



**THE FUTURE OF THE RECONCILIATION**  
**PROCESS** WITHIN KOSOVO AND  
BETWEEN  
**KOSOVO AND SERBIA**  
IN THE CONTEXT OF AN EVENTUAL  
**'GRAND FINALE'**

October 2019

Supported by:



Norwegian Embassy





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**BACKGROUND NOTE/STUDY**

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## **Abbreviations**

<b>EU</b>	European Union
<b>EULEX</b>	European Rule of Law Mission in Kosovo
<b>HLC</b>	Humanitarian Law Center
<b>HRAP</b>	Human Rights Advisory Panel
<b>ICTJ</b>	International Center for Transitional Justice
<b>ICTY</b>	International Criminal Tribunal for the former Yugoslavia
<b>KLA</b>	Kosovo Liberation Army
<b>KRCT</b>	Kosovo Rehabilitation Center for Torture Victims
<b>MOCR</b>	Municipal Offices for Communities and Return
<b>NATO</b>	North Atlantic Treaty Organization
<b>OMPF</b>	Office on Missing Persons and Forensics
<b>OSCE</b>	Organization for Security and Co-operation in Europe
<b>RECOM</b>	Regional Commission Tasked with Establishing the Facts about All Victims of War Crimes and Other Serious Human Rights Violations Committed on the Territory of the Former Yugoslavia
<b>SC</b>	Specialist Chambers
<b>SPO</b>	Specialist's Prosecutor Office
<b>TRC</b>	Truth and Reconciliation Commission
<b>UNDP</b>	United Nations Development Program
<b>UNMIK</b>	United Nations Mission in Kosovo
<b>WCD</b>	War Crimes Department
<b>WCIS</b>	War Crimes Investigation Service
<b>WCIU</b>	War Crimes Investigation Unit
<b>WCPO</b>	War Crimes Prosecutor's Office

## Introduction

1. Kosovo and Serbia mark almost two decades since the end of the conflict between the two countries and NATO intervention. Achieving reconciliation between communities in Kosovo and between Albanians and Serbs, in particular, remains one of the most challenging tasks. The conflict in 1998-99 resulted in numerous victims, missing persons, and displaced populations. These stay at the center of ongoing grievances and tensions in Kosovo. Furthermore, the post-conflict situation is characterized by different conflict narratives that serve to maintain the status quo between communities. Both communities have established victimhood narratives while blaming each other for transgressions – therefore, there is a need to tackle this issue within Kosovo and between Kosovo and Serbia.
2. This paper deals with the facets of the process of reconciliation between Kosovo and Serbia. It analyzes, at first instance, the background of the conflict. Then, it examines the institutional mechanisms and legal framework in Kosovo in addressing the war crimes, in particular in the context of the post-independence period. Within this part of the paper, several national, regional and international actors and initiatives will be discussed (e.g., civil society initiatives, the role of Ministry for Communities and Return, TRC Preparatory team, etc.). The next part of this paper analyzes some of the legal institutions and mechanisms in Serbia which are dealing with the war crimes in Kosovo. Moreover, the role of political actors, especially in the framework of a dialogue between Kosovo and Serbia, is discussed and potential ways to integrate reconciliation as part of the dialogue facilitated by the EU. Finally, the last section provides conclusions and recommendations related to the topic.
3. In this respect, there is always a need for reconciliation initiatives that will build trust and mutual respect between communities. However, the reconciliation process is very much fluid and requires systematic measures that will possibly shrink the animosities.

## Background of the conflict

4. In examining the conflict in former Yugoslavia, more than 6,000 persons were evidenced as missing during the Kosovo conflict 1998-99 and its aftermath. The process of counting the missing persons has yielded results, enabling the identification of more than 4,000. Twenty years after the conflict, 1,647 persons remain missing, with the majority being Albanians, but also including Serbs and other communities in Kosovo. With the end of the war in 1999, over 12,000 Kosovo Albanians were estimated to have been killed.<sup>1</sup> About 800 Serbs, Roma, and other minority communities went missing during the Kosovo conflict in 1999 and its aftermath. During 1999 estimates show that more than 800,000 Kosovo Albanians were displaced. On the other hand, the displaced Serbian population within the region and in Kosovo ranges from 80,000 to 110,000.
5. Despite the extensive and systematic nature of violence in Kosovo, a small number of people responsible for committing crimes prosecuted. The lack of political will to support the sanctioning of past war-crimes and a weak judiciary system to prosecute these crimes makes it uncertain that perpetrators will ever hold accountability for their crimes in Kosovo.<sup>2</sup>
6. Trials for war crimes in Kosovo took place over several separate courts with jurisdiction over Kosovo: at the International Criminal Tribunal for the former Yugoslavia (ICTY); at the Special War Crimes Chamber in Belgrade in Serbia; and UNMIK courts from 1999-2008, following with EULEX mission responsible for

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<sup>1</sup>Amnesty International (2017), 'Wounds that Burn our Souls'. Available at: <https://www.amnesty.org/download/Documents/EUR7075582017ENGLISH.PDF> [Accessed on: October 10, 2019].

<sup>2</sup>Amnesty International (2017), 'Wounds that Burn our Souls'. Available at: <https://www.amnesty.org/download/Documents/EUR7075582017ENGLISH.PDF> [Accessed on: October 10, 2019].

dealing with war-crimes in Kosovo after 2008 and Kosovo's courts following the end of EULEX mission.<sup>3</sup>

7. In 2009, the International Criminal Tribunal for the former Yugoslavia resolved on the conviction of Serbia's highest-ranked political, military and police officials for war crimes and crimes against humanity in Kosovo. Encapsulated here are the 'sexual assaults as a form of persecution, and as a crime against humanity; a senior official was convicted in 2014 of persecutions through sexual assaults, as a crime against humanity'.<sup>4</sup> Also, high-level commanders of the Kosovo Liberation Army trialed in ICTY.
8. According to the international law, rule 117 accounting for missing persons, each party involved in the conflict should 'take all feasible measures to account for persons reported missing as a result of armed conflict and must provide their family members with any information it has on their fate'.<sup>5</sup> This obligation includes equal and effective access to justice and the right to adequate, effective, and prompt reparation for the harm suffered, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. In general, these measures meant to address the sufferings of the victims and help them rebuild their lives.<sup>6</sup>

## **Institutional mechanisms and legal framework within Kosovo in addressing the war crimes**

9. The international institutions dealt with penal justice in Kosovo. The UN Security Council established the International Criminal Tribunal for the former Yugoslavia

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<sup>3</sup>OSCE Mission to Serbia (2015), 'War crimes proceedings in Serbia (2003-2014)'. Available at: <https://www.osce.org/serbia/194461?download=true> [Accessed on: October 12, 2019].

<sup>4</sup>Amnesty International (2017), 'Wounds that Burn our Souls', pp.7. Available at: <https://www.amnesty.org/download/Documents/EUR7075582017ENGLISH.PDF>[Accessed on: October 10, 2019].

<sup>5</sup> International Committee of the Red Cross (2019), 'Rule 117. Accounting for Missing Persons' Available at: [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule117](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule117)[Accessed on: October 12, 2019].

