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SERBIA

BRIEFING TO THE HUMAN RIGHTS COMMITTEE

AMNESTY
INTERNATIONAL



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CONTENTS

INTRODUCTION.....	5
Summary.....	5
1. Impunity for war crimes.....	6
1.1 Prosecutions.....	7
1.2 Investigations.....	8
1.3 Reparations.....	9
1.4 Enforced disappearances and abductions.....	10
1.5 The rights of the relatives	13
2. Torture and other ill-treatment.....	15
3. Attacks on human rights defenders.....	17
Continued impunity.....	20
4. Discrimination against Roma.....	21
4.1 Discrimination in access to housing	22
4.2 Cruel, inhuman or degrading treatment.....	23
4.3 Internally displaced Roma.....	23
4.4 Access to documentation	25

INTRODUCTION

Amnesty International submits this summary of concerns for the consideration of the Human Rights Committee (HRC) in advance of its examination of Serbia's second periodic report on implementation of the International Covenant on Civil and Political Rights (ICCPR). This submission provides information on Amnesty International's concerns about some of the areas where Serbia has failed to fulfil its obligations under the ICCPR. In particular, this submission highlights the organization's concerns with regard to the failure of the government to respect its obligations under the ICCPR to:

- Respect the right to life (Article 6(1))
- Guarantee the right to a remedy (Article 2(3))
- Absolutely prohibit torture and other cruel, inhuman or degrading treatment or punishment (Article 7)
- Guarantee the right to liberty and security of person (Article 9)
- Guarantee the right to freedom of expression (Article 19)
- Guarantee all rights without discrimination (Articles 2 and 26)

SUMMARY

Since the HRC last considered the country's obligations under the ICCPR in 2004, Serbia has made substantial progress in improving the protection of human rights, including by ratifying a number of conventions for the protection of human rights, and amending legislation to bring it closer in line with international human rights standards. However, further measures need to be taken to ensure implementation of these obligations.

Significant measures have been taken towards ending impunity for war crimes since 2004, including through the transfer of suspects to, and increased cooperation with, the International Criminal Tribunal for the former Yugoslavia (Tribunal), and the commencement of proceedings at the Special War Crimes Chamber at Belgrade District Court. However, further measures need to be taken to strengthen the Office of the War Crimes Prosecutor and challenge the climate of impunity which prevails within both the Ministry of Interior's police force and Serbian military forces for past violations of human rights and international humanitarian law, and in particular for enforced disappearances during the armed conflict in Kosovo. Further, no measures have been taken to respect and protect the rights of the relatives of enforced disappearances and abductions which took place during and after the armed conflict in Kosovo in 1999.

Further, although legal and administrative reforms have been introduced to address impunity for torture and other ill-treatment, further measures remain to be taken in order to ensure prohibition of torture in practice, the accountability of law enforcement and prison officers

and to address impunity for past violations.

Amnesty International also has serious concerns about the lack of measures taken to ensure enjoyment of the right to freedom of expression in Serbia including by human rights defenders (especially those addressing issues of transitional justice).

Finally, the organization is concerned about pervasive and continuing discrimination against the Romani community, and Serbia's continued failure to guarantee rights to Roma, including internally displaced Roma from Kosovo, without discrimination.

1. IMPUNITY FOR WAR CRIMES

Article 6 (1): Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Amnesty International is concerned that Serbia has not fully honoured its obligations under Article 6 of the ICCPR to ensure the investigation and prosecution of those responsible for violations of the right to life, including war crimes and crimes against humanity in Bosnia and Herzegovina (BiH), Croatia and Kosovo. Following its examination in July 2004 of Serbia and Montenegro's implementation of its obligations under the ICCPR¹ the Human Rights Committee expressed concern about impunity for war crimes, including in cases of enforced disappearances, and made the following recommendations to the state party. It stated:

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

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

² *Concluding Observations of the Human Rights Committee: Serbia and Montenegro. 12/08/2004, CCPR/CO/81/SEMO.*

1.1 PROSECUTIONS

Amnesty International recognizes that some progress has been made since 2004 in bringing to justice some of the individuals responsible for war crimes, following the commencement of prosecutions at the Special War Crimes Chamber (WCC) at Belgrade District Court. However, the number of prosecutions remains low, with only nine first instance judgements and five final judgements in cases of war crimes committed in BiH, Croatia and Kosovo.³

Amnesty International observes that the WCC receives little public support from the government and members of the parliament and according to non-governmental organizations (NGOs) the war crimes prosecutor “works in a hostile political environment and is exposed to attacks in the Serbian Parliament by a nationalist opposition”.⁴

With insufficient staff and financial resources in the Office of the War Crimes Prosecutor (OWPC), a limited number of investigative judges and only two trial chambers at the WCC, progress remains slow in raising indictments and in actual prosecutions, (although anticipated changes in the relevant law are expected to improve this situation). Despite ongoing negotiations, the continued absence of an extradition agreement with other states in the region including BiH and Croatia, so that suspects cannot be investigated or summonsed, also results in protracted cases.

By the end of 2008 the Supreme Court had upheld only two verdicts appealed from the WCC, overruling the remaining judgements, reducing sentences and returning the majority of cases for retrial. NGOs have criticized the Supreme Court not only for their slowness in reaching such decisions, but have also suggested – on the basis that grounds for such decisions relate “neither to questions of law nor questions of fact” – that the court may be subject to political influence.⁵

The OWPC has largely failed to bring charges against high-ranking officials of the police and army, including for crimes committed by individuals directly subordinated to them. This may derive from the absence of an adequate definition of command responsibility in applicable law.⁶ Nevertheless, other provisions exist, which criminalize aspects of command responsibility, including perpetration by omission, the failure to report crimes and incitement or aiding and abetting by omission.

³ See http://www.tuzilastvorz.org.rs/html_trz/index_eng.htm (retrieved 7 December 2009); eight further trials were in progress and some 25 investigations against 120 suspects underway. Few war crimes cases are prosecuted at other courts.

⁴ Centre for Peace, Non-violence and Human Rights Osijek, the Humanitarian Law Centre and the Research and Documentation Centre Sarajevo, *Trials for war crimes and ethnically and politically motivated crimes in post-Yugoslav countries*, June 2009, pp. 93-95.

⁵ Ibid, p. 94.

⁶ Article 30, Basic Penal Code; Article 203, 1977 Criminal Code. Amnesty International has observed that that provisions in the current 2006 Criminal Code (Article 384: Failure to Prevent Crimes against Humanity and other Values Protected under International Law) remain weak, and falls short of internal law including Article 28 of the Rome Statute and of Article 87 of the First Additional Protocol to the Geneva Conventions. The organization has recommended that the Article should be modified in order to include the failure by commanders or other superiors to repress the commission of war crimes committed, being committed or about to be committed by subordinates or to submit the matter to the competent authorities for investigation and prosecution among the elements establishing the responsibility of a military commander, person de facto performing this function or other superior.

