enterprise in unlawful detention resulting in the death of four ethnic Albanians in September 1999. Idriz Balaj was sentenced to 15 years' imprisonment, Daut Haradinaj and Bekin Zekaj to five years, and Ahmet Elshani and Ramush Ahmetaj to three years each. They were released in December 2003 following an appeal against their conviction.¹³⁰

Proceedings opened on 17 February 2003 against Kosovo Albanians, Latif Gashi, Rustem Mustafa, Naim Kadriu and Nazif Mehmeti, who were charged with alleged participation in unlawful detention, torture and murder between August 1998 and June 1999. Twenty-five of the victims were ethnic Albanians; one, Milovan Stanković, was a Serb, abducted and subsequently tortured at a KLA detention centre at Bajgora between August and September 1998. Latif Gashi was convicted and sentenced to 10 years' imprisonment, Rustem Mustafa to 17 years, Nazif Mehmeti to 13 years and Naim Kadriu to five years. Following an appeal, a retrial opened on 29 November 2007, but no further proceedings had taken place by May 2009.¹³¹

On 10 August 2006 former senior KLA officers Selim Krasniqi, Bedri Zymberi and Agron Krasniqi were convicted of war crimes, including the illegal detention and kidnapping of Albanians in the village of Drenovac/Drenovc (Mališevo) between June and July 1998. They were each sentenced to seven years' imprisonment. On appeal, in April 2009, the Kosovo Supreme Court, comprising three international judges and two Kosovar judges presided over by a EULEX Kosovo judge, acquitted the three men on the basis that there was no proof of their involvement in war crimes.

On 8 February 2007 Idriz "Galani" Gashi was indicted for war crimes against the civilian population. He had been charged with killing Sanije Balaj in August 1998, near Vranovac/Vranoc village in Peć/Pejë municipality. Sanije Balaj had been abducted on 12 August 1998 after being stopped at a KLA checkpoint and taken for questioning. Her body was discovered on 11 September 1998; she had been shot in the head. On 22 June 2007 Idriz Gashi was convicted of her murder by an international panel of judges at Peć/Pejë District Court, and sentenced to 15 years' imprisonment.¹³²

To date, no prosecutions have been brought in Kosovo against members of the KLA suspected of the abductions of Serbs, Roma or other minorities, which took place after June 1999.

OBSTACLES TO ENDING IMPUNITY

Amnesty International considers that criminal investigations and prosecutions in both Serbia and Kosovo have been beset by obstacles that the respective authorities have taken little action to overcome. Some of those obstacles (discussed below) have been constructed by the authorities themselves, or by international bodies operating in Kosovo. In addition Amnesty International acknowledges that while Serbia had an intact police and judiciary in the immediate aftermath of the war, there were no functioning courts or judiciary in Kosovo (the majority of the ethnic Albanian judiciary having been dismissed by the Serbian authorities

during the 1990s), so UNMIK was required to start from scratch.

DENIAL OF ACCESS TO EVIDENCE

Amnesty International is concerned that existing evidence relating to both enforced disappearances and abductions has not been made available to the relevant authorities.

The organization is particularly concerned that evidence gathered by the Tribunal relating to exhumations, missing persons and possible grave sites was not made available to the OMPF until 2008. Moreover, although information in some specific cases has been shared by the Tribunal the organization continues to be concerned that some that an estimated 72,000 pages of documentation relating to the Tribunal's criminal investigations in Kosovo, has not yet been made available by the Tribunal to police or prosecutors.¹³³ While Amnesty International understands that information relevant to ongoing proceedings at the Tribunal might need to remain confidential, the organization notes that UNMIK police investigations (and to a certain extent those in Serbia) were hampered in the absence of this information.

In addition, Amnesty International is concerned that evidence, including photographs of the locations of grave sites and other information relating to bodies found (and in some cases buried) by KFOR, has not been made available to UNMIK investigators or to EULEX. Many relatives of Serbs abducted in Kosovo in the aftermath of the conflict reported their abduction to the local KFOR battalion. According to the information available to Amnesty International, none of the information provided by the relatives to KFOR battalions, including statements, photographs of the missing persons and identity documents, has been made available to the authorities mandated with the power to investigate such crimes in Kosovo.

In order to ensure that all relevant information on gravesites is made available, "the ICRC has approached the Tribunal and other international organizations present in Kosovo during and in the aftermath of the conflict to request their co-operation, in order to obtain further information on missing persons. Because of the role the international community has played in Kosovo, the ICRC have recommended that all UN member states who played a role in Kosovo, look into their documentation to see if they have any relevant information on human remains, graves or the missing in general."¹³⁴

Amnesty International considers that the failure of the Tribunal and KFOR to turn over evidence collected in 1999-2000, in the immediate aftermath of the crimes, may serve as a serious impediment to the resolution of the fate of some of the persons subjected to enforced disappearance and abduction. Amnesty International's discussions with family members of those affected indicate that both the failure to turn over evidence and the continuing failure to determine and inform the families of the fate and whereabouts of their loved ones, are sources of great distress to the families. Many of them consider that the international community, which was deployed to protect them and re-establish the rule of law, has let them down.

THE RIGHT TO KNOW – THE ROLE OF KFOR

Halim Querkezi (53 years), Artan Querkezi (25), Armend Querkezi (24), both sons of Halim Querkezi, Ardian Querkezi (19), Edmond Querkezi (14), Vegim Querkezi, nephew of Halim Querkezi (19), Shpejtim Ymeraga, cousin of Halim Querkezi (32), Skënder Dylhasi (59), Myrteza Dylhasi (26), Fatos Jetishi (21) and Shpend Jetishi (20) were all

taken from the Querkez family home in Đakovica/Gjakovë at 7.30pm on 27 April 1999. Their identity cards had been taken away by local police officers earlier in the day. The men were loaded onto an unmarked lorry and driven away by masked men, who Arta Querkezi, the wife of Artan Querkezi, believes were Serbian police.¹³⁵

Over the following months the family made intensive but fruitless efforts to discover the fate of the men, visiting the local Serbian police station several times to report the men's enforced disappearance and asking for information. They were variously told that information was impossible to obtain because telephone lines were not functioning; that the men had been sent to Albania; and that they should apply to NATO for information. They also sought help from one of the police officers who was recognized by Halim Querkezi as one of those who came to their house on 27 April and who had later been seen driving the family car, which had been stolen on the same day. The officer denied any knowledge of, or responsibility for, the enforced disappearances.

In September 1999, according to Kasim Querkezi, Artan Querkezi's uncle, a villager from Lake Škoza/Shkozë near Prizren brought Artan Querkezi's identification card to the family. He had found it near Lake Škoza/Shkozë. Kasim Querkezi went to the lake, near Vrbnica/Vërmicë. He told Amnesty in February 2009 what had occurred:

"First I went with some of the other men and I saw Artan and the others. I recognized Artan by his clothes. I approached his body, and touched his clothes with a stick and I identified him 100 percent. He was on the bank of the lake: Armend, Ardian and Myrtezan were close to Artan - all the bodies were half in and half out of the lake. I don't know whether they were executed there or somewhere else."

"I informed KFOR and went with KFOR and saw the bodies. KFOR didn't allow us to go near: they said it was dangerous. KFOR told us that they would gather and identify the bodies, and we [the families] thought that maybe there would be some other bodies there [in the lake] as they were all transported [from Prizren] on the same truck. We did not see the truck, but the women saw the truck when the men were being taken away."

"Then I went with the ICTY and saw the bodies, and they promised that ICTY would identify them and provide them to the families and we believed them. The ICTY investigator, Mr Cliff, went to the site and I showed him the site, and he told me don't worry, we will gather them [the bodies] and take care of them. This was probably October 1999."

"We went to UNMIK to get the results and they said don't come here it's not the procedure. We didn't think it would take so long to get their bodies back."¹³⁶

Ferdonije Querkezi separately stated that she had also been to the site at Vrbnica/Vërmicë, and had seen bodies which she believed to be those of her husband and son, Vegim Querkezi and Halim Querkezi.

Artan Querkezi's body was exhumed by the Tribunal in 2000 in Vrbnica/Vërmicë, Prizren municipality and returned to the family on 15 December 2005. Edmond Querkezi's body was exhumed by the Tribunal in 2000 at another site in Đakovica/Gjakova municipality and returned to the family on 15 December 2005.¹³⁷ The fate and whereabouts of Vegim Querkezi, Halim Querkezi, Armend Querkezi, Ardian Querkezi, Myrtezan Dylhasi, Skënder Dylhasi, Shpejtim Ymeraga, Fatos Jetishi, and Shpend Jetishi who were detained and disappeared along with Artan and Edmond Querkezi on 27 April 1999 have never been disclosed to their families.

A LACK OF CO-OPERATION

Both Serbia and UNMIK consider they have had jurisdiction over war crimes in Kosovo, but had failed to develop any effective technical agreements or framework for co-operation. Given the fact of the armed conflict, and the subsequent absence of agreement between Serbia and Kosovo on the vexed issue of the final status of Kosovo, the lack of co-operation between Serbia and UNMIK in the conduct of investigations and prosecutions is not surprising -- but nevertheless remains a regrettable obstacle to justice.

Serbia is rightly perceived in Kosovo as being slow to begin prosecutions against Serbian forces considered responsible for war crimes committed in the context of the conflict with Kosovo. Meanwhile Serbian authorities consider the absence of prosecutions of members of the KLA by UNMIK for crimes committed against Serbs is representative of the bias they perceive UNMIK has had in favour of the ethnic Albanian community.

Bruno Vekarić, spokesperson for the Office of the War Crimes Prosecutor (OWCP) in Serbia, told Amnesty International that the office had rarely received feedback from evidence sent to UNMIK police.¹³⁸ For example, on 2 November 2003, photographs of men in KLA uniforms holding up the decapitated heads of Kosovo Serbs were published in the Belgrade daily newspaper, *Vecernje Novosti*. The HLC had written to the International Prosecutor in Kosovo requesting an investigation be opened into how the deceased met their deaths and how the men pictured had come into possession of the decapitated heads. While UNMIK confirmed to the Institute for War and Peace Reporting in November 2003 that an investigation had been opened, no progress has been reported since, although the OWCP have reportedly provided evidence related to the photographs to the UNMIK Department of Justice, including the names of persons missing from Dečan/Decani whose heads had been shown in the photographs.¹³⁹

Following the establishment of the OWCP in Serbia in 2003, some degree of co-operation has been established. The OWCP, for example, has received (and continues to receive) forensic information from the OMFP in Kosovo. However, the OWCP in Serbia has no access to sites in Kosovo. In addition, the WCP and investigating judges in Serbia have reported repeated obstacles to interviewing Kosovo Albanian witnesses for the prosecution of Serbian suspects. The OWCP was reliant on UNMIK to provide access to such witnesses, but it claims, for example, that in the Suva Reka case, UNMIK did not facilitate access to witnesses. UNMIK has reportedly denied this.¹⁴⁰ Amnesty International notes that in the Suva Reka case (see above, p.29), the three key witnesses were eventually persuaded to provide testimony in the Serbian proceedings in late 2007 only after the encouragement, assistance and support of the HLC, whose positive role has been acknowledged by the WCP. In the case of Anton Lekaj, (see box, p.46-7) on 6 June 2006 a prosecutor and an investigative judge from the OWCP in Serbia arrived in Pristina expecting to interview six witnesses. UNMIK, however, approved interviews with only two – both of whom were witnesses for the defence – on grounds that the requests by OWCP to interview the witnesses had come too late.¹⁴¹ Judge Miroslav Amplić from the WCC and chief prosecutor in cases relating to Kosovo, Dragoljub Stanković, claimed that SRSG Soren Jessen-Petersen had only allowed witnesses for the defence to be interviewed by the OWCP. They then refused to attend the hearing alleging direct interference of the executive in the judiciary.¹⁴²

While Bruno Vekarić was realistic about the political delicacy of co-operation with EULEX (whose authority in Kosovo is not accepted by Serbia), the OWCP has recognized the need for such co-operation with EULEX Kosovo. While OWCP and EULEX prosecutors only held their first meeting in March 2009, Amnesty International is hopeful that it was the first of many to come and a sign of willingness to co-operate in the investigation of war crimes committed in the context of the conflict in Kosovo and its aftermath.

The following case illustrates some of the problems faced in establishing co-operation, not only between Serbia and investigators in Kosovo, but also between the Tribunal and other countries bordering Kosovo.

THE “YELLOW HOUSE”

“My 17 year-old-son Ivan is missing; I am still searching for him. Imagine how I felt when I heard about the ‘Yellow House’. It is driving me crazy, the ‘Yellow House’...”¹⁴³

In October 2008 Vladimir Vučković of the Serbian OWCP visited Albania to investigate allegations that more than 300 Serbs had been abducted by members of the KLA during 1999 and taken to the “Yellow House” near the village of Burrel in Albania. The Albanian Chief Prosecutor refused him permission to conduct an investigation in Albania, on the basis that an investigation conducted by the Tribunal had not found evidence to substantiate claims that the Serbs had been transferred into the country. The investigation by the OWCP followed allegations published by the former Chief Prosecutor to the Tribunal, Carla del Ponte, that Serbs had been abducted so that their organs might be surgically removed and sold.¹⁴⁴

Although it is now established that UNMIK conducted an investigation into the allegations in 2004, it initially denied any interest in the case. In June 2008, the OWCP in Serbia received a letter from the UNMIK Department of Justice, stating that no international prosecutor had been involved in “investigating a case stemming from these allegations.” UNMIK subsequently sent its complete report on the investigation to the WCP on 22 March 2009.¹⁴⁵

As of May 2009, the case was under investigation by the OWCP and Senator Dick Marty, looking into the case in his capacity as a rapporteur for the Parliamentary Assembly of the Council of Europe. Following reports in April 2009 by the UK-based BBC about the alleged abduction and subsequent torture of Serbs by members of the KLA at the “Yellow House”, senior Kosovo government officials dismissed the allegations. Prime Minister Hashim Thaçi claimed in the BBC broadcast that persons involved had abused the uniform of the KLA, while President Fatmir Sejdiu later reportedly stated “Someone has thought of damaging Kosovo. It won't work.”¹⁴⁶

BARRIERS TO INVESTIGATIONS: UNMIK POLICE

Amnesty International considers that the UNMIK police have failed to conduct adequate investigations into war crimes and serious ethnically motivated crimes, including the post-war abductions of Serbs and Roma, over which UNMIK had jurisdiction until December 2008. As the Office of the Ombudsperson in Kosovo (OiK) reported in 2003, “In certain cases, the victims of such crimes and their families have been waiting for the results of police investigations for over three years now, frequently without even having been duly informed on any new developments in their respective cases.”¹⁴⁷

The OiK, Amnesty International and others have attributed this failure to several factors including: the constant and swift turnover of investigative staff, with UNMIK police officers

often serving no more than a six-month tour of duty, resulting in a lack of investigative continuity, with frequent repeat interviews by successive officers, or total neglect in other cases. Further, many officers seconded to the MPU and WCIU had little or no experience in the investigation of serious crime, let alone war crimes and inter-ethnic crimes (for example, UK Ministry of Defence police). Mostly unable to speak the local language and excluding members of the KPS from participation in investigations, UNMIK police met with little cooperation from local communities and witnesses. However, as the Ombudsperson stated: “[This] cannot serve as a valid excuse for this inability of the law enforcement authorities to achieve the expected investigatory results, in particular in cases involving the most serious crimes.”¹⁴⁸

In addition no effective criminal investigation procedures appear to have been established. According to Matti Raatikainen, Head of the EULEX WCIU, UNMIK police had only a “simple” database. Paper files, amounting to more than 30,000 pages, had not been computerized, causing massive retrieval problems, as the sometimes contradictory information on the status of individual cases provided by UNMIK to Amnesty International in 2008 bears out.¹⁴⁹

BARRIERS TO INVESTIGATIONS: SERBIAN POLICE

Amnesty International considers that the climate of impunity within the police force in Serbia, and supported by leading political figures, including within the Ministry of Interior, provides one of the most significant obstacles to the investigation of war crimes, including enforced disappearances.¹⁵⁰ This obstruction occurs at both ministerial and local levels.

On 23 December 2004 the HLC published allegations about the burning of corpses of Kosovo Albanian civilians in the furnaces of the Mačkatica factory in Surdulica on 16 and 24 May 1999. The HLC reported that the alleged incinerations were part of the large-scale operation to conceal war crimes committed in Kosovo. It provided detailed information about those believed to be responsible, and in 2005 made public detailed evidence about the Special Police Units that allegedly transported the bodies to Mačkatica, naming former and still serving senior security officials, and claiming to know the identities of the drivers of the trucks.