<sup>6</sup>Amnesty International (2017), 'Wounds that Burn our Souls'. Available at: <https://www.amnesty.org/download/Documents/EUR7075582017ENGLISH.PDF> [Accessed on: October 10, 2019].

during the conflicts in the Balkans in the 1990s, and its mandate lasted from 1993 until 2017. The tribunal during its tenure has a record of 161 individuals indicted from which 90 sentenced.<sup>7</sup> The former Yugoslav leader Slobodan Milošević was the first President to be charged for the war crimes when the Tribunal indicted him for the alleged crimes committed in Kosovo in 1999. He stood the trial from 2002 to 2006 for the alleged crimes in Kosovo as well as in Croatia and Bosnia and Herzegovina. However, he died due to natural causes before a judgment rendered.<sup>8</sup> For the crimes against humanity committed in Kosovo, five high ranking Yugoslav and Serbian political, military, and police officials convicted. Former Yugoslav Deputy Prime Minister, Nikola Šainović, Yugoslav Army (VJ) General, Nebojša Pavković, Serbian police General Sreten Lukić, Yugoslav Army General, Vladimir Lazarević and Chief of the General Staff, Dragojlub Ojdanić were found guilty.<sup>9</sup> However, late 2005 marked the initial decree for committed war crimes throughout the Kosovo conflict against members of the Kosovo Liberation Army (KLA), Fatmir Limaj, Isak Musliu, and Haradin Bala. They were faced with accusations on alleged crimes committed in 1998 in the Llapushnik detention camp in Kosovo.<sup>10</sup> While Fatmir Limaj and Isak Musliu cases resulted in not guilty verdicts, Haradin Bala was condemned with 13 years in prison. Around the same year, three other KLA members faced indictments. Ramush Haradinaj, Idriz Balaj, and Lah Brahimaj were charged for numerous alleged offenses. At the same time, the trial for Haradinaj et al., and would initially conclude in 2008 when Haradinaj and Balaj were found not guilty. A partial re-trial would take place in 2010 before all three of them were acquitted in 2012.<sup>11</sup>

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<sup>7</sup>United Nations International Criminal Tribunal for the Former Yugoslavia (2019), 'ICTY 1993-2017'. Available at: <https://www.icty.org/> [Accessed on: October 13, 2019].

<sup>8</sup>United Nations International Criminal Tribunal for the Former Yugoslavia (2019), 'Prosecution Case-Kosovo'. Available at: <http://www.icty.org/en/content/prosecution-case-kosovo> [Accessed on: October 11, 2019].

<sup>9</sup>Ibid.

<sup>10</sup>Kosovo 2.0. (2017), 'The end of the ICTY'. Available at: <https://kosovotwopointzero.com/en/the-end-of-the-icty/>[Accessed on: October 13, 2019].

<sup>11</sup>Ibid.

**10.** After the conflict in Kosovo, the United Nations Mission in Kosovo under Security Council Resolution 1244 was officially mandated to ensure a peaceful and normal life for all inhabitants in Kosovo. The UNMIK mission organized around four main pillars, and Police and Justice were among four pillars. Within Justice Pillar, UNMIK also had the responsibility of dealing with war-crimes. UNMIK was the sole authority over the war crimes in Kosovo, and one of the mechanisms of the UNMIK to investigate war crimes were War Crimes Investigation Unit (WCIU). Furthermore, UNMIK established the Office on Missing Persons and Forensics (OMPF), which was as well the sole authority mandated to determine the whereabouts of missing persons, identify the mortal remains and return the bodies to their families.<sup>12</sup> UNMIK within its Emergency Justice System appointed international judges and prosecutors overall territory of Kosovo, in this regard, the war crimes allegations to not be ethnically biased.<sup>13</sup> In addition to that, according to OSCE report on the war crimes, there is no reliable database of war crimes cases from the UNMIK period due to different authorities engaged in this process, and there is no centralized database for these cases.<sup>14</sup> An important initiative in 1999 was the establishment of the Kosovo War and Ethnic Crimes Court (KWECC), a special tribunal that would address the war crimes and other ethnic motivated crimes, but due to budget constraints and development of local courts, the initiative abandoned.<sup>15</sup> UNMIK mission, including the field of justice and police, ended in December 2008 with EULEX taking full operational control in the area of the rule of law. What can be noted during that period is that citizens have shown dissatisfaction with UNMIK in dealing with the legacies of conflict. Complaints involved the failure of the mission to remedy the damage that had come as a result

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<sup>12</sup>The Human Rights Advisory Panel (2015) 'Opinion'. Available at: <http://www.unmikonline.org/hrap/Eng/Cases%20Eng/132-09%20Opinion%20Signed.pdf> [Accessed on: October 13, 2019].

<sup>13</sup> OSCE (2010) 'Kosovo's War Crimes Trials: An Assessment Ten Years on 1999-2009'. Available at: <https://www.osce.org/kosovo/68569?download=true> [Accessed on: October 13, 2019].

<sup>14</sup>Ibid.

<sup>15</sup>Ibid.

of the conflict and its aftermath.<sup>16</sup>The main concern of the population was the inadequate approach of UNMIK for the issue of missing persons and the lack of proper investigation for the war crimes, but also including property issues as a result of displacements.<sup>17</sup>

**11.** Since 1999 international actors, first UNMIK and then EULEX from 2008 until 2020 (with its new mandate), had the leading role in restoring justice for war crimes in Kosovo. The main impact of these international missions in Kosovo was conflict management, despite several initiatives to support long-term peace, which possibly would lead to a normalization of relations between communities. International and local actors have made various efforts to foster the process of transitional justice; however, the political obstacles hindered the process.<sup>18</sup>

**12.** Since the end of the conflict, in a way, the international actors in Kosovo failed to address the war crimes. Although the war crimes had the attention of the public and relevant stakeholders – the same was not reflected in the fieldwork when it comes to indictments of those crimes.<sup>19</sup>

**13.** Thus, the failure to address the war crimes did hinder the process of normalization of relations, as both entities Albanians and Serbs remain entrenched in antagonistic positions. Besides the war crimes, many other human rights violations must be taken into account. Thousands of people were prosecuted unfairly by Serbian (then former Yugoslavia) judicial system. Issues, such as destruction of property, forcible displacement, extortion of money, detentions, compile some of the violations that

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<sup>16</sup> The Human Rights Advisory Panel (2016), 'The Human Rights Advisory Panel: History and Legacy Kosovo, 2007-2016' Available at: <http://www.unmikonline.org/hrap/Eng/Pages/default.aspx> [Accessed on: October 13, 2019].

<sup>17</sup>Ibid.

<sup>18</sup> Center for Research Documentation and Publication (2018), 'Deconstructing Reconciliation in Kosovo' p.3, Available at: <http://crdp-ks.org/wp-content/uploads/2018/03/CRDP-Policy-Brief-on-Deconstructing-Reconciliation-EN.pdf> [Accessed on: October 14, 2019].

<sup>19</sup> OSCE (2010), 'Kosovo's War Crimes Trials: An Assessment Ten Years on 1999-2009' Available at: <https://www.osce.org/kosovo/68569?download=true> [Accessed on: October 13, 2019].

have received no attention and accountability.<sup>20</sup> As a consequence, there is a general dissatisfaction among people about the lack of concrete steps toward identifying and prosecuting individuals who committed war crimes and other human rights violations. Consequently, there has been increased mistrust toward the institutions dealing with legacies of the conflict, which has also reflected in more deep-rooted animosities and disparities regarding the normalization of relations.

14. The initial phase of normalization of relations has gone through the penal justice, which in the case of Kosovo, was implemented in two levels; international and local. The legislative measures formed the foundation for dealing with truth and reconciliation. Institutional strategies for security, peace-building, and reconciliation in Kosovo implemented through institutions such as the UN, NATO, and the EU.<sup>21</sup>

## Dealing with War-Crimes after the declaration of independence of Kosovo

15. Kosovo parliament declared its independence on February 17<sup>th</sup>, 2008. The declaration of independence marked the end of the UNMIK period and the gradual transition of UNMIK competencies to the newly established government of Kosovo. However, the process of dealing with war crimes has transferred to the European Union Rule of Law Mission in Kosovo (EULEX). EULEX “inherited 1200 war crimes cases from UNMIK, but it closed or dismissed 500 of these due to the lack of evidence”.<sup>22</sup>

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<sup>20</sup> OSCE Verification Mission (2003), ‘Kosova/Kosovo as Seen as Told’ Available at: <https://www.osce.org/odihr/17772?download=true> [Accessed on: October 13, 2019].

