

THE ISSUE OF
MISSING PERSONS IN THE
CONTEXT OF AN EVENTUAL 'GRAND FINALE'
BETWEEN
KOSOVO AND SERBIA

September 2019

Supported by:



Norwegian Embassy



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Abbreviations

CCIU	Central Criminal Investigation Unit
ECHR	European Convention of Human Rights
EU	European Union
EULEX	European Rule of Law Mission in Kosovo
FRY	Former Republic of Yugoslavia
HLC	Humanitarian Law Center
HRW	Human Rights Watch
ICC	International Criminal Court
ICMP	International Commission on Missing Persons
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the former Yugoslavia
KLA	Kosovo Liberation Army
MPU	Missing Persons Unit
NATO	North Atlantic Treaty Organization
OMPF	Office on Missing Persons and Forensics
UN	United Nations
UNMIK	United Nations Mission in Kosovo
VRIC	Victim Recovery and Identification Commission
WCIU	War Crimes Investigation Unit
WGEID	Working Group on Enforced or Involuntary Disappearance
OSCE	Organization for Security and Cooperation in Europe

1) Introduction

1. According to the latest statement of the International Committee of the Red Cross (ICRC) “out of 6,057 people reported to the ICRC as missing in connection with the armed conflict in Kosovo and its aftermath, 1,647 are still unaccounted for”.¹
2. The number of identifications of missing persons is relatively small and the rate of locating, recovering, and identifying them is declining. This fact was also emphasized by ICRC the chairman of the working group, Mr. Fabien Bourdier, pointing out only seven resolved cases in 2018.² As a result families of the missing persons live for decades with the unresolved loss of loved ones. Therefore, they could not go through the process of human grief. The declining rate of finding the missing persons is of special concern; therefore, in the framework of dialogue for normalization of relations between Kosovo and Serbia, Kosovo must address the issues of the missing and bring to agenda in dialogue. The importance of the missing persons in the dialogue between Kosovo and Serbia is emphasized by the President of the Republic of Kosovo, declaring that the issue of missing persons will be one of the first issues to be discussed in the coming round of the dialogue.³
3. According to the report of the Working Group on Enforced or Involuntary Disappearance (WGEID), a major obstacle to establishing the fate and whereabouts of missing persons in Kosovo is the lack of precise information on the locations of undiscovered gravesites. Serbian authorities were believed to possess more information than that contained in the documents they had already submitted. According to this report, there is a common perception in Kosovo that the Serbian military has complete records of the locations of gravesites, yet it has not fully opened its archives.⁴

¹ ICRC (2018), ‘Twenty Years on, 1647 people still missing in Kosovo’. Available at: <https://www.icrc.org/en/document/twenty-years-1647-people-still-missing-kosovo> [Accessed on: August 10, 2019].

² Ibid.

³ Thaçi, H., 2018. *RTV21 Interview with Hashim Thaçi* [Interview] (28 12 2018).

⁴ Human Rights Council & Working Group on Enforced or Involuntary Disappearances, (2015), ‘Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development’ Available at:

4. This paper outlines the reasons and the arguments the dialogue between Kosovo and Serbia has to include in the agenda the issue of missing persons during the armed conflict of 1998-1999 and its aftermath. This paper provides information on the background of armed conflict in Kosovo, international and national legal framework, and operating mechanisms in Kosovo. At the end this paper offers four arguments in support of addressing the issue of missing persons in this dialogue:

- The Government of Serbia and respective institutions must respect and implement international standards related to the Missing Persons;
- The families of the missing persons must enjoy the right to know regarding the fate of their relatives who went missing as a consequence of armed conflict;
- Kosovo and Serbia need to cooperate for revealing the fate of missing persons;
- Cooperation of the Serbian Government and its respective institutions should show that Serbia is contributing to peace and peaceful relations between Kosovo and Serbia.

2) Background

5. The conflict in Kosovo escalated into armed conflict in February 1998 and lasted until June 1999. The liberation of Kosovo from Serbian forces was reached with the efforts of the Kosovo Liberation Army (KLA) and the air support of the North Atlantic Treaty Organization (NATO). The NATO intervention was inevitable as the humanitarian disaster and ethnic cleansing was reaching its peak as almost half of the population was expelled from Kosovo, about 300,000 were displaced internally⁵ in mountains or other localities. 13,517 people, mostly civilians, but

https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A-HRC-30-38-Add1_en.pdf [Accessed August 12, 2019].

⁵ Suhrke, A., Barutciski, M., Sandison, P. & Garlock, R., (2000), 'The Kosovo Refugee Crisis - An Independent Evaluation of UNHCR's Emergency Preparedness and Response'. Available at: <https://www.alnap.org/help-library/the-kosovo-refugee-crisis-an-independent-evaluation-of-unhcrs-emergency-preparedness> [Accessed on: August 13, 2019].

also members of armed forces were killed or went missing during the period of armed conflict⁶

6. During this armed conflict, civilians suffered the most as consequence of evictions from homes and from home country, killings, kidnappings, arrests, arson, etc. During that time a portion of war victims remain missing and their whereabouts are not known yet. People had been arrested in many ways, under unknown circumstances.⁷ Additionally, civilians had been arrested in their homes or those of their neighbors, and some of them were held in the streets. Moreover, in many cases, people got arrested while the police entered their villages and often they killed every person they met. Families used to be separated; indeed men were separated from women. Unfortunately, the victims who got arrested or were murdered, in many cases they were disappeared without a trace.
7. People who went missing during the armed conflict of 1998-1999 were either killed or taken alive and killed in different places by Serbian military and paramilitary forces.
8. Prior to the withdrawal of Former Republic of Yugoslavia (FRY) forces in June 1999 in the wake of the Kumanovo Agreement, it has been observed that bodies of the killed civilians were removed from the gravesites to be transported to Serbia and buried in unknown gravesite⁸. The main purpose of the transportation was to lose trace of the crimes committed during the armed conflict.
9. "Human remains from the Kosovo conflict had been incinerated on two occasions, on 16 and 24 May 1999 in the Mačkatica aluminum factory (near Surdulica) in

⁶ Balkan Insight (2014), 'List of Kosovo War Victims'. Available at: <https://balkaninsight.com/2014/12/10/kosovo-war-victims-list-published/> [Accessed on: August 12, 2019].