On 16 January 2005 the HLC reported that, following the publication of these allegations, members of the police and the Serbian State Security Agency (BIA) implicated in the report had threatened a number of people with the aim of intimidating them. Customs officer, Anita Nikolić from Vladičin Han, in contact with the HLC on an unrelated matter, was repeatedly threatened by security officials who suspected her of being an informant. On 30 December 2004, Bratislav Milenković, local head of the BIA, allegedly approached her in a café in Vladičin Han, and in the presence of witnesses, said: “I’m now identifying the enemy; I have already identified some of them. And my enemies end up three metres under the ground.”

Although Inspector-General Vladimir Božović of the Ministry for Internal Affairs subsequently announced that an investigation was underway, on 3 February 2005 the HLC pointed out that a named senior police officer implicated in the affair had been initially suspended but then re-assigned and promoted to the position of an intelligence officer in the Gendarmerie. The HLC said there were strong indications that the leadership of the Serbian Ministry of Internal Affairs and the BIA were attempting to prevent the facts about the case from

emerging.¹⁵¹

Obstruction continues: in March 2009, police officers in Leskovac organized protests against the arrest of four former members of the 37th Battalion of Special Police Units (PJP). Police reservists were seen wearing T-shirts printed with photographs of the arrested PJP members on the front and the slogan, "Heroes of the 37th Battalion", on the back. According to the HLC the protests, apparently supported by the Police Administration of the City of Leskovac and the Presidency of the Independent Police Union of the Republic of Serbia, called for the release of the arrested officers and public disclosure of the names of the witnesses. Police officers were reportedly heard threatening to kill the police witnesses and calling for them to be tried for treason.¹⁵²

It is therefore not surprising that the War Crimes Investigation Service (WCIS), established in 2003 as a specialized war crimes investigation service within the Ministry of Interior and assigned to assist the OWCP, has faced considerable difficulties in its investigations.¹⁵³ According to the OWCP and other observers, the unit is hampered by its position within the Ministry of Interior, whereby its officers are often required to investigate allegations against police officers senior to them in rank. Indeed the unit was initially headed by officers who were themselves alleged to be implicated in war crimes. Despite the appointment of a respected new head, the WCIS continues to be perceived as weak and unwilling to initiate investigations. The unit itself is under-resourced and personnel under-paid in relation to their responsibilities. Although the WCP reported some co-operation in the Suva Reka investigation, in other cases access to information has reportedly been obstructed. Consequently, in 90 per cent of cases, criminal investigations are conducted by WCP prosecutors following changes in the law in 2004 that enabled them to examine witnesses without relying on prior police work. Both the OWCP and international NGOs have argued for the creation of a separate war crimes directorate within the Ministry of Interior or Ministry of Justice, or for the WCP to be given control of the unit.¹⁵⁴

OBSTACLES IN THE JUDICIAL SYSTEM

In relation to both Serbia and Kosovo, Amnesty International has raised concerns about the functioning and practices of the judicial systems, which have acted as barriers to effective prosecutions. In Kosovo in 2008, the organization published a report that set out in detail its assessment of UNMIK's failed justice system, focussing on the International Judiciary and Prosecutors' (IJP) programme introduced in 2000. Amnesty International documented examples of the IJP's absence of experience in war crimes cases, lack of knowledge of applicable law – including international humanitarian law – and failures to comply with the Criminal Procedure Code. The organization also found a lack of independence in the judiciary, which in several cases was considered to have violated the rights of the accused to a fair trial. However, the most glaring shortcoming was the small number of prosecutions and convictions in cases of war crimes and inter-ethnic crimes – the very reasons the IJP programme was established.¹⁵⁵

In Serbia, the OWPC and WCC face a series of problems. With little political support, insufficient staff in the OWPC and a limited number of investigative judges, progress was agreed to be slow, although anticipated changes in the law were expected to improve this situation.¹⁵⁶ Local and international NGOs have repeatedly criticized the court for the length of time taken to raise indictments – for example, in the case of the Bytyqi brothers the

indictment was raised seven years after their murder (see above, p.30).

However, of most concern to both international and local NGOs is the failure of the OWCP to bring charges against high-ranking officials of the police and army, including for crimes committed by individuals directly subordinated to them.

In part the failure to bring such charges may derive from the absence of an adequate definition of command responsibility in applicable law.¹⁵⁷ However, other provisions exist, which include aspects of command responsibility, including perpetration by omission, the failure to report crimes and incitement or aiding and abetting by omission. According to the ICTJ, the OWCP has been reluctant to use such provisions, commenting that the OWCP has, “an unease with command responsibility as a doctrine whose applications could put the office at odds with the military, police and political elites.” Amnesty International in February 2009 perceived a similar unease on the part of the OWCP when the organization broached the question of outstanding indictments for the “cover-up”.¹⁵⁸ The ICTJ has also observed that the court lacks the necessary political and military analysts and historians required to bring together such a complex indictment.

The HLC has expressed its concerns robustly. With regard to the Suva Reka/Suharekë indictment the HLC stated in 2007: “However, although ... a number of members of the Internal Affairs Department [at] Suva Reka have been charged, the indictment failed to apply the command responsibility principle... What is clear is that the OWCP is functioning as a unit of the government rather than [as] a unit of the judiciary”.¹⁵⁹ In April 2009, the WCC acquitted two senior commanding officers indicted for the murder of the Berisha Family in Suva Reka/Suharekë in 1999.¹⁶⁰

LACK OF WITNESS PROTECTION AND SUPPORT

Amnesty International considers that neither Kosovo nor Serbia has taken adequate measures to protect witnesses in war crimes prosecutions, the majority of whom continue to fear for their safety. In addition, prosecutors in Serbia, including the Chief WCP, have received threats.¹⁶¹

While witness protection measures now exist in Serbia, they were only introduced in 2006, largely at the behest of the HLC whose staff members, in the absence of an official witness protection programme, had themselves escorted witnesses to court, and provided them with accommodation and support in Belgrade. The Victim and Witness Support Unit, established in the WCC in June 2006, consists of two female staff members who had no previous experience when they were hired. Having been trained by the Tribunal and working closely with the HLC, they now make travel and accommodation arrangements for witnesses and look after them in the court building. However, they have no capacity to provide psychological support, and no budget.

The 2006 Law on the Protection of the Participants in Criminal Proceedings sets out measures for the protection of persons, including witnesses, defendants and injured parties before, during and after trials. Within the court, measures in place allow for the use of pseudonyms and video-links for witnesses who refuse to come to Belgrade.¹⁶² A Witness Protection Unit within the Ministry of Interior protects witnesses while they are in Serbia, and has successfully arranged for protection of the relatives of witnesses outside Serbia, although

this has been problematic for some witnesses – including police officers who are themselves protected witnesses.

In Kosovo, UNMIK Regulation 2001/20 On the Protection of Injured Parties and Witnesses in Criminal Proceedings, grants trial panels in Kosovo the power to restrict the disclosure of a witness's identity where it is perceived that to do otherwise may subject that witness or his/her family to possible physical harm, and includes other measures whereby their identity may be protected during trial proceedings.¹⁶³ However, such measures have been limited in their application by the international judiciary, and constrained by the lack of facilities – for example, a video-link is only available in the Gjilanë District Court.¹⁶⁴ UNMIK Police's Witness Protection Unit has been a source of concern to Amnesty International, which has made repeated recommendations to the authorities over the years for it to be strengthened and provided with adequate funding.

On 10 October 2005, in a war crimes trial held before an international panel of judges in Gnjilane/Gjilan, a key prosecution witness was murdered and an anonymous witness seriously injured in the market in Zerze/Xërxë near Prizren. According to OSCE LSMS, unknown individuals subsequently disinterred the body of the former witness and set it alight. Leaflets were distributed in which the Albanian National Army (ANA) claimed responsibility for the murder, stating that they "[would] not cease executing all collaborators". A local newspaper then included the surviving witness' name in its report on the incident. OSCE LSMS reported that according to investigators in the case, "The reluctance of the local population to co-operate (fear of revenge and admiration of the two main suspects) is a primary problem in the case. Even if willing to testify or co-operate, the public does not have confidence that the authorities could effectively protect them from revenge by the suspects".¹⁶⁵

A further example of the extent to which witness protection is required in Kosovo in war crimes cases is illustrated by the problems faced by the far better resourced Tribunal in its prosecution of former KLA Commander Ramush Haradinaj. The Tribunal Trial Chamber, in its judgment in the *Haradinaj et al* trial reported significant difficulties in obtaining evidence from the 100 prosecution witnesses, of whom 18 had to be issued with subpoenas in order to ensure their appearance. In addition, some 34 witnesses were granted protective measures, and four persons were indicted by the Tribunal for contempt of court, including a journalist convicted in July 2008 for disclosing the name of a protected witness and two former Kosovo government officials convicted in December 2009 for attempting to influence a protected witness.¹⁶⁶

Amnesty International considers that in Kosovo the reluctance of witnesses to come forward to provide information about war crimes, their refusal to testify in criminal proceedings and an inadequate witness protection programme, have constructed serious impediments to the prosecution of ethnic Albanians responsible for abductions committed during, or in the aftermath of, the conflict.

POLITICAL INTERFERENCE IN THE COURSE OF JUSTICE

In both Kosovo and Serbia, there has been a demonstrable lack of political will to bring to justice "their own" perpetrators of war crimes. In some instances, this lack of political will has manifested itself in a lack of government support for the judicial process, while in others, there is compelling evidence of political interference, including in some cases evidence of conspiracies to interfere in the course of justice. In particular, Amnesty International

considers that investigations in Serbia of enforced disappearances allegedly committed by Serbian police have been hampered or obstructed by the Ministry of Interior. In Kosovo, investigations against KLA members suspected of the abduction of Serbs and other minorities have been similarly hampered or obstructed by former members of the KLA, and by UNMIK.

Obstruction in Serbia

Up until early 2001 the Serbian authorities continued to conceal evidence of the numerous and grave human rights violations committed by the security forces in Kosovo in 1998 and 1999. For example, even when evidence of the cover-up was made public, politically influenced obstruction prevented criminal investigations into responsibility for the transportation of bodies from Kosovo to Serbia proper.

THE COVER-UP CONSPIRACY: CONTINUED

According to Časlav Golubović, former chief of the Secretariat for Internal Affairs in Bor, on 6 April 1999 he received a telephone call from Tomislav Miladinović, head of the criminal police, informing him of the reported discovery on 5 April 1999 of a refrigerated truck containing some 20 to 30 bodies. The truck had been found floating in the river Danube near the village of Tekija.¹⁶⁷

In testimony to the Tribunal, Časlav Golubović stated that at around 8.30am on 6 April 1999 he reported the discovery to General Vlastimir Đorđević at the Ministry of Internal Affairs, who had allegedly instructed him to dispose of the bodies. He testified: "General Djordjević told me to try, in the course of the night, to transfer the corpses from the refrigerator truck to a different vehicle and to explore the possibility of burying the corpses somewhere in the area of Kladovo." Časlav Golubović was allegedly instructed to destroy the refrigerator truck, and not to release any information to the media. He further stated that the instruction had been on the order of the Minister of Internal Affairs, the late Vljako Stojiljković.¹⁶⁸ The bodies were subsequently recovered by divers on 9 April 1999, and buried in Batajnica.

In addition, on 6 April 1999, the then Negotin Deputy District Public Prosecutor, acting on information received by the local police, stated that he had notified the District Public Prosecutor of the discovery. The Negotin Deputy District Public Prosecutor was informed the following day that the matter would not be investigated further.¹⁶⁹

The existence of the bodies remained a "state secret" until 1 May 2001 when an article was published in a local newspaper repeating the reported discovery of the refrigerated truck containing corpses from Kosovo in April 1999.¹⁷⁰

As a result of the ensuing media outcry, on 12 May 2001 Minister of Internal Affairs, Vljako Stojiljković, and his deputy, Sreten Lukić, were forced to establish a working group to investigate these allegations. According to evidence presented at the Tribunal, "[Sreten] Lukić instructed the working group to make sure not to exclude anyone from the investigation or give any favours, and gave the working group full authorization and powers in its investigation. According to Dragan Furdulović, the working group was able to work completely independently and without hindrance in taking lawful measures against any member of the MUP."¹⁷¹

The working group interviewed some 30 police officers and civilians between 12 and 15 May 2001, and its notes were passed to the District Public Prosecutor in Belgrade. Although, Vlastimir Đorđević reportedly refused to provide evidence to the working group, Slobodan Borisavljević, then assistant to Vlastimir Đorđević's chef de cabinet, testified to the Tribunal that he had been instructed by Vlastimir Đorđević to make

payments to persons who had worked on the transportation of the bodies. The working group did not interview Sreten Lukić, who, in 1999, was Head of the MUP in Kosovo.¹⁷²

On 25 May 2001 the working group confirmed that the Minister of Interior, Vljako Stojiljković, and the Chief of the Public Security Department (RJB), Vlastimir Đorđević, had declared the original discovery of the bodies in 1999 a "State secret". According to evidence heard at the Tribunal: *"The communiqué further reported that there had been a meeting in March 1999 in the office of Slobodan Milošević, attended by Milošević himself, as well as Stojiljković, Đorđević, and Radimir Marković (Chief of RDB),¹⁷³ during which Đorđević raised the issue of the clearing up of the terrain in Kosovo, called 'asanacija.'* Milošević then ordered Stojiljković to 'take measures to remove all traces which could indicate the existence of evidence of the crimes committed.' According to the communiqué, the problem was further discussed, also in March 1999, in Stojiljković's office. The aim was to remove civilian victims who could potentially become the subject of investigation by the Tribunal. Stojiljković issued orders to Đorđević and Ilić to carry out this task. A third meeting then took place sometime later, where Đorđević made arrangements in respect of the clearing up of the bodies from Kosovo."¹⁷⁴ In a second communiqué, published on 26 June 2001, the working group stated that the refrigerated truck had contained bodies wearing KLA uniforms, yet according to evidence provided at the time and to the Tribunal by Boško Radojković, a police officer in Kladovo called to the scene on 5 April 1999, the bodies were those of civilians, including women.¹⁷⁵

Even after the bodies had been exhumed no further progress in criminal investigations was reported. In March 2002, Dragan Karleuša, then Deputy Head of the Serbian Ministry of Internal Affairs Organized Crime Squad, who headed the investigation into the mass graves, "was unable" to provide any information on progress in the investigations. Later in 2002, an unnamed police source advised the press that information should be sought from the courts, alleging that the prosecutor's office, in particular, had deliberately hindered police investigations. The State Prosecutor countered the allegation, stating that they were unable to launch criminal proceedings as the police had not yet filed any criminal charges.¹⁷⁶

On 24 June 2003, Vladan Batić, then Serbian Minister of Justice, in a speech made to the Serbian parliament introducing the draft law on the prosecution of war crimes before domestic courts, and referring to the investigations at Batajnica and Petrovo Selo (see pp.21-2), indicated that these cases would be amongst the first to be prosecuted by the new war crimes chamber envisaged in the law. While prosecutions relating to the murders of individuals found in the graves are in progress (see pp. 31-2, Suva Reka and Bytici cases) and further similar cases are under investigation, Amnesty International is concerned that the WCP himself in 2009 told the organization that he did not intend to investigate the cover-up, which he considered a matter for the Tribunal.¹⁷⁷

The obstruction of justice also continued from June 1999 with the refusal of the authorities in Serbia to hand over suspects indicted by the Tribunal, until the introduction of a law on co-operation with the Tribunal on 11 April 2002. Immediately after the law had been passed Serbian Interior Minister, Vljako Stojiljković, indicted by the Tribunal in May 1999,¹⁷⁸ shot himself in the head, outside the Federal parliament, in protest, and died two days later. The authorities gave the remaining suspects five days to surrender. General Ojdanić surrendered on 24 April 2002 and Nikola Sainović on 2 May 2002. Milan Milutinović did not surrender until 20 January 2003, after completing his term of office in December 2002. Under further international pressure, including from the EU, the remaining indicted suspects were "persuaded" to surrender by the government. Vladimir Lazarević surrendered on 3 February 2005, Sreten Lukić on 4 April 2005 and Nebojša Pavković on 25 April 2005.