<sup>21</sup>Center for Research Documentation and Publication (2017), ‘Deconstructing Reconciliation in Kosovo’ Available at: <https://crdp-ks.org/wp-content/uploads/2017/06/Zb%C3%ABrthimi-i-konceptit-t%C3%AB-pajtimet-n%C3%AB-kontekstin-e-Kosov%C3%ABs-Deconstructing-Reconciliation-Qershor-2017.pdf>[Accessed on: October 13, 2019].

<sup>22</sup>EULEX (2019), ‘EULEX and War Crimes’. Available at: <https://www.eulex-kosovo.eu/en/news/000427.php>[Accessed on: October 14, 2019].

**16.** EULEX officially began its operations in Kosovo in December 2008. Its stated mission was to ‘monitor, mentor, and advise retaining limited executive powers in the area of the rule of law’.<sup>23</sup> “EULEX’s overall mission is to assist Kosovo’s authorities in establishing the sustainable and credible rule of law institutions. EULEX works within the framework of Resolution 1244 of the UN Security Council”.<sup>24</sup> EULEX from 2014 has shortened the number of personnel as well as the cases that cover. Its mandate, implemented through monitoring and operation pillars, has been launched to cover the period until 14 of June 2020.<sup>25</sup> War crimes compound one of the areas that EULEX was in charge of since 2008.

**17.** When it comes to war crimes, EULEX has a record of 600 hundred cases pending with Kosovo and EULEX prosecutors; however, EULEX has initiated 51 new war crimes cases, including for the first time cases of sexual violence and rape. On the other hand, EULEX has adjudicated 15 war crime cases, which half of these involve Serbian defendants, and just over half of these (8) involved Albanian defendants.<sup>26</sup> There are active cases when it comes to Missing Persons, and around 100 cases of war crimes are currently in an investigation by EULEX in collaboration with Kosovo institutions.<sup>27</sup> Some war crime cases may get transferred to Kosovo courts. According to the new Strategy of the war crimes, a department for dealing with war crimes will be established, which will deal with alleged war crimes of all ethnicities living in Kosovo.<sup>28</sup>

**18.** There is a broad consensus that the justice system in Kosovo and the international missions have failed to address the war crimes adequately. Therefore, Kosovo

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<sup>23</sup> OSCE (2010), ‘Kosovo’s War Crimes Trials: An Assessment Ten Years on 1999-2009’ p.14, Available at: <https://www.osce.org/kosovo/68569?download=true> [Accessed on: October 13, 2019].

<sup>24</sup>EULEX. (2019), ‘What is EULEX?’. Available at: <https://www.eulex-kosovo.eu/?page=2,16> [Accessed on: October 14, 2019].

<sup>25</sup> Ibid.

<sup>26</sup>EULEX (2019), ‘EULEX and War Crimes’. Available at: <https://www.eulex-kosovo.eu/en/news/000427.php>[Accessed on: October 14, 2019].

<sup>27</sup>Ibid.

<sup>28</sup> Kosovo Judicial Council (2019). ‘Strategy of the war crimes first document of its kind in Kosovo’ Available at: <http://www.gjyqesori-rks.org/2019/05/10/strategjia-e-krimeve-te-luftes-dokumenti-i-pare-i-ketij-lloji-ne-kosove/> [Accessed on: October 12, 2019]

Specialist Chambers and Specialist Prosecutor's office established in Hague, Netherlands. This institution operates in Hague under Kosovo laws to seek justice for war crimes, certain crimes against humanity and other crimes under Kosovo law.<sup>29</sup> This justice institution has been established based on the report of Swiss Senator Dick Marty in 2010. This report presented to the Assembly of the Council of Europe indicated that some Serbians and Albanian Kosovars were held in prisons in northern Albania and subjected to inhuman treatment. The report further suggests that under KLA control in a territory near Fushë-Krujë in Albania, border region with Kosovo, organs were removed from prisoners to be taken abroad for transplantation.<sup>30</sup>

**19.** The Specialist Chambers (SC) and Specialist's Prosecutor Office (SPO) "have mandate and jurisdiction over crimes against humanity, war crimes, and other related crimes under Kosovo law." SC and SPO are temporary judicial institutions and investigate 'alleged crimes committed between 1 January 1998 and 31 December 2000'.<sup>31</sup> The international community expects that Kosovo institutions will take charge of the war crimes and other wrongdoings from the conflict-related period.<sup>32</sup>

**20.** The process of reconciliation had many obstacles with often changing legislative framework due to different missions embarked in Kosovo. The lack of political will and ethnic tensions within Kosovo society and between Kosovo and Serbia and the loss of trust in the international institutions further complicated the reconciliation.

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<sup>29</sup>Center for Research Documentation and Publication (2017), 'Deconstructing Reconciliation in Kosovo' Available at: <https://crdp-ks.org/wp-content/uploads/2017/06/Zb%C3%ABrthimi-i-konceptit-t%C3%AB-pajtitimit-n%C3%AB-kontekstin-e-Kosov%C3%ABs-Deconstructing-Reconciliation-Qershor-2017.pdf> [Accessed on: October 13, 2019].

<sup>30</sup> Council of Europe – Parliamentary Assembly (2011), 'Report: Inhuman treatment of people and illicit trafficking in human organs in Kosovo'. Available at: <http://www.assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?fileid=12608&wqid=0&ref=3446&lang=EN> [Accessed on: October 14, 2019].

<sup>31</sup> Kosovo Specialist Chambers & Specialist Prosecutor's Office (2019). Available at: <https://www.scp-ks.org/en> [Accessed on: October 11, 2019].

<sup>32</sup> Visoka, G. (2017), 'Assessment of the Potential Impact of the Special Court of Kosovo'. Available at: <https://www.impunitywatch.org/publications/vleresimi-i-ndikimit-potencial-te-gjykates-speciale-te-kosoves> [Accessed on: October 14, 2019].

Therefore, reconciliation remains a challenge that requires the engagement of many social actors, likewise creating a social atmosphere that is in favor of the normalization of relations between Kosovo and Serbia.

**21.**In 2012, the Kosovo government created an inter-ministerial group to deal with war crimes and establish reconciliation. The mandate of this inter-ministerial group based on the four pillars of transitional justice: ‘finding the truth, reparations for victims, right to justice, and institutional reform.’<sup>33</sup>

**22.**Despite the sincere engagement of the working group members, this group failed to meet its objectives due to several factors, including inadequate management and the lack of political ownership, sparse representation and participation of minority communities in Kosovo, the non-representation of civilian victims of war and the failure to involve the general public.<sup>34</sup> Even though this is considered a project that could gather different actors to establish a strategy to deal with the past, financial and political support lacked; consequently, this strategy did not develop so far. Furthermore, Kosovo remained without a proper framework to deal with the past and based on which policies could implement.<sup>35</sup>

**23.**Until now, international initiatives in Kosovo have failed to address the war crimes. International and hybrid war crime trials have been seen by Albanian and Serbian communities in Kosovo as mechanisms to demand accountability from the other side for wrongdoing and to expand the political power of fierce nationalist lines. International and hybrid courts in Kosovo focused mainly on criminal justice and

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<sup>33</sup> Center for Research Documentation and Publication (2017), ‘Deconstructing Reconciliation in Kosovo’ Available at: <https://crdp-ks.org/wp-content/uploads/2017/06/Zb%C3%ABrthimi-i-konceptit-t%C3%AB-pajtim-it-n%C3%AB-kontekstin-e-Kosov%C3%ABs-Deconstructing-Reconciliation-Qershor-2017.pdf> [Accessed on: October 13, 2019].