Further, the Law on Accountability for Violations of Human Rights, adopted by the Serbian Parliament in June 2003, introducing the vetting of persons in public office, including police officers, has remained unimplemented due to opposition by members of the Serbian Parliament representing the Serbian Radical Party, the Democratic Party of Serbia and the Socialist Party of Serbia.⁷

1.2 INVESTIGATIONS

Amnesty International considers that the climate of impunity within the Ministry of Interior's police force provides one of the most significant obstacles to the investigation of war crimes, including enforced disappearances.

In March 2009 police officers in Leskovac organized protests against the arrest for war crimes in Kosovo of four former members of the 37th Battalion of the Serbian Special Police Unit (PJP). Police reservists were seen wearing T-shirts printed with photographs of the arrested PJP members on the front and the slogan "Heroes of the 37th Battalion" on the back. According to the non-governmental organization (NGO) Humanitarian Law Centre (HLC) the protests, apparently supported by the Police Administration of the City of Leskovac and the Presidency of the Independent Police Union of the Republic of Serbia, called for the release of the arrested police officers and public disclosure of the names of the witnesses. Police officers were reportedly heard threatening to kill the police witnesses and calling for them to be tried for treason. Amnesty International is not aware of any measures taken by the Ministry of Interior to investigate these allegations.

It is therefore not surprising that the War Crimes Investigation Service (WCIS), established in 2003 as a specialized service within the Ministry of Interior and assigned to assist the OWCP, has faced considerable difficulties in carrying out investigations.

Concerns have been raised about the ability of the WCIS to conduct independent and impartial investigations. According to the OWCP and other observers, the unit is hampered by its position within the Ministry of Interior, whereby its officers are often required to investigate allegations against police officers senior to them in rank. Indeed the unit was initially headed by officers who were themselves alleged to be implicated in war crimes. Despite the appointment of a respected head, and support in strengthening the WCIS by the Organization for Security and Cooperation in Europe (OSCE), the WCIS does not initiate investigations, and until very recently been unwilling to do more than the minimum required by specific instructions from the prosecutor.

The WCIS is under-resourced and personnel are under-paid (compared to other specialized police departments) in relation to their responsibilities.⁸ Although the OWCP reported some co-operation from WCIS officers in the Suva Reka investigation (see section 1.2), in other cases access to information has reportedly been obstructed. Consequently, in 90 per cent of cases, criminal investigations are conducted by OWCP following changes in the law in 2004 that enabled them to examine witnesses without relying on prior police work. Both the OWCP

⁷ Humanitarian Law Centre & Documenta, *Transitional Justice in Post-Yugoslav Countries, Report 2007*, p.19; ICTJ, *Serbia, Submission to the Universal Periodic Review of the UN Human Rights Council, Third Session: December 1-12, 2008*, July 17, 2008, p.3.

⁸ Amnesty International interviews with OWCP, HLC and OSCE Mission in Serbia, February 2009.

and international NGOs have advocated for the creation of a separate war crimes directorate within the Ministry of Interior or Ministry of Justice, or for the OWCP to be given control of the unit.

Mačkatica

No indictment has ever been published in relation to the alleged burning of the bodies of Kosovo Albanian civilians killed in Kosovo in the furnaces of the Mačkatica smelter in Surdulica on 16 and 24 May 1999. As in the case of Batajnica and Petrovo Selo, Special Police Units are alleged to have transported the bodies from Kosovo to Mačkatica. In January 2005 the HLC reported that, following the publication of these allegations, members of the police and the Serbian State Security Agency (BIA) had reportedly threatened a number of people with the aim of discouraging them from providing information about these crimes. The Ministry for Internal Affairs subsequently announced that an investigation was underway; no further progress has ever been publicly reported.

1.3 REPARATIONS

Article 2(3): Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.

Amnesty International considers that since 2005 Serbia has failed to ensure that the victims of war crimes victims and their families have received adequate compensation for violations of rights guaranteed under the ICCPR. Legislation in both Serbia and Kosovo provide that civil suits for damages may be brought against both public officials and non-state actors for violations of national law. Amnesty International notes, however, that since 2004 civil suits for reparation have so far been unsuccessful. For example, on 24 January 2007 the HLC, on behalf of 24 family members of 14 civilians killed in Podujevo/Podujevë on 28 March 1999 by members of the Serbian police reserve unit known as the “Scorpions”, filed a civil suit seeking compensation from Serbia for the murder of their family members. The suit sought reparation for actions, or omissions, which could be attributed to the State and which constituted gross violations of international human rights law or serious violations of international humanitarian law. The suit was dismissed by the court in May 2009 on the basis of a decision by the Supreme Court in 2004 which held, contrary to the statute of limitations, that claims against the state must be brought within five years of the event of the violation.⁹

⁹ HLC Press Release, “Compensation Lawsuit for Victims from Podujevo Dismissed”, 21 May 2009, <http://www.hlc-rdc.org/Saopstenja/1712.en.html>. For a request to the Supreme Court to reconsider this decision, see <http://www.hlc-rdc.org/PravdalReforma/REPARACIJE/Reparacije-Novcane/900.en.html>. Similarly on 2 April 2009 the Belgrade First Municipal court dismissed a comparable law-suit for reparations brought against the Republic of Serbia by 25 family members of 16 Bosniaks from the village of Sjeverin. They had been abducted on 22 October 1992 when the bus in which they were travelling entered the territory of Bosnia and Herzegovina; they were subsequently killed in BiH. HLC,

1.4 ENFORCED DISAPPEARANCES AND ABDUCTIONS

Article 7: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment

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

In June 2009 Amnesty International published a report *Burying the Past: 10 years of Impunity for enforced disappearances and abductions in Kosovo* which set out the organization's concerns about continuing impunity for enforced disappearances and abductions carried out in Kosovo in 1998-9 and in the aftermath of the armed conflict. The report also highlighted the failure of the authorities in both Serbia and Kosovo to respect the right of the relatives to reparation, including compensation.¹⁰ The organization also urged Serbia to introduce into the Criminal Codes, a definition of the crime in accordance with the International Convention on the Protection of All Persons from Enforced Disappearance, and to ratify the Convention without delay.

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

Since the establishment of the WCC, prosecutions by the Chief War Crimes Prosecutor have resulted in three first instance judgements relating to enforced disappearances in Kosovo.

On 24 April 2009 four members of the Serbian police were convicted and sentenced for the murder of 48 members of the Berisha family and Abdullah Elshani, in Suva Reka/Suharekë, Kosovo, in March 1999. Their bodies had first been buried in military ranges in Prizren, Kosovo. Some, but not all, of the bodies were transported to Batajnica in Serbia proper, and were among the first exhumed in 2001 to be identified. Proceedings had opened on 2 October 2006. Radojko Repanović, the former commander at the Suva Reka police station, and police officer Slađan Čukarić were convicted and sentenced to 20 years' imprisonment. Reserve policeman Miroslav Petković was sentenced to 15 years and former State Security Inspector, Milorad Nišavić, to 13 years. The court acquitted two senior police officers, Radoslav Mitrović, former commandant of the 37th Battalion of the Serbian Special Police Unit (PJP) and Zoran Petković, assistant commander of the Suva Reka police station, of criminal

Request for Reparation of Family Members of Kidnapped Persons from Sjeverin Denied, HICIndexOut: 019-1575-2, 7 April 2009. Prior to the Supreme Court Decision, and in relation to other conflicts in the region, individuals or groups whose physical or psychological harm was caused by Serbian agencies had in a few cases brought successful complaints.