Even after the establishment of the Serbian Special War Crimes Chamber (WCC) in 2003, the government, led by Vojislav Kostunica's Democratic Party of Serbia, gave no public support to the work of the court, with the Ministers of Justice and Interior, respectively, either actively undermining or ignoring the court.¹⁷⁹ In 2009 NGOs continue to report resistance to the WCC by members of the assembly. The HLC also informed Amnesty International that assistance, previously promised by the Head of the WCIS in the compilation of the "Kosovo Memory Book" (containing narrative summaries about each person who died or was reported missing in the period January 1998 to December 2000, and intended to assist in criminal investigations) ceased after personnel changes in the Ministry of Interior.¹⁸⁰

Further, the Law on Accountability for Violations of Human Rights, adopted by the Serbian Parliament in June 2003, which aimed to introduce the vetting of persons in public office, including police officials, has remained unimplemented due to opposition by members of the Serbian Assembly representing the Serbian Radical Party, the Democratic Party of Serbia and the Socialist Party of Serbia.¹⁸¹

Obstruction in Kosovo

In Kosovo the continued influence and political authority of former leading members of the KLA, including in their support for convicted perpetrators, has fostered a similar climate of impunity. In 2006, for example, Agim Çeku – then Prime Minister of Kosovo – visited KLA general Selim Krasniqi after his conviction in 2006 for war crimes, including the illegal detention and kidnapping of ethnic Albanians (see above p.34), reportedly stating: "Kosova needs men like General Selim Krasniqi."¹⁸²

Any failure to prosecute human rights abuses is unacceptable. While the reluctance of the former warring parties to see the prosecution of "their own" violates compliance with their international obligations, it is not unexpected. However, Amnesty International considers the apparent reluctance of UNMIK to investigate and prosecute war crimes perpetrated by the KLA against non-Albanians, is also of serious concern. Not only is UNMIK a body of the UN, but it was charged by the Security Council to protect and guarantee the human rights of all persons in Kosovo.

Moreover, UNMIK's international judges and prosecutors (IJP) programme was introduced to ensure that trials for war crimes and inter-ethnic crimes were conducted impartially, and according to international standards for fair trial.

In 2008 Amnesty International expressed concern about the independence of the IJP, which it considered to be undermined by the process of executive case allocation to international judges and prosecutors. The organization reported deep concern that interference by the executive arm of the UNMIK administration had not been limited to the choice and allocation of cases, but may also have extended into interference in the actual conduct of cases.¹⁸³

One international judge told Amnesty International, "If you acquit too many Serbs they [the UNMIK Department of Justice] probably won't give you any more war crimes cases..."¹⁸⁴

Another former international judge told Amnesty International that a senior UNMIK official had been known to place pressure on judges in certain cases, and that political pressure had been used to force at least one judge and one prosecutor to leave.¹⁸⁵ Credible information also suggests that decisions were made within the UNMIK Department of Justice to refrain

from the investigation and prosecution of high-level political figures, including against Ramush Haradinaj, in connection with allegations relating to the death of a member of the Musaj family.¹⁸⁶

Amnesty International is concerned about other reported interventions in the administration of justice by the Office of the SRSG. The organization has been informed that such interventions were motivated by political considerations, which prioritized the political stability and security of Kosovo above respect for the human rights of communities in Kosovo. Several UNMIK officials informed Amnesty International that it was “time to move on”, suggesting that the past should be forgotten. Reporter Michael Montgomery confirmed this: “Several former UNMIK officials told me there was no political support for major war-crimes prosecutions, especially after the March 2004 riots targeting the Serbian minority.”¹⁸⁷

Amnesty International considers that some of the actions taken by UNMIK may have exceeded the bounds of political expediency, particularly in the cases of former KLA leaders who held office or authority in the Provisional Institutions of Self-Government (PISG).

In 2003, Hashim Thaçi, arrested in Budapest on the basis of an international arrest warrant issued on behalf of the Serbian authorities by Interpol, was released reportedly after a telephone call from the then SRSG, Michael Steiner. Similarly in October 2003, former commander Agim Çeku, arrested in Slovenia on an Interpol warrant, was released reportedly after the then SRSG, Harri Holkeri intervened with the Slovenian authorities. In March 2004 Agim Çeku was again released reportedly on the intervention of the SRSG after being arrested on the same warrant in Budapest.¹⁸⁸

The Office of the Prosecutor at the Tribunal has expressed particular concern that the relationship between UNMIK and Ramush Haradinaj has had the effect of creating a sense of impunity and fostering witness intimidation. According to Jean-Daniel Ruche, political adviser to the Chief Prosecutor, “There was a general atmosphere of intimidation; they [UNMIK] did nothing to change this atmosphere.” He reportedly stated that the meeting between senior UNMIK officials and Ramush Haradinaj prior to his voluntary surrender to the Tribunal in March 2007, and on his return to the Tribunal after his provisional release, “has had a chilling impact on our witnesses.”¹⁸⁹ Commenting on the transfer of the former KLA leader to the Tribunal, SRSG Soren-Jessen Peterson stated: “Personally, I am saddened to no longer be working with a close partner and friend.”¹⁹⁰

Amnesty International has identified compelling evidence of one attempt in 2006 by the then SRSG to interfere in the prosecution of Anton Lekaj, a former member of KLA, indicted for war crimes at the Belgrade WCC. The indictment included the abduction and murder of a group of Romani men. Amnesty International interviewed one of the survivors in 2000.¹⁹¹

EXECUTIVE INTERFERENCE

Former KLA member, Anton Lekaj, was arrested in Montenegro in August 2004, in connection with the theft of a car, and transferred to Serbia under an indictment by the WCC. He was charged with war crimes against the civilian population, including the rape of a minor Romani female at the Hotel Pastrik in Prizren; the beating and other ill-treatment of two individuals on 13 June 1999 at the same hotel; the inhuman and or degrading treatment of a male detainee on the night of 13 and 14 June; the transfer of four Romani men to another

location on the night of 15 June 1999, and the murder of three of those men.¹⁹² Proceedings opened in the WCC at Belgrade District Court on 18 November 2005.

On Wednesday 3 April 2006, the Kosovo daily, *Koha Ditore*, reported that the SRSG had written to the Serbian authorities challenging the jurisdiction of the Belgrade WCC over proceedings against Anton Lekaj.¹⁹³ On 4 April 2006 in a meeting with the UNMIK Office of Legal Affairs (OLA), Amnesty International was informed that OLA considered the WCC did not have jurisdiction over this case. OLA also considered the indictment of Anton Lekaj, and other indictments against former KLA leaders Hashim Thaci, Agim Ceku and Ramush Haradinaj, to be unlawful, on the basis that these indictments had originally been made by the “parallel court” established in Niš in Serbia proper following the withdrawal of the Serbian authorities from Kosovo in July 1999. The OLA confirmed that the SRSG had written to the Serbian authorities seeking withdrawal of the indictments, which had been forwarded by the Serbian authorities to Interpol (p.49).¹⁹⁴

The OLA was unable to confirm whether UNMIK had opened an investigation into allegations against Anton Lekaj. Nor would it confirm that such an investigation would be opened in the event of the matter being handed over by Serbia to UNMIK, stating that if such evidence were to be provided, they would “look into it.”¹⁹⁵

In September 2000, the organization interviewed B.S., a Romani man then living in a refugee camp, who stated that his brother Rexh Shala (Red Šalja) was missing.¹⁹⁶

According to B.S., in June 1999 after the NATO bombing ended, the wedding of Rexh Shala to S.T. was due to take place. As is customary, the bridegroom and eight other men went to the bride's family home - 100 metres away - to fetch her for the wedding. On their way back, four or five men, believed to be from the KLA, appeared and arrested them all, including Rexh Shala and S.T. They were taken to a textile factory in Gjakovë, and subsequently to the basement of the Hotel Pashtrik. B.S. told Amnesty International they were beaten, and that some men suffered knife wounds to the face and body and others had automatic guns held to their throats. According to B.S., S.T. was raped by several men in the basement of the hotel, in front of the other detainees, on the orders of their commander, who had raped her first. They recognized the commander.

Some of the men and S.T. were released. The four remaining men, including B.S. and his brother, were told that they were being taken home. But they were forced into a car and taken to a warehouse on the Gjakovë-Prizren road. According to B.S., the KLA then opened fire with automatic weapons, hitting his brother and the two other men. B.S. managed to escape by jumping into the river and swimming away underwater.¹⁹⁷ He told Amnesty International in 2000 that he did not know whether his brother was alive or dead.

In October 2007 Anton Lekaj was convicted and sentenced to 13 years' imprisonment. On 26 February 2007, the War Crimes Panel of the Supreme Court of Serbia confirmed the judgment. The body of Rexh Shala has not yet been found.

5: THE RIGHTS OF THE RELATIVES

In previous chapters we have seen how the Serbian authorities and UNMIK have failed to provide the relatives of victims of enforced disappearances and abductions with effective access to justice through the criminal justice system. In this chapter Amnesty International documents how the same authorities, and the Kosovo Government, have failed to guarantee the relatives access to adequate reparation.

The right to reparation is clarified in 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.¹⁹⁸ In accordance with these Basic Principles and Guidelines, in addition to effective access to justice, the relatives of those who were subjected to enforced disappearances or abduction in the conflict in Kosovo and its aftermath should receive adequate, effective and prompt reparation for the harm they have suffered, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

These five forms of reparation are defined in Articles 19-23 of UN Basic Principles and Guidelines on the Right to a Remedy and Reparation of Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

19. Restitution should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.

20. Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:

- (a) Physical or mental harm;
- (b) Lost opportunities, including employment, education and social benefits;
- (c) Material damages and loss of earnings, including loss of earning potential;
- (d) Moral damage;
- (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

21. Rehabilitation should include medical and psychological care as well as legal and social services.

22. Satisfaction should include, where applicable, any or all of the following:

- (a) Effective measures aimed at the cessation of continuing violations;
 - (b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;
 - (c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities;
 - (d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;
 - (e) Public apology, including acknowledgement of the facts and acceptance of responsibility;
 - (f) Judicial and administrative sanctions against persons liable for the violations;
 - (g) Commemorations and tributes to the victims;
 - (h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.
23. Guarantees of non-repetition should include, where applicable, any or all of the following measures, which will also contribute to prevention:
- (a) Ensuring effective civilian control of military and security forces;
 - (b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality;
 - (c) Strengthening the independence of the judiciary;
 - (d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders;
 - (e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces;
 - (f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises;
 - (g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution;
 - (h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.

As we have seen, relatives in both Serbia and Kosovo have not been guaranteed their rights to “satisfaction”, which is defined under Article 22, above, among other things, as: “Verification of the facts and full and public disclosure of the truth ... The search for the whereabouts of the disappeared ... and for the bodies of those killed...”. Neither have they received a public apology, nor have the authorities provided “commemorations and tributes to the victims”. Relatives in both Serbia and Kosovo have had to struggle for their rights.

RELATIVES CLAIM THEIR RIGHTS

The relatives of the missing are not merely the passive victims of human rights violations, but continue to be active in seeking their rights. Forming themselves into family associations in both Kosovo and Serbia they have used a variety of means to persuade the authorities to provide them with the truth. They have written to every national and to relevant international authorities, assisted the work of the commissions and supported each other.

Relatives have also taken action: in Kosovo in 2004 they placed photographs of the disappeared on the railings outside the Kosovo parliament building, reminding the government of its responsibilities. Now the pictures fade in the rain and sun, a testament to the authorities' inaction. Others have protested outside the offices of government and international institutions in Belgrade and Pristina, or sought out visiting international delegations, seeking to influence others who might put pressure on their unresponsive governments.

They – and they are mainly women; the mothers and sisters and daughters of the missing – have gone on hunger strikes in both Serbia and Kosovo. In their hundreds, they have blocked the main streets of Pristina, and been arrested for doing so.

Local NGOs have joined in their campaigns. In 2003-2004 the Kosova Action Network (KAN), together with the Coordinating Council of Family Associations of the Hostages, Missing and Families with War Victims, collected 236,311 signatures on a petition, “We all are missing them.” It was addressed to the UN, the US, the EU, the European Commission (EC), UNMIK and the Kosova Assembly, government and President, and it called for the return of bodies from Serbia and the initiation of legal proceedings.¹⁹⁹ In Serbia, the HLC has worked tirelessly for the respect of the rights of the relatives, and has established an initiative calling for a *Regional Commission mandated to establish and disclose the facts about war crimes committed in the former Yugoslavia* (RECOM), which aims to provide “a systematic mechanism for truth-seeking and truth telling about war crimes.”²⁰⁰

Amnesty International considers that the particular situation of those directly affected by abductions and enforced disappearances requires a gender-sensitive approach. While the victims of enforced disappearances and abductions in the context of the conflict in Kosovo and its aftermath are predominantly (more than 85 per cent) male, the surviving victims are most often women. For many, the loss of their family member (and in some cases their displacement from their place of origin) has resulted in adverse effects on their social and economic circumstances. Few receive adequate social or economic support, or recognition in law from their governments. In both Serbia and Kosovo alike, the relatives of the disappeared and abducted consider that their respective governments have done little to assist them.

REPARATION: COMPENSATION FOR THE VICTIMS AND THEIR FAMILIES

The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation cited above call on states to provide adequate, effective and prompt reparation, proportional to the gravity of the violation and the harm suffered. Amnesty International considers that the vast majority of civilian victims of serious human rights abuses committed in Kosovo have not received such reparation.²⁰¹

Under laws on the rights of the military and civilian victims of war in both Serbia and Kosovo, relatives of the missing are entitled to social benefits. Amnesty International considers, however, that these laws discriminate against the families of civilian victims of war, and fail to provide them with adequate compensation.

In Serbia

The Serbian laws on military and civilian invalids provide for monetary compensation, in the form of a monthly payment, to persons disabled by war and the families of persons killed in armed conflict or deceased as a result of injuries suffered in connection with the conflict.²⁰² Under the law families of missing servicemen have the right to family disability pensions, but the families of missing civilians are only able to invoke this right if they undertake civil proceedings to declare the missing person dead. The majority of family members are either unaware that they may receive monthly compensation under these conditions or do not wish to launch such proceedings, hoping that their relative is still alive.²⁰³

Under the law families of military victims automatically receive a monthly family disability benefit, with a three-member family receiving about 92,500 dinars (worth 1,170 Euro in 2007). However, families of civilians who were killed are excluded from such benefits if they had incomes exceeding a stipulated threshold. Those who were eligible in 2007 received about 14,750 dinars (187 Euro) per family, regardless of the number of beneficiaries. In Serbia, in late 2007, only 1,972 persons (not necessarily from Kosovo) had been found eligible for such a benefit and granted the status of a civilian war invalid.

The International Center for Transitional Justice (ICTJ) considered that, "the legislation provides for wholly uneven treatment of military victims and members of their families on the one hand and civilian victims and members of their families on the other. Families of fallen soldiers receive generous disability allowances irrespective of their financial situation, while families of killed civilians receive modest incomes only if they are in a dire economic situation."²⁰⁴ Such families may receive payments for funerals, financial donations and ad hoc donations of humanitarian aid from the Commission for Missing Persons.

The Head of the Serbian Commission for Missing Persons, Vjelko Odalović, admitted that provisions in the law were inadequate and that not all relatives qualified for such benefits. He told Amnesty International that the relatives of the abducted were worse off than, for example, dependants of former MUP police or others previously employed in the public sector in Kosovo, who receive pensions from the Serbian Ministry for Kosovo and Metohija.²⁰⁵

Serbia has no Law on Missing Persons. According to Vjelko Odalović there is a lack of political will to introduce a law, which would also have to apply to the estimated 10,000 relatives of missing persons from wars in Croatia and Bosnia and Herzegovina who are now citizens of Serbia. Instead, the Serbian Commission for Missing Persons, with the assistance

of guidelines drawn up by the ICRC, aims to produce a booklet providing dependants with guidance on their rights to assistance under other laws, and to amend legislation to allow such assistance.²⁰⁶ The organization observes that many Romani relatives, unable to access citizenship rights, will continue to be excluded from such benefits.

In Serbia the relatives of the missing are not considered victims. Under the law a victim is defined as “a person who sustains physical damage of at least 50% because of a wound or injury which left visible traces, inflicted by torture or deprivation of freedom by the enemy during the war, during war operations, from leftover war material or from enemy sabotage, i.e. terrorist acts.” Detained persons, victims of sexual violence and of torture are also excluded from administrative compensation unless they reach the physical injury threshold.²⁰⁷ While other “victims” may seek compensation in the courts, “a high standard of proof and the expiration of the statute of limitations prevent victims from obtaining compensation for physical or psychological harm in most cases.”²⁰⁸ The law on administrative compensation also excludes those whose injuries or loss of life resulted from actions of Serbian state agencies, thus excluding Kosovo Albanians subjected to enforced disappearances by Serb forces.²⁰⁹

In Kosovo

“UNMIK, in cooperation with the PISG ... should ensure that the relatives of ‘disappeared’ and abducted persons have access to adequate compensation.” UN Human Rights Committee, July 2006.²¹⁰

UNMIK Regulation 2000/66 provided entitlement to compensation, in the form of benefits, for war invalids and the next of kin of those who had died as a result of the armed conflict in Kosovo. It also established a Special Fund, administered by the Department of Health and Social Welfare, from which such benefits might be paid.²¹¹ The Regulation did not explicitly provide for entitlement to compensation to the families of the missing, who were eligible to receive a monthly compensation payment only after their family member was declared dead. Few Kosovo Albanians were ready to make this formal declaration; in December 2007 only eight families of persons still missing were receiving compensation. For those whose relatives had been found dead, the government funded the costs of the funeral (including the purchase of a coffin), and paid a modest sum of one-time compensation.²¹²

The UNMIK regulation only provided for benefits to be awarded to the families of civilian victims of war who died or who disappeared (“whose fate is still not known”) between 27 February 1998 and 20 June 1999. It thus excludes the relatives of minorities abducted after 10 June 1999, many of whom remain in Serb areas of Kosovo.²¹³

In Kosovo the Law on the Status and Rights of the Families of Martyrs KLA War Invalids and Veterans, and the Families of the Civilian Victims of War, was adopted by the assembly in February 2006. The new law primarily provides for financial and other benefits for the families of deceased and injured members of the KLA and other armed groups.²¹⁴ Like the law in Serbia, this law creates a massive discrepancy between the rights afforded and benefits awarded to the dependants of military and civilian victims.²¹⁵ According to the law, families are not required to declare a missing family member dead in order to exercise the right to financial compensation. However, in 2007 the provisions of the new law had only been implemented in relation to the rights of families of missing combatants, but not missing

civilians.

