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**Promotion et protection de tous les droits de l'homme,
civils, politiques, économiques, sociaux et culturels,
y compris le droit au développement**

Visite en Serbie et au Kosovo*

Rapport du Rapporteur spécial sur la promotion de la vérité, de la justice, de la réparation et des garanties de non-répétition, Fabián Salvioli**

Résumé

Dans le présent rapport, le Rapporteur spécial sur la promotion de la vérité, de la justice, de la réparation et des garanties de non-répétition, Fabián Salvioli, rend compte de la visite qu'il a effectuée en Serbie et au Kosovo du 22 novembre au 2 décembre 2022 et évalue les progrès accomplis s'agissant de réparer les graves violations des droits de l'homme et du droit international humanitaire commises pendant les conflits armés des années 1990.

Dans son rapport, le Rapporteur spécial rend compte des efforts déployés à l'issue du conflit en Serbie et au Kosovo, avec l'appui de la communauté internationale, pour rechercher les personnes disparues. Il souligne cependant le manque de coopération ces dernières années, les difficultés rencontrées dans les processus d'établissement des responsabilités et de réparation, ainsi que l'insuffisance des mesures prises pour entretenir la mémoire des violences passées, endiguer les divisions et promouvoir la réconciliation. Il conclut par des recommandations adressées aux autorités serbes et kosovares et à la communauté internationale.

* Les références au Kosovo s'entendent dans le contexte de la résolution [1244 \(1999\)](#) du Conseil de sécurité.

** Le résumé du présent rapport est distribué dans toutes les langues officielles. Le corps du rapport, annexé au résumé, est distribué dans la langue de l'original seulement.



Annexe

Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on his visit to Serbia and Kosovo***

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*** References to Kosovo shall be understood to be in the context of Security Council resolution 1244 (1999).

I. Introduction

1. From 22 November to 2 December 2022, the Special Rapporteur conducted an official visit to Serbia and Kosovo. He thanks the authorities in Belgrade and Pristina for their openness and cooperation during the realization of the visit. He also extends his sincere gratitude to the United Nations Human Rights Adviser's Team in Serbia and the United Nations Mission in Kosovo (UNMIK) for their support in preparation for and during the visit.
2. The objective of the visit was to assess the measures in the fields of truth, justice, reparation, memorialization and guarantees of non-recurrence to address the serious violations of human rights and international humanitarian law committed during the armed conflicts that engulfed the region in the 1990s.
3. The Special Rapporteur visited Belgrade and Pristina and carried out field visits to sites of mass graves, search and exhumation locations, and memorials, in Belgrade, Stavalj, Rudnica, Pristina and Rezallë/Rezala village. He regrets not having had access, despite his request, to the police compound in Batajnica, where a mass grave had been found.
4. In Belgrade, the Special Rapporteur met with the Minister of Foreign Affairs, the Minister of Justice, the Minister of Culture, the Minister of Human and Minority Rights and Social Dialogue, the Assistant Police Director, the President of the Commission on Missing Persons, representatives of the War Crimes Investigation Service and the Witness Protection Service, the President of the High Court in Belgrade, the President of the War Crimes Department, the Serbian War Crimes Prosecutor and the Protector of Citizens of the Republic of Serbia.
5. In Pristina, the Special Rapporteur met with the Special Representative of the Secretary-General for Kosovo, the Prime Minister and the Minister of Justice, and with representatives of the Office of Good Governance, the Ministry of Education, Science and Technology, the Ministry of Communities and Returns, the Agency for the Management of Memorial Complexes, the Ministry of the Interior, the Commission on Missing Persons, the Commission on Recognition and Verification of the Status of Sexual Violence Victims During the Kosovo Liberation War, the Assembly's Committee on Human Rights, Gender Equality, Victims of Sexual Violence During the War, Missing Persons and Petitions, and the Ombudsperson.
6. He also met with victims and survivors, representatives from civil society, international organizations and the diplomatic community, journalists and academic experts.

II. Background

7. During the 1990s, the dismemberment of Yugoslavia led to a series of conflicts in the region. Gross violations of human rights and serious violations of international humanitarian law were documented during this period. Civilians from all ethnic groups were subjected to killings, enforced disappearance, torture, conflict-related sexual violence and forced displacement. The armed conflicts in Bosnia and Herzegovina and in Croatia, where Serbian forces were involved, raged until 1995. In Kosovo, the conflict between Serbian forces and the Kosovo Liberation Army, which included the participation of the North Atlantic Treaty Organization (NATO), ended in June 1999 with the adoption of the Kumanovo Agreement and Security Council resolution 1244¹ on the status of Kosovo.² However, conflict-related killings, disappearances and sexual violence were reported until December 2000. Security Council resolution 1244 placed Kosovo under UNMIK administration. The competences of UNMIK in rule of law-related matters were transferred to the European Union Rule of Law Mission in Kosovo in 2008, following the unilateral declaration of independence by Kosovo.

¹ See <https://daccess-ods.un.org/tmp/9433331.48956299.html>.

² See <https://www.icty.org/en/about/what-former-yugoslavia/conflicts> and <https://eulex-kosovo.eu/?page=2,16>.

8. A series of domestic, regional and international initiatives in the field of transitional justice were adopted in the intervening years to address the legacy of those violations, which are reviewed below. The present report focuses on the situation as it was during the visit, although some references are made to subsequent developments.

III. Serbia

A. Truth

Search for and identification of missing persons

9. Six thousand and sixty-five persons were reported missing from the conflict in Kosovo, from January 1998 to December 2000, 1,621 of whom remain missing today.³ Serbia is also involved in the search for missing persons from the conflicts in Bosnia and Herzegovina and in Croatia, where thousands remain missing.⁴ A total of 1,402 persons have been exhumed in Serbian territory to date, including 914 bodies from the Kosovo conflict buried in mass cemeteries in Batajnica, Perućac, Petrovo Selo, Rudnica and Kizevak.⁵

10. In Serbia, the search for and identification of missing persons was carried out by domestic institutions, led by the courts and coordinated by the Commission on Missing Persons. The international community supported the process. The International Commission on Missing Persons reported that despite delays in the immediate post-conflict period, a policy transformation during the 2000s led to genuine efforts and progress in the search for missing persons. The (Serbian) Commission on Missing Persons was established in 2006 to coordinate the search for and exhumation and identification of persons who had gone missing during the armed conflicts. In 2006, the DNA laboratory in Belgrade of the International Commission on Missing Persons was handed over to the Serbian authorities.

11. Serbia is a member of the working group on persons unaccounted for in connection with events in Kosovo in 1998 and 1999 (the Working Group on Missing Persons). The Working Group was established in 2004, under the auspices of the Special Representative of the Secretary General for Kosovo, to facilitate the exchange of information on missing persons and gravesites between the authorities in Belgrade and Pristina, and is chaired by the International Committee of the Red Cross. Although the amount of information effectively exchanged within the Working Group was initially limited, it led to some progress and the discovery of mass graves. In recent years, however, the work of the entity has been substantially hampered by political animosity between Belgrade and Pristina and has reached a stalemate at the highest levels of the Working Group. Notwithstanding, cooperation continues at the technical level with the Subgroup for Forensic Medicine and the Analytical Team. The lack of cooperation has resulted in an alarming stagnation in the rate of clarification of missing persons cases. Reportedly only one case was solved in 2022. The Special Rapporteur noted with appreciation that European Union-mediated negotiations to normalize relations between Serbia and Kosovo had led to their endorsement of a joint Declaration on Missing Persons, in May 2023.⁶

12. Restricted access to Serbian archives also hindered cooperation on missing persons cases for several years. In 2013, the Ministry of the Interior granted access which led to the resolution of several cases. The Government of Serbia advised that 2,417 documents from the Ministry of the Interior and the Serbian Armed Forces had been shared with the delegation of Pristina. Reports indicate that relevant military information remains classified.