<sup>34</sup>Kosovo 2.0. (2017), ‘How can Kosovo Deal with the Wartime Past?’ Available at: <https://kosovotwopointzero.com/en/can-kosovo-deal-wartime-past/> [Accessed on: October 14, 2019].

<sup>35</sup>Center for Research Documentation and Publication (2018). ‘Deconstructing Reconciliation in Kosovo’ Available at: <http://crdp-ks.org/wp-content/uploads/2018/03/CRDP-Policy-Brief-on-Deconstructing-Reconciliation-EN.pdf> [Accessed on: October 14, 2019].

ignored other aspects of transitional justice, such as a search for truth, victim support, harassment, reparations, and community reconciliation.<sup>36</sup>

## **Ministry for Communities and Return in the process of the reconciliation**

**24.** In order to ensure a safe return and integration for the displaced persons, Kosovo has established the Ministry for Communities and Return in January 2005 under the UNMIK regulation 2004/50.<sup>37</sup> Before that, an office for communities and return existed within the office of Prime Minister. Ministry for Communities and Return is responsible for the promotion and protection of communities and their rights, including the right to return and integrate. Furthermore, it implements adequate legislation for the rights of communities, 'rendering leadership on activities building confidence, dialogue, and reconciliation between communities, as well as supporting implementations of those activities'.<sup>38</sup>

**25.** Property destruction and usurpation constitute another problem. Based on the data of the Human Rights Advisory Panel, about 14.000 property-owning complaints, mainly from the Serbian community, proceeded at the panel. Such claims involved the usurpation and destruction of properties, primarily related to the period of conflict in Kosovo in 1999.<sup>39</sup> Considering the high volume of cases on the Kosovo judicial system, the UNMIK has suspended all the cases until finding a better way to process the cases.<sup>40</sup> Four years later, in 2008, UNMIK advised the Kosovo courts to proceed with the cases. However, between 2008 and 2010, compensation claims still have not been contacted by the courts, nor setting a date

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<sup>36</sup>Visoka, G. (2017). 'Assessment of the Potential Impact of the Special Court of Kosovo'p.27, Available at: <https://www.impunitywatch.org/publications/vleresimi-i-ndikimit-potencial-te-gjykates-speciale-te-kosoves> [Accessed on: October 14, 2019].

<sup>37</sup>Strategy for Communities and Return (2014). Available at: [http://www.kryeministri-ks.net/repository/docs/Strategjia\\_per\\_Komunitete\\_dhe\\_Kthim\\_2014-2018.pdf](http://www.kryeministri-ks.net/repository/docs/Strategjia_per_Komunitete_dhe_Kthim_2014-2018.pdf) [Accessed on: October 15, 2019].

<sup>38</sup>Ministry of Communities and Returns (2019), 'Ministry of Communities and Returns - Mission and vision'. Available at: <http://mzp-rks.org/en/mission-and-vision.html> [Accessed on: October 10, 2019].

<sup>39</sup>The Human Rights Advisory Panel (2016), 'The Human Rights Advisory Panel: History and Legacy Kosovo, 2007-2016' Available at: <http://www.unmikonline.org/hrap/Eng/Pages/default.aspx> [Accessed on: October 13, 2019].

<sup>40</sup>Ibid.

for hearings. Even twenty years after the war, thousands of property disputes continue to be a problem for Kosovo's judiciary. What caused this problem is that Serbian authorities removed cadastral documents registered in the period from 1983 to 1999, and as a consequence, Kosovo is missing a significant amount of cadastral information.<sup>41</sup> There are many cases where complaints did not have their property documents correct as a result of missing cadastral records. Although an agreement was signed between Kosovo and Serbia in Brussels in 2011 for return of cadastral records, and the deal entails the return of around 4.6 million copies of cadastral documents.<sup>42</sup> However, the problem is more complex as the properties were not correctly registered to their owners because of the tensed and repressive political situation before the conflict. Therefore, the return of the displaced persons entails many challenges along with the safe return, integration, and property damage, which the Ministry covers at certain levels.

**26.** To facilitate reconciliation and implement governmental policies for community integration, Municipal Offices for Communities and Return (MOCR) established. Formation of these offices contains a positive development in itself; however, not necessarily those offices have accomplished their missions. Generally, these offices have failed to inform the returnees and assess their needs and implement projects regarding returnee needs.<sup>43</sup> Institutional mechanisms that have the mandate to support MOCR did not functionalize in all municipalities. That said, the reintegration of the Serbs has faced several challenges, which in this situation adds more problems to reconciliation.

**27.** Kosovo's legal framework has incorporated the international legal instruments into its legal system to provide comprehensive legislation for all communities and promoting international standards. In this regard, the Framework Convention for

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<sup>41</sup> Balkan Insight (2019), 'Lost Property: Kosovo's Missing Records Prolong Post War Legal Battles.' Available at: <https://balkaninsight.com/2019/04/03/lost-property-kosovos-missing-records-prolong-post-war-legal-battles/> [Accessed on: October 12, 2019].

<sup>42</sup> Ibid.

<sup>43</sup> OSCE (2015), 'Community Rights Assessment Report Fourth Edition' p.37, Available at: <https://www.osce.org/kosovo/209956?download=true> [Accessed on: October 14, 2019].

the protection of National Minorities embedded as the most important international legal instrument to measure the Kosovo institutions' accountability towards the national minority's rights.<sup>44</sup>

**28.**It is essential to note that the Republic of Kosovo guarantees the rights of communities through laws. For instance, law no.03/L on the protection and promotion of the rights of communities and their members in Kosovo; law no.02/L-37 on the use of languages, and also the rules on education such as law no.04/L-032 on pre-university education; law no. 03/L-068 on education in the municipalities of the Republic of Kosovo. These laws create a solid legal ground for more comprehensive integration of the Serbs into the legal system in particular, and in the society in general.

**29.**The vision of the Ministry of Communities and Return is to contribute to building dialogue, confidence, and reconciliation between communities as well as assure policies for the protection of community rights, human rights, and creating conditions for safe return.<sup>45</sup> The Strategy for Communities and Return 2014-2018 has focused on the reintegration of displaced persons, sustainable return, and economic reintegration of the communities.<sup>46</sup>The implementation of these goals from the Ministry of Communities and Return has yielded mixed results. Ministry has been a focal point for displaced persons and has contributed to providing some of the conditions for this process. On the other hand, some challenges were noticed regarding the implementation of the legislation.

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<sup>44</sup> OSCE (2015), 'Community Rights Assessment Report Fourth Edition' p.35, Available at: <https://www.osce.org/kosovo/209956?download=true> [Accessed on: October 14, 2019].

<sup>45</sup>Ministry of Communities and Returns (2019), 'Ministry of Communities and Returns - Mission and vision', Available at: <http://mzp-rks.org/en/mission-and-vision.html> [Accessed on: October 14, 2019].

<sup>46</sup> Strategy for Communities and Return (2014), Available at: [http://www.kryeministri-ks.net/repository/docs/Strategjia\\_per\\_Komunitete\\_dhe\\_Kthim\\_2014-2018.pdf](http://www.kryeministri-ks.net/repository/docs/Strategjia_per_Komunitete_dhe_Kthim_2014-2018.pdf) [Accessed on: October 14, 2019].