⁷ Brovina, Q. & Berisha,(2006) 'HUMAN RIGHTS MONOGRAPH'. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=953629 [Accessed on: August 13, 2019].

⁸ ICMP (2017), 'Missing Persons from the Kosovo Conflict and its aftermath: A stocktaking, 2017'. Available at: <https://www.icmp.int/wp-content/uploads/2017/05/Kosovo-stocktaking-ENG.pdf> [Accessed on: August 13, 2019].

southern Serbia”.⁹ Humanitarian Law Center based in Belgrade shared information based on multiple independent sources. Moreover, in April 2005, Vladimir Vukčević which was in the position of the War Crimes Prosecutor in Serbia, together with the investigating judge of the District Court in Vranje and a team of forensic experts visited the Mačkatica factory that they examined all the blast furnaces and all the sites containing mining waste. The results of the investigation led by the Chief War Crimes Prosecutor regarding the allegations leveled by the Humanitarian Law Center have not yet been made public.¹⁰

10. Humanitarian Law Center on October 29th 2014, compiled a criminal complaint against five persons and filed it to the Office of the War Crimes Prosecutor (OWCP) based on the reasonable suspicion that in Kosovo in the first half of 1999, they loaded onto a truck 21 bodies of Kosovo Albanians which were unidentified and murdered in an unknown location. The bodies were transported to the “Feronikl” complex as loaded the crane basket with the bodies above the flames of the blast furnace.¹¹ Based on the information that the HLC obtained, and which were accessible in the manuscript of the book *Crnice* “[“Reminiscences”] written by Slobodan Maksimović the criminal complaint was filed. An excerpt from the book of Maksimović which was not published, can serve to describe a particular event. “Two police officers (one nicknamed “Čeda”) and one driver received orders to load onto the truck the bodies of 21 Albanians and burn them at the “Feronikl” factory complex. The author depicts in detail what the burning of the bodies looked like, stating that the bodies were loaded onto a crane “which was used to pour semi-worked iron into the burning Bessemer converters”.¹²

⁹ ICMP (2017), ‘Missing Persons from the Kosovo Conflict and its aftermath: A stocktaking, 2017’, p23. Available at: <https://www.icmp.int/wp-content/uploads/2017/05/Kosovo-stocktaking-ENG.pdf> [Accessed on: August 13, 2019].

¹⁰ Ibid.

¹¹ Humanitarian Law Center, (2017). ‘The cover-up of evidence of crimes during the war in Kosovo: THE CONCEALMENT OF BODIES OPERATION’. Available at: <http://www.hlc-rdc.org/?p=33299&lang=de>, [Accessed on: August 14, 2019].

¹² Humanitarian Law Center, (2017). ‘The cover-up of evidence of crimes during the war in Kosovo: THE CONCEALMENT OF BODIES OPERATION’. Available at: <http://www.hlc-rdc.org/?p=33299&lang=de>, [Accessed on: August 14, 2019].

- 11.** According to the HLC report Slobodan Milošević, then the President of the Former Republic of Yugoslavia, in March 1999 at a meeting at the White Palace, issued the order of taking measures in sort of removing the already buried bodies of Albanian civilians. It is important to be noted that this meeting was attended by people in high positions in government, police, and military. Furthermore, the report states that the secret operation ordered in March 1999 by Slobodan Milošević to cover up the crimes, was primarily conducted in following months. For the activities of this operation, high-and mid-ranking officers of the police and the army were responsible.¹³
- 12.** 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 reintering 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”.¹⁴
- 13.** The armed conflict in Kosovo ended with the Kumanovo Treaty. Yugoslav and Serbian forces agreed to withdraw from territory of Kosovo and to make way for international presence in Kosovo. However, this treaty did not stipulate the issue of enforced disappearance and missing people.
- 14.** The attempts of Serbian authorities to hide the evidence of war crimes was about to be revealed in April 2001. Based on several reports, “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, such as from Serbian Ministry of Interior land at Batajnica outside Belgrade, Petrovo Selo, and Bajina Bašta, where bodies recovered from Lake Peručac had been reburied in 1999”.¹⁵

¹³ Ibid.

¹⁴ Human Rights Watch (2001), ‘UNDER ORDERS: War Crimes in Kosovo’ Available at: <https://www.hrw.org/legacy/reports/2001/kosovo/> [Accessed on: August 14, 2019].

¹⁵ Ibid.

3) International Standards

15. ICRC defines the missing person 'a person whose whereabouts are unknown to his/her relatives and/or who, on the basis of reliable information, has been reported missing in accordance with the national legislation in connection with an international or non-international armed conflict, a situation of internal violence or disturbances, natural catastrophes or any other situation that may require the intervention of a competent State authority'.¹⁶
16. Article 7 of the 1998 Rome Statute of the International Criminal Court (ICC) lists the enforced disappearance as one of the crimes against humanity. This Article defines the enforced disappearance as "the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time".¹⁷
17. The UN Resolution A/RES/47/133 18 December 1992 contains the Declaration on the Protection of All Persons from Enforced Disappearance, which defines the enforced disappearance as the fact that "persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law"

¹⁶ Advisory Service on International Humanitarian Law, (2009), 'ICRC'. Available at: [file:///C:/Users/RIDEA%205/Downloads/model-law-missing-icrc-eng-%20\(1\).pdf](file:///C:/Users/RIDEA%205/Downloads/model-law-missing-icrc-eng-%20(1).pdf) [Accessed on: August 13, 2019].