³ See https://www.eeas.europa.eu/eeas/belgrade-pristina-dialogue-statement-high-representative-political-declaration-missing-persons_en.

⁴ See [A/HRC/51/34/Add.1](#), p. 5; [A/HRC/51/34/Add.2](#), p. 6; and <https://www.icmp.int/wp-content/uploads/2017/06/stocktaking-2022-June-30.pdf>.

⁵ Information provided by the Government.

⁶ See https://www.eeas.europa.eu/eeas/belgrade-pristina-dialogue-statement-high-representative-political-declaration-missing-persons_en.

13. Several other challenges hinder progress in this field. Witnesses' exposure to intimidation and threat, or fear of implicating themselves in a crime, has prevented many from providing valuable information on missing persons. The existence of numerous cases of misidentification (before DNA testing was introduced), and of unidentified mortal remains, further thwarts progress.

14. Serbia has signed regional cooperation agreements which have led to joint monitoring of excavations and exhumations, joint reconnaissance visits, transfers of human remains and exchanges of information and materials with the authorities of Bosnia and Herzegovina and Croatia. It also signed two official agreements with UNMIK leading to joint commitments and collaboration in the search for missing persons in Serbia and Kosovo. In 2014, Bosnia and Herzegovina, Croatia, Montenegro and Serbia signed the Declaration on the Role of the State in Addressing the Issue of Persons Missing as a Result of Armed Conflict and Human Rights Violations, and bilateral protocols to operationalize it. In 2017, Serbia joined the International Commission on Missing Persons database of active missing persons cases from conflicts on the territory of the former Yugoslavia. In 2018, Serbia signed a joint declaration on missing persons alongside 13 other countries participating in the Berlin Process,⁷ which was followed by a framework plan and the establishment of a missing persons group by Bosnia and Herzegovina, Croatia, Montenegro and Serbia, as well as Kosovo. In July 2019, Bosnia and Herzegovina, Croatia and Serbia signed cooperation agreements for the exchange of information and documents on missing persons. Unfortunately, regional cooperation has slowed down significantly in recent years, hampered by insufficient exchange of information across borders.

15. The Special Rapporteur notes the initial efforts and progress made by Serbia to search for missing persons but remains concerned about the current stagnation and lack of cooperation with Kosovo and regional partners.

Truth-seeking initiatives

16. The Special Rapporteur noted a scarcity of measures in the field of truth-seeking. Although a Truth and Reconciliation Commission was established in March 2001, it was criticized for lacking ethnic diversity in its membership and for consulting inadequately with civil society. The Commission was disbanded in February 2003, without holding a hearing or delivering a report.

17. Initiatives aimed at collecting data on all wartime violations and testimonies of victims have been found only in civil society, but lack official support, such as RECOM/KOMRA and the Kosovo Memory Book.⁸

B. Justice

18. The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (the International Tribunal for the Former Yugoslavia) has convicted 12 Serbian officials and two former Kosovo Liberation Army members. It transferred one active case to Serbia, where domestic courts found the accused unfit for trial.⁹

19. Serbia has set up an institutional framework for war crimes prosecution and trial, with support from the international community. In 2003, it established the War Crimes Chamber of the Higher Court in Belgrade and the War Crimes Prosecutor's Office. In 2005, the War Crimes Investigation Service was established as a specialized organizational unit of the Ministry of the Interior to detect and investigate all crimes against humanity and international law, pursuant to the Law on the Organization and Competence of State Authorities in War Crimes Proceedings. The Service handles an annual average of 3,000 investigation requests. Serbia adopted national strategies for the prosecution of war crimes. The strategy for

⁷ See <https://www.icmp.int/wp-content/uploads/2018/09/Deklaracije.pdf>.

⁸ See <https://www.recom.link> and <http://www.kosovomemorybook.org>.

⁹ See <https://www.icty.org/en/cases/transfer-of-cases/status-of-transferred-cases>.

2021-2026 and its related action plan provide a framework and road map for the prosecution of war crimes.

20. The War Crimes Prosecutor's Office advised that it had indicted 238 persons since its inception, with an 85 per cent conviction rate. Ninety-four per cent of the defendants were Serbian nationals. Between 2016 and 2020, the Office had issued 34 indictments against 45 persons (65 per cent of the files had been transferred from Bosnia and Herzegovina). In 2022, the Office had brought 10 indictments to court. Notwithstanding, progress has remained slow, leading to a backlog of 1,731 cases at the pre-investigation stage. Several interlocutors expressed concern that most defendants were low-ranking officials. Currently, only four high-ranking officials are being prosecuted in Serbia, and one was recently indicted. The Ombudsperson Institution of Kosovo reported stagnation in the will to prosecute Serbian officials for crimes against Kosovo Albanians, with no such indictments filed in the past five years. It noted that 20 indictments had been filed for war crimes committed in Kosovo, leading to the conviction of 15 Serbian officers (mostly low-ranking) and two former Kosovo Liberation Army members. Serbia refuses to extradite Serbian nationals requested by Kosovo judicial authorities.

21. The Special Rapporteur notes the legal and administrative framework in place to provide protection and psychosocial support to victims and witnesses, which includes the Law on the Protection Programme for Participants in Criminal Proceedings, of 2005, the Commission for the Implementation of the Protection Programme, and the Witness Protection Unit (which signed a protocol with the War Crimes Prosecutor's Office). Pursuant to these, witnesses at risk are provided with material security and economic, social, psychological and legal assistance. A strategy and plan of action for witness protection was adopted in 2020. Despite these measures, the Special Rapporteur received reports of continued intimidation and attacks against witnesses and victims, which deterred them from testifying in war crimes cases. Legal action has not been taken to counter such practices, despite the existence of a specific offence in the Criminal Code.

22. Since 2006, Serbia has adopted several agreements and protocols with its regional counterparts in Bosnia and Herzegovina, Croatia and Montenegro to improve cooperation in war crimes prosecution. In 2015, the relevant prosecutorial entities in Bosnia and Herzegovina, Croatia and Serbia signed the Guidelines for the Advancement of Regional Cooperation in Processing War Crimes and Searching for Missing Persons and for the Establishment of Coordination Mechanisms. Notwithstanding these positive steps, cooperation in the field has stagnated in recent years, leading to reduced prosecutorial outcomes. The International Residual Mechanism for Criminal Tribunals noted that regional judicial cooperation was at its lowest level in years and faced serious challenges. It further noted that judicial cooperation between Belgrade and Pristina and between Croatia and Serbia remained at a standstill.¹⁰ Serbian authorities cited a lack of cooperation from their counterparts in Croatia, despite the efforts of Serbia, and recalled a report of the International Residual Mechanism for Criminal Tribunals in this regard.¹¹ On the other hand, judicial cooperation between Bosnia and Herzegovina and Serbia has reportedly improved and yielded some results.

23. The Special Rapporteur notes the framework in place to prosecute war crimes, but is concerned about stagnated judicial cooperation, and about the low prosecution rate despite the resources devoted to this endeavour and the substantial files at the disposal of the authorities.

C. Reparations

24. War crime victims in Serbia can claim compensation through lawsuits against the Government of Serbia or through administrative procedures. The legal framework governing administrative reparations was for several decades governed by the Law on the Rights of Civilian Disabled Veterans, adopted in 1996. The framework was updated in February 2020

¹⁰ See <https://www.irmct.org/sites/default/files/documents/220519-progress-report-s-2022-404-en.pdf>.

¹¹ Ibid.

with the adoption of the Law on the Rights of Veterans, Disabled Veterans, Civilian Disabled Veterans and Their Family Members. However, victims and civil society were not adequately consulted in the drafting process and, as a result, the law retains the shortcomings of its predecessor. Under this legal framework, only citizens of Serbia who were victims of violence committed by members of “enemy troops” and who suffered a certain degree of physical impairment may initiate the administrative procedure. Eligible victims are entitled to health care, free public transport and, for those in situations of social vulnerability, a monthly stipend.