## Reconciliation process through civil society initiatives

**30.** Civil society organizations have made the most critical efforts in bringing reconciliation in Kosovo. Perhaps, due to the lack of political courage or willingness among political actors, civil society organizations have stepped in and had a leading role in the reconciliation process in Kosovo. Organizations, such as Council for the Defense of Human Rights and Freedoms-CDHRF, Kosovo Red Cross, Association of the Families of Missing Persons, Humanitarian Law Center, The Kosovo's Rehabilitation Centre for Torture Victims, Regional Commission Tasked with Establishing the Facts about All Victims of War Crimes and Other Serious Human Rights Violations Committed on the Territory of the Former Yugoslavia (RECOM) and so forth, have actively engaged in improving intergroup relations within Kosovo and in Serbia.<sup>47</sup>

**31.** There was a substantial impact on documentation of war crimes, such as documentation of killings, missing persons, mass graves, and so on. The documentation of these issues has usually come from ICTY witnesses and other judicial instances.<sup>48</sup>

**32.** A significant development was the RECOM initiative. The acronym RECOM stands for the Regional Commission Tasked with Establishing the Facts about All Victims of War Crimes and Other Serious Human Rights Violations Committed on the Territory of the Former Yugoslavia from 1 January 1991 to 31 December 2001.<sup>49</sup> The coalition of RECOM was formed on 28 October 2008 in Pristina, Kosovo, in the fourth forum for Transitional Justice in post-Yugoslav Countries, by the

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<sup>47</sup>UNDP (2017), 'Dealing with the Past and Reconciliation in Kosovo: A Summary of Institutions and Initiatives' p.14. Available at: [https://www.undp.org/content/dam/kosovo/docs/TJ/ENG\\_TJ%20Summary%20of%20Institutions%20and%20Initiatives.pdf](https://www.undp.org/content/dam/kosovo/docs/TJ/ENG_TJ%20Summary%20of%20Institutions%20and%20Initiatives.pdf) [Accessed on: October 14, 2019].

<sup>48</sup> UNDP (2017), 'Dealing with the Past and Reconciliation in Kosovo: A Summary of Institutions and Initiatives'. Available at: [https://www.undp.org/content/dam/kosovo/docs/TJ/ENG\\_TJ%20Summary%20of%20Institutions%20and%20Initiatives.pdf](https://www.undp.org/content/dam/kosovo/docs/TJ/ENG_TJ%20Summary%20of%20Institutions%20and%20Initiatives.pdf) [Accessed on: October 14, 2019].

<sup>49</sup> The initiative for RECOM (2019), Available at: <http://recom.link/about-recom/what-is-recom/> [Accessed on: October 12, 2019].

decision of 100 organizations and associations, those dealing with human rights, missing persons, youth organizations and so forth. RECOM mission was to establish the facts for all the war crimes, wrongdoings, and human rights violations, and doing so by collecting data on particular issues, as well as organizing public hearings of victim's testimonies.<sup>50</sup> RECOM coalition brought together 2050 non-governmental organizations from all countries of former- Yugoslavia – with the mission of establishing the facts about what happened in the recent past, and compiling narratives about the war crimes.

**33.** RECOM's official regional expert group held its first formal meeting in Zagreb in 2013, which was compounded by envoys of presidencies of Croatia, Kosovo, Bosnia and Herzegovina, Serbia and Montenegro as well as public advocates of the initiative. Both envoys of the presidents and public advocates agreed that the proposed RECOM statute, as was adopted in 2011, represents an essential document for building a consensus for minimum official-level discussion and cooperation.<sup>51</sup> However, the RECOM coalition still did not accomplish its full mission due to the failure of the Western Balkans Summit in London in 2018 to support the establishment of the regional truth-seeking committee.

**34.** Nonetheless, the RECOM initiative has progressed in shrinking the differences by becoming a coalition, in which all states have their representatives. In this regard, Kosovo also had its representative from the office of the president of Kosovo, Atifete Jahjaga, in 2014-15.<sup>52</sup> However, the RECOM has its obstacles and conceptual misunderstandings within the countries of former-Yugoslavia. One of the biggest critiques that lied on the RECOM in the context of reconciliation was the initiative

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<sup>50</sup>Ibid.

<sup>51</sup> The initiative for RECOM (2019), Available at: <http://recom.link/about-recom/what-is-recom/> [Accessed on: October 12, 2019].

<sup>52</sup> UNDP (2017), 'Dealing with the Past and Reconciliation in Kosovo: A Summary of Institutions and Initiatives'. Available at: [https://www.undp.org/content/dam/kosovo/docs/TJ/ENG\\_TJ%20Summary%20of%20Institutions%20and%20Initiatives.pdf](https://www.undp.org/content/dam/kosovo/docs/TJ/ENG_TJ%20Summary%20of%20Institutions%20and%20Initiatives.pdf) [Accessed on: October 14, 2019].

to put all victims into equal positions to secure a regional forum for all entities.<sup>53</sup> Nevertheless, the RECOM coalition, with its associates and non-governmental organizations, has provided several documents on human losses, camps, and other detention facilities, as well as publications on the Transitional Justice and Reconciliation.<sup>54</sup>

**35.** However, the initiative faced a lack of support from the government of Kosovo and other regional governments. Another problem that jeopardized the initiative was the political denial of the crimes and wrongdoings. In this manner, Serbia embraced the victimization narratives and justified its crimes as acts of defense. Thus, the lack of cooperation and mutual understanding of the reconciliation has disrupted the RECOM initiative for intraregional reconciliation.<sup>55</sup>

## **The Truth and Reconciliation Commission Preparatory Team in Kosovo**

**36.** Kosovo President Hashim Thaci has initiated the formation of the Truth and Reconciliation Commission (TRC) to deal with war/conflict narratives by taking into consideration all perspectives from all communities living in Kosovo, especially Albanians and Serbs. To functionalize the Truth and Reconciliation Commission, the President of Kosovo has appointed a preparatory team, which is composed of nine members. Most of the members are from civil society; also,

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<sup>53</sup> Center for Research Documentation and Publication (2017), 'Deconstructing Reconciliation in Kosovo p.18,' Available at: <https://crdp-ks.org/wp-content/uploads/2017/06/Zb%C3%ABrthimi-i-konceptit-t%C3%AB-pajtim-it-n%C3%AB-kontekstin-e-Kosov%C3%ABs-Deconstructing-Reconciliation-Qershor-2017.pdf> [Accessed on: October 13, 2019].

<sup>54</sup> The initiative for RECOM (2019), 'What is RECOM'. Available at: <http://recom.link/about-recom/what-is-recom/> [Accessed on: October 14, 2019].

<sup>55</sup> Center for Research Documentation and Publication (2017), 'Deconstructing Reconciliation in Kosovo' p.19, Available at: <https://crdp-ks.org/wp-content/uploads/2017/06/Zb%C3%ABrthimi-i-konceptit-t%C3%AB-pajtim-it-n%C3%AB-kontekstin-e-Kosov%C3%ABs-Deconstructing-Reconciliation-Qershor-2017.pdf> [Accessed on: October 14, 2019].

representatives from the office of President, Kosovo Assembly, Government of Kosovo, and international experts are part of the team.<sup>56</sup>

**37.** TRC would serve as a forum that would help to describe the crimes in all aspects: criminal aspect, social and geographical aspect as well. Its objective is to “document and establish facts of violations of human rights from the recent violent conflict, and contribute to societal transformation to prevent a repetition of abuses and violations suffered, and restore the dignity of victims of all communities.” Also, TRC aims to gather all narratives that each community has built for itself and the other side, and which very often contradict each other.<sup>57</sup>

**38.** In particular, the role of the TRC is to document the narratives of the victims and perpetrators. However, the tasks of the TRC are very complex and, if not handled properly, can deteriorate instead of improving relations in Kosovo. The reconciliation should not be reduced only on the Truth and Reconciliation Commission. Instead, Kosovo, as well as Serbia, should strengthen institutions that respect human rights and are worthy of trust. This commission would not replace justice but would contribute to documenting and establishing the facts of violation during the armed conflict.<sup>58</sup>

**39.** For the reconciliation between societies and states, only penal justice cannot help in that regard. Therefore, the TRC's primary focus is the recognition of the victimization and the way how victims have experienced the conflict, but also

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<sup>56</sup> President of the Republic of Kosovo (2017), ‘The President established the Preparatory Team for the Truth and Reconciliation Commission’ Available at: <https://www.president-ks.gov.net/en/news/the-president-established-the-preparatory-team-for-the-truth-and-reconciliation-commission> [Accessed on: October 14, 2019].