In May 2008, under pressure from family associations and the ICMP, an amendment was proposed to the law, with the aim of recognizing in law the rights of the families of the “disappeared”. Now proposed as a separate law, it is expected to come into force by November 2009.²¹⁶ A draft of the law reviewed by Amnesty International in February 2009 lacked detailed definitions or adequate provisions, including on the relatives’ right to know and their right to compensation. Questions have also been raised about whether the funds to implement such a law will be available.²¹⁷

ACCESS TO REPARATION THROUGH CIVIL PROCEEDINGS

The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, states: “A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term ‘victim’ also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization. The duty to provide reparations for victims of human rights violations is therefore not dependent on prosecution, although prosecution of the perpetrator may be considered an integral part of the right to redress” (Section A (2)).

Legislation in both Serbia and Kosovo provide that civil suits for damages may be brought against both public officials and non-state actors for violations of national law. Amnesty International notes, however, that civil suits for reparation brought have so far been unsuccessful. On 24 January 2007 the HLC, on behalf of 24 family members of 14 civilians killed in Podujevo/Podujevë on 28 March 1999 by members of the Serbian police reserve unit known as the “Scorpions”, filed a civil suit seeking compensation from Serbia for the murder of their family members. The HLC sought reparation for actions, or omissions, which could be attributed to the State and which constituted gross violations of international human rights law or serious violations of international humanitarian law. The suit was rejected in May 2009 on the basis of a decision by the Supreme Court in 2004 which held, contrary to the statute of limitations, that claims against the state must be brought within five years of the violation.²¹⁸

Amnesty International notes that a Serbian court in April 2009 rejected a comparable lawsuit by the families of 16 Bosniaks from the village of Sjeverin, who were abducted in Bosnia and Herzegovina (BiH) on 22 October 1992.²¹⁹

Relatives of the disappeared in Kosovo are unable to make complaints against Serbia, but they have taken complaints against UNMIK to the Office of the Ombudsperson in Kosovo (OiK), which until 2006 had jurisdiction over acts and omissions by UNMIK.²²⁰ In 2003, for example, S.Q., the wife of A.Q., a Kosovo Albanian believed to have been abducted on 9 August 1999, brought a complaint against UNMIK for its failure to investigate A.Q.’s abduction. She had last heard from her husband at 8.45am, when A.Q. had telephoned and told her that he was to travel from his work in Prizren to Pristina to buy painting materials. She has not heard from him since. She had reported his abduction to UNMIK police, who had failed to establish his fate and whereabouts.

After examining UNMIK's investigations, the Ombudsperson concluded that the steps taken by UNMIK police did not satisfy the obligation to protect the right to life under the ECHR. The Ombudsperson considered that delays in the investigative process, attributable to different units of the UNMIK police, the French Gendarmerie and other competent authorities, reflected a lack of the due diligence required by the ECHR with regard to the investigation of serious crimes, and found that the actions of the authorities had been insufficient to protect A.Q.'s right to life.²²¹

Following the withdrawal of the Ombudsperson's jurisdiction over UNMIK, on 23 March 2006, the SRSG promulgated UNMIK Regulation 2006/12, On the Establishment of the Human Rights Advisory Panel (HRAP), establishing a body to which complaints might be submitted in cases where human rights, as defined in law applicable in Kosovo, had allegedly been violated by UNMIK.²²²

In 2008 the HRAP embarked on an outreach campaign in both Kosovo and Serbia with the aim of informing persons of its mandate and procedure, and of their right to bring complaints against UNMIK. As a result, several complaints have been submitted for consideration by the HRAP, brought by the relatives of persons believed to have been abducted by the KLA, in relation to UNMIK's failure to conduct prompt, impartial and effective investigations.²²³

On 12 November 2008 the HRAP delivered its first decision, in relation to the failure of UNMIK police to investigate the murder, in 2000, of Remzije Canhasi. While this case is unrelated to war crimes, Amnesty International considers the decision is of significance to cases that may be brought by relatives of the abducted.

Shaip Canhasi, husband of the deceased, complained that UNMIK had failed to adequately investigate his wife's murder, in violation of the right to life guaranteed under Article 2 of the ECHR. The HRAP found that "[d]espite the apparent identification of possible suspects to the killing, the investigation has been pending for eight years without achieving any substantial result." While an autopsy and forensic examination of the murder site had been conducted, and witnesses interviewed by the police, no attempts had been made to interview individuals whom those witnesses alleged were involved in the killing of Remzije Canhasi. Further, the UNMIK police had failed to keep Shaip Canhasi, the victim's next of kin, "involved in and informed about the investigative process. Despite repeated requests for information about the investigation, the complainant was not updated."²²⁴ The HRAP found that there had been a violation of the right to life guaranteed under Article 2 of the ECHR, and ordered that the investigation be reopened and Shaip Canhasi be awarded adequate compensation for his suffering.²²⁵

THE RIGHT TO KNOW: A CONTINUING VIOLATION

The relatives of the disappeared and abducted are themselves victims of a human rights violation. Not only have they been deprived of the right to a family life, curtailed by the death of their husband or son or mother or daughter, but they have also been deprived of the right to know the fate and whereabouts of their family member. Under Article 24 (1) of the Convention on the Protection of All Persons from Enforced Disappearances, "'victim' means the 'disappeared' person and any individual who has suffered harm as the direct result of an enforced disappearance."

Article 24 (2) of the same convention provides that: "Each victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the 'disappeared' person. Each State Party shall take appropriate measures in this regard."

"I have done everything. I went to KFOR in Pristina. I met with our police and our army and UNMIK and gave them all the information. I have been to the government in Kosovo and talked to Bajram Rexhepi [then Prime Minister]; I contacted Flora Brovina. I contacted Barbara Davies at the UN High Commission for Human Rights. I contacted families who had paid a ransom. I have given a DNA sample. I have done everything. It is us, all the friends and relatives; we are the victims of this crime."

Amnesty International February 2009 interview, Serbian woman whose son was abducted on 19 August 1999.

The right of the relatives to know the fate of their family member is also set out in Article 32 of Protocol I to the four Geneva Conventions. Article 33 further provides that "[a]s soon as circumstances permit ... each party to the conflict shall search for the person who had been reported missing by an adverse Party" (Article 33).

According to the ICRC, "The right to know what has happened to a missing loved one is a fundamental concern of international humanitarian and human rights law. That right must be respected. The authorities and parties to the former conflict are obliged by the law to provide answers. The ICRC will continue to support the stricken families in their quest to find the truth and to approach the authorities to remind them of their responsibility to release information on the whereabouts of those unaccounted for."²²⁶

This duty to provide relatives with information about the fate of those "disappeared" or abducted has been underscored by the UN Human Rights Committee: "*UNMIK, in cooperation with the PISG ... should ensure that the relatives of disappeared and abducted persons have access to information about the fate of the victims.....*"²²⁷

The European Court of Human Rights has ruled that the pain and anguish caused to relatives of the victims of enforced disappearances by the failure of the authorities to clarify the fate of their loved ones may constitute inhuman and degrading treatment, a violation of their rights under Article 3 of the ECHR. This has also been recognized as a violation that continues until an effective investigation is carried out.

The anxiety and distress caused by not knowing the fate of one's close relatives leaves many unable to rebuild their lives, either emotionally or practically. As M.P. told Amnesty International, "My mother has cried absolutely every day for the last 10 years."²²⁸ While no authoritative studies have been undertaken into the effects of enforced disappearances and abductions on the relatives, these effects have an enduring and significant impact on the mental and physical health of a significant percentage of the population. This is also clear from interviews conducted with such relatives by Amnesty International.

Neither the authorities in Serbia nor Kosovo have taken any measures that recognize this ongoing aspect of the violation of the rights of the relatives.²²⁹

RESTITUTION AND NON-REPETITION

Article 19 of the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation defines restitution, among other things, as the enjoyment of human rights, citizenship, return to one's place of residence, restoration of employment and return of property. For the many Serb and Roma²³⁰ and other minority families who now live as displaced persons in Serbia or Montenegro or under temporary protection in EU member states, continuing impunity and the associated security concerns provide the most enduring obstacles to their return to their former place of residence in Kosovo. Few have been able to recover their property and most lack the financial means to rebuild destroyed housing.²³¹

Few Serbian and Romani women whose relatives were abducted are likely to return to their pre-war communities, although as one Serbian woman told Amnesty International. "I would like to go back to my home just to see it, and see who is living there, if they gave me protection". Like N.N. they continue to fear for their safety: members of the Serbian Association of Families of Persons Missing and Abducted in Kosovo (Udruzenje porodica nestalih i kidnapovanih lica sa Kosova) would only be interviewed by Amnesty International on condition of anonymity. Few of these women have any trust in KFOR, UNMIK or the KPS to guarantee their safety.

While Serbia's signature to the UN Convention on the Protection of Persons from Enforced Disappearances, may be taken as an indication of "non-repetition", as defined above, Amnesty International considers that -- while impunity prevails, bodies are still missing, perpetrators are not brought to justice and the status of Kosovo remains unresolved -- few relatives of the Kosovo Albanian victims of enforced disappearances by Serb forces or the Serb and Roma relatives of the abducted will consider that their rights have been protected or respected.

6. CONCLUSIONS AND RECOMMENDATIONS

Amnesty International considers that there are serious institutional barriers to ending impunity for enforced disappearances and abductions. While they may no longer occupy the positions they held during the war, the influence of once-powerful individuals extends throughout Serbian and Kosovo Albanian government and society, and in some instances, into the international community. In both Serbia and Kosovo there are those who would prefer that the disappeared and abducted remain buried in the past, including some former KLA leaders and Serbian police officials who have no interest in guaranteeing the relatives' right to the truth.

This report has shown how both Serbia and UNMIK have failed to address impunity for war crimes. Even though there are now signs of some progress in Serbia since the introduction of the Office of the War Crimes Prosecutor, it remains inadequately resourced or supported in its task. In Kosovo, EULEX promises to prioritize the resolution of outstanding war crimes and inter-ethnic crimes, but it may be stalled by the legacy of inaction in investigations and prosecutions over the past 10 years.

As with any crime, as time passes it becomes increasingly difficult to piece together the information and evidence needed to bring a successful prosecution. As this report has shown, physical evidence – including grave sites and bodies, bullets and other contextual evidence – remains to be gathered by investigators or to be made available to them. Some evidence recovered by the Tribunal has been destroyed, statements collected by KFOR have not been made available, and other evidence may have been contaminated, deliberately destroyed or lost. The memories of witnesses may be influenced or distorted over time, or may have become fixed by the too frequent re-telling of the story, and witnesses may be impossible to locate. While the culture of impunity and witness intimidation prevails in both Kosovo and Serbia, many will continue to refuse to come forward with evidence.

RECOMMENDATIONS

The governments of Serbia and Kosovo should show a clear commitment to, and public support for, all measures that will enable the ending of impunity for enforced disappearances and abductions.

Both Serbia and Kosovo should introduce into their respective Criminal Codes, a definition of the crime in accordance with the International Convention on the Protection of All Persons from Enforced Disappearance. Serbia should without delay ratify the Convention. .

EXHUMATIONS AND IDENTIFICATIONS

- The Serbian military and police authorities must disclose information on the location of any remaining individual or mass graves in Serbia. The Minister of Interior and Minister of

Defence should lead on disclosure of this information;

- Former members of the Kosova Liberation Army (KLA) should provide full information on the location on any individual and mass graves in Kosovo. This should include those former KLA commanders or political leaders who are currently in positions of power in the Kosovo government or who are members of the assembly, as well as members of the Kosovo Security Force.²³² The Prime Minister of Kosovo and President of Kosovo should take a lead in this process;
- Additional mechanisms should be created in order to collect information on the location of grave sites. The competent institutions in Serbia and Kosovo should request financial support from the EU and EU member states to support the functioning of these mechanisms;
- The Office of the Prosecutor in both jurisdictions should re-establish protocols for the exchange of all information relevant to the location of potential burial sites;
- Because of the role the international community has played in Kosovo, international organizations and UN member states should examine any documentation, relating to the armed conflict and its aftermath in their possession, to establish whether they have any relevant information on human remains, graves or missing persons, and provide such information to the Working Group members or the International Committee of the Red Cross (ICRC);
- The EU and EU member states should provide the EU Rule of Law Mission in Kosovo (EULEX), and in particular the Office of Missing Persons and Forensics (OMPF), with sufficient human, technical and financial resources to investigate and exhume all potential grave sites; immediate measures should be taken to seek means of establishing the identity of over 400 unidentified bodies held at the OMPF morgue.
- Cross-border agreements should be established with neighbouring countries where there is reasonable suspicion that grave sites may exist;
- The international community should continue to provide funding, expertise and support for the DNA identification programme undertaken by the International Committee on Missing Persons (ICMP).

INVESTIGATIONS AND PROSECUTIONS

The governments of Kosovo and Serbia, and the remaining UNMIK authorities should:

- refrain from political interference in war crimes investigations;
- demonstrate political support for investigations and prosecutions, including through co-operation with the respective investigative authorities;
- adopt a Memorandum of Understanding for mutual co-operation in the investigation and prosecution of war crimes. Such an agreement should also be concluded between Serbia and EULEX.

The EU and EU Member States should ensure that sufficient financial and other resources are provided to the Office of the War Crimes Prosecutor (OWCP) at the Special War Crimes Chamber in Belgrade and to the EULEX Police and Justice mission in Kosovo, in order to:

- ensure the prompt, independent, effective and impartial investigation of war crimes, including enforced disappearances and abductions;
- develop an effective witness protection programme that ensures witnesses are protected and provided with support before, during and after criminal proceedings;
- ensure that all courts in Kosovo are provided with video links and other witness protection measures, as set out in relevant UNMIK regulations and domestic law;
- ensure that the witness protection service at the Special War Crimes Chamber is adequately staffed and resourced;
- create a separate war crimes directorate within the Ministry of Interior or Ministry of Justice, or give the Office of the War Crimes Prosecutor (OWCP) control of the unit.

EULEX should continue to adopt recommendations made by Amnesty International in the organization's January 2008 report, which aimed to ensure an effective and impartial judiciary in Kosovo, including in particular through the introduction of measures to: ensure the accountability of international judiciary and prosecutors; the recruitment of experienced individuals, with expertise in civil law, criminal law and international humanitarian and human rights law; establish a publicly accessible database of the indictments, judgments and other public decisions made by UNMIK international panels in the past and by EULEX judges; providing for their continued training in laws applicable in Kosovo.

- With regard to the rights of suspects (and family members), EULEX should ensure that all proceedings involving international judges and prosecutors are properly, fully and simultaneously translated into all the official languages of Kosovo and that all parties, including defence counsel, the accused and the victims and their families receive copies of all court documents, translated into the relevant language, in a timely manner.
- Provision should be made for an international defence office which can provide assistance to defence counsel in the preparation of their cases.
- Mindful that the EULEX mission will remain in Kosovo only for a limited period of time, and does not plan to resolve all outstanding cases of war crimes, crimes against humanity and inter-ethnic crimes, Amnesty International urges the EULEX Police and Justice Components to draft and implement a plan of action to ensure, through training and mentoring of local police, prosecutors and judges, and by working in cooperation with the Ministry of Interior and Ministry of Justice, an impartial and independent Kosovo Police Service War Crimes Unit and specialized prosecutors and judiciary within the Ministry of Justice responsible for the investigation and prosecution of *all* war crimes, crimes against humanity and inter-ethnic crimes.