25. The framework has thwarted most victims’ eligibility and has resulted in different treatment among categories of victims. Victims whose injuries or loss of life resulted from actions of Serbian State agencies, or who did not suffer injuries in the territory of Serbia, and victims of sexual violence, victims of torture whose injuries resulted in bodily disability below a certain threshold, and camp detainees, cannot benefit from administrative reparation. In addition, parents or children of victims who were living in a different household are not eligible for reparation. Furthermore, the framework has been significantly less favourable to civilian than to military victims.

26. Serbia lacks a legal framework that regulates the status of missing persons and defines the rights of their families. Under the Law on the Rights of Civilian Disabled Veterans, missing persons are not considered to be civilian victims of war. Families of missing persons were therefore forced to declare the death of their relative in order to access the benefits prescribed by the law. Recently adopted by-laws have reportedly removed this requirement. A draft law on missing persons was recently prepared, in consultation with victims, civil society and international organizations, but was not passed by Parliament.

27. Despite the update to its legal framework, Serbia provides reparation to a limited category of victims and keeps many others devoid of reparation. This requires urgent amendment. Victims who cannot qualify for administrative reparation due to the restrictive legal framework, seek financial compensation through the courts, but the judicial processes are lengthy and require a criminal conviction before compensation can be sought in civilian courts. In addition, there is a high standard of proof, and the expiration of the statute of limitations has prevented victims from obtaining compensation in most cases. Moreover, lawsuits entail considerable expense on the part of victims-plaintiffs, and there is no legal aid available to them. These difficulties, and the uncertainty of a positive outcome given the burden of proof placed upon victims, make this avenue for reparation practically inviable for victims.

Rights of forcibly displaced persons

28. During the conflict, 50,000 refugees arrived in Serbia from the former Yugoslav republics, and more than 200,000 fled to central Serbia from Kosovo and Metohija in 1999.¹² Few of them are able or willing to return to their places of origin due to insecurity, marginalization and other concerns, and approximately 88,000 have forced displacement-related needs.¹³ Roma represent 10 per cent of the overall population of internally displaced persons and 75 per cent of the returnees in Serbia. They live in extremely vulnerable situations and face mounting difficulties in obtaining personal documentation, employment and basic services. Seventy-four per cent of them are unemployed, two thirds have not completed primary education, 90 per cent live in low-quality housing, 98 per cent cannot satisfy their nutritional needs and 92 per cent live below the poverty threshold.¹⁴

29. The Government reported the adoption of the Strategy for the Inclusion of Roma Men and Women in the Republic of Serbia 2022–2030 and its Action Plan 2022–2024. It also advised that 27 million dinars from the national budget had been devoted to improving the living and housing conditions of internally displaced Roma in 2019. In 2020, 122 million dinars had been devoted to improving the living and housing conditions of internally displaced persons, 30 per cent of whom were Roma beneficiaries. The Government further

¹² See <https://www.unhcr.org/serbia.html>.

¹³ See <https://rm.coe.int/16806db7fa>, p. 10.

¹⁴ A/HRC/26/33/Add.2, pp. 4 and 5.

reported that €75,000 had been devoted to the housing accommodation of internally displaced persons and returnees under the Instrument for Pre-accession Assistance project of 2014 entitled “Improvement of living conditions of IDPs and returnees under the Readmission Agreement in Serbia and support for sustainable return to Kosovo and Metohija”.

D. Memorialization

30. Memorialization of the conflict and its victims was absent in the aftermath of the conflict. In the past decade, the armed conflicts of the 1990s have become the focal point for memory policies, with a focus on legitimizing the role of the Government of Serbia and revisiting the role of convicted war criminals. This memorialization strategy includes large commemorations, and the use of media technologies and cultural productions that reproduce a narrative around the conflict centred in nationalist sentiments, denial of responsibilities for past crimes, and obscuring of the harm suffered by non-Serbian victims.

31. While some much-needed memorials have been erected to commemorate the suffering of Serbian victims, such as children killed during the NATO bombing, it is regrettable that similar initiatives do not exist with respect to victims of other ethnic groups. Moreover, initiatives from civil society to commemorate non-Serbian victims are often obstructed by the authorities or restrictive regulations, as was the case with the attempts to memorialize the mass grave in the police compound at Batajnica where the remains of 744 Kosovo Albanians were found. The Commission on Missing Persons advised, however, that it supported some memorials dedicated to missing persons, and urged non-politicization of the issue. In 2018, the Government adopted a law on monuments, which forecloses the commemoration of events that question the role of Serbia in the conflict.

32. Memorialization processes related to the 1990s conflicts show a strong focus on Serbian victims. Memorials, plaques or ceremonies aimed at comprehensively commemorating all violations and all victims, in particular ethnic minority victims, seem mostly restricted to civil society efforts. Progress in this area will be vital to reconciliation processes and to restore the dignity of victims. Efforts to commemorate the conflicts are important as long as they ensure an accurate and balanced view of the events that took place during that period, allow a democratic and pluralistic debate about those events, and ensure that the voices of all victims take centre stage, regardless of their ethnicity.

33. Serbia marks several days commemorating Jewish, Roma and Serb genocide victims, and adopted a law recognizing their plight and establishing the “Staro Sajmište” Memorial Centre in the grounds of the former Nazi concentration camp. Memorialization and education efforts about these previous dark periods of Serbian history are welcomed and must also be guided by the criteria mentioned above in paragraph 32.

E. Guarantees of non-recurrence

Institutional and security sector reform

34. Since the end of the conflict, some limited reforms have taken place in the police, including the adoption of the Law on Police (2005, amended in 2016, and 2018), the Ethics Code for Active Police (2006), the Rulebook on the Manner of Performing Individual Police Duties (2018) and the Rulebook on Police Powers (2019); the creation of the Security and Information Agency; the establishment of the Internal Police Control Department, made up of police officers, under the purview of the Ministry of the Interior; and the instituting of an ad hoc second instance commission to assess public complaints, with representation from civil society. A bill on internal affairs, which would replace the Police Act, was recently drafted and is being revised following consultations with civil society. Although important, these measures are insufficient, as the police and other bodies have not undergone a vetting process, and Parliament, to which the Ministry of the Interior reports regularly, remains the sole oversight mechanism for security forces. Despite his request, the Special Rapporteur was not able to meet with representatives of the Ministry of Defence.

35. Despite by-laws in place since 2016 to prevent public service appointments of persons with a wartime criminal record, some convicted war criminals have held public office, according to numerous reports received.

36. The Government reports that the Witness Protection Unit has undergone a series of reforms to adapt to present challenges. The Unit gained operational independence within the Ministry of the Interior to reduce the risk of disclosure of sensitive information, reformed its internal organizational structure, strengthened human resources with multidisciplinary recruitments and training, and improved technical equipment and data protection systems. The War Crimes Investigation Service, within the Ministry of the Interior, regularly strengthens its human and material resources.

37. Since the end of the conflict, the judicial sector has embarked on successive reforms, which have included dismissals and reappointments of judges and prosecutors, the handing over of files, and changes in roles and responsibilities. However, their implementation has yielded limited results. In 2022, a constitutional reform, which included a substantial judicial reform package to address the insufficient independence and accountability of the judiciary, was adopted by referendum. The amendments resulted in improvements with respect to the independence of judges, but risks of political influence over prosecutors remain, given the underrepresentation of prosecutors in the High Prosecutorial Council.