¹⁰ Amnesty International: *Burying the Past: 10 years of Impunity for enforced disappearances and abductions in Kosovo*, June 2009, Index: EUR 70/007/2009.

responsibility for the murders.

On 18 June 2009 four members of the Paramilitary Group known as the “Scorpions” were convicted of the murder of Albanian civilians in Podujevo/ë. Željko Đukić, Dragan Medić, Dragan Borojević and Miodrag Šolaja, were accused that on 28 March 1999, they had taken 20 Albanians -- women, children, and the elderly -- from the house of the Bogujevci family where they were all staying and ordered them to go to the courtyard of the house of Halim Gashi, where they were subsequently shot. The bodies of the Bogujevci family were buried in mass graves just outside the graveyard in Podujevo/ë. Proceedings had opened in September 2008. Željko Đukić, Dragan Medić, Dragan Borojević were sentenced to 20 years’ imprisonment, and Miodrag Šolaj to 15 years.

In September 2009 Sreten Popović and Miloš Stojanović, both former commanding officers of the Operational Pursuit Group of the Serbian Special Police (PJP), were acquitted of all charges related to the enforced disappearance of Agron, Mehmet and Ilijem Bytići, brothers of Kosovo-Albanian origin who held US citizenship who had joined the Atlantic Brigade fighting alongside the KLA. Sreten Popović and Miloš Stojanović had been indicted in August 2006 for having “deprived their victims of the right to an impartial and fair trial. On 8 July 1999 the Bytići brothers were released from Prokuplje District Prison, after being convicted and sentenced to 15 days’ imprisonment for crossing into Serbia proper. The indictment alleged that following their release they were detained by the accused and taken to a training camp at Petrovo Selo where they were shot on 9 July 1999. Their bodies were found in 2001 at the top of mass graves at Petrovo Selo. The Prosecutor has appealed the verdict. In June, the Director of the Humanitarian Law Centre, who had been representing the Bytići family informed the Trial Chamber of her decision to stop representing the family, who considered that the trial had failed to bring justice to the victims, but served only to protect those responsible. According to the HLC, a total of 96 witnesses were heard, all of whom according to the HLC protected the accused, who were their superior commanders. The HLC also allege that only those with minor roles in the crime were indicted while the perpetrators, and accomplices, as well as those who ordered the crime, including members of the Special Operations Units of the State Security Division were not investigated or indicted.¹¹

According to the Office of the War Crimes Prosecutor (OWCP) in February 2009 at least 10 investigations were in progress relating to the murders in Kosovo of ethnic Albanians whose bodies had been transferred in 1999 to Serbia for reburial. No indictments have yet been published. The OWCP has also investigated and prosecuted cases relating to the abduction of Serbs in Kosovo by ethnic Albanians believed to be members of the Kosovo Liberation Army (KLA), including the alleged post-war abduction and subsequent torture of Serbs by members of the KLA at the “Yellow House” near Burrel in Albania.

On 8 January 2009 10 ethnic Albanians, former members of the so-called Gnijilane/Gjilan group of the Kosovo Liberation Army (KLA) arrested in Preševo/Presheve in southern Serbia in December 2008, were remanded pending investigations into allegations of the abduction, murder and rape of 153 Serbs in Kosovo following the end

¹¹ HLC, Press release, “Nataša Kandić withdraws from the Bytyqi brothers murder trial”, 11 June 2009.

of the armed conflict in 1999; at least 34 of the victims are still listed as missing. Nine of those arrested were indicted in June 2009 (one was released), along with other suspects still at large, on charges including the unlawful detention, inhuman treatment, torture, mutilation and murder of at least 52 Serbs, Roma and ethnic Albanians, and the rape of a “large” number of women in Gnjilane/Gjilan between June and October 1999. Proceedings opened at the WCC on 23 September 2009.

However, Amnesty International remains concerned that no investigation has been opened or is anticipated in connection with the 1999 conspiracy to conceal war crimes in Kosovo by exhuming the bodies of between 800-900 ethnic Albanians killed in Kosovo and subsequently transferred them to Serbia where they were reburied.¹² Amnesty International notes that in 2004, the Human Rights Committee stated:

10. While noting the effective work regarding exhumations and autopsies of some 700 bodies from mass graves in Batajnica, the Committee is concerned at the lack of progress in investigations and prosecutions of the perpetrators of those crimes (arts. 2, 6). **The State party should, along with the exhumation process, immediately commence investigations into apparent criminal acts entailing violations of the Covenant. The particular needs of the relatives of the missing and disappeared persons must equally be addressed by the State party, including the provision of adequate reparation.**¹³

Amnesty International notes that proceedings at the International Criminal Tribunal for the former Yugoslavia (Tribunal) opened in January 2009 against former Assistant Interior Minister Vlastimir Đorđević, indicted for crimes against humanity and war crimes in Kosovo. In particular, and in connection with the enforced disappearance of more than 800 Kosovo Albanians whose bodies were transferred to Serbia for reburial, he is charged that with others “he took a lead role in the planning, instigating, ordering and implementation of the program of concealment by members of the RJB [Public Security Department] and subordinated units of the crime of murder, in coordination with persons in the RDB [State Security] and in the VJ”.¹⁴

All of the bodies exhumed in Serbia have now been returned to Kosovo, and all those that can presently be identified have been returned to their relatives for burial. Further, investigations have been opened by the OWCP into the killings in Kosovo of some of those whose bodies were found buried in Serbia. However, no investigations have been opened by the OWCP against those suspected of participation in the conspiracy, despite the comprehensive evidence relating to the exhumation, transfer and reburial of those bodies presented in proceedings at the Tribunal in the case of Milan Milutinović *et al*, which concluded in February 2009.¹⁵

Amnesty International has repeatedly called on the Serbian authorities to open such an investigation. The organization has also called on police and prosecutors to ensure that

¹² Amnesty International interview with Chief War Crimes prosecutor, February 2009.

¹³ *Concluding Observations of the Human Rights Committee: Serbia and Montenegro*, 12/08/2004, CCPR/CO/81/SEM0.

¹⁴ The Prosecutor against Vlastimir Đorđević, IT-05-87/1-PT, Fourth Amended Indictment, IT-05-87/1-PT, D 1197 - D 1150, 09 July 2008.

¹⁵ The Prosecutor v. Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević & Sreten Lukić, IT-05-87.

relatives are kept regularly and fully informed of progress in investigations and prosecutions at all stages of the proceedings in cases involving their family members in accordance with international standards, including the Rome Statute of the International Criminal Court, International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

1.5 THE RIGHTS OF THE RELATIVES

Article 2.3: Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.