¹⁷ ICC, (1998), 'Rome Statute of the International Criminal Court'. Available at: https://www.icc-cpi.int/nr/rdononlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf [Accessed on: August 14, 2019].

- 18.**IHL regulates the measures each party in the conflict has to take to account for missing persons as consequence of conflict and to provide their family member with information about their fate.
- 19.**European Convention of Human Rights (ECHR) stipulates that the family members of missing persons have a right to know regarding the whereabouts of their relatives who went missing.
- 20.**The 1949 Geneva Conventions and Declaration on the Protection of All Persons from Enforced Disappearance provide for sharing of information between the parties in conflict regarding the whereabouts of persons who went missing during the conflict.
- 21.**Declaration on the Protection of All Persons from Enforced Disappearance provides for the protection of all people who are involved in the investigation of missing persons. This Declaration also stipulates that persons who committed enforced disappearance shall not benefit from any special amnesty law or similar measures that might have effect of exempting them from any criminal proceedings or sanctions, and victims of enforced disappearance and their families to obtain redress and compensation.

4) Kosovo Legislation

- 22.**Main existing international human rights instruments are incorporated in the Kosovo constitution and legislation. Basically, it ensures the right of family members of missing persons to have information concerning the fate and whereabouts of their relatives.
- 23.**Kosovo Law on Missing Persons (No.03/L-023) was adopted by Kosovo Assembly on August 2011. This law aims to protect the rights and interests of missing persons and their family members. It is focused on protecting the right of family members to know the fate of persons who were reported missing during the

period from 1 January 1998 to 31 December 2000 as a consequence of the war in Kosovo during 1998-1999.

24. Kosovo Law on Missing Persons defines missing person the person whose whereabouts is unknown to his/her family members and seekers who based on reliable information was reported missing during the period 1 January 1998 – 31 December 2000, as a consequence of the war in Kosovo during 1998-1999.

25. Following the adoption of the Kosovo Law on Missing Persons in August 2011, the Kosovo Government adopted the Regulation on the Work of the Government Commission on Missing Persons, which prescribes the rules and procedures of the Government Commission on Missing Persons and the duties and responsibilities of the Administrative Unit of the Commission.

26. President of Kosovo has established the Truth and Reconciliation Commission Preparatory Team in Kosovo with an aim to prepare the ground for the creation of Truth and Reconciliation Commission in Kosovo. The aim of the Commission is to document and establish facts of violations of human rights that took place during the recent violent past, restoring dignity of victims of all communities. With such an aim, the commission hopes to contribute to societal transformations to prevent repetition of violations and abuses suffered.¹⁸ On April 2018, the president appointed the preparatory team for the establishment of the Truth and Reconciliation Commission, and the Regulation of Rules and Procedures of the Preparatory Team for the Establishment of the Truth and Reconciliation Commission.

¹⁸ President of the Republic of Kosovo (2018), 'Declaration of the Preparatory Team for the establishment of the Truth and Reconciliation Commission'. Available at: https://www.president-ksgov.net/repository/docs/2019_01_17_143401_DECLARATION17119.pdf [Accessed on: August 15, 2019].

5) Operating mechanisms in Kosovo

27. The task of locating, recovering and identifying missing persons has been mainly shared by international organizations operating in Kosovo, whereas in Serbia such task was mainly undertaken by domestic institutions, first coordinated by the Kosovo Coordination Council and later by the Serbian Government Commission on Missing Persons.

28. Right after the end of the armed conflict in June 1999 International Tribunal for the former Yugoslavia (ICTY) was responsible for early exhumation work in Kosovo. Its primary purpose was criminal investigations to demonstrate that crimes were systematic and widespread, and to gather evidence for the prosecution of members of the Serbian leadership who had been indicted in May 1999 by the ICTY for war crimes in Kosovo. Independent teams from several countries under the loose coordination of the ICTY arrived with NATO in Kosovo in 1999. On occasion, they identified the mortal remains too. Unidentified bodies exhumed in 1999 were reburied in locations that were not shared with UNMIK and other institutions mandated with investigations of the cases of missing persons.

29. Until 2001, the identification of the exhumed bodies was done by non-scientific visual means such as recognizing the person's clothing or other personal belongings by family members. ICRC and the Organization for Security and Cooperation in Europe (OSCE) published a series of books "Books of Belongings" with the items found with exhumed persons.

30. Missing Persons Unit (MPU) was established in November 1999 within the UNMIK Police. The mandate of the unit was to investigate the possible locations of missing persons and gravesites. MPU together with Central Criminal Investigation Unit (CCIU) of the UNMIK Police and War Crimes Investigation Unit (WCIU) were in charge of investigating criminal aspects of missing persons cases in Kosovo. According to ICMP report, the MPU was responsible for seeking court orders authorizing exhumations and for conducting exhumations, along with forensic

archeologists and/or anthropologists. Consequently, MPU by April 2002 conducted 69 exhumations and recovered 85 bodies. In May 2000, in order to deal with identification, recovery, and disposition of mortal remains it was created Victim Recovery and Identification Commission (VRIC) chaired by UNMIK.¹⁹

31.A Working Group on Persons Unaccounted for in Connection with the Events in Kosovo (WG) between January 1998 and December 2000 was established in 2004 under the auspices of the United Nations secretary-general's special representative for Kosovo as an outcome of the UN-led Vienna Dialogue. This working group held regular sessions at which the Prishtina and Belgrade delegations exchanged information and plan activities.

32.Office on Missing Persons and Forensics (OMPF) in the Department of Justice was established by UNMIK in 2002. This office was the sole authority in Kosovo with a mandate to determine the whereabouts of missing persons, identify their mortal remains and return them to the families of missing persons. The OMPF carried out a range of specialized activities –forensic exhumations, post-mortem examination and comparison of ante-mortem and post-mortem data – until late 2008. In 2007 this office partially was transferred from UNMIK Department of Justice to the Kosovo Ministry of Justice. In 2008 this office was taken over by the EULEX mission.