Education, culture and the media

38. The Special Rapporteur noted uniformity of narratives about the conflict and about its victims, which permeate the educational, cultural and media spheres. Deliberations in the public sphere, including the media, the press and the arts, as well as history teaching in certain textbooks, do not seem to include comprehensive or plural narratives about the conflict or to allow all voices of victimhood to take centre stage. A Radio Liberty review of a secondary school textbook showed a selective presentation of facts, with a strong nationalist focus and scarce reference to victims of war crimes committed by Serbian forces.¹⁵ Educational materials about recent history do not seem to be aimed at reversing divisive conflict rhetoric or related ethnic polarization.

39. The Government reports that the school curriculum encompasses teaching about past conflict periods, including the Second World War and the Holocaust, and the 1990s conflict; reviews of past and present humanitarian law violations, and the concepts of genocide, holocaust and totalitarianism; the promotion of human rights, cultural diversity and mutual understanding; the prevention of violence and discrimination; and the development of critical and tolerant historical thinking in students. Teacher training also encompasses these areas. While noting these efforts, the Special Rapporteur has observed the placing of greater attention in history teaching on Serbian suffering and victims to the detriment of other situations and victims. He is concerned that history teaching may be used to perpetuate the conflict narratives of Serbia.

40. The Government reports that the Ministry of Culture has helped fund regional civil society initiatives that promote tolerance and multi-historical narratives of the past, such as the “Who started all this? Historians against revisionism” and “Reading Balkans” projects.¹⁶

Glorification of war criminals, denial of atrocity crimes, and hate crimes

41. The Special Rapporteur is particularly concerned about numerous instances of glorification of convicted war criminals, denial of their crimes, and relativization of the judgments of the International Tribunal for the Former Yugoslavia and/or of local courts. He has also observed with dismay numerous murals and graffiti dedicated to war criminals, which are not removed by the authorities despite being in contravention of national regulations and being blatantly immoral, but which are nonetheless protected from citizens

¹⁵ See <https://www.rferl.org/a/serbia-history-textbook-dubious-lessons-college-kosovo-balkan-wars/32155496.html>.

¹⁶ See <http://www.krokodil.rs/wp-content/uploads/2018/03/Open-Call-Reading-Balcans-Ukraine-2018.pdf> and <https://www.krokodil.rs/eng/2018/06/who-started-all-this-historians-against-revisionism/>.

who intend to protest against them. He has been informed that several instances of war crimes glorification or denial have not been appropriately condemned by the relevant authorities, and some have been supported by them, which transmits a message to the general public that they are tolerable in Serbian society.

42. He has also received numerous concerning reports about verbal and physical threats and attacks against journalists and human rights defenders working on transitional justice issues, and about the lack of investigation and punishment of those crimes, as well as about the criminalization of these actors for the peaceful exercise of their work.

43. The prohibition of incitement to racial, ethnic and religious hatred is enshrined in article 49 of the Constitution and article 317 of the 2019 Criminal Code. The Special Rapporteur received concerning reports about a rise in radicalization and hate crimes. The Government reported that 24 criminal offences motivated by national, racial or religious hatred and intolerance were reported in 2021 (as opposed to 13 in 2020), leading to criminal charges against 17 persons. Twenty-three criminal charges were filed for incitement of national, racial and religious hatred and intolerance (as opposed to 11 in 2020). The Government also reported the adoption of a series of activities to curb hate speech, racism and discrimination in line with the recommendations set by the Council of Europe, and a series of dialogues to foster affirmation of the rights of the Albanian national minority (through the Seven Points Plan).

IV. Kosovo

44. The authorities have taken steps, unsuccessfully since 2012, to elaborate a transitional justice strategy. In 2021, a multisectoral working group was established to draft a strategy with a comprehensive, victim-centred and gender-sensitive approach. A draft is currently being discussed in focus groups with different stakeholders, including victims and minority communities.

A. Truth

Search for and identification of missing persons

45. The task of locating and recovering missing persons in Kosovo was undertaken by UNMIK until 2008, and by the European Union Rule of Law Mission in Kosovo until 2018, and was subsequently transferred to the authorities in Kosovo.

46. The Kosovo Commission on Missing Persons was established in 2006, under UNMIK, to lead activities in relation to missing persons. The Law on Missing Persons (No. 03/L-023) adopted in 2011 strengthened the mandate and the competence of the Commission and tasked it with creating a Central Register on Missing Persons. However, the capacities of the Commission, and the political support for it, are limited.¹⁷ The Central Register was established in 2012 under the Commission's purview. The Law on Forensic Medicine was adopted in 2016, stipulating the competence of the Institute of Forensic Medicine. The Institute and the Police Department for War Crimes Investigation assist in the search for missing persons, with support from the Special Prosecutor's Office and competent courts. Kosovo is member of the Working Group on Missing Persons, which reached an impasse due to politicization, and endorsed the Declaration on Missing Persons in the framework of the European Union-facilitated dialogue. Kosovo is party to regional cooperation initiatives and agreements to facilitate the search for missing persons, including the International Commission on Missing Persons database of active missing persons cases from conflicts on the territory of the former Yugoslavia, the Berlin Process joint declaration¹⁸ and joint collaboration agreements with Serbia. Regional cooperation has stagnated in recent years.

¹⁷ See <https://www.icmp.int/wp-content/uploads/2017/05/Kosovo-stocktaking-ENG.pdf>, p. 38.

¹⁸ See <https://www.icmp.int/wp-content/uploads/2018/09/Deklaracije.pdf>.

47. The discovery rate of missing persons from the conflict in Kosovo is over 70 per cent,¹⁹ a high rate compared to other regions in the world. Progress in the past decade has slowed dramatically due to politicization. The lack of cooperation and exchange of information between Serbia and Kosovo remains the main stumbling block in clarifying unsolved cases. Reports indicate that the authorities in Kosovo have not shared vital information and documentation on missing persons that is at their disposal.²⁰ The problem of misidentifications and unidentified mortal remains, and witnesses' reluctance to provide information due to threats, intimidation, loyalty or fear of implicating themselves, present additional challenges. The Institute of Forensic Medicine has begun carrying out a new inventory of the 300 unidentified remains in its morgue but noted the need to access similar records from Serbian and relevant international institutions. The authorities advised that excavation evaluations had been undertaken in 20 locations in 2021.

48. Roma, Ashkali and Egyptian victims reported insufficient representation in official efforts to search for missing persons. This deficiency requires urgent attention.

49. A noteworthy civil society initiative is the Missing Persons Resource Centre, established with the support of UNMIK, where families of missing persons from different ethnic communities gather to work towards their joint common goal.

50. The Special Rapporteur notes the initial efforts and progress made in searching for missing persons in Kosovo but remains concerned about the current stagnation and the lack of cooperation with Serbian counterparts.

Truth-seeking initiatives

51. The Special Rapporteur noted insufficient measures in the field of truth-seeking. An initiative to establish a truth and reconciliation commission was begun in 2017, under the previous presidency, but has not been completed or taken up by the present authorities. A draft law on the establishment of the Institute for Crimes Committed during the War in Kosovo has been approved and is currently before the Assembly. The Institute, which is to replace a similar, earlier initiative and will operate within the Office of the Prime Minister, will research, document, preserve and make publicly available data on serious crimes committed in Kosovo in 1998 and up to June 1999. Under the law (art. 2, para. 2), the research and documentation can also apply to crimes committed between June 1999 and December 2000. Civil society expressed concern about the enforceability of the second paragraph of article 2, due to its loose wording. Authorities stated that the bill had been prepared in consultation with, and with the participation of, representatives of victims' groups and civil society. Notwithstanding, civil society reported insufficient minority representation and consultation in that process.

52. Truth-seeking initiatives to collect data on all wartime violations, and testimonies of victims, have been found only in civil society – such as the Kosovo Memory Book,²¹ *People and Memories Talk*²² and the documentation of crimes of sexual violence during the conflict in Kosovo.