<sup>57</sup> 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-ks.gov.net/repository/docs/2019\\_01\\_17\\_143401\\_DECLARATION17119.pdf](https://www.president-ks.gov.net/repository/docs/2019_01_17_143401_DECLARATION17119.pdf) [Accessed on: October 15, 2019].

<sup>58</sup> Center for Research Documentation and Publication (2018), ‘Deconstructing Reconciliation in Kosovo,’ Available at: <https://crdp-ks.org/wp-content/uploads/2017/06/Zb%C3%ABrthimi-i-konceptit-t%C3%AB-pajtim-it-n%C3%AB-kontekstin-e-Kosov%C3%ABs-Deconstructing-Reconciliation-Qershor-2017.pdf> [Accessed on: October 14, 2019].

addressing the perception of the conflict from their side. The TRC principles and values consist as follows:

- *Will respect human rights and dignity;*
- *Has a particular focus on civilian victims: it protects, acknowledges and empowers them;*
- *Is composed of people of high integrity, selected by a transparent process following the highest standard of professional ethics;*
- *Will be independent, and its decisions shall not be influenced politically;*
- *Will be accountable, responsive, accessible and open to all citizens of Kosovo and interested stakeholders;*
- *Prevents racism, sexism and gender discrimination during the process, in its work and the outcomes of the process;*
- *Will follow a rigorous and methodical examination of facts and events of the past, in line with procedural fairness.<sup>59</sup>*

**40.** Consequently, TRC will conduct research, public consultations, meetings with key political and civic stakeholders in Kosovo, to draft reports and documents that would make the TRC functional and can meet its goals.<sup>60</sup>

**41.** However, this initiative accepted with different stances. While there are a significant doubt and disbelief in the intents and possible success of the commission, however, for many others, the TRC enhances new horizons for reconciliation. TRC has gained support from international missions in Kosovo, as well. In 2019, the TRC held nine public consultation meetings with various social

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<sup>59</sup> 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](https://www.president-ksgov.net/repository/docs/2019_01_17_143401_DECLARATION17119.pdf) [Accessed on: October 15, 2019].

<sup>60</sup>Ibid.

groups such as historians, Albanian war veterans, Serbian community, and family members of missing persons, legal experts, and so on.<sup>61</sup>

42. The different initiatives and approaches from different state actors regarding reconciliation, has undermined the process in itself and often has generated doubt.<sup>62</sup> Therefore, TRC does not have an easy task, and to reach the goals, it is expected to face many challenges, as its mission tends to reconcile communities that are yet stuck into their conflict narratives. However, there are successful examples and failures of TRCs throughout the world. A successful model that deserves consideration is the Sierra Leone TRC.

### **Legal institutions and mechanisms of Serbia in dealing with war crimes in Kosovo**

43. The Serbian political and judicial system after the conflicts in the former Yugoslavia has experienced changes. In 2003 Serbia adopted the Law on War Crimes and established institutions within the Police, Prosecution, and Courts to deal with war-related crimes in former Yugoslavia. Furthermore, this law gives Serbia 'jurisdiction over crimes committed in the territory of the whole former Yugoslavia, regardless of the nationality of the suspect or the victims, and irrespective of the presence of the suspect on the territory of Serbia'.<sup>63</sup> In addition to that, the Law on War Crimes established institutions such as War Crimes Prosecutor's Office (WCPO), the War Crimes Department (WCDs) the War Crimes Investigation Service (WCIS), with their headquarters in Belgrade, Serbia.<sup>64</sup>

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<sup>61</sup> President of the Republic of Kosovo (2019), 'Preparatory Team for the Establishment of the Truth and Reconciliation Commission' Available at: <https://www.president-ksgov.net/en/preparatory-team-for-the-establishment-of-the-truth-and-reconciliation-commission> [Accessed on: October 14, 2019].

<sup>62</sup> Center for Research Documentation and Publication (2018), 'Deconstructing Reconciliation in Kosovo,' Available at: <https://crdp-ks.org/wp-content/uploads/2017/06/Zb%C3%ABrthimi-i-konceptit-t%C3%AB-pajtimit-n%C3%AB-kontekstin-e-Kosov%C3%ABs-Deconstructing-Reconciliation-Qershor-2017.pdf> [Accessed on: October 13, 2019].

<sup>63</sup> OSCE (2015), 'War crimes proceedings in Serbia (2003-2014)' p.29. Available at: <https://www.osce.org/serbia/194461?download=true> [Accessed on: October 12, 2019].

<sup>64</sup> Ibid.

44. The WCPO and the WCDs have jurisdiction over the crimes against humanity, genocide, or aggression; however, no defendants charged over those crimes.<sup>65</sup> While ICTY indicted high-level ranking officials, the war crimes institutions in Serbia proceeded with mid-ranking prosecutions. The most mid-ranking indictments occurred during the first few years of the work of these institutions, while from 2009, all defendants were low ranking ones.<sup>66</sup>

45. Furthermore, the cases prosecuted in Serbia have covered crimes committed against 1.100 'victims' belonging to all nationalities that were involved in the conflicts of former Yugoslavia (i.e., Albanians, Bosnians, Croats, Roma, and Serbs). The majority of the cases involve crimes against victims of Croatian ethnicity, which comprise 35% of the cases, followed with cases for crimes against Bosniak ethnicity, including 28% of the cases. Cases for crimes against Kosovo Albanians make up to 14%, followed by cases against Roma victims, which contain 7%. Trials for crimes against Serbian nationality are 16 %.<sup>67</sup>

46. In addition to that, from the outset of its operations dating back to November 2003 until the end of 2014, the War Crimes Prosecutor's Office (WCPO) charged 162 defendants with war crimes against civilians and prisoners of war. Almost three-quarters of the accused used to be members of the military (including "territorial defense" forces), while police and paramilitary troops account for nearly all the remaining ones.<sup>68</sup> The vast majority (86%) of defendants are former members of Serbian forces. It is followed by Albanian defendants indicted in a single case, which resulted in the discharge of all 17 defendants. Three defendants belonged to Bosnian or Croatian troops.

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<sup>65</sup> OSCE (2015), 'War crimes proceedings in Serbia (2003-2014)' p.23. Available at: <https://www.osce.org/serbia/194461?download=true> [Accessed on: October 12, 2019].

<sup>66</sup> OSCE (2015), 'War crimes proceedings in Serbia (2003-2014)' p.45. Available at: <https://www.osce.org/serbia/194461?download=true> [Accessed on: October 14, 2019].

<sup>67</sup> OSCE (2015), 'War crimes proceedings in Serbia (2003-2014)' p.46. Available at: <https://www.osce.org/serbia/194461?download=true> [Accessed on: October 12, 2019].

<sup>68</sup> OSCE (2015), 'War crimes proceedings in Serbia (2003-2014)' Available at: <https://www.osce.org/serbia/194461?download=true> [Accessed on: October 12, 2019].