33.In 2003, after several years of negotiation International Commission on Missing Persons (ICMP) and UNMIK signed a memorandum of understanding consisting on ICMP's technical assistance to UNMIK. The lengthy negotiation process was centered on ICMP's insistence on the use of DNA as a primary identifier which was subjected by UNMIK forensic staff as they were accustomed to using traditional methods of identification. However, the agreement was reached on the use of DNA, but UNMIK rejected ICMP's offer to provide assistance at excavations and in the examination of mortal remains in mortuaries in Kosovo. The errors in

¹⁹ ICMP (2017), 'Missing Persons from the Kosovo Conflict and its aftermath: A stocktaking, 2017', p.15,. Available at: <https://www.icmp.int/wp-content/uploads/2017/05/Kosovo-stocktaking-ENG.pdf> [Accessed on: August 13, 2019].

identification of the bodies with traditional methods had impact on identification by DNA. Families which once have incorrectly received the body they were reluctant to provide DNA samples for next identification. Therefore, the missing persons' remains are still unidentified.

34.In 2006, ICMP provided assistance to the Kosovo Government authorities in establishing a Government Commission on Missing Persons to lead activities in relation to missing persons on the territory of Kosovo. The Government Commission on Missing Persons' mandate includes protecting the rights and interests of missing persons and their families; coordinating activities in collecting data related to missing persons; establishing a Central Register of Missing Persons; informing family members of missing persons and cooperating with their associations, notifying family members of the fate of missing persons; raising awareness about and supporting initiatives related to missing persons by reporting the outcome of its findings publicly; undertaking other significant activities relating to missing persons; cooperating with local and international institutions in the conduct of its duties; opening and registering cases of missing persons; and paying burial costs of identified missing persons. Its mandate is in line with the mandate of the counterparts in the region, except its political authority to carry out and coordinate the domestic law-based process to investigate missing persons cases from the conflict.

35.In 2008, after the Kosovo Assembly declared the independence EULEX took over the responsibility for rule-of-law matters, including the issue of missing persons. EULEX maintained cooperation with ICMP on the basis of the memorandum of understanding signed by UNMIK and ICMP in 2003. EULEX took over the operation of OMPF which had a dual mandate: (1) clarifying the fate of missing persons and (2) providing a medical legal system to Kosovo of European Standards.

36. To improve the work of Kosovo institutions on missing persons, Institution of Forensic Medicine (IFM) was established on the law '*Law for Department of Forensic Medicine, Law No.03/L-137*', in June 2009 within the Ministry of Justice.

According to Ministry of Justice in Kosovo, Institution for Forensic Medicine is a competent public body possessing the main responsibility to provide forensic medicine expertise, medical investigations about the death and return of mortal remains to their families. Furthermore, EULEX maintains its executive mandate in relations to missing persons, and EULEX staff member was deputy director of IFM. More, IFM gets assistance from EULEX staff in forensic anthropology and archeology, forensic pathology, and crime-scene investigation. “The IFM maintains contact with families of the missing and is responsible for locating, exhuming, identifying and determining the fate of the missing, as well as handing over human remains to the families of missing persons”.²⁰

37. Kosovo Special Prosecutor’s Office (SPK) was established in 2008 and is mandated based on Geneva Conventions, among others, to investigate and prosecute crimes against humanity and war crimes in international armed conflicts and in armed conflicts of an international character. SPK is responsible for investigating cases of enforced disappearance. The Law on Amending and Supplementing the Laws related to EU Rule of Law Mission in Kosovo notes that SPK has full competences for all cases, including cases of enforced disappearance, initiated after 15 April 2014. The execution of its competences regarding the missing persons’ cases is very limited due to the initiation of majority of missing persons’ cases prior to 15 April 2014. Therefore, the majority of those cases remain within the preview of EULEX.

38. Since 2008 when some of the competencies were transferred from UNMIK to EULEX, the latter has conducted 594 field operations in order to identify and re-associate human remains. 506 victims have been identified and buried based on the wishes of victims’ families.²¹

²⁰ ICMP (2017), ‘Missing Persons from the Kosovo Conflict and its aftermath: A stocktaking, 2017’, p.17,. Available at: <https://www.icmp.int/wp-content/uploads/2017/05/Kosovo-stocktaking-ENG.pdf> [Accessed on: August 13, 2019].

²¹EULEX, (2018), ‘European Rule of Law Mission in Kosovo’. Available at: <https://www.eulex-kosovo.eu/?page=2,10,813> [Accessed on: August 15, 2019].

39. The ownership of Kosovo institutions regarding the missing persons' cases is very limited. EULEX maintained its executive mandate in relation to missing persons. It limits Kosovo capacity to deal Serbian counterpart regarding the missing persons, limits the responsibility for the issue of missing persons and participation in relevant international legal instruments.

40. The Committee on Human Rights, Gender Equality, Missing Persons and Petitions is one of the permanent committees of the Kosovo Assembly, mandated by the Rules of Procedure of the Assembly".²² One of the roles of the committee is to monitor the implementation of the law and already existing laws. According to the name itself, the committee includes the scope of interest in human rights, gender equality, missing persons and petitions. Hence, the committee has the right to make petitions while raising concern about any issue to the Kosovo Assembly. In case the petition is raised by individuals to the Assembly of Kosovo, the petition will be passed on to this committee and after taking into consideration it will be recommended the institution that the petition should be sent.

6) Arguments that Outline Serbian Government's Legal Obligations toward Kosovo

41. There are compelling reasons that Kosovo and Serbia have to cooperate in revealing the fate of missing persons. These reasons are articulated in the following arguments: (1) The Government of Serbia and respective institutions must respect and implement international standards related to the Missing Persons; (2) The families of the missing persons must enjoy the right to know regarding the fate of their relatives who went missing as consequence of armed conflict; (3) Kosovo and Serbia need to cooperate for revealing the fate of missing persons; (4) Cooperation of Serbian Government and its respective institutions should show that Serbia is contributing to peace and peaceful relations between Kosovo and Serbia.