Amnesty International considers that the Serbian authorities have failed in their obligations to provide the relatives of the disappeared and abducted with an effective remedy.¹⁶ Article 24 of the International Convention on the Protection of All Persons from Enforced Disappearance (signed but not yet ratified by Serbia) defines victims as “the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance”.

In addition to effective access to justice, the relatives of those who were subjected to enforced disappearances or abduction during the conflict in Kosovo and its aftermath should receive adequate, effective and prompt reparation for the harm they have suffered, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.¹⁷

Under Serbian *Law on the Rights of Civilian War Invalids*, the relatives of the victims of enforced disappearances by Serbian military, police or paramilitary forces disappeared are not recognized as civilian victims of war.¹⁸ No provisions are made in law to ensure reparation for the relatives of the disappeared, the majority of whom are Kosovo Albanians, who thus have no access to a process through which they may realize their right to a remedy. The law

¹⁶ Amnesty International's use of the term enforced disappearance is consistent with the internationally agreed definition of enforced disappearance set out in Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance: “For the purposes of this Convention, ‘enforced disappearance’ is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.” Amnesty International distinguishes enforced disappearances -- in which state agents are directly or indirectly involved -- from abductions carried out by non-state actors, such as armed opposition groups.

¹⁷ The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law give effect to Article 2.3, see <http://www2.ohchr.org/english/law/remedy.htm>.

¹⁸ Under the *Law on the Rights of Civilian War Invalids* a victim is defined as “a person who sustains physical damage of at least 50% because of a wound or injury which left visible traces, inflicted by torture or deprivation of freedom by the enemy during the war, during war operations, from leftover war material or from enemy sabotage, i.e. terrorist acts.”

on administrative compensation also excludes those whose injuries or loss of life resulted from actions of Serbian state agencies, thus excluding Kosovo Albanians subjected to enforced disappearances by Serbian forces.¹⁹

Kosovo Albanian relatives of the disappeared do not have the right to compensation under the Serbian laws on military and civilian invalids. While other “victims” may seek compensation in the courts, concerns have been raised that “a high standard of proof and the expiration of the statute of limitations prevent victims from obtaining compensation for physical or psychological harm in most cases.”²⁰

Under the Serbian laws on military and civilian invalids the relatives of Serbs and others abducted in Kosovo by the KLA are also excluded from administrative compensation unless they reach the physical injury threshold set out in law. These laws allow for a monthly payment to persons disabled by war and the families of persons killed in armed conflict, or who died as a result of injuries suffered during such conflict.²¹

The Serbian dependants of abducted persons are not eligible for this monthly payment if their income is above a certain level (although the families of missing servicemen have an automatic right to such a payment). Further, families of abducted civilians are only able to invoke this right if they undertake civil proceedings to declare the missing person dead. The majority of family members are either unaware that they may receive monthly compensation under these conditions or do not wish to launch such proceedings, continuing to hope that their relative is still alive.²² In general the families of the missing survive on *ad hoc* financial donations and humanitarian aid from the Serbian Commission for Missing Persons.

The Serbian Commissioner for Missing and Kidnapped Persons informed Amnesty International in February 2009 that it was extremely unlikely that a Law on Missing Persons would be introduced in Serbia. Such a law would equally apply to an estimated 10,000 citizens of Serbia (relatives of missing persons from wars in Croatia and Bosnia and Herzegovina), as well as internally displaced Serbs and Roma from Kosovo. Instead, the Serbian Commission for Missing Persons has produced a booklet providing dependants with guidance on their rights to assistance under other laws. Many Romani relatives, unable to access citizenship rights, will be excluded from such benefits.²³

Amnesty International has urged the Serbian authorities to amend legislation in order to recognize the continued violation of the rights of the relatives, enabling them to be eligible in

¹⁹ In relation to other conflicts in the region, individuals or groups whose physical or psychological harm was caused by Serbian agencies have in some cases brought successful complaints, see *ICTJ, Serbia: Submission to the Universal Periodic Review*, paras. 15 and 19.

²⁰ *ICTJ, Serbia: Submission to the Universal Periodic Review*.

²¹ Article 13 (1) of the Law on the Basic Rights of Servicemen, Military Invalids and Families of Deceased Servicemen, Official Gazette of the SRJ, numbers 24/98, 29/98 and 25/200, applies to families of servicemen who “died or disappeared”; the term “disappeared” is not included in Article 3 (2) of the Law on the Rights of Civilian War Invalids, *Official Gazette of the RS*, No 52/96.

²² HLC & Documenta, *Transitional Justice in Post-Yugoslav Countries, Report 2007*, p.51.

²³ For example, internally displaced persons are entitled to a 70 per cent discount on administrative fees, including fees for documents required in applications for social insurance, Article 19 of Law on Republic Administrative Fees (Official Gazette of the Republic of Serbia, No. 43/2003, 51/2003, 61/2005 and 101/2005). These include birth, marriage, death and citizenship certificates. See http://www.praxis.org.rs/index.php?option=com_content&task=view&id=16&Itemid=55.

their own right to status as civilian victims of war, and ensuring that they have the right to reparation from the authorities who have failed to provide them with information on the fate and whereabouts their family members.

2. TORTURE AND OTHER ILL-TREATMENT

Article 7: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Amnesty International notes that Serbia has taken measures to eradicate ill-treatment by law enforcement officials, and welcomes the decline in reported incidents of torture and other ill-treatment. However, the organization remains concerned that significant cases of ill-treatment remain, including in prisons, and that impunity continues for past violations.

Article 25 of the 2006 Constitution provides that “Nobody may be subjected to torture, inhuman or degrading treatment or punishment”. However, Article 137 of the Criminal Code (Torture and Ill-treatment) still fails to adequately reflect the definition set out in Article 1 of the Convention against Torture. Further, in 2005 the Supreme Court ruled that a statute of limitation applied in respect of the crime of torture.²⁴

Amnesty International has received fewer allegations of torture over the past five years. This reflects the findings of the January 2009 report by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on their visit to places of detention in Serbia in November 2007.²⁵ However, despite a reduction in the numbers of allegations received by the CPT delegation, reports of ill-treatment, verbal abuse and threats, the disproportionate use of force at the time of arrest, as well the presence of non standard-issue implements in police stations has continued.

Further, the majority of those detained at police stations told the CPT they had been granted access to a lawyer and other detention rights. However, the CPT noted that juveniles had often been interviewed in the absence of a lawyer, parent or other appropriate adult.

Amnesty International also notes that the CPT reported on the ill-treatment of prisoners in the high security and remand wings of the Požarevac-Zabela Correctional Institution and in the Belgrade Special Prison hospital, where truncheons were reportedly used on prisoners.

²⁴ Amnesty International notes that Serbia has undertaken to address this matter, Committee Against Torture, Forty-First Session, 3-21 November 2008, *Consideration of Reports Submitted By States Parties Under Article 19 of the Convention, Concluding observations of the Committee against Torture*, SERBIA CAT/C/SRB/CO/1, para 5.

²⁵ *Report to the Government of Serbia on the visit to Serbia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 19 to 29 November 2007*, 14 January 2009, retrieved at <http://www.cpt.coe.int/documents/srb/2009-01-inf-eng.htm>.