**47.** After the political changes in the early 2000s, Serbia started to address its legacy of the conflicts that had overwhelmed the territory of the former Yugoslavia during the 1990s. However, since the establishment of specialized institutions responsible for investigating, prosecuting, and adjudicating war crimes cases in 2003, Serbia has not made significant progress in establishing accountability for past atrocities. Generally, these institutions have often been the object of criticism by a range of stakeholders in Serbia. “Human rights organizations have pointed at issues such as the low number of cases, insufficient support given to injured parties and overly lenient sentencing practices”.<sup>69</sup>

**48.** The Parliament appoints the War Crimes Prosecutor among other candidates that are nominated by the government. Besides that, the parliament appoints the judges that deal with war crimes. Therefore, the judicial system of Serbia and its legal framework leaves space for political influence. Additionally, there is low public support among the Serbian population for war crimes prosecution.<sup>70</sup>

**49.** In order to improve the prosecution of war crimes, the Republic of Serbia adopted the National Strategy for the Prosecution of the War Crimes 2016-2020, which evaluated a set of activities to help improve the prosecution of the war crimes as a common objective. In addition to that, determining individual responsibility for war crimes committed during the 1990s is one of the formal conditions for Serbia as part of the EU integration process.<sup>71</sup> According to the report of the HLC, the implementation of the National Strategy delayed, war crimes trials continue to be unceasingly prolonged, and the process of finding missing persons is at a meager pace.<sup>72</sup>

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<sup>69</sup>Ibid.

<sup>70</sup> Ibid.

<sup>71</sup>Humanitarian Law Center (2016), ‘Transitional Justice in Serbia in the period from 2013 to 2015’. Available at: [http://www.hlc-rdc.org/wp-content/uploads/2016/06/izvestaj\\_o\\_TP\\_2013-2015\\_eng.pdf](http://www.hlc-rdc.org/wp-content/uploads/2016/06/izvestaj_o_TP_2013-2015_eng.pdf) [Accessed on: October 15, 2019].

<sup>72</sup>Ibid.

**50.** The lack of tangible results about the war crimes indictments has jeopardized the normalization of relations between two countries and its people. “In cases of war crimes committed in Kosovo, the OWCP often files indictments based on partial investigations, as happened in the Suva Reka/Suhareke and Ćuška/Qushk Cases”.<sup>73</sup> The Court of Appeal in Belgrade has continued to confirm low imprisonment sentences, this significantly damages the initiatives for restoring the peace between communities, as the perpetrators remain free.

**51.** To reconcile, both states should provide adequate information for missing persons, war victims, and other wrongdoings committed. Many international institutions consider that Serbian institutions have information for numerous locations of missing persons from Kosovo.<sup>74</sup> In this realm, the Serbian government and other institutions should provide information about the site of missing persons. Serbia has the information relating to enforced disappearance during the armed conflict in 1998-1999 and its aftermath. There are 1,647 persons still missing from the last war in Kosovo.<sup>75</sup>

**52.** The hate and mistrust between Albanians and Serbs are still present. That said, reducing animosities and creating a suitable environment for improving relations should be imperative for both states. This environment can be created by dealing with the past as a fundamental premise to move forward. About that, putting justice in place is a precondition for reconciliation, as Serbian institutions must demonstrate by actively engaging in identifying perpetrators and prosecuting them for war crimes. Reconciliation can take place at many levels, such as individual level, community level, but yet the most important one remains the political level.

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<sup>73</sup>Humanitarian Law Center (2012), ‘Transitional Justice in Post-Yugoslav Countries Report 2010-2011’. Available at: <http://www.hlc-rdc.org/?p=22665&lang=de> [Accessed on: October 14, 2019].

<sup>74</sup>Commissioner for Human Rights (2017), ‘Memorandum following the Commissioner’s mission to Kosovo\*’ Available at: <https://rm.coe.int/memorandum-following-the-commissioner-s-mission-to-kosovo-from-5-to-9-/16807ba832> [Accessed on: October 14, 2019].

<sup>75</sup> ICRC (2018), ‘Twenty years on, 1,647 people still missing in Kosovo’ Available at: <https://www.icrc.org/en/document/twenty-years-1647-people-still-missing-kosovo> [Accessed on: October 14, 2019].

That is because the political level sets the conditions for individuals and communities to seek a process such as reconciliation.<sup>76</sup>

53. However, the reconciliation between Kosovo and Serbia remains challenging as both countries do not have official bilateral relations and maintain their hostile positions. Although this posits a severe problem, yet does not block the process of reconciliation at its core. What has prolonged the process is the unwillingness of political elites and institutions to deal with the past and take necessary measures for recognition of the wrongdoings and indict the war crimes. Therefore, the issue of dealing with the past shall be very challenging but addressed in the dialogue between Pristina and Belgrade facilitated by the EU.

54. Serbia, as well as Kosovo, should cooperate on the fate of missing persons and war crimes in general. On the contrary, communities cannot build trust and understanding to continue a process of reconciliation. Therefore, prime ministers of the Western Balkans countries, including Serbia and Kosovo, have signed a joint declaration in the Western Balkans Summit in the framework of the Berlin Process in 2018, which emphasizes the importance of finding missing persons and its whereabouts and bringing the perpetrators to the justice.<sup>77</sup>

55. Some of the points of the joint declaration regarding missing persons and war crimes include following remarks: *to ensure impartial and effective investigations into missing persons cases by international human rights standards and to resolve as many missing persons cases as possible over the next five years; to engage actively all domestic institutions that are responsible for or involved in locating and the*

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<sup>76</sup> Center for Research Documentation and Publication (2018), 'Deconstructing Reconciliation in Kosovo,' p.8 Available at: <https://crdp-ks.org/wp-content/uploads/2017/06/Zb%C3%ABrthimi-i-konceptit-t%C3%AB-pajtim-it-n%C3%AB-kontekstin-e-Kosov%C3%ABs-Deconstructing-Reconciliation-Qershor-2017.pdf> [Accessed on: October 14, 2019].

<sup>77</sup> Western 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](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/724294/180710_WBS_Joint_Declarations.pdf) [Accessed on: October 14, 2019].

*identification about gravesites, including commitment to adequately resource the search for archives for relevant information, and the transmission of this information to appropriate central institution; to provide the competent central institution from each of the Berlin Process participants responsible for the search and identification of missing persons with adequate human and budgetary resources to fulfill their mandate.*<sup>78</sup>

56. Joint declaration on war crimes in the framework of the Berlin Process also emphasizes the following: *'Recognizing the increasing urgency to end impunity and overcome the legacy of the past, including through justice for all victims of past atrocities; determined to promote the rule of law, including as a central tenet of the EU accession process; reaffirming the importance of the independence of the judiciary'*.<sup>79</sup>

57. Fundamental aspects of moving forward are the war crimes that require consistent measures from governments. Both joint declarations compound positive developments. However, the statements are not legally binding, which, in this case, expresses more the will of the governments to fulfill the principles proclaimed.

## **Dialogue between Kosovo and Serbia and Reconciliation**

58. The EU mediated dialogue between Kosovo and Serbia has started since 2011. The dialogue began with the aim to normalize relations and to facilitate the integration of both countries in the EU. To make progress in the EU integration process, both Kosovo and Serbia should establish good neighborly relations, including other neighboring countries.

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<sup>78</sup> Ibid.

<sup>79</sup> Western 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' p. 9. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/724294/180710\\_WBS\\_Joint\\_Declarations.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/724294/180710_WBS_Joint_Declarations.pdf) [Accessed on: October 14, 2019].

**59.** The dialogue between Kosovo and Serbia has resulted in numerous agreements projected to create a sustainable environment for cooperation, normalization, and reconciliation.<sup>80</sup> The dialogue process backed by the majority of political parties in both countries; however, the present political narratives, in many cases, have disrupted the dialogue by creating divergences in both countries.