²² OSCE Mission in Kosovo (2009) ' Exercise your rights! A catalogue of Remedies and Assistance for Community Members'. Available at: <https://www.osce.org/kosovo/73421?download=true> [Accessed on: August 14, 2019].

6.1) The Government of Serbia and respective institutions must respect and implement international standards related to the Missing Persons

42. International instruments relating to missing persons deal with the obligations regarding the information providing. One of them is International Convention for the Protection of All Persons from Enforced Disappearance which requires states parties to codify and punish under their criminal legislation failure to record the deprivation of liberty of any person; the registration of inaccurate data concerning persons deprived of their liberty; the refusal to provide information on persons deprived of their liberty; and the falsification, concealment or destruction of documents attesting the true identity of children subjected to enforced disappearance (Articles 22 and 25). The other one are Articles 14 and 15 of International Convention for the Protection of All Persons from Enforced Disappearance, which state that parties must afford one another the greatest measure of mutual legal assistance in connection with criminal proceedings brought in respect of enforced disappearances, and co-operate with a view to assisting victims of enforced disappearance; searching for, locating and releasing disappeared persons; and, in the event of death, in exhuming and identifying them and returning their remains. Article 17 provides that no one shall be held in secret detention. The gravesite in Rudnica was opened after 15 years. In that gravesite, 54 bodies of Albanians were found. This means that Serbia has refused to provide information regarding missing persons. Serbia has to open the police and army archives.²³ Disclosing complete relevant information by Serbia regarding missing persons would be an indicator that Serbia will fulfill these standards.

43. Based on the Article 17 of the Declaration on the Protection of All Persons from Enforced Disappearance, “enforced disappearance must be considered a continuing offence as long as the perpetrators continue to conceal the fate and whereabouts of the disappeared and these facts remain unclarified. This declaration includes the sanction that states must ensure that all those involved in the investigation, including the relatives, counsel, witnesses and those

²³ Interview 1, 1., (2018). *Representative of the Humanitarian Law Center in Prishtina* [Interview] (November 22, 2018).

conducting the investigation, are protected against reprisals".²⁴ Serbs do not provide information regarding the whereabouts of missing persons because they are afraid of criminal prosecution.²⁵ Sometimes, Serbia has open gravesites for benefiting politically, but they reburied remains without identification.²⁶

44. Based on Article 16 and 17 of the Declaration on the Protection of All Persons from Enforced Disappearance, persons alleged to have committed enforced disappearance shall not benefit from any special amnesty law or similar measures that might have the effect of exempting them from any criminal proceedings or sanctions. Article 19 establishes that victims of enforced disappearance and their families shall obtain redress and shall have the right to adequate compensation, including the means for as complete rehabilitation as possible. Families of missing persons have more needs, not only the return of remains.²⁷

45. Following the General Assembly Resolution UN Resolution A/RES/47/133 the Commission on Human Rights established a working group to draft a legally binding normative instrument for the protection of all persons from enforced disappearance. International Convention for the Protection of All Persons from Enforced Disappearance entered into force on December 2010. This instrument deals with enforced disappearance, detailing states' obligations in terms of prevention of the practice, investigation, and sanction of those responsible, and adoption of adequate measures to ensure victims' rights. This convention determines that states parties must codify enforced disappearance as a separate criminal offence under their domestic legislation, holding criminally responsible

²⁴ United Nations Human Rights Office of the High Commissioner, (1992) 'Declaration of the Protection of All Persons from Enforced Disappearance'. Available at: <https://www.ohchr.org/en/professionalinterest/pages/enforceddisappearance.aspx> [Accessed on August 13, 2019].

²⁵ Interview 2, 2., (2018). *Advisor of the Prime Minister & appointed File Holder on the Issue of Missing Persons* [Interview] (November 22, 2018).

²⁶ Interview 4, 4., (2018). *Representative of the Commission for Human Rights, Gender Equality, Missing Persons and Petition* [Interview] (November 26, 2018).

²⁷ Interview 3, 3., (2018). *Representative of the Commission for Human Rights, Gender Equality, Missing Persons, and Petition* [Interview] (November 26, 2018).

any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance.

46. States parties must also establish their competence to exercise jurisdiction over the offence of enforced disappearance, including when persons accused of having committed the crime abroad are present in any territory under their jurisdiction, unless said persons have been extradited or surrendered to another state or to an international criminal tribunal (Articles 9 to 11 of International Convention for the Protection of All Persons from Enforced Disappearance).

47. Article 24.2 of International Convention for the Protection of All Persons from Enforced Disappearance states that “the victims’ 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”. Article 24.3 requires states parties “to take all appropriate measures to search for, locate and release disappeared persons and, in the event of death, to locate, respect and return their remains”. While Article 24.6 requires state parties to “take the appropriate steps with regard to the legal situation of disappeared persons whose fate has not been clarified”.

48. Under the European Convention of Human Rights (ECHR), family members of missing persons have a right to information concerning the fate and whereabouts of their relatives, which is anchored in Articles 2, 3, 5 and 8 of the ECHR.

6.2) The families of the missing persons must enjoy the right to know regarding the fate of their relatives who went missing as a consequence of armed conflict

49. Even though the Article 24.2 of International Convention for the Protection of All Persons from Enforced Disappearance enshrines ‘the victims’ 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’ and Article 24.3 requires states parties to take all appropriate measures to search for, locate

and release disappeared persons and, in the event of death, to locate, respect and return their remains. Article 32 of the Additional Protocol I of Geneva Conventions states that 'by inclusion of the missing and the dead in paragraph III of this Additional Protocol, it is legitimized the right of family members to know about the destiny of their relatives', families of missing persons in Kosovo do not enjoy this right because Serbia is not sharing the information regarding the whereabouts of the missing persons.