In November 2009 five security staff were arrested on suspicion of the abuse and torture of detainees at Leskovac District Prison in January. They had previously been suspended from their employment, along with the former director and two other senior staff. Later in the same month, media reported that a total of 12 guards had been suspended by the authorities in relation to the same January incident. Following the suspension, according to a local NGO, further incidents of ill-treatment took place in which three detainees were reportedly injured and left in a corridor all night without medical treatment; around 100 prisoners subsequently started a hunger strike. (On 5 October, the Director of the same prison was dismissed following the wounding of a prisoner in the prison yard on 28 September by an unknown assailant who had cut through the fence). Investigations continued in December 2009.

According to information received from NGOs in Serbia, detainees are often reluctant to make complaints of ill-treatment to the authorities for fear of reprisals. The organization is aware of cases where such complaints have been made, and where subsequently further beatings have taken place. The organization therefore welcomes amendments to the Law on the Execution of Penal Sanctions, adopted on 31 August 2009 providing, among other things, for an improved internal complaints system for prisoners. A new set of bylaws, including provisions for the power of inspection by the Ministry of Justice, are expected to be adopted in first quarter of 2010. However no independent complaints mechanism available to persons deprived of their liberty has yet been established.

Serbia ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in September 2006. Article 17 of OPCAT requires the state party to establish an independent National Prevention Mechanism (NPM) within one year of ratification. While the government reported to the Committee against Torture in 2006 that they would propose that the Protector of Citizens (Ombudsperson) be designated as the NPM, this had not taken place by December 2009. The organization notes that the *Law on [the] Protector of Citizens* empowers the office with the capacity to visit places of detention, and that a Deputy Ombudsperson for the rights of detainees has been appointed; however, as the Committee against Torture noted in January 2009, "the structures of the Ombudsman's office are not yet fully consolidated, that its independence is not fully ensured, that it has not been allocated adequate resources to fulfil its functions effectively and that, despite a large number of complaints (700), it does not have the capacity to analyse them."²⁶

Amnesty International also notes that the CPT expressed concerns about the quality of prisoners' medical records. These concerns about medical records are reflected in a case reported to Amnesty International by the Serbian NGO, the Leskovac Committee for Human Rights. According to the NGO, lawyers acting for a man referred to only as N.N, detained at Niš Correctional Centre (KP-Niš), were in January 2009 refused access to medical records for their client, in violation of Article 37 of the Law on Health Care²⁷ and Principle 26 of the UN Body of Principles for the Protection of All Persons under Any form of Detention or Imprisonment, which provides that "Access to such records shall be ensured". N.N had in

²⁶ UN Committee Against Torture (CAT), *Concluding observations of the Committee against Torture: Serbia*, 19 January 2009, CAT/C/SRB/CO/1, <http://www.unhcr.org/refworld/docid/4986bc0e0.html>, retrieved 8 December 2009.

²⁷ Official Gazette of Republic of Serbia No107/05.

2008 alleged that his arm had been broken during an organized assault on him by several prison guards. Amnesty International has received no reply from the authorities to a letter sent concerning this case in July 2009.

Amnesty International remains concerned about impunity for past violations of Article 7 of the ICCPR. In paragraph 13 of the HRC's 2004 Concluding Observations, the Committee urged Serbia to take immediate steps to investigate all allegations of torture during the 2003 Operation Sabre. Amnesty International remains concerned that the authorities have failed to take such measures in at least seven of the cases reported to the organization in 2003.²⁸ In three of these cases, complaints relating to the continued inaction by the authorities were submitted to the European Court of Human Rights (ECtHR) in 2006, but were declared inadmissible on 24 March 2009 on the grounds that the complainants had failed to exhaust domestic remedies.²⁹ Applications to domestic courts by two other individuals remain pending as of December 2009. In another case, charges against the victim, D.L. (a taxi-driver), were dropped by the fourth Belgrade District Court; on 6 October 2008 the Supreme Court also reversed the Belgrade Court's 2004 decision not to issue him a driving licence.

Amnesty International is also concerned about impunity in several other cases of alleged ill-treatment and excessive use of force. For example, during alleged riots at Niš Detention and Rehabilitation Centre (KPZ-Niš) on 24 November 2006 Ministry of Interior police were brought in to contain what was described as a rebellion. On 29 March 2007 a criminal complaint against the police for ill-treatment and excessive use of force was submitted to the Niš District Prosecutor by lawyers acting on behalf of 38 detainees, one of whom had subsequently died from his injuries. The complaint was rejected by the Prosecutor on 5 December 2007, apparently on the basis there was no evidence of torture. Following a further communication to the court in December, to which no reply was received after the statutory eight days, lawyers acting for 37 of the men submitted an application under Article 3 and Article 12 of the European Convention on Human Rights on 2 April 2008, which was declared admissible by the ECtHR on 16 May 2008.³⁰

3. ATTACKS ON HUMAN RIGHTS DEFENDERS

Amnesty International is concerned about the curtailment of the right to freedom of expression of human rights defenders (HRDs) in Serbia, including lawyers, journalists and civil society activists, and in particular those addressing issues related to war crimes and

²⁸ *Serbia and Montenegro, Amnesty International's concerns submitted to the Human Rights Committee*, February 2004.

²⁹ *Goran Petrović and Igor Gajić v. Serbia*, 36470/06; *Zoran Jotić v Serbia*, application no 44692/06. A fourth complainant withdrew his complainant, reportedly in the face of continued intimidation.

³⁰ *Habimi and others v Serbia*, case number 19072/08; the relatives of the deceased man submitted a separate complaint to the Jagodina District court, the status of which is unknown to Amnesty International.

transitional justice.

In a 2005 report, (*Serbia and Montenegro: The Writing on the Wall, Serbian Human Rights Defenders at Risk*, Index: EUR 70/016/2005, 29 November 2005), Amnesty International outlined a campaign of harassment and intimidation against human rights defenders, and the failure of the Serbian authorities to provide those attacked with protection and redress. These attacks of defenders took place in the period leading up to and directly following, the 10th anniversary of the massacre at Srebrenica. They were directed at members of NGOs who formed the “Facing the Past coalition”, which sought to challenge the climate of impunity for war crimes enjoyed by members of the Serbian police, paramilitary and military forces.³¹ Intimidation then included public threats in the form of graffiti on their premises; verbal and written threats; apparent “burglaries” and threats of legal action or the opening of what appear to be malicious prosecutions. There were also a number of physical attacks on the same group of human rights defenders.

While the level and intensity of attacks on human rights defenders and independent media addressing impunity for war crimes declined after 2005, they continued until early 2008. Following the unilateral declaration of independence of Kosovo in February 2008, the incidence of such attacks again increased. On 14 September 2009 Amnesty International published another briefing outlining its concerns (*Serbia: Human Rights Defenders at Risk*, Index: EUR 70/014/2009) and highlighting further attacks on human rights defenders by state and non-state actors.