THE RIGHTS OF THE RELATIVES

Governments should ensure that police and prosecutors in Serbia and Kosovo should:

- ensure that relatives are kept regularly and fully informed of progress in investigations and prosecutions at all stages of the proceedings in cases involving their family members in accordance with international standards, including the Rome Statute of the International Criminal Court, International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR);
- ensure that the rights of victims and their families to protection, support, information about criminal and civil proceedings at all stages and participation in criminal and civil proceedings, as well as to full reparations, are effectively guaranteed.
- ensure that procedures for obtaining reparations be prompt, independent, impartial and effective.

Governments in Serbia and Kosovo should:

- at a ministerial level express public support for the rights of the relatives of the victims of enforced disappearances and abductions;
- amend legislation in order to recognize the continued violation of the rights of the relatives, enabling them to be eligible in their own right to status as civilian victims of war, and ensuring that they have the right to reparation from the authorities who have failed to provide them with information on the fate and whereabouts their family members;
- amend legislation to ensure that provisions for reparation, including compensation, do not discriminate against the relatives of civilians and do not require them to declare their relative dead if considered to be missing by an independent authority such as the ICRC;
- identify financial resources to provide relatives with adequate reparation;
- in the preparation of such legislation governments should consult with the relatives;
- both governments should ensure that all relatives are, through their respective Commissions on Missing Persons, informed of their rights and that special measures are taken to ensure that members of Roma and other communities, including those living elsewhere as IDPs or as refugees, are fully informed of these rights;
- ensure that all such measures take into account the gendered nature of enforced disappearances and abductions, and adopt a gender-sensitive approach to ensuring the rights of the relatives.
- Finally, while Amnesty International has no position on whether states should or should not be members of the EU, the organization urges the European Commission in their annual progress reports on Serbia and Kosovo, to ensure that progress towards ending impunity for war crimes and crimes against humanity is carefully monitored, as an essential obligation under the Copenhagen Criteria for accession to the European Union.

ABBREVIATIONS & ACRONYMS

BiH	Bosnia and Herzegovina
CCIU	Central Criminal Investigation Unit (UNMIK police)
DNA	deoxyribonucleic acid
EC	European Commission
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
EU	European Union
EULEX	European Union Rule of Law Mission in Kosovo
FRY	Federal Republic of Yugoslavia
HLC	Humanitarian Law Centre
HRAP	Human Rights Advisory Panel
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICMP	International Commission on Missing Persons
ICRC	International Committee of the Red Cross
ICTJ	International Center for Transitional Justice
IDP	Internally Displaced Person
IJP	International Judiciary and Prosecutors, UNMIK
KFOR	NATO-led Kosovo Force
KPS	Kosovo Police Service
KLA	Kosova Liberation Army, in Albanian <i>Ushtria Çlirimtare e Kosovës</i> (UÇK)
MUP	[Serbian] Ministry of Interior, in Serbian
NATO	North Atlantic Treaty Organization

NGO	non governmental organization
OiK	Office of the Ombudsperson in Kosovo
OLA	Office of Legal Affairs (UNMIK)
OMPF	Office of Missing Persons and Forensics
OSCE	Organization for Security and Co-operation in Europe
OWCP	Office of the War Crimes Prosecutor (Serbia)
PISG	Provisional Institutions of Self-Government
PJP	Special Police Units, in Serbian <i>PosebniH jedinica policije</i>
RDB	State Security, in Serbian <i>Resor državne bezbednosti</i>
RJB	Public Security Department, in Serbian <i>Resor javne bezbednosti</i>
SFRY	Socialist Federal Republic of Yugoslavia
SRSG	Special Representative of the UN Secretary General in Kosovo
Tribunal	International Criminal Tribunal for the former Yugoslavia
UNHCR	UN High Commissioner for Refugees
UNMIK	United Nations Interim Administration Mission in Kosovo
UNSC	United Nations Security Council
VJ	Army of Yugoslavia, in Serbian <i>Vojska Jugoslavije</i>
WCC	Special War Crimes Chamber, Belgrade District Court
WCIS	War Crimes Investigation Service (Serbian police)
WCP	War Crimes Prosecutor
WCIU	War Crimes Investigation Unit (EULEX)
WCU	War Crimes Unit (UNMIK)

APPENDIX 1: EMBLEMATIC CASES TAKEN UP BY AMNESTY INTERNATIONAL

Name, date last seen, ICRC reference	Exhumation/Identification	Criminal Investigations and Prosecutions ²³³
Kosovo Albanians believed to be the victims of enforced disappearances by Serbian forces		
Bekim Rrecaj KMI BLG-802481 Mehmet Tupella KMI BLG 802482 Basri (Bastria) Tupella KMI BLG 802482	The body of Bekim Rrecaj was exhumed in Bajna Bašta in Serbia, and returned to his family on 16.11.2007. The body of Mehmet Tupella was exhumed in Vidomiric (Mitrovica) on 15.12.2002 and returned to his family on 05.08.2005. Basri Tupella's body has not been found.	No information received.
Afrim Dana DJA BLG-800942 Albert Dana DJA BLG-800940 Luan Dana DJA BLG-801034 Labinot Dana DJA BLG-801034 Kastriot Dana DJA BLG-801033 Gëzim Dana ²³⁴ DJA BLG 801035 This group was arrested together on 10 May 1999.	The bodies of members of the Dana family were exhumed at Batajnica in Serbia. The body of Afrim Dana was returned to the family on 15.01.2005. All other mortal remains were returned on 25.08.2005.	August 2008; WCU of UNMIK Police investigating; December 2008: case to be transferred to EULEX prosecutors.
Albion Kumnova DJA BLG-801769 Artan Efendia DJA BLG-801037 Gëzim Deva DJA BLG-803511 Lutfi Bunjaku	The body of Albion Kumnova is still missing. The bodies of all other members of this group were exhumed at Perućac (Bajna Bašta) in September 2001, and returned to their families on 20.09.2006.	August 2008: case at a preliminary investigative stage with UNMIK international prosecutor; confirmed by UNMIK Department of Justice (DoJ), December 2008.

DJA BLG-801030 Bekim Bunjaku DJA BLG-801030 Shkëlzen Binishi DJA BLG-800829 Arrested together on 31 March 1999		
Bekim Beqiri not listed		No criminal report is associated with this name.
Artan Qerkezi DJA BLG-801535 Edmond Qerkezi DJA BLG-801535 Vegim Qerkezi DJA BLG-801536 Shpejtim Ymeraga DJA BLG-800954 Skënder Dylhasi DJA BLG-801038 Myrtezan Dylhasi DJA BLG-803295 Fatos Jetishi DJA BLG-801009 Shpend Jetishi DJA BLG-801009 Halim Qerkezi DJA BLG-801535 Armend Qerkezi DJA BLG-803297 Ardian Qerkezi DJA BLG-801535 All of these men were arrested together on 27 April 1999.	Artan Qerkezi's body was exhumed by the Tribunal in 2000 in Prizren and was returned to the family on 15.12.2005. Edmond Qerkezi's body was exhumed by the Tribunal in 2000 in Gjakova and was returned to the family on 15.12.2005. The bodies of the other members of this group have not been found.	August 2008: case at a preliminary investigative stage with UNMIK international prosecutor; confirmed by UNMIK DoJ, December 2008.

Serbs and Roma²³⁵ believed to have been abducted by the Kosovo Liberation Army		
Petrija Piljević Abducted 28 June 1999 PRI BLG-800674	Her body was found in Dragodan, Pristina and exhumed in 2000 by the Tribunal. Her body was returned to her family on 15.08.2001.	August 2008: case under investigation by UNMIK Police War Crimes Unit. December 2008: not registered as the subject of a criminal report, or investigation.
Gradimir Stolić 25 August 1999 GJI BLG-801720		August 2008: case under investigation by UNMIK Police War Crimes Unit. Dec 2008: case not recorded in WCU database.

Tihomir Patrnođić 1 September 1999 BLG 802702_01		August 2008: case under investigation by UNMIK Police War Crimes Unit. December 2008: no evidence that his case is related to war crimes.
Ramadan Halilaj (Halili) DJA BLG802522 Xhevdet Cufaj (no reference) Vehbi Mailiqi (no reference) June 1999	The body of Ramadan Halilaj was found in two locations: Ramoc forest on 04.09.2004 and Dragodan on 18.06.2003, and was returned to his family on 17.07.2007	December 2008: not registered as being the subject of a criminal report, investigation or prosecution.
Kujtim Imeraj June 1998 DJA BLG-803492 Bashkim Imeraj 16 June 1999 DJA BLG-802519	The body of Kujtim Imeraj was found in Piskote, Gjakova, on 10.10.2005 and returned to his family on 17.07.2007. The body of Bashkim Imeraj has not been found.	Kujtim Imeraj, see Prosecutor v. Ramush Haradinaj, Idriz Balaj, Lahi Brahimaj, IT-04-84-T, 3 April 2008, paras. 298-302. The Trial Chamber found insufficient evidence that the accused were responsible for the criminal acts related to his death. Bashkim Imeraj August 2008:, UNMIK Police WCU investigating
Vesel Rama PRI BLG-802589 June 1999	The body of Vesel Rama was found in Makovc on 11.09.2003 and was returned to his family on 03.12.2003.	August 2008: At the preliminary investigation stage with an international prosecutor
Rexhe Shala BLG-804815-01 June 1999	His body has not been found.	On 18 September 2006 Anton Lekaj was convicted of his murder at the Serbian WCC, see p. 47.
Bajram Krasniqi (no reference)	According to the OMPF a DNA analysis was conducted by the OMPF but contact could not be established with his family.	August 2008: No criminal report is associated with this name.
Abdul (Avdul) Imeraj DJA BLGS-802521		August 2008: No criminal report is associated with this name.
Daka Asani/Asanović 1 August 1999 DJA BLGS-802521	The body of Daka Asani was exhumed in 2000 by the Tribunal and returned to his family in December 2006	August 2008: No criminal report is associated with this name.

ENDNOTES

¹ ICRC, *Statistics – Kosovo Conflict*, 14 April 2009.

² Kosovo declared unilateral independence from Serbia on 17 February 2008; as of 28 April 2009 58 UN member states had recognized its independence. Serbia was a constituent state of the Federal Republic of Yugoslavia in 1999. The name of the country was changed to Serbia and Montenegro under the November 2002 Constitutional Charter, which came into force on 4 February 2003. In June 2006 the Republic of Montenegro seceded from Serbia and Montenegro after a referendum, and the Republic of Serbia became an independent state.

³ See: Amnesty International, *FRY (Kosovo), A Decade of Unheeded Warnings*, Vols. 1 & 2, (Index: EUR 70/39/99 & EUR 70/40/99).

⁴ Amnesty International: *"Collateral Damage" or Unlawful Killings? Violations of the Laws of War by NATO during Operation Allied Force*, (Index: EUR 70/18/00), June 2000.

⁵ <http://www.unhcr.ch/news/media/kosovo.htm>, 4 May 1999.

⁶ <http://www.nato.int/kosovo/docu/a990609a.htm>

⁷ Resolution 1244 (1999), Adopted by the Security Council at its 4011th meeting, on 10 June 1999, S/RES/1244 (1999), retrieved at <http://daccess-ods.un.org/TMP/658974.9.html>; S/1999/779: *Report of the Secretary-General of the United Nations Interim Administration Mission in Kosovo*, 12 July 1999, prepared pursuant to paragraph 20 of Security Council resolution 1244 (1999); the report outlined the authority, competencies, structure and main components of UNMIK, <http://daccess-ods.un.org/TMP/658974.9.html>, accessed April 2009.

⁸ Article 9 (c); Article 11(k); Article 10, Resolution 1244 (1999).

⁹ Under Section 1.1, UNMIK Regulation 1999/1, 25 July 1999, "All legislative and executive authority in Kosovo, including the administration of the judiciary is vested in UNMIK and is exercised by the Special Representative of the Secretary General".

¹⁰ These standards were set out in Section 1.3 of UNMIK Regulation 1999/24, and included the Universal Declaration of Human Rights; the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto; the International Covenant on Civil and Political Rights and the Protocols thereto; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Convention on the Rights of the Child.

¹¹ Names of cities, towns and villages, with the exception of Pristina, are given in Serbian and Albanian.

¹² *Smrekovnica prison: a regime of torture and ill-treatment leaves hundreds unaccounted for*, pp.2-3. M.K. was interviewed by Amnesty International in May 1999.

¹³ Some ethnic Albanians were abducted and killed by ethnic Albanian armed groups, see Chapter 4.

¹⁴ See for example, Amnesty International, *Smrekovnica prison: a regime of torture and ill-treatment leaves hundreds unaccounted for*, (Index: EUR 70/107/99). October 1999. Smrekovnica/Smrekonicë is a village midway between Kosovska Mitrovica/Mitrovicë and Vučitrn/Vushtrri.

¹⁵ See: *KFOR forces should live up to responsibility to protect all inhabitants of Kosovo*, (Index: 70/101/99), 25 June 1999; *Kosovo: murder of 14 ethnic Serbs -- UN civilian police must be deployed*, (Index: EUR 70/104/99) 26 July 1999.

¹⁶ In October 1999, the Yugoslav Red Cross and local authorities indicated that some 230,884 people from Kosovo were registered as displaced in Serbia and Montenegro, *Overview of the Situation of Ethnic Minorities in Kosovo*, 3 November 1999, UNHCR/OSCE.

¹⁷ Amnesty International interview with V.T., Belgrade, February 2009.

¹⁸ *Report of the Special Rapporteur for Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia*, UN Doc. A/54/396, 24 September 1999, para.112.

¹⁹ See: Amnesty International, *A Broken Circle: "Disappeared" and abducted in Kosovo province*, (Index EUR 70/106/1999), November 1999, p.8.

²⁰ On 13 October 1999 a KFOR spokesman reported that 348 people had been killed in Kosovo since 12 June 1999. The Centre for Peace and Tolerance, a Kosovo Serb NGO, reported that 644 Serbs had been abducted and more than 40 killed since the deployment of KFOR in June 1999, *FRY: In the Interests of Justice*, (Index: EUR 70/121/99), November 1999, p.5.

²¹ See: *Amnesty International, FRY (Kosovo): Update from the field January 2000*, (Index: EUR 70/02/00), January 2000. Minorities then made up between five and eight per cent of the population.

²² Based on estimates from different sources.

²³ Interview with the mother of Marijan Melonaši, Belgrade, February 2009. On 20 June 2000, Valentina Cukić, editor of Serbian-language programming at Radio Kontakt, was shot in the chest.

²⁴ For Amnesty International's continued concerns about the violation of the rights of minority communities in Kosovo see, for example, *"Prisoners in our own homes": Amnesty International's concerns for the human rights of minorities in Kosovo/Kosova*, (Index: EUR 70/010/2003), April 2003; *Serbia and Montenegro (Kosovo/Kosova): The March Violence: KFOR and UNMIK's failure to protect the rights of the minority communities*, (Index: EUR 70/016/2004), 8 July 2004.

²⁵ Amnesty International's use of the term enforced disappearance is consistent with the internationally agreed definition of enforced disappearance set out in Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance: "For the purposes of this Convention, 'enforced disappearance' is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law." This Convention, which was adopted by the UN General Assembly in December 2006 is not yet in force; it will enter into force when 20 states become parties to it. As of May 2009: 10 states were parties to this Convention.

²⁶ *Cyprus v Turkey*, Judgment of the European Court of Human Rights (10 May 2001) at paras. 136, and 150 Article 8(1)(b) of the International Convention on the Protection of All Persons from Enforced

Disappearance; Article 17(1) of the Declaration on the Protection of All Persons from Enforced Disappearance.

²⁷ Serbia and Montenegro ratified the ECHR on 3 March 2004.

²⁸ Applicable law in Kosovo following the arrival of UNMIK was defined in UNMIK Regulation 1999/1, and amended in UNMIK Regulation 1999/24, *On the Law Applicable in Kosovo*, (12 December 1999) which states that: "1.3 In exercising their functions, all persons undertaking public duties or holding public office in Kosovo shall observe internationally recognized human rights standards, as reflected in particular in: [*inter alia*] (b) The European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and the Protocols thereto; (c) The International Covenant on Civil and Political Rights of 16 December 1966 and the Protocols thereto.

²⁹ Article 3 Common to the Geneva Conventions of 1949; Articles 4 and 5 of Protocol II to the Geneva Conventions.

³⁰ Article 7 (i) and (e) of the Rome Statute of the International Criminal Court.

³¹ The Prosecutor v. Milan Milutinović, Nikola Sainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević and Sreten Lukić, Case no. IT-05-87-T.

³² The Prosecutor v. Fatmir Limaj, Isak Musliu and Haradin Bala, Case no. IT-03-66-I; The Prosecutor v. Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj, (IT-04-84).