50. In addition, in a resolution adopted in 2002, the UN Commission on Human Rights reaffirmed "the right of families to know the fate of their relatives reported missing in connection with armed conflict".²⁸

51. Article 24.7 of the Committee on Enforced Disappearances (CED) states that "each State Party shall guarantee the right to form, and participate freely in organizations and associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons, and to assist victims of enforced disappearance". This guarantees the right to establish joint Truth and Reconciliation Commission aiming the establishment of the circumstances of enforced disappearances of missing persons and their fate.

52. The adopted Resolution of 26 Conference of the Red Cross and Red Crescent states that: "*It is strongly requested that the states and the parties involved in the armed conflicts, provide necessary information about the fate of the missing for their family members*". This is the obligation for Serbia too as it belongs to the list of Red Cross and Red Crescent Societies.

53. Families of missing persons are actively seeking their right to know. They continuously lobby and advocate for information concerning their missing family members. Protests and hunger strikes were evident since the end of the armed conflict in 1999. E.g. in 2002, Nesrete Kumnova, the founder of the Mothers' Appeal organization, got together with other parents to lobby for information about what happened to their loved ones.

²⁸ UN Commission on Human Rights,(2002), 'Resolution 2002/60'. Available at: https://ap.ohchr.org/documents/alldocs.aspx?doc_id=4920 [Accessed on: August 13, 2019].

They staged hunger strikes, one lasting as long as 16 days, and protested in Gjakova and Prishtina. The experience of hunger was overwhelming. "Being sad and when you have your pain with you, it's very hard to handle it. But it's the only choice I had," says Nesrete.²⁹ Families of the missing persons issued a joint appeal to authorities in the Serbian capital, Belgrade; the Kosovar capital, Pristina; and the international community, urging the appointment of a high representative to end their suffering by recovering the remains of their loved ones. Bajram Qerkinaj, a representative of the families, said that "the process had stagnated and must be revived and speeded up. We have reached the point when we would be happy to find even a single piece of the bodies of our loved ones," he said. "This is what family happiness could be for us now — so that they at least could know where they could send a flower, or that they now can grieve for their members."³⁰

6.3) Kosovo and Serbia need to cooperate for revealing the fate of missing persons

54. According to Commissioner for Human Rights, (2018), people in Kosovo have a common perception that Serbian military has evidence and complete records of the locations of gravesites and that the Serbian institutions have not fully opened the archives. The Government of Kosovo has reassured its willingness to cooperate in revealing the fate and whereabouts of missing persons. The spokesman of Government Missing Persons Commission said that they have an interest especially for sites inside Serbia in the Raška and Novi Pazar areas. The Committee on Human Rights, Gender Equality, Missing Persons, and Petition has invited some members of Serbian Parliament responsible for missing persons, but they never responded on such invitations.³¹ There are indicators that in Batajnica exist a gravesite. We requested Serbian Government to investigate this case, but they did not respond to this request. Instead of opening this gravesite, recovering,

²⁹ News Statsmen (2018), 'In independent Kosovo, families still search for their missing children'. Available at: <https://www.newstatesman.com/world/europe/2018/02/independent-kosovo-families-still-search-their-missing-children> [Accessed on: August 14, 2019].

³⁰ Voice of America, (2017), 'Families of Missing in Kosovo Want to Know Fate of Loved Ones'. Available at: <https://www.voanews.com/europe/families-missing-kosovo-want-know-fate-loved-ones> [Accessed on: August 15, 2019].

³¹ Interview 6, 6.,(2018), 'Representative of the Commission for Human Rights, Gender Equality, Missing Persons, and Petition' [Interview] (December 5, 2018).

and identifying the remains, they build church on this site.³² There is a document which includes the details of 22 Albanians who were executed in Deva (Gjakova) and then transferred to Kalludra by Serbian army.³³ In Krukuvac, Rudnice, and Petrovoselo there is a person who witnessed the transportation of two tracks with around 250 to 450 Albanians. Only 52 of them were returned.³⁴

55.The International Convention for the Protection of All Persons from Enforced Disappearance regulates the cooperation between the state parties concerning the enforced disappearance. Articles 14 and 15 of this convention states that ‘states parties must afford one another the greatest measure of mutual legal assistance in connection with criminal proceedings brought in respect of enforced disappearances, and co-operate with a view to assisting victims of enforced disappearance; searching for, locating and releasing disappeared persons; and, in the event of death, in exhuming and identifying them and returning their remains’. Under the European Convention of Human Rights (ECHR), family members of missing persons have a right to information concerning the fate and whereabouts of their relatives, which is anchored in Articles 2, 3, 5 and 8 of the ECHR. In the context of Kosovo, this convention obliges Serbia to search for, locate, recover, exhume and identify missing persons from the armed conflict 1998-1999. Since the Kumanovo Agreement did not include any dispositions regarding the missing persons, it is time now to discuss this issue and oblige Serbia to disclose the relevant information and participate in solving the missing persons cases.

56.In line with Article 26 and 27 of the Fourth Geneva Convention, Serbian government and responsible institutions must actively share information about the missing persons and actively seek for the missing persons. Serbian government must refrain from withholding information about missing persons who are of Kosovo origin.

³² Interview 6, 6.,(2018), ‘Representative of the Commission for Human Rights, Gender Equality, Missing Persons, and Petition’ [Interview] (December 5, 2018).

³³ Interview 5, 5., (2018), *The families of Missing Persons Assosiation "The Parents' Voice"* [Interview] (November 22, 2018).

³⁴ Interview 5, 5., (2018), *The families of Missing Persons Assosiation "The Parents' Voice"* [Interview] (November 22, 2018).