B. Justice

53. War crimes investigation and prosecution in Kosovo was undertaken by UNMIK, was transferred to the European Union Rule of Law Mission in Kosovo in 2008 and was then gradually transferred to Kosovo authorities starting from 2018. The progress made by UNMIK and the European Union Rule of Law Mission in Kosovo was reported as unsatisfactory by numerous stakeholders. Prosecutions led by UNMIK were lengthy and inadequately investigated and led to many retrials. The European Union Rule of Law Mission in Kosovo achieved increased transparency and speed but did not meet expectations with

¹⁹ Information provided by the authorities.

²⁰ A/HRC/39/46/Add.2, p. 149.

²¹ See <http://www.kosovomemorybook.org/>.

²² See <https://ngo-integra.org/publication/Transcripts%20-%20English%20-%20People%20and%20Memories%20Talk%20-%20Kosovo%20Edition.pdf>.

regard to the number of cases processed.²³ Progress within the domestic institutions has also been meagre.

54. In 2008, the Special Prosecutor's Office was established in the judicial system of Kosovo to investigate and prosecute war crimes. In 2015, the Department for War Crimes was established within the Special Prosecutor's Office to increase investigative capacities. In 2018, the Special Prosecutor's Office received exclusive competence to investigate and prosecute war crimes. In 2019, the Special Department for Serious Crimes was established at the Basic Court of Pristina to try cases received from the Special Prosecutor's Office, and a War Crimes Strategy was drafted by the Prosecutorial Council of Kosovo and the Department for War Crimes. Cooperation agreements with Serbian and regional prosecutorial counterparts appear, nonetheless, to be lacking.²⁴ The use of evidence collected by the International Tribunal for the Former Yugoslavia is not explicitly permitted under the legal framework.²⁵

55. Between 1999 and 2022, 117 people were accused of war crimes in Kosovo, and 45 of them (35 Kosovo Albanians, nine Kosovo Serbs and one Rom) were convicted with a final verdict. In 2021, only one indictment was filed, and 11 hearings, relating to 11 accused persons, were held.²⁶ The authorities report that the War Crimes Department currently has 1,000 active cases, and that the Police Department for War Crimes Investigation filed 48 cases with the Prosecutor's Office (against 506 persons), made 16 arrests and constructed 4,046 cases.

56. The absence of suspects in Kosovo due to the reluctance of Serbia to hand them over has been a notorious stumbling block. In the absence of judicial cooperation, in 2019 the Kosovo Assembly adopted Law No. 04/L-123 amending the Criminal Procedure Code to allow trials in absentia for war crimes, an approach praised by some experts and criticized by others. This authority is reflected in article 303 of the Criminal Procedure Code which entered into force in 2022. Despite these changes, no trials in absentia have been initiated. As noted by interlocutors, Kosovo does not cooperate with Serbian authorities either, because it believes that its judiciary is the relevant authority to try crimes that occurred in Kosovo. The lack of cooperation in the investigation and prosecution of war crimes has been mutual and has significantly hampered progress.

57. Regarding bias in the selection of cases, the European Commission expressed significant concern in 2019 at the unwillingness of authorities in Kosovo to investigate, prosecute and sanction war crimes cases involving former Kosovo Liberation Army members.²⁷

58. Witnesses' reluctance to provide testimony due to fear of retaliation substantially thwarts progress and emphasizes the need for an effective and properly functioning witness protection programme, which is currently lacking in Kosovo.

59. The authorities reported an increased budgetary allocation for 2021 to improve the institutional capacity for prosecuting war crimes (with provision for four additional prosecutors, six assistants and two translators). However, the War Crimes Department reportedly still operates at pre-existing capacity levels. Specialized rooms for interviewing witnesses and victims of sexual violence have been established at the Police Department for War Crimes Investigation. Despite his request, the Special Rapporteur could not meet with the War Crimes Prosecutor.

60. Separately, the Kosovo Specialist Chambers and Specialist Prosecutor's Office were established in 2016 with jurisdiction over international and other crimes under the law of Kosovo relating to allegations contained in the Parliamentary Assembly of the Council of Europe report on inhuman treatment of people and illicit trafficking in human organs in

²³ A/HRC/30/38/Add.1, pp. 15 and 16; and information provided by the Ombudsperson Institution of Kosovo.

²⁴ A/HRC/39/46/Add.2, pp. 147 and 157.

²⁵ Ibid., paras. 66 and 127.

²⁶ Information provided by the Ombudsperson Institution of Kosovo.

²⁷ See <https://neighbourhood-enlargement.ec.europa.eu/system/files/2019-05/20190529-kosovo-report.pdf>.

Kosovo.²⁸ They are temporary institutions with an international composition based in The Hague and placed within the judicial system of Kosovo. Three indictments for war crimes have been filed against five people, and one indictment for obstruction of justice was filed against two people who were subsequently convicted.

61. The Special Rapporteur notes the framework in place to prosecute war crimes and the recent strengthening of its capacities. He is, however, concerned about the low prosecution rate and the stagnated judicial cooperation.

C. Reparations

62. Law No. 04/L-054 on the Status and Rights of Martyrs, Invalids, Veterans, Members of the Kosovo Liberation Army, Sexual Violence Victims of the War, Civilian Victims and their Families affords the status of victims to those who died or suffered injuries at the hands of “enemy forces” between February 1998 and 20 June 1999.

63. Due to the law’s temporal scope and the use of the term “enemy forces”, victims killed, tortured or injured after June 1999, and those who were victims of forces not considered as “enemy forces”, are excluded from its scope. This particularly affects Kosovo Serb, Roma, Ashkali and Egyptian victims. The framework also affords different sets of benefits to war veterans and civilians. Although the law prescribes compensation, rehabilitation and paid health care, reports indicate that rehabilitation is only provided by civil society organizations, with some limited support from public institutions. A psychosocial support strategy for civilian victims is lacking. The legal framework in place forces victims who have suffered more than one form of violation, and were therefore granted more than one victim status, to choose between the benefits that are afforded to them under each category, as only one benefit can be received per victim. When they reach retirement age, victims must also choose between receiving conflict-related reparation or retirement pensions. This practice clearly defeats the purpose of granting reparation to victims for the harm suffered.

64. The authorities reported that as at November 2022, reparations had been granted to 2,197 families of Kosovo Liberation Army martyrs (out of 3,194 registered in reparation schemes) for a total amount of €1,001,237.97; to 3,633 families of killed civilian victims (out of 6,450 registered) for a total amount of €626,265.25; and to 36,802 Kosovo Liberation Army veterans – or to their families after death – (out of 42,159 registered), for a total amount of €6,143,335.50. The statistics reflect disparities in the amounts received in respect of Kosovo Liberation Army martyrs and civilians who had been killed, with the former receiving on average €455 and the latter receiving on average €172.

65. In 2014, pursuant to amendments made through Law No. 04/L-172, victims of conflict-related sexual violence were recognized as civilian victims. The amendment continues to exclude conflict-related sexual violence committed after June 1999, despite the numerous reported cases,²⁹ and must be urgently reviewed in order to redress the gap. Pursuant to the amendment, victims can apply to the Commission on Recognition and Verification of the Status of Survivors of Sexual Violence to receive victim status and related social benefits. Since its establishment, the Commission has received a total of 1,837 applications, out of which 1,382 applicants (1,314 women and 67 men) were granted survivor status.³⁰ In January 2023, the mandate of the Commission was extended until 2025 to allow victims to continue to submit requests. A draft law (No. 04/L-054) currently before the Assembly extends the deadline for applications for recognition of the status of victims of sexual violence until 15 May 2025 and has been subjected to public consultation. While noting the initiative, the Special Rapporteur recalls that to comply with international standards, the amendment should include an open-ended period for recognition of victim status, since statutes of limitations do not apply to crimes against humanity.