³³ Serbia: Article 142, War crimes against the civilian population: including - attack against civilian population, resulting in death; killings; torture; inhuman treatment; taking hostages; unlawful bringing into concentration camps and other illegal arrests and detention, set out in Chapter 16 ("Criminal Offences against Humanity and International Law"), Basic Penal Code, Official Gazette of the SFRY, no. 44/1976, Articles 141–156. Under Article 371 of the Law on Organization and Jurisdiction of Government Authorities in Prosecuting Perpetrators of War Crimes, (Official Gazette, no. 67/2003, July 1, 2003), the definitions of crimes against humanity includes: "detention or abduction of persons without giving information on it so as to deprive them of the protection of the law".

³⁴ Kosovo: Article 142: War Crimes against the Civilian Population including:, killings, torture, inhuman treatment, taking hostages, unlawful bringing in concentration camps and other illegal arrests and detention, derivation of rights to fair and impartial trial, and, Article 125, Terrorism, 1976 Criminal Code of the Socialist Federal Republic of Yugoslavia (SFRY) and Basic Criminal Code of the Republic of Serbia, Official Gazette SFRY No. 44 of October 8, 1976. Applicable law in Kosovo is defined under UNMIK Regulation 1999/24.

³⁵ These duties arise, *inter alia*, under Articles 2, 6, 7 and 9 of the ICCPR and Article 13, 2, 3 and 5 of the ECHR, *Cyprus v Turkey* (judgment of the European Court of Human Rights (10 May 2001) at para 147; *Cicek v Turkey*, Judgment of the European Court of Human Rights (27 February 2001) at para 164. See Articles 12 and 3 of the International Convention on the Protection of All Persons from Enforced Disappearance.

³⁶ See, for example, *Luluyev and Others v Russia*, judgment of the European Court of Human Rights (November 2006) at paras 90 and 122.

³⁷ Article 12(1) of the International Convention on the Protection of All Persons from Enforced Disappearance; Article 13(3) of the Declaration on the Protection of All Persons from Enforced Disappearance; Article 5(d) of the Declaration of Basic Principles of Justice for Victims of Crime and

Abuse of Power.

³⁸ *Cyprus v Turkey*, Judgment of the European Court of Human Rights (2001) at paras 156-158; *Khaila Isayeva v Russia*, 15 November 2007 at para 130; Article 24(2) of the International Convention for the Protection of All Persons from Enforced Disappearance

³⁹ *Cyprus v Turkey*, (10 May 2001), Judgment of the European Court of Human Rights, paras. 136 and 156-158. The Human Rights Committee has recognized that the “anguish and stress” suffered by a family member of a victim of enforced disappearance can amount to a violation of Article 7 of the ICCPR torture, inhuman or degrading treatment. *Quinteros v. Uruguay* (107/1981), Report of the HRC.

⁴⁰ The five forms of reparation are defined in Articles 19-23 of UN Basic Principles and Guidelines on the Right to a Remedy and Reparation of Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law..

⁴¹ At this time Serbia was a constituent republic of the state of Serbia and Montenegro. *Initial report Serbia and Montenegro, 24/07/2003, (CCPR/C/SEMO/2003/1)*, State Party Report.

⁴² *Concluding Observations of the Human Rights Committee: Serbia and Montenegro*. 12/08/2004, CCPR/CO/81/SEMO.

⁴³ *Report Submitted By The United Nations Interim Administration Mission In Kosovo To The Human Rights Committee on the Human Rights Situation In Kosovo Since June 1999*, CCPR/C/UNK/1, 3 March 2006, (including the Core Common Document “CCD” and the Treaty Specific Report “TSR”), <http://www.ohchr.org/english/bodies/hrc/docs/AdvanceDocs/CCPR.C.UNK.1.pdf>. UNMIK is not a state party to the ICCPR, however the HRC required UNMIK to report to the committee after Serbia in 2004 had stated that they were unable to report on implementation of the ICCPR in Kosovo.

⁴⁴ CCPR/C/UNK/CO/1, *Concluding observations of the Human Rights Committee, Advance non edited version, Kosovo (Republic of Serbia)*.

⁴⁵ Geneva Convention relative to the Treatment of Prisoners of War, Adopted on 12 August 1949, <http://www.unhcr.ch/html/menu3/b/91.htm>; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1), Adopted on 8 June 1977, <http://www.unhcr.ch/html/menu3/b/93.htm>

⁴⁶ ICRC, *Persons Missing in Relation to the Events in Kosovo from January 1998*, May 2000. The list comprises the person’s name, date of birth, gender, father’s name and date and place last seen. Four editions have been published, and the regularly updated list is available online at <http://www.familylinks.icrc.org/eng/missing-kosovo>

⁴⁷ ICRC, “Persons Unaccounted for in Connection with Kosovo Crisis”, 10 April 2001.

⁴⁸ UNMIK police Missing Person’s Unit and Central Criminal Investigation Unit (CCIU). UNMIK police remained without forensic capacity until 2002. By December 1999, however, only 1,900 out of the promised 4,800 international police officers had arrived in Kosovo.

⁴⁹ In an article published in 2008, accompanied by photographs of KFOR personnel recovering bodies from a river, Mauro Del Vecchio, a former Italian KFOR General, stated: “We were receiving pleas from Serbian mothers and wives reporting the abduction of their sons and husbands. Sometimes they were found dead. ...those bodies were abandoned in very unlikely places.”, see “Kosovo, La verita nacosta: I massacri di serbi”, *Panorama*, 18 December 2008, <http://www.faustobiloslavo.com/articoli/29203.pdf>

⁵⁰ E-mail from Monique Fienberg, Head of the UNMIK Bureau for Detainees and Missing Persons, 19 April 2002. The Bureau was closed in June 2002. In September 2002, OMPF announced they “will soon release a Consolidated List of Missing Persons”, including 4700 records, *UNMIK/PR/833*, 27 September 2002; in February 2003, OMPF reported that the “latest” list included 4,233 persons are still reported as missing, 3,324 of whom were Albanian and 909 non-Albanian, *UNMIK/PR/917*, 3 February 2003. On 3 December 2004, UNMIK OMPF reported that a maximum of 5602 persons had been included in the “consolidated list of missing persons”, of whom these 439 persons found alive, *OMPF Annual Report 2002-2004*.

⁵¹ *OMPF Annual Report 2002-2004*, http://www.unmikonline.org/justice/ompf/ompf_reports.htm

⁵² S/RES/827(1993), 25 May 1993; CC/PIO/302-E, The Prosecutor’s Statement Regarding The Tribunal’s Jurisdiction Over Kosovo, 10 March 1998, <http://www.icty.org/sid/7683>, accessed April 2009.

⁵³ The Prosecutor v. Slobodan Milošević, Milan Milutinović, Nikola Sainović, Dragoljub Ojdanović, Vlajko Stojiljković., (IT-99-37-I), 23 May 1999. The five accused were charged with command responsibility for crimes against humanity and violations of the laws and customs of war committed in Kosovo.

⁵⁴ UN Wire, *UN Tribunal Reports On Mass Graves, Altered Evidence*, 11 November 1999, http://www.unwire.org/unwire/19991111/5783_story.asp, accessed April 2009.

⁵⁵ *Beta News*, 17 July 2001, quoted in HRW, *Under Orders*, footnote 40. This conflicts with figures provided to Amnesty International in 2002 by the Victim Recovery and Identification Commission (VRIC), that 1800 mortal remains had been handed over the relatives for burial, from a total of 2,198 bodies exhumed. Until early 2002 VRIC was responsible for handing over bodies exhumed by the Tribunal.

⁵⁶ *Comments on Technical Assessment of Progress in Implementation of Standards for Kosovo, prepared by the UN GS Special Representative for Kosovo*, 30 November 2007, accessed 3 April 2009 at www.mfa.gov.yu/Policy/Priorities/KIM/anex_e.pdf

⁵⁷ Interview with R.D., Belgrade, February 2009; interview with Valerie Brasey, OMPF, February 2009.

⁵⁸ Article 15, International Convention for the Protection of All Persons from Enforced Disappearance.

⁵⁹ http://www.mfa.gov.yu/Policy/Priorities/KIM/unmik_e.html, retrieved 3 April 2009. UNMIK’s objective in concluding this agreement was to encourage Serbs living in Kosovo and those displaced in Serbia, who had refused to exercise their rights to vote, to register to vote in the November 2001 elections.

⁶⁰ Under this agreement UNMIK agreed to, “by 31 December 2002, investigate all non-surveyed grave-sites in Kosovo and undertake exhumations of all human remains, and to process, through DNA testing and ante- and post-mortem data, 1,250 unidentified human remains [from the Tribunal’s exhumations] held throughout Kosovo with a view to their identification and return to family members”. Further, “Recogniz[ing] that the exhumation and identification programme is only part of the activities”, the authorities also agreed “to co-operate in full transparency and to share all relevant data and information. This co-operation shall also include work on grave-site locations.” www.unmikonline.org/justice/documents/

⁶¹ This was introduced in response to the belief amongst the families of Kosovo Serbs that abducted persons continued to be imprisoned. Both UNMIK and the FRY authorities had by that time undertaken investigations into the existence of secret prisons, but had reportedly found no evidence of hidden prisons or illegal detention centres in Kosovo or in Serbia respectively. The Protocol was largely signed to allay the fears and dispel rumours about such prisons. It also sought to prevent the exploitation of

families by individuals including lawyers who, claiming they knew the location of such prisons, were extorting money from families, promising that they would find their family member.

⁶² A Working Group for Missing Persons including representatives of the Serbian Commission for Missing Persons and UNMIK was not created within the Belgrade-Pristina dialogue until 2004.

⁶³ The FRY authorities had already established a mechanism for addressing the issue of missing persons in 1991, during the war in Croatia. In June 2006, the Serbian government formally established a Commission on Missing Persons of the Government of the Republic of Serbia and in October 2006, the Provisional Institutions of Self government (PISG) in Kosovo established the Kosovo Commission on Missing Persons. Both commissions (in theory) include representatives of relevant ministries and are mandated to search for missing persons regardless of the national, ethnic or religious origin.

⁶⁴ ICMP, *ICMP Proposal for Kosovo*, December 2006.

⁶⁵ By April 2002 the MPU had conducted 69 exhumations and recovered some 85 bodies.

⁶⁶ Formerly part of the UNMIK Department of Justice, in 2007 OMPF was in part transferred to the Kosovo Ministry of Justice, but in 2008 was taken over by the EULEX mission.

⁶⁷ OMPF, *Activity Report 2002-2004*, http://www.unmikonline.org/justice/ompf/ompf_reports.htm, accessed 3 April 2009. According to the OMPF, 849 identifiable mortal remains included 641 ethnic Albanians and 98 non-Albanians.

⁶⁸ Elsewhere OMPF reported that 69 exhumations had been conducted and 77 bodies and body parts representing some 43 individuals were recovered in 2005. *Assessments - Exhumations results 2005*, http://www.unmikonline.org/justice/ompf/ompf_reports.htm, accessed 3 April 2009.

⁶⁹ http://www.unwire.org/unwire/20010611/15196_story.asp. One of the first acts of Serbian co-operation with the Tribunal, the invitation came three weeks before an international donors conference.

⁷⁰ HRW, *Under Orders: War Crimes in Kosovo*, 2001, p.124, <http://www.hrw.org/legacy/reports/2001/kosovo/>.

⁷¹ In proceedings at the Tribunal witnesses also testified that other bodies had been exhumed from various locations in Kosovo and subsequently reburied in other locations, Case IT-05-87-T, Judgment Section P, Efforts to Conceal Crimes, paras. 1263 ff.

⁷² In 2001 the OMPF signed a Memorandum of Understanding with the then FRY Ministry of Foreign Affairs, and a Grant Agreement with the Coordination Centre for Kosovo and Metohija to assist in the excavation and identification of persons missing from the Kosovo conflict.

⁷³ Judgment, Case IT-05-87-T, paras. 1350-1355.

⁷⁴ <http://www.ic-mp.org/icmp-worldwide/southeast-europe/republic-of-serbia/>

⁷⁵ Amnesty International interview with ICRC Belgrade, February 2009.

⁷⁶ ICMP, *Concept Paper - A Proposal For ICMP Activities In Kosovo*, August 2006.

⁷⁷ Amnesty International interview with ICRC, Belgrade, February 2009.

⁷⁸ These allegations were based on statements by two witnesses, one of whom had worked at the complex; two further witnesses, including a former member of the police force, subsequently confirmed these allegations in interviews with investigative journalists, HLC [check press release no]; *Danas*, 24

December 2004; IWPR Balkan Crisis Report, *Investigation: Serbia: More Mackatica Body Burning Revelations*, April 2005, http://www.iwpr.net/?p=bcr&s=f&o=242276&apc_state=henibcr2005

⁷⁹ Amnesty International interview with Valerie Brasey, OMPF, February 2009.

⁸⁰ *Lajm*, "Procedurë për gjetjen e të zhdukurve kosovar" (Procedure for finding the missing Kosovo Albanians), 27 February 2009. The Kosovo Ministry of Foreign Affairs denied making an official request to their counterparts in Macedonia.

⁸¹ ICMP, Conclusions, *Eleventh Regional Networking Conference on the Missing Persons Issue*, November 28-30, 2008.

⁸² ICRC, News release 01/05, "Yugoslavia: Families of Kosovo missing can consult new Book of Belongings", 8 February 2001.

⁸³ <http://www.ic-mp.org/icmp-worldwide/southeast-europe/un-administered-kosovo>. Email to amnesty International from ICMP, April 2009.

⁸⁴ ICRC, *Newsletter of the ICRC Regional Delegation Belgrade, covering Serbia, Albania, Macedonia and Montenegro*, December 2008; *OMPF Activity Report, 2008*.

⁸⁵ Interview with Valerie Brasey, OMPF, February 1999.. These techniques are described in Gunilla Holmlund et. al., "Experiences from DNA analysis in Sweden for the Identification of Tsunami Victims", *International Congress Series*, 1288, pp.74-76, 2006.

⁸⁶ Amnesty International in February 2009 was given sight of a report by the OMPF produced for Nesrete Kumnova, which in detail explained why none of the unidentified mortal remains held in the OMPF morgue, and large enough to provide a DNA sample, are those of Albion Kumnova.

⁸⁷ <http://video.kosovapress.com/?cid=1,7,2998>, retrieved 9 March 2009. Unofficial translation, Amnesty International.

⁸⁸ "Over 400 sets of human remains still unidentified in Pristina morgue", accessed 6 April 2009, http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2009/04/06/feature-03

⁸⁹ Between 150 and 200 Kosovo Albanian prisoners were killed at Dubrava prison, 23 were killed in two NATO bombing raids on 19 and 22 May; an estimated minimum of 130 were killed by Serbian police and unknown masked men between 22 and 23 May. Amnesty International interview with HLC, Pristina, February 2009; UNMIK news No. 86-2/04/01, <http://www.unmikonline.org/pub/news/nl86.html> accessed April 2009.

⁹⁰ Amnesty International interview with Valerie Brasey, OMPF, February 2009.

⁹¹ OMPF MPU2000-001592, Cause of Death; Department of Justice Death Certificate; ICRC Trace Request.

⁹² Communication from independent expert to Amnesty International, September 2007. He also stated that in this particular case he did not know the specific reasons for the lack of identification.

⁹³ Amnesty International interview with family of Daka Asani, August 2007.

⁹⁴ In September 2002, OMPF reported that they had returned 203 of 910 autopsy reports received from Tribunal investigators. According to Joe Pablo Baraybar, they could not be distributed as families associations complained of misspelled names [required for subsequent administrative processes], and a

lack of precision concerning the cause of death and date of death. The date of death was given as the date when the autopsy took place, often several months or years after their original burial. An offer was made to by OMPF to change the “date of death” to reflect when each Tribunal team finished their work on each site, UNMIK/PR/833, *OMPF Press Conference, 27 September 2002*.

⁹⁵ EULEX was established by the European Council in February 2008, see Council Joint Action, 2008/124/CFSP, 4 February 2008, on the European Union Rule of Law Mission in Kosovo, EULEX Kosovo. The mission was launched under the European Security and Defence Policy (ESDP), with the aim of assisting and supports the Kosovo authorities in the field of the rule of law, through police, judiciary and customs components. EULEX is primarily a technical mission with a mandate to monitor, mentor and advise, but retains some executive power, <http://www.eulex-kosovo.eu/?id=2>.

⁹⁶ EULEX Justice Component, “Brief overview of results obtained since Initial Operational Capacity (IOC)”, <http://www.eulex-kosovo.eu/?id=10&j=12>, accessed 3 April 2009. OMPF was assisted in the analysis by an ICRC consultant and two officers from the EULEX Police WCIU.