57. The 1949 Geneva Conventions provide for the setting up of Information Bureaux mandated to centralize information on prisoners of war and civilians belonging to an adverse party, transmit such information to that party, and open inquiries to elucidate the fate and whereabouts of missing persons. In accordance with this convention is the initiative of ICMP for the database of missing persons. In December 2017 in Belgrade, ICMP convened a regional meeting to present the Database of Active Missing-Persons Cases from the Armed Conflicts in the Former Yugoslavia. Participation on an integrated regional database would be especially beneficial for accounting for missing persons from Kosovo in armed conflicts in other parts of former Yugoslavia during the 90s.³⁵ Enrichment of such database with information gathered from people, witnesses, official documents/files from Serbia would be crucial in cooperation for accounting for missing persons. The Truth and Reconciliation Commission would regularly verify and further investigate the cases and after then would proceed with concrete steps in locating, recovering, and identification. The proceedings of this committee need to be supervised by relevant international stakeholders in order to avoid any loss or concealment of information.

58. In the context of the Berlin process at the fifth Western Balkans Summit on 10th of July 2018 Prime Ministers of Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro, and Serbia met. They signed the Joint Declaration on War Crimes and Missing Persons in the Framework of the Berlin Process. This declaration emphasizes the importance of finding the missing persons at the territory of former Yugoslavia, and clarifying the circumstances of their disappearance and bringing those accountable to justice (European Western Balkans, 2018). This declaration includes the following points: *(1) to ensure impartial and effective investigations into missing persons cases in accordance with international human rights standards and to resolve as many missing persons cases as possible over the next five years; (2) to engage pro-actively all domestic institutions that are responsible for or involved in locating and/or the identification*

³⁵ ICMP (2017) 'Western Balkans Regional Meeting Launches Database of Active Missing Persons Cases From the Armed Conflicts in the Former Yugoslavia'. Available at: <https://www.icmp.int/flash-news/western-balkans-regional-meeting-launches-database-of-active-missing-persons-cases-from-the-armed-conflicts-in-the-former-yugoslavia/> [Accessed on: August 11, 2019].

of missing persons to explore all possible avenues to obtain new information about gravesites, including a commitment to adequately resource the search of archives for relevant information, and the transmission of this information to the appropriate central institution; (3) to provide the competent central institution from each of the Berlin Process participants responsible for the search and/or identification of missing persons with adequate human and budgetary resources to fulfil their mandate; (4) to ensure the active engagement of families of the missing in the process of searching and/or locating the missing; (5) to ensure that reliable and accurate information on the process of locating and identifying the missing is made publicly available; (6) to commit to develop further domestic forensic institutions and ensure continued institutional support and funding for this; (7) to ensure that families are able to exercise their rights, including by harmonizing and fully implementing domestic legislation in line with international laws and standards; (8) to adequately address the needs of the families of missing persons; and (9) to refrain from any politicization of the missing person issue.³⁶ Serbia should put concrete efforts to implement each point of this declaration.

59.Based on Article 19 of the Declaration on the Protection of All Persons from Enforced Disappearance, victims of enforced disappearance and their families shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible. To fulfill this standard adequately, Serbia is obliged to provide redress and compensation to all victims of enforced disappearance and their families. This should be specified in the terms of the Truth and Reconciliation Commission.

60.The EULEX mission is being completed. This implies that the institutions of Kosovo should have the ownership and leadership role in efforts to solve the cases of missing persons. For that, the Kosovo Government has to insist that the Government of Serbia fulfills the international standards concerning missing persons.

³⁶Western Balkans Summit London (2018), 'Joint declarations on regional cooperation and good neighborly relations, war crimes and missing persons in the framework of the Berlin Process'. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/724294/180710_WBS_Joint_Declarations.pdf [Accessed on: August 14, 2019].

6.4) Cooperation of the Serbian Government and its respective institutions should show that Serbia is contributing to peace and peaceful relations between Kosovo and Serbia

61. Normalization of the relations with Serbia and reconciliation is far behind without sharing the information regarding the missing persons. There have been several protests from the families of missing persons requiring that Kosovo institutions and responsible bodies put the finding of missing persons as a precondition for talks with Serbia.³⁷ It is not possible to build good neighboring relations without solving the cases of missing persons.³⁸

62. In addition, according to Article 24.7 of the Committee on Enforced Disappearances (CED), “each State Party shall guarantee the right to form and participate freely in organizations and associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons, and to assist victims of enforced disappearance”. Serbia should put concrete efforts to reassure that Serbs living in Kosovo and Serbia are free to establish or participate in such associations or organizations.

63. The head of the Association of Missing People, Bajram Qerkinaj says that authorities and the international community are not fully engaged in addressing this issue. Qerkinaj also said that this topic should be included in the talks being held in Brussels because if this issue is not addressed, there can never be reconciliation between Albanians and Serbs.³⁹

64. The hatred and the mistrust between Albanians in Kosovo and Serbs are still present, even among groups engaged for the same cause. One example is the lack

³⁷ Balkan Insight (2012), ‘Kosovo: Families of Missing Persons Protest’. Available at: <https://balkaninsight.com/2012/05/15/kosovo-families-of-missing-persons-protest/> [Accessed on: August 15, 2019].

³⁸ Interview 7, 7., (2018), *Representative of the Commission for Human Rights, Gender Equality, Missing Persons, and Petition* [Interview] (30 11 2018).

³⁹ Independent Balkan News Agency, (2018), ‘The fate of missing persons in Kosovo is yet to be addressed’. Available at: <https://balkaneu.com/the-fate-of-missing-persons-in-kosovo-is-yet-to-be-addressed/> [Accessed on: August 13, 2019].

of trust between families of missing persons from the Albanian community and families of missing persons of Serb community. Many Serbs also lost family members in the fighting, but dialogue is impossible for Albanians, says Nesrete Kumnova. "Serbs are, all the same, they have always been like that," she says. "Almost all of them are criminals. We have no faith in them. Even in the past in our grandparents' time, they hung out together. They would keep an axe under their pillow and think about how to murder an Albanian. When they are born, they're born criminals."⁴⁰ The establishment of Truth and Reconciliation Commission would contribute to build trust, share information, and move forward to reconciliation. The support from the Serbian Government in this initiative would contribute to trust-building.