²⁸ See <https://www.scp-ks.org/en/background>.

²⁹ See <https://www.amnesty.org/en/wp-content/uploads/2021/05/EUR7075582017ENGLISH.pdf>, p. 15.

³⁰ Information provided by the Commission.

66. Survivors of conflict-related sexual violence in Kosovo are still severely stigmatized and marginalized by society in every aspect of life. Thus, the fear of stigma prevents many victims from speaking up, claiming their rights, and receiving reparation. To respond to this challenge, the 2014 law establishes mechanisms to protect victims from stigma and revictimization. Four civil society organizations financially supported by public institutions provide procedural and psychosocial support to applicants. Awareness-raising campaigns have also been adopted by public institutions and civil society to tackle stigmatization. Efforts to combat stigmatization must be maintained and strengthened.

67. With a lengthier time frame, the Law on Missing Persons (No. 03/L-023) determines the status of persons who went missing from 1 January 1998 to 31 December 2000 and the rights of their families. The law does not establish a reparations regime, so the rights of families of missing persons to compensation and benefits are regulated by Law No. 04/L-054. Several actors expressed concern that families of missing soldiers received preferential treatment, as they had access to additional benefits and larger compensation sums. The government advised that, as of 2022, reparation had been granted to 18 families of missing Kosovo Liberation Army members (out of 23 registered) for a total amount of €8,066.34 and to 306 families of missing civilians (out of 495 registered) for a total amount of €53,071.90. The data show that the former receive on average €448 per family and the latter receive on average €173 per family.

68. In 2021, the Working Group for Amending the Law on Missing Persons was established to review the status of and benefits for families of missing persons, a long-standing request of the families. An amended draft has not been finalized.

69. Law No. 03/L-95 on the Rights of Former Convicts and the Politically Persecuted, adopted in 2010, affords compensation and other benefits to this separate category of victims.

70. Besides the administrative procedures, the legal framework in Kosovo allows judges discretion to direct victims to a civil procedure for compensation after they have finished the criminal procedure.

71. Despite the reparations frameworks in place, many victims in Kosovo have not received adequate reparation due to the shortcomings in the legal framework, which need to be urgently addressed.

Rights of forcibly displaced persons

72. As at December 2019, there were approximately 16,000 internally displaced persons in Kosovo.³¹ A sample-based profiling exercise carried out among them revealed that struggles in access to health care affected 17 per cent of the Roma, Ashkali and Egyptians sampled, 7 per cent of the Kosovo Albanians sampled, 12 per cent of the Kosovo Serbs in private accommodation and 42 per cent of the Kosovo Serbs in collective centres. Sixty-seven per cent of the households of the internally displaced Roma, Ashkali and Egyptians sampled relied primarily on social benefits, as did 8 per cent of the Kosovo Albanians, 13 per cent of the Kosovo Serbs in private accommodation and 27 per cent of the Kosovo Serbs in collective centres. Illiteracy affected 18 per cent of the internally displaced Roma, Ashkali and Egyptians sampled.³²

73. The authorities reported that in response to these challenges, they had adopted the Regulation on the Return of Displaced Persons and Permanent Solutions, of 2018, had developed a centralized database of internally displaced persons and returnees, and had provided sustainable return support by means of subsidies and financial support, house construction and renovation, and the development of infrastructure and of water pollution treatment systems. To address the challenges facing Roma, Ashkali and Egyptian communities, they had adopted measures in the fields of employment, anti-discrimination

³¹ See <https://www.internal-displacement.org/sites/default/files/2020-04/GRID%202020%20E2%80%9320Conflict%20Figure%20Analysis%20E2%80%9320KOSOVO.pdf>.

³² See https://www.jips.org/uploads/2018/10/KosovoReport_IDP_Profiling_English_Pages_web-min.pdf, pp. 5 and 6.

and the advancement of rights. However, these were not specifically aimed at internally displaced persons or wartime victims.

74. Roma, Ashkali and Egyptian victims of lead poisoning in UNMIK-run camps for internally displaced persons have not received adequate reparation, despite the recommendation of the UNMIK Human Rights Advisory Panel. In 2017, the Secretary-General of the United Nations established a trust fund charged with implementing community-based assistance projects to benefit these communities, but it remains unfunded, despite United Nations-led resource-mobilization initiatives, and non-operational.³³ UNMIK implemented several confidence-building projects addressed to (and with the participation of) affected communities. These initiatives are much welcomed but fall short of effective reparation standards under international law.

D. Memorialization

75. The memorialization of the conflict in Kosovo is largely mono-ethnic and is permeated by nationalist/ethnocentric discourses about the conflict and its victims along the political and administrative lines in Kosovo. Memorials established by central authorities in Kosovo and authorities in Kosovo Albanian-majority municipalities are mainly dedicated to commemorating Kosovo Albanian civilian victims and fallen soldiers of the Kosovo Liberation Army. In Serb-majority areas, most memorials commemorate Kosovo Serb victims or are in remembrance of war campaigns against Serbia. Civil society has denounced the lack of solidarity with all victims and the ethnocentrism and politicization of memory in the official commemorative practices of Kosovo Albanian and Kosovo Serb officials. Other remembrance days, symbols, commemorations and rituals also have an ethnonationalist focus. The plight of Roma, Ashkali and Egyptians is not memorialized.

76. Numerous memorials have been built and preserved by families' and veterans' associations. However, in most cases, memorials commemorate the fallen heroes and civilian victims of one ethnic group. Some memorials have been reportedly vandalized.

77. Few memorials inclusive of victims of all ethnicities have been erected, either by the authorities or by civil society. The government established a monument dedicated to missing persons, near the Kosovo Assembly, and another one commemorating victims of conflict-related sexual violence, in the centre of Pristina. The latter was, however, designed without proper consultation with victims and the inscription on it is in the Albanian language only. Some civil society organizations have created exemplary inclusive memorialization initiatives, such as the "Once upon a time, never again" exhibition in honour of the 1,113 children of different ethnic groups killed or disappeared between 1998 and 2000, and the Virtual Museum of Refugees which recognizes the plight of refugees of all ethnic groups from the Kosovo conflict.

78. The government provided information about a planned memorial for children killed during the conflict in Kosovo in 1998 and 1999, and about the commission on documenting damage caused to the cultural heritage during the 1998–1999 war. The scope of these initiatives, as regards time, appears to exclude victims killed after 1999 as well as Orthodox religious monuments attacked in 2004. In addition, a memorial dedicated to victims of the April 1999 massacre, mostly Kosovo Albanian civilians from Catholic and Muslim religious backgrounds, was erected in Mejë/Meja village. Memorials commemorating victims of deportations stand in Mitrovicë/Mitrovica and Bllacë/Blace, from where 1 million people from Kosovo were deported.

79. In 2013, the Agency for the Management of the Memorial Complexes of Kosovo was established by law, with responsibility for the design, construction, administration and management of memorial complexes. The Agency has established a register of 1,369 memorials, and has constructed 154 memorials, 42 of which commemorate 2,843 civilian victims of massacres.

³³ See <https://www.ohchr.org/en/special-procedures/sr-toxics-and-human-rights/lead-contamination-kosovo#:~:text=Case%20background,on%20lead%2Dcontaminated%20toxic%20wasteland.>

80. The shortage of public efforts aimed at commemorating victims of all ethnic backgrounds and at enabling a pluralistic debate about wartime events hampers mutual understanding and sows social division. Further progress in this area will be vital for reconciliation.