Humanitarian Law Centre

On 17 February 2008, after Nataša Kandić, director of the Humanitarian Law Centre (HLC) attended the Kosovo Parliament to celebrate Kosovo’s declaration of independence from Serbia, she was attacked in the Serbian media. These attacks included a threat of lynching. The Socialist Party of Serbia launched a petition in the Serbian parliament calling for criminal proceedings to be opened against her for “compromising the territorial integrity of Serbia”.³² Ivica Dačić, then leader of the Socialist Party of Serbia (subsequently Minister of Interior and Deputy Prime Minister since May 2008), called for political parties and NGOs that recognized an independent Kosovo to be banned.

On 21 February 2008, following a demonstration against Kosovo’s independence, unidentified persons tried to set fire to the Belgrade offices of the HLC. Although the HLC had previously asked for police protection, there was no police presence in the vicinity during or after the demonstration. The police reportedly arrived around midnight to conduct an investigation, but no perpetrators were identified or brought to justice.

Serbian Helsinki Committee

³¹ See Amnesty International, *Human Rights Defenders at Risk: Serbia*, EUR 70/014/2009.

³² Similar attacks have been made against Nataša Kandić since 2000 when the Yugoslav Army (VJ) filed charges against her relating to allegations made against the VJ in relation to Kosovo. A VJ spokesperson stated that Nataša Kandić “should be sentenced for what she is doing.”, BETA news agency, “Talking about war crimes committed by VJ in Kosovo, VJ Spokesman: Nataša Kandić Should Be Sentenced, Yugoslav Army News Conference Belgrade”, 29 August 2000.

From September to October 2008, Sonja Biserko, Director of the Serbian Helsinki Committee was subject to a series of personal and abusive attacks in the Serbian media, after the Helsinki Committee's Annual Report named prominent academics opposed to Serbia's cooperation with the Tribunal. The media coverage appeared to encourage physical attacks on the NGO and on Sonja Biserko.

On 30 September 2008, around 130 members of Movement 1389 (Pokret 1389) gathered outside of the Helsinki Committee's office in Belgrade. They shouted verbal abuse against Sonja Biserko and left a large cardboard swastika outside the building. On 2 October 2008, the newspaper Tabloid described Sonja Biserko as a traitor and published her home address and other personal information. Three days later, she saw two unidentified men dressed in black: one was outside the entrance to the building in which she lives; the other outside the door to her apartment. They ran away when a friend came to her assistance. This series of threats and attacks stopped only after the intervention of international organizations. No perpetrators were identified or brought to justice.

Peščanik (Sandglass)

The NGO Peščanik (Sandglass) is run by journalists Svetlana Lukić and Svetlana Vuković and aims to promote debate about human rights. On 22 January 2009 the NGO's website was hacked into; it remained blocked for over a week. The next day, the signal for Peščanik's radio programme, broadcast on the independent radio station B92, was jammed. On 24 January 2009, the repeat broadcast was also blocked. At the same time, Svetlana Lukić's car, parked outside B92, was repeatedly rammed and its wheels forced over a curb. No perpetrators have been identified or brought to justice.

A campaign of harassment and intimidation has, for the past five years, appeared to focus in particular on the female leaders of human rights organizations. As well as facing the same forms of intimidation experienced by their male colleagues, they also face discrimination, sexual abuse and derogatory accusations related specifically to their status as women. These have included verbal and written attacks describing women human rights defenders as "whores", or accusations that Women in Black (Žene u crnom) are involved in the organization of women for prostitution.

Amnesty International notes the important role that women such as Nataša Kandić of the Humanitarian Law Centre, Sonja Biserko of the Serbian Helsinki Committee for Human Rights Biljana Kovačević-Vučo (formerly of the Centre for Cultural Decontamination and latterly director of The Lawyers committee for Human Rights, YUCOM) and Staša Zajović of Women in Black have played in demanding an end to impunity for war crimes, in accordance with the principles set out in the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (UN Declaration on Human Rights Defenders).³³

Public threats have been made against these human rights defenders by individual members of the government, or by members of political parties with which the government is in

³³ A/RES/53/144, Resolution adopted by the General Assembly, 8 March 1999.

coalition. Other threats – especially against organizations which have reported on the intimidation of witnesses in war crimes trials – are considered to originate with members of the security forces themselves.

Amnesty International is also concerned that state institutions, members of the government, parliament and leading public figures, use litigation as a tool to intimidate human rights defenders.³⁴

In November 2008, Biljana Kovačević-Vučo and YUCOM were sued by Aleksandar Tijanić for €100,000 in a defamation case after YUCOM published a book entitled “The Case of Civil Servant Aleksandar Tijanić”. The book was composed largely of quotations from statements by Aleksandar Tijanić director of the state-run Radio-Television Serbia and a former minister in Slobodan Milošević’s government. On appeal, the Supreme Court on 23 July 2009 partially reversed the District Court decision and found YUCOM responsible for infringement of the author’s copyright, (the author being held to be Aleksandar Tijanić), and awarded reduced compensation of RSD 200,000 (about €2,068), The ruling also prohibited YUCOM from printing further copies or distributing the book.³⁵

CONTINUED IMPUNITY

The organization also notes with concern continued impunity for past violations of the right to life of journalists, dating from the killing of journalist Slavko Čuruvija in August 2000 to the near-fatal attack in April 2007 on Dejan Anastasijević, journalist for the weekly Vreme, when a hand grenade was thrown through the window of his flat after the publication of an article on impunity for war crimes. Impunity continues for more recently documented attacks, including two physical attacks on anti-fascist activists in July 2009 allegedly by the members of the organization Obraz, apparently because of their support for an evicted Romani community (see below).

Many of the physical attacks on life and property identified above have been linked to members of right wing groups who appear to enjoy almost complete impunity for such attacks. The number of persons brought to justice for such attacks and threats remains extremely small. Amnesty International notes the arrest of 35 members of Obraz in September 2009 for public order offences, yet the organization is not aware of any measures taken under domestic law against such organizations, for their campaigns of threats, intimidation and assaults on human rights defenders, members of the lesbian, gay, bisexual and transgender community and on Roma. Investigations, where they take place, are ineffective and those responsible are rarely brought to justice. Provisions in law aimed at the prevention of advocacy of national, religious or religious hatred or the promotion of

³⁴ On February 5 2009 IV Belgrade Basic Court found Nataša Kandić guilty of the slander and libel of Tomislav Nikolić, based on her research on war crimes in Antin and the role in those crimes of the volunteer corps of the Serb Radical Party, of which “Toma” Nikolić was a member. The decision was overturned by Belgrade District Court on 20 June 2009.

³⁵ According to YUCOM: “The decision presented an effective ban on quotes from published material without its author’s prior consent. By mis-using copyright the verdict abolishes the right to criticize public figures by using their own quotes and/or statements. This verdict will thus have large negative influence on the work of human rights organizations, too”. Email to Amnesty International, October 2009; see also YUCOM, *Supreme Court Forbids YUCOM’s Book “The Case of Civil Servant Aleksandar Tijanić” on Grounds of Infringement of Aleksandar Tijanić’s Moral Rights*, 15 September 2009.

discrimination are seldom if rarely invoked.