⁹⁷ The Prosecutor v. Slobodan Milošević, Milan Milutinović, Nikola Sainović, Dragoljub Ojdanić, Vljako Stojiljković, (IT-99-37-I), 23 May 1999.

⁹⁸ The Prosecutor v. Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević & Sreten Lukić, (IT-05-87). Sreten Lukić had been separately indicted on 2 October 2003, and joined to the above indictment on 26 June 2006.

⁹⁹ Para. 1356. *ibid.* The evidence against Sreten Lukić is summarized in paras 1098-1113, (c. Lukić’s participation in concealment of bodies), see Case No. IT-05-87-T, Judgement, Volume 3 of 4. “However, the Chamber is not convinced by the evidence brought that Lukić was involved in the concealment of these crimes through the clandestine transportation of civilian bodies from Kosovo to other parts of Serbia”, Summary of Judgement.

¹⁰⁰ Vljako Stojiljković, Serbian Minister of Interior from 1997 to 2000, indicted in 1999 along with Slobodan Milošević, shot himself on the steps of the parliament in April 2002.

¹⁰¹ IT-05-87/1-PT, Fourth amended Indictment, Prosecutor against Vlastimir Đorđević, para. 61(d).

¹⁰² The Prosecutor v. Fatmir Limaj, Haradin Bala, and Isak Musliu (IT-03-66), retrieved at <http://www.icty.org/x/cases/limaj/ind/en/lim-2ai040212e.pdf>, accessed April 2009.

¹⁰³ Verdict, para 350 p. 30, <http://www.icty.org/case/limaj/4#ind>; <http://www.icrc.org/Web/doc/siterf10.nsf/htmlall/familylinks-kosovo-eng>, accessed 26 April 2009.

¹⁰⁴ Prosecutor v. Fatmir Limaj, Haradin Bala, Isak Musliu, Judgement, 30 November 2005, paras. 345-351, <http://www.icty.org/case/limaj/4#tjug>, accessed April 2009.

¹⁰⁵ The Prosecutor v. Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj, (IT-04-84). <http://www.icty.org/case/haradinaj/4#tjug>, accessed April 2009.

¹⁰⁶ PR/P.I.S./437-E, “Statement by Prosecutor of the [Tribunal] on the Investigation and Prosecution of Crimes Committed in Kosovo”, 29 September 1999, <http://www.icty.org/sid/7733>, accessed April 2009.

¹⁰⁷ In December 2000 Major Dragiša Petrović and reservists Nenad Stamenković and Tomica Jović were convicted for the killing of an elderly Albanian couple in 1999, and sentenced to four years and 10 months’, and the reservists each to four years and six months’ imprisonment; these sentences were increased in October 2003 by the Supreme Military Court to nine and seven years. In October 2002,

Colonel Zlatan Mančić, Rade Radojević, Danilo Tesić were convicted for war crimes against Kosovo Albanians by Niš Military Court and respectively sentenced to seven, five, four and three years' imprisonment, increased to 14, nine, seven and five years, respectively by the Supreme Military Court in June 2003. In proceedings in Požarevac District Court, in a re-trial ordered by the Supreme Court, police reservist Boban Petković was convicted of war crimes against civilians and sentenced to five years' imprisonment for murdering three Albanians in Orahovac/Rahovec in May 1999. In July 2002 Prokuplje District Court convicted former VJ soldier Ivan Nikolić for killing two ethnic Albanian civilians in Podujevo/ë in May 1999 and sentenced him to eight years' imprisonment.

¹⁰⁸ Indictment: http://www.tuzilastvorz.org.rs/html_trz/OPTUZNICE_ENG.htm.

¹⁰⁹ As former combatants, under Article 4 of Protocol 2 and Common Article 3 of the Geneva Conventions, they should have been treated humanely, and if there was sufficient evidence of their involvement in criminal offences, they should have been promptly charged and tried in accordance with international standards of fairness.

¹¹⁰ Verdict No. K.1823/04 Belgrade District Court, 17 June 2005.

¹¹¹ Albion Duriqi (2 years of age), Mimoza Duriqi (4 years), Arber Duriqi (7 years), Dafina Duriqi (9 years), Shpetim Bogujevci (10 years), Shpend Bogujevci (13 years), Nora Bogujevci (14 years), Fezdrije Llugaliju (21 years), Fitnete Duriqi (36 years), Sala Bogujevci (39 years), Shefkate Bogujevci (42 years), Nefise Llugaliju (55 years), Shehide Bogujevci (67 years) and Esma Duriqi (69 years) were shot and killed. In addition Four children sustained serious injuries: Genc Bogujevci (6 years), Lirije Bogujevci (9 years), Jehona Bogujevci (11 years), Fatos Bogujevci (13 years) and Saranda Bogujevci, (14 years).

¹¹² As of April 2009, "Total number of investigations requested into 62 cases against 291 individuals.

Out of the above number, currently underway are investigations into 32 cases against 132 individuals". http://www.tuzilastvorz.org.rs/html_trz/index_eng.htm

¹¹³ Interview with Vladimir Vučković, February 2009. See also: para. 166, IT-05-87-T Judgement, Volume 2 of 4.

¹¹⁴ Interviews with, for example, members of the NGO Thirrjet e Nënave (Mothers' Cries), February 1999.

¹¹⁵ Case: KTRZ-1/07, "Orahovac Group".

¹¹⁶ The OWCP announced in May 2009 the opening of a criminal investigation into allegations against Fatmir Limaj related to the abduction of 10 Serbs in May 1998, "Ex-KLA faces war crimes probe", http://www.b92.net/eng/news/crimes-article.php?yyyy=2009&mm=05&dd=03&nav_id=58892.

¹¹⁷ Established in November 1999 with the primary task of investigating war crimes, outside of the jurisdiction of the Tribunal, committed within Kosovo between 1998 and 1999, and other serious offences committed prior to the establishment of investigational primacy by UNMIK police, *UNMIK Press Briefing*, 3 June 2002. UNMIK police took over policing powers from KFOR in Pristina on 19 September 1999; Prizren, 27 October 1999; Gnjilane, 12 May 2000, in Pec by June 2000. In Mitrovica UNMIK Police had investigative authority, but KFOR retained technical primacy, *UNMIK Police Report 2000*.

¹¹⁸ Letter from International Prosecutor to Amnesty international, December 2008. For prosecutions in two cases, by the Tribunal, and in Serbia, see *Haradinaj et al*, above, and Anton Lekaj, below, p.46.

¹¹⁹ Amnesty International interviews, April 2004 and April 2006.

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- ¹²⁰ See European Court of Human Rights Judgment, *Finucane v UK* (1 July 2003), at para 71.
- ¹²¹ Amnesty International interviews, February 2009.
- ¹²² Amnesty International telephone conversation with Dragan Piljević, 13 January 2009; see Appendix.
- ¹²³ The EUPT was established by a decision of the Council of the EU on 10 April 2006, to prepare for a possible future EU crisis management operation in the field of rule of law in Kosovo. According to the EUPT, in 2007 some 3,500 UNMIK police files on missing persons remained open, although the exact number of cases could not be established from existing databases. Many case files included only a single piece of paper; in others the evidence gathered was insufficient or of poor quality; some 50 per cent of cases lacked forensic evidence. In many cases a prosecutor had never been assigned to the case, Amnesty International interview with EUPT, November 2007.
- ¹²⁴ In February 2009 the Head of EULEX Justice component, Bernard Rabatel, stated on BIRN's "Jeta ne Kosove" ("Life in Kosovo") TV programme, "Some 550 civil files were handed over to EULEX, 250 of them criminal files, of which some 50 concern war crimes", *Balkan Insight*, 27 February 2009.
- ¹²⁵ David Marshall & Shelley Inglis, "The Disempowerment of Human Rights-Based Justice in the United Nations Mission in Kosovo", *16 Harvard Human Rights Journal* 96, 2003, p.140. OSCE LSMS was mandated to independently monitor the correctional service and judicial system, including through reporting on systemic violations of international law and gross violations of fair trial standards,
- ¹²⁶ Marshall & Inglis, p.122.
- ¹²⁷ For Amnesty International's concerns about the impartiality of these investigations. see *FRY: In the interests of justice*, p.10-13,
- ¹²⁸ UNMIK Regulation 2000/6, February 2000, allowed for the appointment of international judges, initially in Mitrovica. This power was extended by UNMIK Regulation 2000/34, May 2000, which allowed for the appointment of international judges and prosecutors throughout Kosovo. UNMIK Regulation 2000/64 subsequently granted competent prosecutors, the accused or defence counsel the right to petition the Administrative Department of Justice for the assignment of international judges and prosecutors or for a change of venue, in order "to ensure the independence and impartiality of the judiciary or the proper administration of justice". See also, *OSCE Review of the Criminal Justice System, 1 September 2000 - 28 February 2001*, p. 75ff.
- ¹²⁹ Nineteen of these cases had been completed by mid-2002, the majority of guilty verdicts reversed at appeal or retrial, see OSCE/LSMS, *Kosovo's War Crimes Trials: A Review*, September 2002. In late 2002 two further suspects were acquitted. For Vuckovic, see www.hlc.org/uploads/editor/Izvestaj_sudjenja_KOSOVO_engleski.pdf
- ¹³⁰ Case of Idriz Balaj, Daut Haradinaj, Bekin Zekaj, Ahmet Elshani, Ramush Ahmetaj, Supreme Court Appeal No. AP95/2003, *Balaj* case, Verdict, C.C. No. 190/02, District Court of Peć/Peja (international panel), 17 December 2002; rev'd appeal verdict, AP. 95/2003. Supreme Court of Kosovo (international panel), 1 December 2003.
- ¹³¹ OSCE/LSMS, *Case Report: The Public Prosecutor's Office vs Latif Gashi, Rrustem Mustafa, Naim Kadriu and Nazif Mehmeti, The "Llapi Case"*, 2004. According to HLC-Kosovo, the presiding judge in the left Kosovo at the beginning of 2008; UNMIK Department of Justice had not scheduled a date for the re-trial by the end of 2008.

¹³² www.hlc-rdc.org/uploads/editor/lzvestaj_sudjenja_KOSOVO_engleski.pdf For further details of this case, including an alleged KLA investigation into her death, see ICTY Case No. IT-04084-T, Judgement, paras 336-203

¹³³ Amnesty International interview: Matti Raatikainen, February 2009; email, May 2009.

¹³⁴ Amnesty International interview with ICRC Belgrade, February 2009; email to Amnesty International from ICRC, Belgrade, April 2009. Because access to information has been in many cases obtained under a confidentiality agreement, Amnesty International is not able to provide further information on the precise content of the ICRC's negotiations.

¹³⁵ The Querkezi family are Albanian-speaking members of Kosovo's small Circassian minority; for details of their arrest, see *Amnesty International: Broken Circle: "Disappeared" and Abducted in Kosovo province: Case Sheets*, (Index: EUR 70/14/99), November 1999), pp.11-13.

¹³⁶ Amnesty International interview, Đakovica/Gjakovë, February 1999.

¹³⁷ Amnesty International has not been able to establish the precise sequence of events relating to the recovery of the bodies of Artan Querkesi and Edmond after they were allegedly seen by family members. .

¹³⁸ Amnesty International interview, February 2009.

¹³⁹ HLCIndexout:0201-1084-3, 14 November 2003; IWPR, "Kosovo: Crimes against Serbs investigated", 13 November 2003.

¹⁴⁰ ICTJ, *Against the Current*, p. 32.

¹⁴¹ ICTJ, *Against the Current*, p. 32.

¹⁴² Text of report by Serbia-Montenegrin radio Kontakt Plus, 7 June 2006.

¹⁴³ Amnesty International interview with N.N, Belgrade, February 2009.

¹⁴⁴ According to Human Rights Watch, who were granted access to information obtained by the Tribunal, evidence relating to the transfer of abducted Serbs to Albania is "well researched and credible". It consists of separate interviews, conducted by journalists, with seven former KLA members who provided details about participating in or witnessing the transfer of abducted Serbs and others prisoners from Kosovo to Albania after the war. According to the witnesses, the abducted individuals were held in warehouses and other buildings, including in Kukës and Tropojë. In comparison to other captives, some of the younger, healthier detainees were fed, examined by doctors, and never beaten. An unknown number of abducted individuals were allegedly transferred to a yellow house in or around the Albanian town of Burrel. However, HRW considered that evidence of doctors extracting the captives' internal organs, which were then allegedly transported out of Albania via the airport near the capital Tirana, was "suggestive but far from complete", *Kosovo/Albania: Investigate Postwar Abductions, Transfers to Albania*, 4 May 2008, <http://www.hrw.org/en/news/2008/05/04/kosovoalbania-investigate-postwar-abductions-transfers-albania>, accessed 5 May 2008.

¹⁴⁵ Letter from UNMIK Department of Justice to Vladimir Vučković dated, 6 June 2008; B92, "UNMIK sends "Yellow House" Report", 22 March 2009.

¹⁴⁶ MIA, <http://www.mia.com.mk/default.aspx?mId=22&vId=63837338&IId=2&title=BULLETINS+-+BALKANS%3A+DEFENSE+AND+SECURITY>

¹⁴⁷ See, for example, OiK, *Annual Report 2004*, p.23.

¹⁴⁸ OiK, *Annual Report 2004*, p.23.

¹⁴⁹ Amnesty International interview, February 2009. See also Appendix 1. The extent of the disarray of UNMIK police's investigative files was shown in a television broadcast on BBC2 on 17 April 2009.

¹⁵⁰ Around 35 per cent of the Serbian population believe that members of the police and other security services would seek to obstruct investigations into their own officers, OSCE and Belgrade Centre for Human Rights, *Results of the public opinion poll on war crimes trials in Serbia*, <http://www.osce.org/serbia/13161.html>, accessed April 2009.

¹⁵¹ In December 2004 the HLC and seven other NGOs called on the Serbian Parliament to investigate the alleged incinerations. No investigation has taken place, 'NGOs call for commission of inquiry into mass graves and burning of bodies', HlcIndexOut: 0201-167-2, 21 February 2005.

¹⁵² Police officers Nenad Stojković, Zoran Marković, Dragan Milenković, and Zoran Nikolić were arrested after the HLC filed a criminal complaint against 17 former members of the Battalion on 2 March 2009 in relation to war crimes in Kosovo, HLC, "Letter to Ivica Dačić, Minister of Internal Affairs", HlcIndexOut: 038-1550-2, 18 March 2009.

¹⁵³ Law on the Organization and Jurisdiction of Government Authorities in Prosecuting Perpetrators of War Crimes, Official Gazette RS, No. 67/2003, Article 8.

¹⁵⁴ Amnesty International interviews with OWCP, HLC and OSCE, February 2009; see also footnote 154.

¹⁵⁵ It is beyond the scope of this report to provide a comprehensive critique of the shortcomings of the justice systems in Serbia and Kosovo; for Kosovo, see *Amnesty International, Kosovo: The challenge to fix a failed UN Justice mission*, (Index: EUR 70/001/2008), 29 January 2008. For critiques of the WWCC, see International Centre for Transitional Justice and Bogdan Ivanišević, *Against the current – War Crimes Prosecutions in Serbia (2007)*; HRW, *Unfinished Business, Serbia's War Crimes Chamber*, June 2007.

¹⁵⁶ Amnesty International interviews: Bruno Vekarić and Vladimir Vučković, February 2009.

¹⁵⁷ Article 30, Basic Penal Code; Article 203, 1977 Criminal Code. For command responsibility, see p.27, above.

¹⁵⁸ ICTJ, *Against the current*, p.9; Amnesty International interview : Vladimir Vučković, February 2009.

¹⁵⁹ Humanitarian Law Centre, *Annual Report 2006*, 11 July 2007, p. 13. However, according to the OSCE Mission to Serbia, the OWCP has since adopted a policy of prosecuting for command responsibility as defined in the jurisprudence of the Tribunal, Amnesty International interview, February 2009.

¹⁶⁰ HlcIndexOut: 019-1589-2, "The Decision of the War Crimes Trial Chamber unjust for victims and the accused", 24 April 2009.

¹⁶¹ Amnesty International interview with Bruno Vekarić, spokesperson for the OWCP, February 2009. The trial of Saša Cvetjan had in 2003 been transferred from Prokuplje to the Belgrade District Court because of reported threats against the prosecutor and concerns for the safety of an ethnic Albanian witness.

¹⁶² Law on the Protection of the Participants in Criminal Proceedings, Official Gazette, no. 85/05, entered into force 1 January 2006.

¹⁶³ UNMIK Regulation 2001/20, 20 September 2001.