E. Guarantees of non-recurrence

Institutional and legal reform

81. Following the conflict, the international community oversaw the institution-building and reform of the security sector and the judicial sector. New security and military agencies were established, such as the Kosovo Protection Corps, under Kosovo Force (KFOR) control, and subsequently the Kosovo Security Force. After the demobilization, disarming and reintegration of the Kosovo Liberation Army, its former members were integrated into civil life, and some were incorporated into the newly created security forces. UNMIK and the Organization for Security and Cooperation in Europe (OSCE) mission in Kosovo oversaw the police institution-building process, which entailed the establishment of the Kosovo Police Service in 1999, and of its successor, the Kosovo Police, in 2008, the creation of a police academy and a police inspectorate, and the recruitment and training of police officers, including demobilized Kosovo Liberation Army members. The Kosovo Security Council and the Kosovo Intelligence Agency were established in this period. A series of new norms, developed with the support of the international community, underpinned the security sector institution-building process in Kosovo.

82. The judiciary was restructured and reinforced (including with international staff for a period) after the conflict, led by UNMIK, and training was provided to judicial and prosecutorial officials with support from the international community. Despite the progress achieved in the judicial sector, the European Commission recently noted that Kosovo was still at an early stage in developing a well-functioning judiciary; it was still inefficient, slow, inadequately coordinated and vulnerable to undue political influence, and the existing tools to ensure independence and integrity were insufficiently implemented.³⁴ In 2021, the government announced a judicial vetting process, which was criticized by members of the judiciary and discouraged by international partners, and is currently being implemented.

83. Although Kosovo cannot ratify international human rights instruments, the main instruments are included in the Constitution, are directly applicable, and have precedence over domestic legislation.

Education, culture, the media and minority rights

84. The Special Rapporteur has noted with concern ethnocentric and one-sided narratives about the conflict and its victims in the fields of education, culture and the media, which hamper mutual understanding, social cohesion and, ultimately, sustainable peace. Communication in the public sphere, including the media, the arts and history teaching, does not seem to contain inclusive and comprehensive narratives about the conflict or allow all voices of victimhood to take centre stage. Kosovo Albanians and Kosovo Serbs live in segregated communities and grow up receiving opposing public information about the conflict.

85. Students follow different school curricula depending on whether they attend Kosovo-administered or Serbian-administered schools, or mixed schools where there is no interaction between children of different ethnic groups. Textbooks used in both systems contain elements of nationalism and bias. Teaching about the conflict is permeated by the prevailing narratives of the majority in the administrative area in which the children live, and the plight of minority victims is thus excluded from textbooks. This constitutes a persistent challenge for Roma, Ashkali and Egyptians, as they are minority members in all regions. The authorities reported that the educational curriculum included human rights and promoted the values of mutual understanding, cultural diversity and coexistence; and that learning in the student's mother

³⁴ See https://ec.europa.eu/commission/presscorner/detail/en/country_22_6090 and https://ec.europa.eu/commission/presscorner/detail/de/COUNTRY_19_2776.

tongue was guaranteed to all citizens. Civil society reported insufficient progress in introducing plural perspectives in history education about the conflict.

86. Media outlets, including the Kosovo public broadcaster, further ethnocentric, politically divisive, and one-directional narratives. Some artistic expression targeted at youth fervently appeals to ethnocentric sentiments. Sensationalist and reckless reporting have on occasions led to grave instances of inter-ethnic violence, such as the campaign against Kosovo Serbs and Orthodox monuments of 2004. There have also been concerning reports of instances of hate speech, defamation and insults, primarily between the different ethnic groups in Kosovo.

87. The Office of the Language Commissioner, and victims from minority communities interviewed by the Special Rapporteur, reported that minorities' access to public services, information, employment and other rights was hampered by insufficient translation of government documentation into minority languages. The government reported that it had developed the "Development of bilingualism in public security institutions" programme, a digital Albanian-Serbian dictionary of 40,000 words and an online platform of Albanian and Serbian language courses to tackle this challenge.

Glorification of war criminals and denial of atrocity crimes

88. The Special Rapporteur received reports of worrying conflict-related statements from public officials and politicians, including denial of war crimes, and of criticism of officials who had tried to honour victims from other ethnic groups. He also received concerning reports about convicted war criminals holding public office, including in high-ranking positions.

V. Conclusions

89. **The search for and identification of missing persons and the pursuit of criminal justice has, rhetorically and factually, dominated the transitional justice agenda in Serbia and Kosovo since the end of the conflict. Numerous efforts by local and international actors have led to substantial progress, particularly in the search for missing persons. In recent years, progress has stalled alarmingly, driven by lack of cooperation among the authorities in Belgrade and Pristina. The politicization of the search for missing persons and the manipulation of its humanitarian mandate for political gain have caused immense frustration in civil society and the international community, but above all among victims. The families of missing persons find themselves hostage to political interests, and to the unwillingness of authorities who do not take the necessary measures to put an end to their suffering. The lethargic prosecution and conviction rate, prompted by insufficient political will despite increased human and technical capacities, further exasperates the grievances of victims, weakens the rule of law and inhibits the path to non-repetition.**

90. **It appears as if decision makers in Serbia and Kosovo have embarked on a downward race in their truth-seeking and criminal accountability agendas, where political praise is awarded by each party for achieving lesser rather than greater results. This destructive race to the bottom is violating the rights of victims, hampering social cohesion, undermining institutional trust-building and, ultimately, preventing sustainable peace. The Special Rapporteur urges the relevant authorities in Serbia and Kosovo to immediately cease the use of politicized tactics in their transitional justice agendas and to put the pressing needs of victims, and those of society as whole, at the centre of all legal, policy and technical decisions and actions in these areas.**

91. **Many victims in Serbia, and to a lesser but still considerable extent in Kosovo, have not received adequate reparation, due to the shortcomings in the respective legal frameworks that fail to recognize and to afford equal rights and benefits to all categories of victims. In Kosovo, the stigmatization of victims of sexual violence substantially hinders access to rights and reparation for this category of victims, and requires urgent attention.**

92. The Special Rapporteur is concerned about the insufficient recognition and memorialization in Serbia and Kosovo of the harm suffered by all conflict-related victims. He would like to recall that in order for peacebuilding efforts to be effective, acknowledgement of the suffering and dignity of all victims is vital, as is the transmission of their stories to current and future generations. The legacy of past violations in all its complexities must be adequately and comprehensively addressed to assist in the process of social reconciliation, placing the victims at the centre of this process and ensuring that perpetrators are held accountable. Enabling conflict-affected societies and victimized populations to explain a brutal past – without justifying or denying it – eases existing tensions and allows society to live more peacefully with the legacy of past divisions.

93. The Special Rapporteur is alarmed about the continued use of ethnocentric, nationalist and/or biased or incomplete narratives about the conflict in politics, the media, culture and education in Serbia and Kosovo. The manipulation of past events and the concomitant exaltation of nationalistic and ethnic-related sentiments for political reasons, even if it appears to provide short-lived political gain for its supporters and perpetrators, is not only illegitimate and contrary to international standards, but also short-sighted, ill-advised and above all an act of utmost public irresponsibility which can lead to the recurrence of past violence. The Special Rapporteur urges the authorities in Serbia and Kosovo to immediately halt the exaltation of nationalistic and divisive feelings in public action and discourse. Negligence in this regard can and will only be construed as liability.

94. Since the end of the conflict, the authorities in Serbia and Kosovo have undertaken efforts to address certain aspects of the legacy of the conflict. While the Special Rapporteur commends the progress made, he wishes to recall that effective transitional justice processes require the adoption of a comprehensive approach in the fields of truth, justice, reparation, memory and guarantees of non-recurrence. He calls on the authorities in Serbia and Kosovo to renew their efforts and cooperation to advance the transitional justice agenda. Its success will be crucial to achieve effective reconciliation and sustainable peace.

VI. Recommendations

A. Recommendations addressed to the authorities in Serbia

95. Adopt without delay a law that recognizes the status of missing persons and their families in compliance with international standards.