65. International Convention for the Protection of All Persons from Enforced Disappearance entered into force on December 2010. This instrument deals with enforced disappearance, detailing states' obligations in terms of prevention of the practice, investigation, and sanction of those responsible, and adoption of adequate measures to ensure victims' rights. This convention determines that states parties must codify enforced disappearance as a separate criminal offence under their domestic legislation, holding criminally responsible any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance. Based on Article 16 and 17 of this Convention, persons alleged to have committed enforced disappearance shall not benefit from any special amnesty law or similar measures that might have the effect of exempting them from any criminal proceedings or sanctions. Respecting this convention by bringing the alleged persons to justice would significantly contribute to trust building. Serbia should cooperate with Kosovo in processing war crime cases.⁴¹

⁴⁰ News Statsmen (2018), 'In independent Kosovo, families still search for their missing children'. Available at: <https://www.newstatesman.com/world/europe/2018/02/independent-kosovo-families-still-search-their-missing-children> [Accessed on: August 14, 2019].

⁴¹ Interview 1, 1., (2018). *Representative of the Humanitarian Law Center in Prishtina* [Interview] (22 11 2018).

66. To help societies to overcome the sufferings and the divide caused by the armed conflict in 1998-1999 and foster reconciliation the establishment of the Truth and Reconciliation Commission would be very important. This commission would not replace justice but would contribute in documenting and establishing the facts of violation during this armed conflict, restore the dignity of all communities, contribute to societal transformation to prevent repetition of violations and abuses suffered. The Committee on Human Rights, Gender Equality, Missing Persons, and Petition would contribute to assisting in preparation of the legislation on the establishment of this Commission. The establishment of a joint Truth and Reconciliation Commission chaired by Presidents of both Kosovo and Serbia would contribute considerably in sharing information between Kosovo and Serbia, and therefore progressing significantly in accounting for missing persons. It is recommended that this committee be supervised by relevant international stakeholders in order to ensure functionality, commitment, and accountability, and to avoid any possible boycott.

67. It is important to memorialize the missing persons⁴². It is advisable to engage the families of missing persons and their associations in memorialization initiatives. Based on the preferences of the families of missing persons and the national and international standards to set the memorialization sites and memorialization rituals. To ensure the improvement of the relations between Serbs and Albanians in Kosovo, such initiatives have to be inclusive for all ethnic communities, and no separate memorialization initiatives for each ethnic community. It is recommended to set joint memorialization site(s) for all missing persons. This site would help families of missing persons to go through the mourning/grieving process of their loved one who went missing during and after the war. The remains of missing persons which cannot be identified can be buried in a common cemetery which should be a memorial site too. Establishment of a museum with the artefacts of missing persons would be helpful to address the psychological need of the families of missing persons for the recognition of their fate.

⁴² Interview 4, 4., (2018). *Representative of the Commission for Human Rights, Gender Equality, Missing Persons and Petition* [Interview] (26 11 2018).

Memorialization should be part of the Truth and Reconciliation Commission mission.

7) Conclusions

7. Serbia has the information relating to enforced disappearance during the armed conflict in 1998-1999 and its aftermath. Even though a number of them were found, there are 1,647 persons still missing. Regardless of international standards which sanctions enforced disappearance and obliges the responsible parties to share information whereabouts of persons who went missing, Serbia has not shared that information yet and has not punished persons accountable for such disappearances.
8. During the armed conflict, Serbian military and paramilitary forces manipulated the victims by killing them and changing their appearance and location. There were cases that they changed the victims' clothes and other belongings; burned them in certain locations; recovered them from those locations; and then they reburied them somewhere else or burned their remains. There are places in Serbia suspected of having reburied or burned victims from Kosovo. Military, paramilitary and other official sources possess the files with the information about them.
9. Serbia has not punished the persons accountable for enforced disappearances and persons who have obscured the information and facts regarding the whereabouts of missing persons.
10. Serbia has not put any effort into truth-finding and reconciliation by dealing with the past. It is evident that Serbia is not sharing information or opening the files relating to whereabouts of missing persons, not allowing people to share information, and not encouraging communities to actively find the truth about the whereabouts of missing persons.

11. Serbia is not putting efforts to cooperate with Kosovo in accounting for missing persons. This issue is getting more serious as the EULEX mission, which had a crucial role in accounting for missing persons in Kosovo, is being terminated and Kosovo needs to take ownership of this issue.

8) Recommendations

12. The discussion of the issue of missing persons in the dialogue with Serbia is a must.

13. Kosovo should insist that Serbia must address the issue of missing persons in full accordance with international standards.

14. Kosovo has to condition Serbia to open all the files information relating to missing persons.

15. Serbia must prepare the reports regarding the whereabouts of all persons who went missing during this armed conflict, including those persons whose remains were found afterward.

16. Kosovo has to put a timeframe on the process of sharing those files and information.

17. Serbia has to refrain from politicizing the issue of missing persons.

18. International mechanisms should supervise the implementation of the possible agreement between Kosovo and Serbia concerning solving the missing persons cases.

19. Sanctions should be part of the agreement in case of lack of implementation or partial implementation.

20. Truth and Reconciliation Commission should serve as a mechanism of sharing information and coordinating the activities in accounting for missing persons.
21. Truth and Reconciliation Commission should engage families of missing persons in Kosovo and Serbia in organizing and structuring the memorialization of missing persons.
22. The European Union (EU) should appoint a special envoy within 12 months to address the issue of missing persons between Kosovo and Serbia, and this should be part of a comprehensive and legally binding agreement between Kosovo and Serbia.
23. As an alternative, if the EU hesitates to deal with this issue, then the International Red Cross or the UN should appoint a special envoy to deal with the issue of missing persons.