Amnesty International has repeatedly urged the Serbian government to respect and protect the rights of human rights defenders; to implement in law, policy and practice the provisions of the UN Declaration on human rights defenders; and to conduct prompt, impartial and effective investigations into all attacks on human rights defenders.

4. DISCRIMINATION AGAINST ROMA

Articles 2(1): Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 26: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Amnesty International remains concerned at the continued failure of the authorities to guarantee to the Romani community in Serbia access to enjoyment of their human rights without discrimination. The organization recalls that the Human Rights Committee's 2004 concluding observations stated:

24. The Committee is concerned that widespread discrimination against the Roma persists with regard to all areas of life. The Committee is particularly concerned about the deplorable social and economic situation of the Roma minority, including access to health services, social assistance, education and employment which has a negative impact on the full enjoyment of their rights under the Covenant (arts. 2, 26, 27). **The State party should take all necessary measures to ensure the practical enjoyment by the Roma of their rights under the Covenant, by urgently implementing all strategies and plans to address discrimination and the serious social situation of the Roma in Serbia and Montenegro.**³⁶

Amnesty International is concerned that widespread and institutionalized discrimination against Roma continues, including in access to their civil, political, social and economic rights. This submission focuses in particular on the Romani community's access to adequate housing and to personal documentation, both of which also disproportionately affect Roma displaced from Kosovo.

³⁶ *Concluding Observations of the Human Rights Committee: Serbia and Montenegro*, 12/08/2004, CCPR/CO/81/SEMO.

Amnesty International welcomes legislative measures taken by the authorities since 2004 to ensure the enhanced protection and respect for the rights of minorities, including the introduction of a specific chapter in the 2006 Constitution on the protection of national minorities; the creation in July 2008 of the Ministry of Human and Minority Rights; the adoption of legislation (as outlined in the state party report pp. 86-87) including provisions against discrimination and most recently, the adoption of an Anti-Discrimination Law by the Serbian parliament on 18 March 2009.

Amnesty International also welcomes the adoption in 2005 of action plans related to the core areas of the Decade of Roma Inclusion – education, employment, housing and health-care; the adoption of a national strategy for improvement of the status of the Roma in April 2009, and an action plan to implement the strategy in July 2009.

4.1 DISCRIMINATION IN ACCESS TO HOUSING

According to various estimates, there are almost 600 Roma settlements in Serbia, some 70 per cent of which are either partially legalized or are unlawful. Such settlements have little or no basic infrastructure, including sewage or access to water. Those living in such settlements have an uncertain residency status which also denies or limits their access to personal documentation (see Section 4.3, below).

The government pledged to make housing one of the government's four top priorities during the year of their Presidency of the Decade of Roma Inclusion (2008-2009). Several successful infrastructure projects have taken place during this time. Although progress has been very slow, the government has also continued to legalize Roma settlements. At the end of 2008 agreement was reached between the relevant ministries and eight municipalities on preparation of legal documentation for legalisation and/or relocation of Roma settlements.

Amnesty International is therefore concerned that at a municipal level, Roma continue to be forcibly evicted from temporary settlements.

On 3 April 2009 250 Romani people, including small children, elderly persons and infirm individuals, were forcibly evicted from a temporary settlement in New Belgrade. The majority of individuals evicted have remained without alternative accommodation since. Many were internally displaced persons from Kosovo.

The temporary settlement, known as Blok 37, was cleared to make way for an access road for the 2009 Student Games, to be held in Belgrade in June. Temporary alternative accommodation, in the form of containers, was provided in another neighbourhood of Belgrade, but local residents attempted to set them on fire in order to prevent the Roma from moving in. The majority of evicted Roma still had no permanent shelter at the end of June 2009 when Blok 37 was fenced in for the duration of the Student Games, denying the residents freedom of movement.

According to the UN Refugee Agency (UNHCR) at least two further unlawful forced evictions took place in Belgrade in 2009, neither of which conducted according to international standards.

In contrast, according to UNHCR, the planned eviction on 7 August of 176 families from an

unlawful settlement under the Gazela Bridge, was carried out largely in accordance with international standards and according to an agreed programme.³⁷ The majority were provided with alternative accommodation elsewhere in Belgrade; they were also guaranteed access to social benefits although this was conditional on the children attending school. However those not originating from Belgrade were required to return to their place of origin; the fate of these persons is unknown.

Amnesty International observes that forced evictions such as those highlighted above may also result in the violation of other convention rights, including rights to family and private life.

4.2 CRUEL, INHUMAN OR DEGRADING TREATMENT

Amnesty International notes that the conduct of the authorities during forced evictions may amount to a violation of rights guaranteed under Article 7 of the ICCPR.

The Committee against Torture (CAT) in May 2009 issued a decision (made public in July) relating to an application made in 2004 by Besim Osmani, who alleged that he had been beaten and verbally abused in June 2000 by what were believed to be plain-clothed police officers, in the presence of uniformed officers, during a forced eviction at the “Antena” settlement in New Belgrade. Besim Osmani’s four-year-old son was also hit.

The CAT concluded that Besim Osmani had been subjected to “cruel, inhuman or degrading treatment or punishment,” and noted that the “infliction of physical and mental suffering [was] aggravated by the complainant’s particular vulnerability, due to his Roma ethnic origin and unavoidable association with a minority historically subjected to discrimination and prejudice.” The CAT also found that “the State party’s authorities who witnessed the events and failed to intervene to prevent the abuse have at the very least ‘consented or acquiesced’ to it.” The CAT found that Serbia was in violation of its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, by failing to: open a criminal investigation (Article 12); ensure that Besim Osmani had the right to complain and to have his case promptly and impartially investigated (Article 13); enabling Besim Osmani to obtain redress and to provide him with fair and adequate compensation (Article 16). The CAT urged Serbia to: conduct a proper investigation; prosecute and punish the persons responsible; and provide Besim Osmani with redress, including fair and adequate compensation.³⁸

4.3 INTERNALLY DISPLACED ROMA

In its 2004 Concluding Observations, the Human Rights Committee expressed concerns about the lack of respect for the rights of internally displaced persons (IDPs), including their rights to access social services, education, access to personal documents, unemployment, adequate housing and the full enjoyment of political rights, noting that displaced Roma from

³⁷ See City Of Belgrade, *City Administration Secretariat Of Social An Child Protection, Program Of Resettling Of Unhygienic Settlements Under The Gazela Bridge*, November, 2008, retrieved at http://www.romadecade.org/2nd_decade_of_roma_inclusion_housing_workshop.

³⁸ CAT/C/42/D/261/2005, 12 May 2009.

Kosovo were a particularly vulnerable group. Amnesty International regrets that over the past five years, compounded by the lack of resolution of the final status of Kosovo and the absence of conditions for sustainable return to Kosovo, Roma IDPs continue to be denied these rights.