**60.** Some of the agreements have increased cooperation while some others have put sides too aside from the primary aim – which is the normalization of relations. Technical agreements were accepted more smoothly by both parties, such as; cadastral books, registry books, customs stamps, university degrees, freedom of movement, regional presentation, official visits, integrated boundary management of the administrative crossing points. <sup>81</sup> According to Kosovo institutions, Serbia has blocked the implementation of five technical agreements. In particular, this relates to the following agreements: the agreement on energy, the return of the cadastral books, recognition of the university diplomas, freedom of movement in the bridge of the Iber river in Mitrovica, and allowance of using the objects for rent in the North Mitrovica. Meanwhile, the Serbian side insists on the fastest formation of the Association of Serb-majority municipalities.<sup>82</sup>

**61.** Furthermore, the dialogue has faced many crises, especially concerning political agreements, which at large have had different stances from both parties. The ‘notorious’ agreement of the formation of Association/Community of Serb majority municipalities in Kosovo has generated numerous critics and obstacles in

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<sup>80</sup>European Union External Action (2016). ‘Dialogue between Belgrade and Pristina’ Available at: [https://eeas.europa.eu/diplomatic-network/eu-facilitated-dialogue-belgrade-pristina-relations/349/dialogue-between-belgrade-and-pristina\\_en](https://eeas.europa.eu/diplomatic-network/eu-facilitated-dialogue-belgrade-pristina-relations/349/dialogue-between-belgrade-and-pristina_en) [Accessed on: October 13, 2019].

<sup>81</sup>Government of the Republic of Serbia (2019), ‘Negotiation process with Pristina - Office for Coordination Affairs in the Negotiation Process with the Provisional Institutions of Self-Government in Pristina’, Available at: <http://www.kord-kim.gov.rs/eng/pregovaracki-proces.php>[Accessed on: October 15, 2019].

<sup>82</sup>Radio Free Europe (2018), ‘Dialogue towards blockade’. Available at: <https://www.evropaelire.org/a/dialogu-drejt-blokades-/29288957.html>[Accessed on: October 13, 2019].

implementation, and later the implementation of the agreement as such has been complicated with the verdict of Constitutional Court in Kosovo.<sup>83</sup>

**62.** Although the dialogue projected as an undisputed platform for normalization of relations and reconciliation, the latter is not seen as viable. Serbia has not provided all the information regarding missing persons, no agreement on war reparations reached, and no apology given by Serbia for the atrocities in Kosovo. Therefore, Kosovo should utilize its position in the dialogue by requesting an apology from Serbia, so that would serve as an imperative for the reconciliation of the communities.

**63.** So far, Serbia did not show any sign of apology; on the contrary, very often, Serbian officials have denied the massacres that occurred in Kosovo. In a particular case, the Serbian foreign minister, Ivica Dacic, denied the massacre in the village Racak in Kosovo by stating that; "Racak did not see the truth announced,"; "There were no women and children, there was no massacre."<sup>84</sup> These declarations from the political actors who are part of the political dialogue for normalization of relations between Kosovo and Serbia contribute negatively to the population to reach community reconciliation.

**64.** The status of victims should be the same regardless of nationality. Kosovo should reaffirm once again its readiness to deal with the war crimes and held them who committed crimes responsible for their actions. Nonetheless, Serbia should fulfill its promises when it comes to war crimes prosecution and holding accountable those in charge of the actions, as this was one of the conditions that Belgrade agreed on. So far, political dialogue has shown the disparities between poles, and any possible agreement should take into account the whole process in place.

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<sup>83</sup> Constitutional Court of Kosovo (2015). 'Judgment in Case No. KO130 / 15' Available at: [http://gjk-ks.org/wp-content/uploads/vendimet/gjk\\_ko\\_130\\_15\\_shq.pdf](http://gjk-ks.org/wp-content/uploads/vendimet/gjk_ko_130_15_shq.pdf) [Accessed on: October 15, 2019].

<sup>84</sup>B92 (2017). "There were no women and children, there was no massacre". Available at: [https://www.b92.net/eng/news/politics.php?yyyy=2017&mm=05&dd=17&nav\\_id=101290](https://www.b92.net/eng/news/politics.php?yyyy=2017&mm=05&dd=17&nav_id=101290) [Accessed on: October 11, 2019].

**65.** There can be no doubt that the future of reconciliation between Kosovo and Serbia depends on the outcomes of the Brussels dialogue. Any possible legally binding agreement between Kosovo and Serbia should also include an agreement for the recognition of victims, reparation policies, compensation, and the apology.

## **Conclusions**

**66.** The process of reconciliation is challenging. From 1999-2018, mainly international actors have been responsible for dealing with war-crimes in Kosovo. So far, there is very little if not at all progress toward dealing with the war-crimes.

**67.** Political grievances have been a major hindering factor in dealing with the war-crimes. Political elites in both countries have promoted nationalist discourse, which has created more gaps rather than compromise in this challenging path towards reconciliation. The future of the reconciliation also relies on the EU efforts and policies, besides on both countries. Political dialogue in Brussels viewed as the primary source for the normalization of relations between both countries. Nevertheless, no comprehensive deal is on the table that would give an end to the open 'conflict' between Kosovo and Serbia. A comprehensive legally binding agreement may impact reconciliation positively, with both parts agreed on the recognition of the wrongdoings from the past and setting the ground for mutual reconciliation based on the European principles and values.

## **Recommendations**

**68.** Both Kosovo and Serbia should cooperate in dealing with war-crimes. Addressing the war legacies must be a key topic in the Brussels dialogue.

**69.** Kosovo must condition Serbia to pledge an apology for crimes committed during 1999, as a step toward normalization of relations.

- 70.** Kosovo must condition Serbia with issues of reparation for war crimes, such as compensation of victims. This issue needs to be addressed in Brussels dialogue.
- 71.** Kosovo must ask Serbia to establish a Truth and Reconciliation Commission for war-crimes in Kosovo. Kosovo must show readiness to establish TRC with the condition that Serbia initiates a parallel process.
- 72.** Truth and Reconciliation Commission should gather conflict narratives by taking into consideration all stories and perspectives from all sides.
- 73.** Truth and Reconciliation Commission should engage citizens of all communities on the truth-telling process, which would help to distinguish the victim and perpetrator. Furthermore, TRC should serve as a linking point for families of missing persons in Kosovo and Serbia in organizing the memorialization of missing persons.
- 74.** Truth and Reconciliation Commission, in cooperation with legal institutions in Kosovo, must take necessary steps for dealing with perpetrators. TRC and Kosovo institutions should decide what measures shall be made for perpetrators in case of perpetrators choose to share their stories.
- 75.** Truth and Reconciliation Commission should take into account the successes and failures of other TRCs throughout the world. TRC should act accordingly with the social, political, and historical context of Kosovo and the region, by implementing the best practices from abroad.
- 76.** Kosovo and Serbia should support victims with legal and financial aid to proceed with their cases to the courts and encourage them throughout the whole process.

- 77.** Kosovo must enhance the efforts of documenting the legacies of the conflict as a necessary measure for dealing with the past.
- 78.** Kosovo must create a database of war crimes and other damages by incorporating all cases from all nationalities involved in the conflict and engage with CSOs which deal with these issues.
- 79.** Under the EU mentoring and monitoring authority, Kosovo and Serbia should establish joint teams of independent experts to deal with the conflict legacies of both countries.
- 80.** Kosovo must create new policies and mechanisms that tackle reconciliation by taking into considerations all the perspectives, and in this regard, improve the public perception towards this process.
- 81.** EU should increase its efforts to persuade Serbia and Kosovo to end the disputes and secure a solid ground for the reconciliation process between two countries.
- 82.** International mechanisms, in particular, the EU, should continually be engaged in the political dialogue between Kosovo and Serbia and supervise the agreements concerning the normalization of relations and reconciliation.