¹⁶⁴ Amnesty International interviews with EULEX prosecutors, February 2009. The organizations' concerns about the implementation of the laws on witness protection in Kosovo are discussed in detail in "So does that mean I have rights" *Protecting the human rights of women and girls trafficked for forced prostitution in Kosovo*, (Index: EUR 70/010/2004), 6 May 2004, pp.36-39.

¹⁶⁵ OSCE LSMS, *Review of the Criminal Justice System in Kosovo, 2006*, pp.14-15, www.osce.org/documents/mik/2006/12/22703_en.pdf, accessed April 2009.

¹⁶⁶ Prosecutor v. Haradinaj *et al*, Judgment, 3 April 2008, paras. 22-28, www.icty.org/x/cases/haradinaj/tjug/en/080403.pdf. For contempt cases, see Baton Haxhiu (IT-04-84-R77.5), <http://www.icty.org/contemptcases/party/832/27>; Astrit Haraqija & Bajrush Morina (IT-04-84-R77.4), <http://www.icty.org/contemptcases/party/827/27>, accessed April 2009.

¹⁶⁷ Prosecutor v. Milan Milutinović *et al*, 26 February 2009, <http://www.icty.org/case/milutinovic/4#tjug>, accessed 27 February 2009, Judgement, Volume 2 of 4, Case No. IT-05-87-T, paras.1284-1294

¹⁶⁸ <http://www.un.org/icty/transe54/020903IT.htm>; He claimed that he had advocated that the bodies be sent to the Forensic Institute in Belgrade.

¹⁶⁹ B2-92, interview with Negotin District Public Prosecutor, November 2000.

¹⁷⁰ "50 Bodies in a Refrigerator Truck – State Secret", *Timočka Krimi Revija (Timočka Criminal Review)*; a similar article had been published in the same magazine by the same author in 1999.

¹⁷¹ Judgement, Volume 2 of 4, Case No. IT-05-87-T, paras. 1320-1330,

¹⁷² Paras. 1322-1324, Judgement, Volume 2 of 4, Case No. IT-05-87-T

¹⁷³ On 23 July 2002, Dragan Karleuša appeared before the Tribunal as a witness in the trial of former president Slobodan Milošević. He stated that the evidence relating to a "clean-up order" had been provided to the investigative team in the form of a signed statement by the former Head of State Security Radomir Marković, see <http://www.un.org/icty/transe54/020723IT.htm>

¹⁷⁴ Para. 1325, Judgement, Volume 2 of 4, Case No. IT-05-87-T.

¹⁷⁵ Para. 1284-1288, Judgement, Volume 2 of 4, Case No. IT-05-87-T.

¹⁷⁶ Amnesty International interview: Vladimir Vučković, February 2009.

¹⁷⁷ Amnesty International interview with Vladimir Vučković and Dragoljub Stanković, February 2009.

¹⁷⁸ The Prosecutor v. Slobodan Milošević, Milan Milutinović, Nikola Sainović, Dragoljub Ojdanić, Vlajko Stojiljković, (IT-99-37-I), 23 May 1999.

¹⁷⁹ ICTJ, *Against the Current*, p.2.

¹⁸⁰ Amnesty International interview with Sandra Orlović, HLC, February 2009. By the end of 2008 the Kosovo Memory Book included 112 narrative summaries documenting the fates of 7, 723 victims killed or disappeared between 24 March and 15 June 1999, (824 records cover 200 mass incidents involving 3,112 victims). <http://www.hlc-rdc.org/stranice/Linkovi-modula/Kosovo-Memory-Book.en.html> Amnesty International similarly met with obstruction when requesting interviews with both the Minister of Interior and the Head of the WCIS.

¹⁸¹ HLC & Documenta, *Transitional Justice in Post-Yugoslav Countries, Report 2007*, p.19; ICTJ, *Serbia*,

Submission to the Universal Periodic Review of the UN Human Rights Council, Third Session: December 1-12, 2008, July 17, 2008, p.3.

¹⁸² See, for example, U.S. *Department of State Country Report on Human Rights Practices 2006 - Serbia and Montenegro*, March 6, 2007, accessed at <http://www.state.gov/g/drl/rls/hrrpt/2006/78837.htm> "Kosovo: Mission Accomplished?", *Harpers Magazine*, September 15, 2006, www.harpers.org/sb-kosovo-mis-1158344060.html

¹⁸³ *Amnesty International, Kosovo (Serbia): The challenge to fix a failed UN justice mission*, pp. 28-43.

¹⁸⁴ Amnesty International telephone interview, 24 April 2006.

¹⁸⁵ Amnesty International interview, 11 April 2006.

¹⁸⁶ "Kosovo War-Crimes Trial Splits West and Prosecutors", *New York Times*, 8 April 2007, and subsequent email and telephone conversations, April 2007.

¹⁸⁷ BIRN, *Interview: Unlocking the Dark Secrets of the KLA's Camps*, 15 April 2009, retrieved at <http://www.balkaninsight.com/en/main/news/18164/>; AI telephone conversations with Michael Montgomery, Centre for Investigative Reporting, March 2009.

¹⁸⁸ B92, Beta, "UNMIK confirm Thaqi's arrest and release", 2 July 2003; B92, "UN mission asks Belgrade to withdraw Ceku warrant", 3 March 2004; UNMIK Online, 22 October 2003, <http://www.unmikonline.org/press/2003/wire/Oct/imm221003PM.htm>

¹⁸⁹ Nicholas Woods, "Kosovo War-Crimes Trial Splits West and Prosecutors", *New York Times*, 8 April 2007, <http://www.nytimes.com/2007/04/08/world/europe/08kosovo.html>; see also IWPR, "Dispute over Haradinaj's Engagement in Politics", Tribunal Update No. 474, 28 October 2006.

¹⁹⁰ "UN administrator urges calm in Kosovo after premier is indicted for war crimes", 8 March 2005, http://www.unmikonline.org/archives/news03_05full.htm

¹⁹¹ Indictment against Anton Lekaj, aka "Pindo" aka "Balt" from Đakovica, 7 July 2005, http://www.tuzilastvorz.org.rs/html_trz/OPTUZNICE_ENG.htm

¹⁹² (KTRZ No. 7/04, 7 July 2005; the indictment was for war crimes, even though the abduction took place after 10 June.

¹⁹³ "Jessen-Peterseni rikujton gjyqësinë serbe për Rezolutën 1244", *Koha Ditore*, 3 April 2006.

¹⁹⁴ Amnesty International considers that, irrespective of the issue of UNMIK's recognition or not of the parallel courts, Serbia is obliged to investigate violations of international humanitarian law which took place on its territory. The organization also notes that even if Serbia were a separate state, under the principle of universal jurisdiction, it would have a duty to investigate and prosecute grave crimes under international law, or if they fail to do so, extradite the suspect to a state willing and able to do so.

¹⁹⁵ Amnesty International interview with Alexander Borg Olivier, UNMIK OLA, 4 April 2006, see Amnesty International, *United Nations Interim Administration Mission in Kosovo (UNMIK): Briefing to the Human Rights Committee: 86th Session, July 2006*, (Index EUR 70/007/2006).

¹⁹⁶ Amnesty International members had since 2001 repeatedly written to the UNMIK police in this case, providing them with the full details of the testimony of B.S., and urging them to open an investigation. No reply was received until August 2008, after the conviction of Anton Lekaj,

¹⁹⁷ Amnesty International interview with B.S., June 2000. While there are some inconsistencies between the testimony provided to AI and the indictment and final verdict, and while BS omitted to describe some events, including the sexual abuse of Romani men by the KLA, the substance of the testimony given to Amnesty International is consistent with that described in court documents.

¹⁹⁸ <http://www2.ohchr.org/english/law/remedy.htm>

¹⁹⁹ http://www.kan-ks.org/lexo_permbajtjen.php?kategoria=218&gjuha=english

²⁰⁰ In October 2008 in Pristina, more than 100 NGOs and individuals, including victims and victims' associations from Bosnia and Herzegovina, Croatia, Kosovo, Montenegro and Serbia, formed a Regional Coalition for RECOM, see <http://www.hlc-rdc.org/stranice/Linkovi-modula/About-us.en.html>

²⁰¹ The Statute of the Tribunal makes no provisions for reparation for victims, but UN SC Resolution 827/1993 (adopting the statute of the Tribunal) provides that "the work of the International Tribunal shall be carried out without prejudice to the rights of the victims to seek, through appropriate means, compensation for damages incurred as a result of violations of international humanitarian law" (Art. 7).

²⁰² Article 13 (1) of the Law on the Basic Rights of Servicemen, Military Invalids and Families of Deceased Servicemen, Official Gazette of the SRJ, numbers 24/98, 29/98 and 25/200, applies to families of servicemen who "died or disappeared"; the term "disappeared" is not included in Article 3 (2) of the Law on the Rights of Civilian War Invalids, *Official Gazette of the RS*, No 52/96.

²⁰³ HLC & Documenta, *Transitional Justice in Post-Yugoslav Countries, Report 2007*, p.51.

²⁰⁴ "The allowance for a spouse and two children of a fallen soldier is six times higher than the monthly income received by a civilian victim's family of the same size. Twenty percent bodily infirmity suffices for recognition as a military invalid, while the threshold for civilian victims is 50 percent", International Center for Transitional Justice, *Serbia: Submission to the Universal Periodic Review Of the UN Human Rights Council Third Session: December 1-12, 2008*, 17 July 2008, para. 13.

²⁰⁵ Interview with Vjelko Odalović, Head of Serbian Commission for Missing Persons, February 2009.

²⁰⁶ For example, internally displaced persons, are entitled to a 70 per cent discount on administrative fees, including fees for documents required in applications for social insurance, Article 19 of Law on Republic Administrative Fees (Official Gazette of the Republic of Serbia, No. 43/2003, 51/2003, 61/2005 and 101/2005). These include birth, marriage, death and citizenship certificates. http://www.praxis.org.rs/index.php?option=com_content&task=view&id=16&Itemid=55

²⁰⁷ Law on Rights of Civilian War Invalids, *Official Gazette of RS*, No. 52/96.

²⁰⁸ ICTJ, *Serbia: Submission to the Universal Periodic Review*.

²⁰⁹ In relation to other conflicts in the region, individuals or groups whose physical or psychological harm was caused by Serbian agencies have in some cases brought successful complaints. In 2004 the Serbian Supreme Court ruled that claims against the state must be brought within five years of the event that led to injury or of death. *ibid.* paras.15 and 19..

²¹⁰ CCPR/CUNKCO1, para. 13.

²¹¹ UNMIK Regulation 2000/66, On Benefits for War Invalids of Kosovo and for the Next of Kin of Those Who Died as a Result of The Armed Conflict In Kosovo, 21 December 2000.

²¹² Documenta & HLC, *Transitional Justice in Post Conflict Countries – 2007, 2008*, p. 52. Average

salary: 217 euros per month.

²¹³ Articles 2, 6 and 10. Discrimination against the victims of post war inter-ethnic violence including abductions was addressed by the Oik in March 2004 a letter to the UN SRSG in 2004, on behalf of the complainants whose requests for social benefits had been refused by the Ministry of Labour and Social Welfare because their situation did not meet the legal requirements. The Oik received no response to his letter. However in 2007, about 30 Serbs and 20 Roma family members were reportedly received invalidity compensation benefits of around 130 euros a month from the Kosovo government.

²¹⁴ Projektligji për Statusin dhe të Drejtat e Familjeve të Dëshmorëve, Invalidëve të UCK-së Familjeve të Viktimave Civile të Luftës (in Albanian); Nacrt Zakona Status i Prava Porodica Palih Boraca, Invalida i Veterana OVK-a kao i Porodicama Ratnih Civilnih Žrtva (in Serbian).

²¹⁵ KLA veterans' families are entitled to *inter alia* free school books, free healthcare, the right to housing, a family pension, cheaper electricity, a waiver on administrative taxes, and property tax, and the right to import a car (Article 6). Civilian families are entitled to a family pension, cheaper electricity, and a waiver on certain administrative taxes (Articles 5 and 6).

²¹⁶ Led by an inter-ministerial working group led by the Deputy Prime Minister, comments on the draft have been made by ICMP, ICRC, OMPF, UNMIK, EULEX and the International Civilian Office (ICO). For the mandate of the ICO see, <http://www.ico-kos.org/>

²¹⁷ Interview with Luigij Ndou, ICMP, Pristina, February 2009.

²¹⁸ See Chapter 4. For a request to the Supreme Court to reconsider this decision, see <http://www.hlc-rcd.org/PravdalReforma/REPARACIJE/Reparacije-Novcane/900.en.html>

²¹⁹ HLC, *Request for Reparation of Family Members of Kidnapped Persons from Sjeverin Denied*, HlcIndexOut: 019-1575-2, 7 April 2009. On 2 April 2009 the First Municipal Court in Belgrade rejected a lawsuit for reparations filed by the HLC against the Republic of Serbia on behalf of 25 family members of 16 Bosniaks from the village of Sjeverin, who had been abducted on 22 October 1992 when the bus in which they were travelling entered the territory of BiH; they were subsequently killed in BiH.

²²⁰ For the jurisdiction of Ombudsperson over acts and omissions by UNMIK, see UNMIK regulation 2000/38, 30 June 2000, Section 3, Jurisdiction.

²²¹ Oik, *Report, Ex officio Registration No. 23/02*, April 2004.

²²² The HRAP (composed of international jurists with experience in human rights, and nominated by the President of the European Court of Human Rights) provides independent oversight and adjudication of remedies to complainants. Amnesty International has concerns about the substantial discretion afforded to the SRSG under section 15.3 of the regulation in deciding whether and how to proceed following the panel's decision on the admissibility of a complaint, and on the provision in section 17.3 for the SRSG's "exclusive authority and discretion to decide whether to act on the findings of the Advisory Panel".

²²³ The campaign included leaflets in Albanian and Serbian, TV and radio "infomercials" and meetings with NGOs in both Serbia and Kosovo. Following meetings in November 2008 with the Association of Kidnapped and Murdered Persons in Prokuplje, some 20 potential cases may be submitted to the HRAP, *HRAP Annual Report 2008*.

²²⁴ Opinion, Case No. 04/08, Shaip Canhasi against UNMIK, 12 November 2008, accessed April 2009, http://www.unmikonline.org/human_rights/documents/Decisions/eng/Opinion_0408.pdf.

²²⁵ Opinion, Case No. 04/08, para 39, “[t]he Panel is of the opinion that some form of reparation is necessary. It recommends that the respondent take the following measures: - the respondent should, with due diligence, undertake effective measures to identify the perpetrators. Such effective measures must include taking all reasonable steps to ensure that statements are taken from relevant witnesses and conducting a comprehensive review of the investigation to determine what further steps may be

taken to identify the perpetrators and to bring them to justice; - the respondent should award adequate compensation to the complainant for his suffering in relation to the inadequate investigation into his wife’s murder; - the respondent should take immediate and effective measures to implement the recommendations of the Panel, including through informing the complainant and the Panel about further developments in this case”.

²²⁶ <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/kosovo-news-290807?opendocument>

²²⁷ UN Human Rights Committee, July 2006, CCPR/CUNKCO1, para.13.

²²⁸ Interview with D.M., Belgrade, February 2009.

²²⁹ For cases in the region in which civil or human rights courts in civil proceedings related to enforced disappearances have found the relevant authorities to have violated the rights of the relatives to be informed of the fate and whereabouts of their family members and have, in addition to other measures, awarded those relatives monetary compensation. For BiH, see for example, Human Rights Chamber of Bosnia and Herzegovina, Case No. CH/99/3196, *Avdo and Esma Palić against the Republika Srpska*. Decision on admissibility and merits, 11 January 2001. The Chamber found that the “fear and anguish caused to Mrs Palić by the unclarified fate of her husband constitutes inhuman and degrading treatment and thus violates her rights under Article 3 of the European Convention”. For Montenegro see *Public Announcement on Occasion of the Decision of the Government of Montenegro to Settle Reparation Cases with Victims of 1992 Deportation of Refugees War Crime*, 25 December 2008, http://www.prelevic.com/human_rights_deportation.htm, accessed 19 April 2009.

²³⁰ Roma who remain internally displaced in Serbia and in Montenegro face serious violations of their economic and social rights, often without the necessary personal documentation to enable them to register as citizens, and enjoy the rights to education, health and adequate housing.

²³¹ As of August 2008, some 40,000 outstanding property claims remained unresolved, OSCE, *Background Report: Human Rights, Ethnic Relations and Democracy in Kosovo (Summer 2007 – Summer 2008)*, para.52.

²³² Established 21 January 2009.

²³³ Based on replies received from the UNMIK Department of Justice, 15 August 2008 and 18 December 2008. No replies had been received from the Serbian authorities.

²³⁴ In 2003, two cousins of the Dana family were confirmed dead.

²³⁵ Bekim Lala, reported missing by his family in 2000, was found to be alive in 2004.