96. Allocate sufficient resources for and accelerate the search for and identification of missing persons, including in areas indicated by counterparts in Kosovo, on the basis of objective, transparent and non-discriminatory criteria. Urgently resume cooperation with the relevant authorities in Kosovo, particularly the Working Group on Missing Persons chaired by the International Committee of the Red Cross, including at the level of heads of delegation, and in the region.

97. Ensure urgent, unrestricted and continued access to all information and archives available to State institutions that can facilitate the search for and identification of missing persons.

98. Adopt official initiatives aimed at comprehensively establishing the truth and collecting data and victims' testimonies of all conflict-related violations, and guarantee the preservation of and public access to the information gathered. Support related civil society efforts.

99. Allocate sufficient resources for and accelerate the prosecution and adjudication of war crime cases at all levels of hierarchy in a non-discriminatory manner, regardless of the ethnicity of the victim and of the perpetrator. Immediately establish cooperation with prosecutorial and judicial counterparts in Croatia as well as in Kosovo.

100. Provide effective and comprehensive witness protection services to wartime victims and witnesses and ensure that all cases of threats or intimidation against them are thoroughly and impartially investigated, prosecuted and sanctioned.
101. Provide free legal aid to wartime victims.
102. Adopt a comprehensive legal framework that recognizes the status of all categories of wartime victims and provides full and effective reparation (including compensation, rehabilitation, restitution and satisfaction) to all without discrimination.
103. Accelerate the processing of reparation claims filed in courts, halt the application of the statute of limitations to these cases, and remove legal expenses imposed on victims-plaintiffs.
104. Accelerate the realization of rights and the establishment of adequate socioeconomic conditions, free from discrimination, for all forcibly displaced persons and returnees.
105. Adopt comprehensive memorialization policies and legislation that entail plural and accurate accounts of past violations (as established by international and domestic courts) and narratives of victimhood, define objective criteria and processes for establishing memorials in full compliance with international standards, and facilitate memorialization efforts of victims and their families without restriction or discrimination. Ensure adequate signage for and preservation of all war crimes sites.
106. Repeal any regulations or policies that prevent victims from establishing memorials or marking conflict-related sites.
107. Strengthen policies in the fields of education, culture and the media in order to: (a) prevent the intrusion of nationalist divisive sentiments; (b) foster a democratic, pluralistic and enabling environment for members of society to engage on these topics respectfully; (c) provide society with plural, comprehensive and accurate accounts of past violations (as established by international and national courts); and (d) educate about the history and culture of ethnic minorities and their contribution to society, with a view to promoting mutual understanding, cultural diversity and coexistence.
108. Identify, investigate and hold accountable perpetrators of threats and attacks against journalists and human rights defenders working on transitional justice or wartime issues, and ensure an enabling working environment for these actors.
109. Monitor, investigate, publicly condemn, and where necessary prosecute and sanction, instances of hate crime and incitement to violence on national, ethnic or religious grounds.
110. Address instances of glorification of war criminals and denial of war crimes established by international and domestic courts, in full compliance with international human rights standards.
111. Adopt effective vetting processes to ensure that convicted or indicted war criminals are not appointed to or selected for public office.
112. Ensure that victims, minority groups and civil society actively participate in the design and implementation of all transitional justice processes.

B. Recommendations addressed to the authorities in Kosovo

113. Allocate sufficient resources for and accelerate the search for and identification of missing persons, including in areas indicated by Serbian counterparts, on the basis of objective, transparent and non-discriminatory criteria. Urgently resume cooperation with the relevant authorities in Serbia, particularly the Working Group on Missing Persons chaired by the International Committee of the Red Cross, including at the level of heads of delegation.

114. **Adopt official initiatives aimed at comprehensively establishing the truth and collecting data and victims' testimonies of all conflict-related violations, and guarantee the preservation of and public access to the information gathered. Support related civil society efforts.**
115. **Ensure urgent, unrestricted and continued access to all information and archives available to public institutions that can facilitate the search for and identification of missing persons.**
116. **Allocate sufficient resources for and accelerate the prosecution and adjudication of war crime cases at all levels of hierarchy in a non-discriminatory manner, regardless of the ethnicity of the victim and of the perpetrator. Immediately establish cooperation with prosecutorial and judicial counterparts in Serbia.**
117. **Provide effective and comprehensive witness protection services to wartime victims and witnesses and ensure that all cases of threats or intimidation against them are thoroughly and impartially investigated, prosecuted and sanctioned.**
118. **Provide free legal aid to wartime victims.**
119. **Ensure that the legal and administrative reparation framework: (a) recognizes the status of all categories of wartime victims, including those who suffered harm beyond June 1999 and until December 2000; (b) provides equitable, full, prompt and effective reparation to all; and (c) does not force victims to choose between different forms of reparation or social benefits owed to them.**
120. **Ensure an open-ended period for status recognition for victims of conflict-related sexual violence under draft law No. 04/L-054, in view of the nature of this crime and the stigma associated with it.**
121. **Adopt measures in the areas of administration, education, culture and the media to urgently address the social stigma associated with the harm suffered by victims of conflict-related sexual violence, and its effects on victims.**
122. **Accelerate the realization of rights and the establishment of adequate socioeconomic conditions, free from discrimination, for all forcibly displaced persons and returnees.**
123. **Adopt comprehensive memorialization policies and legislation that entail plural and accurate accounts of past violations (as established by international and domestic courts) and narratives of victimhood, define objective criteria and processes for establishing memorials in full compliance with international standards, and facilitate memorialization efforts of victims and their families without restriction or discrimination. Ensure adequate signage for and preservation of war crimes sites.**
124. **Strengthen policies in the fields of education, culture and the media in order to: (a) prevent the intrusion of ethnocentric divisive sentiments; (b) provide society with plural, comprehensive and accurate accounts of past violations (as established by international and domestic courts); (c) foster a pluralistic enabling environment where members of society can engage on these topics respectfully; and (d) educate about the history and culture of ethnic minorities and their contribution to society, with a view to promoting mutual understanding, cultural diversity and coexistence.**
125. **Consider implementing a common core educational curriculum in all administrative entities, including on sensitive subjects such as history and geography, in consultation with victims, minorities and civil society.**
126. **Adopt effective vetting processes to ensure that convicted or indicted war criminals are not appointed to or selected for public office.**
127. **Adopt the necessary measures to ensure an independent and efficient judicial system.**
128. **Address instances of glorification of war criminals and denial of atrocity crimes established by international and domestic courts, in full compliance with international standards.**

129. Monitor, investigate, publicly condemn, and where necessary prosecute and sanction, instances of hate crime and incitement to violence on national, ethnic or religious grounds.

130. Ensure that victims, including all affected minorities, and civil society actively participate in the design and implementation of all transitional justice processes.

C. Recommendations addressed to the international community

131. Regional and international partners should consider providing, or maintaining, support to the unfinished transitional justice process in Serbia and Kosovo, with a particular focus on: (a) promoting the acceleration of criminal accountability and the search for missing persons; (b) addressing the shortcomings of reparation frameworks to ensure access for all victims; and (c) countering nationalist and ethnocentric divisive agendas in memorialization, education, culture and the media.

132. The European Union should consider instituting, as part of the accession negotiations of Serbia and Kosovo, mechanisms to comprehensively assess, and to monitor with a long-term focus, the progress made in achieving a comprehensive transitional justice process.

133. The United Nations presence in Kosovo should consider providing a more coordinated support to the transitional justice process and to victims of the conflict.

134. The United Nations should acknowledge responsibility for the harm done and provide full and effective reparation to victims of lead poisoning at UNMIK-run camps in Kosovo for internally displaced persons, including by adopting a fully funded reparation programme. States and other donors are urged to financially support the relevant United Nations trust fund.

135. The International Committee of the Red Cross should consider continuing to actively chair and support the activities of the Working Group on Missing Persons.