Serbia hosts more than 97,700 refugees from Croatia and BiH, and 206,000 IDPs from Kosovo. The Serbian Commissariat for Refugees, established in 1999, has no specific mandate in relation to IDPs, nor is there any definition in law of IDPs and the duties of the state for their protection and assistance. This violates Principle 3 (2) 2, of the UN Guiding Principles on Internal Displacement, which states, "National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to IDPs within their jurisdiction".

In practice the Serbian Commissariat for Refugees issues IDP cards and administers collective centres, providing assistance only to vulnerable IDPs living in the ever-dwindling number of collective centres. In January 2002, there were 388 collective centres housing around 26,863 people. In June 2009, only 72 centres remained housing 5,522 persons, the majority of them Roma.³⁹

The absence of support for internally displaced persons has resulted in the expansion of unlawful settlements over the past few years. In addition to those displaced from Kosovo in 1999, the population of such settlements has been augmented by Kosovo Roma who have been forcibly returned from European Union member states. They have either been returned directly to Serbia proper, or have been unable to make a sustainable return to their place of origin in Kosovo, and have relocated to Serbia.

On 1 January 2008 a readmission agreement signed between the European Community and Serbia entered into force. It sets out the conditions for the forced return of individuals to Serbia who either originate from Serbia or who have transited via Serbia to the EU.⁴⁰ It is estimated that the agreement will affect between 50,000 to 100,000 people from Serbia residing in the EU. This includes rejected asylum-seekers and refugees, most of them Roma.

Amnesty International is concerned that, according to government officials, UNHCR Belgrade, international and domestic NGOs, "the state still has no clear readmission strategy". Further no specific funding has been provided to assist Serbia in receiving returned individuals by the European Commission under the pre-accession process. Assistance to persons returned under the readmission agreement thus is conducted on an ad hoc basis.⁴¹ Many of those returned become de facto IDPs.

By 2006, even before the 2008 readmission agreement, Serbian NGOs reported that at least 7 per cent of those living in unlawful settlements in Belgrade had been returned from

³⁹ "Stanovnici Kolektivnog Centra u Novoj Pazovi Odbili Rešenje Komesarijata za Izbeglice", *Glas Javnosti*, 9 August 2009.

⁴⁰ 22007A1219(03), *Agreement between the European Community and the Republic of Serbia on the readmission of persons residing without authorisation*, Official Journal L 334 , 19/12/2007 P. 0046 – 0064, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:22007A1219%2803%29:EN:HTML>.

⁴¹ Amnesty International interviews with Ministry of Human Rights and Minorities and UNHCR, February 2009; Grupa 484, *Annual Report 2008*, <http://www.grupa484.org.rs/index.php?lang=english>.

western Europe. Further, many of those returned to Serbia from EU member states originated from Kosovo. According to the NGO Grupa 484, for example, around 40 per cent of those returned to Serbia in 2007 originated from Kosovo, the majority of whom were Roma. In 2008, 67 per cent of those returned were Roma, according to Readmission Office Coordinator Zoran Panjković. Most were returned from Germany and Switzerland; around 30 per cent of those returned under the age of 18.⁴² Sources estimate that up to 80 per cent of such returnees live in unlawful settlements.⁴³

Amnesty International is concerned that Roma originating from Serbia returned via the readmission agreement will face discrimination similar to that faced by Roma from Kosovo who are being returned to Serbia. In many cases they are likely to be returned to a situation of displacement, and should therefore be considered as IDPs. However, according to UNHCR Belgrade IDPs returned from third countries are not issued with IDP cards, and consequently have no right to housing, and so head for the unlawful temporary settlements described above. They are consequently denied access to any assistance or basic services.

According to a Roma NGO based in Belgrade, on 6 June G.H., an internally displaced person from Kosovo living in an unlawful settlement in Belgrade, was attacked by 10 unknown individuals while he was at work collecting paper for recycling. They reportedly kicked and hit him, and one person knifed him in the back. G.H. was taken to hospital, with pulmonary damage, where he made a statement to the police. However, he later discharged himself, as without identity documents he was not entitled to free medical care, and the police subsequently failed to conduct further investigations. He was forced to return to Gračanica in Kosovo, where he was able to receive medical treatment.

4.4 ACCESS TO DOCUMENTATION

Amnesty International is concerned that an estimated 30 to 40 per cent of Roma in Serbia remain without personal documentation. They are consequently unable to access basic rights including education, healthcare and employment. Many of these Roma are unable to resister their citizenship, or the birth of their children as they live in unlawful settlement. Their number also includes internally displaced Roma who face additional barriers in access to documentation.

Application procedures to register as an IDP or to register citizenship or residency are complex, with many bureaucratic and administrative obstacles. Registry books transferred from Kosovo are held in various municipalities, to which a returnee must apply by post, or in the case of identity cards, in person. This may mean travelling several hundreds of miles to the correct police station. In addition to the costs of travel, fees are required to obtain all the documents (birth, marriage, citizenship certificates, workbooks, medical cards etc) required to prove identity and gain access to relevant rights. In addition, the documents presented must be less than six months old, unless a person is re-registering their citizenship. Although IDPs are eligible for a 70 per cent reduction in the fees payable for these documents, few

⁴² According to the Readmission Office Coordinator those returnees are made up of primarily families (90 percent), out of which 30 percent are children. Most of the readmitted persons arrive from Germany, some 60-70 percent, followed by those who resided in Switzerland. Some 67 percent of the readmitted are Roma, 20 percent are Muslims and the rest are Serbs, Ashkalis, Egyptians, Albanians, Gorani, and others, *Glas javnosti* p.6, *Politika* p.7, *Press* p.11, 5 January 2009.)

⁴³ http://www.balkaninsight.com/en/main/analysis/23081/?tpl=299&ST1=Text&ST_T1=Article&ST_AS1=1&ST_max=1.

IDPs are aware of this right. As a result, large numbers of registered IDPs and persons who have been forcibly returned remain without any documentation.

Those living in unlawful settlements face additional barriers: although persons from Kosovo are formally permitted to register their residence in Serbia, many are unable to do so as they cannot provide proof of a legal place of residence.⁴⁴ This impinges on the realization of other rights.

For example, in order to use local health care services, an IDP or returned person must have a Health Care Certificate, issued by the local municipal branch of the government Health Care Institute. In order to request such a document, an IDP must submit an IDP card, a personal identification card, and a "Green Card" (if the temporary residence is different from that on the IDP card). Persons returned from EU member states are not entitled to IDP cards, and thus cannot receive free medical treatment, unless they have legal residency.

Those living in unlawful settlements, who are unable to register residency, often have to use the address of a friend or relative, or the card of a friend or relative in order to receive medical treatment: thus in some cases, according to the NGO Praxis, some Romani women who have been denied access to hospital to give birth because they do not have a Health Care Certificate, have used another woman's card in order to be admitted into hospital.

Amnesty International has repeatedly called on the Serbian government to respect, protect and fulfil the rights of the Romani community, including those displaced from Kosovo.

⁴⁴ *UNHCR'S Eligibility Guidelines For Assessing The International Protection Needs Of Individuals From Kosovo*, United Nations High Commissioner for Refugees (UNHCR), 9 November 2009, HCR/EG/09/01, p. 27.

