

**HUMAN RIGHTS REVIEW PANEL’S *WHITE PAPER* –**

**A JOINT STRATEGY TO PROVIDE JUSTICE IN CASES OF ENFORCED DISAPPEARANCE**

1. **BACKGROUND TO THE PRESENT PAPER**

The conflict in Kosovo was marked by a large number of instances of (enforced) disappearance where victims and their remains could not be located.

Many of these cases were brought to the attention of the authorities – local and international.

UNMIK, which dealt with a number of these cases, was strongly criticized by the Human Rights Advisory Panel (“HRAP”) for what the HRAP considered to be serious investigative failures and omissions.

Local investigative and prosecutorial authorities likewise generally failed to deal in a meaningful and effective manner with this category of cases.

Disappearance cases – including cases earlier dealt with by the HRAP – subsequently came before EULEX’s Human Rights Review Panel (“HRRP”). Some of these cases have now resulted in findings that EULEX too had failed to conduct effective investigations of these cases. Other cases are presently pending before the Panel and are yet to be dealt with. They reflect many of the same features.

Following meetings between the Panel and EULEX’s Head of Mission and the European Union Special Representative for Kosovo on 17 October 2016, it was proposed that the Panel should submit a short note outlining the challenges posed by these cases from the point of view of human rights law and offer possible avenues of relief to deal with such cases.

1. **ACCOUNTABILITY GAP IN RESPECT OF CASES OF DISAPPEARANCE**

The United Nations has done little or nothing to address the findings and recommendations of the HRAP. It is no longer competent to deal with those cases.

Local authorities have taken no apparent steps to further investigate (and/or prosecute) such cases and there is no indication that, without further incentive, they will be addressed by those authorities.

As for the HRRP, it has made recommendations to EULEX’s Head of Mission. These, however, provide no guarantee that they will result in effective investigations of these cases.

Whilst some of these cases might form part of cases before the newly created Specialist Chambers, this could ever cover a fraction of all pending cases.

This situation has effectively resulted in the absence of accountability for these crimes and rights violations. This constitutes a clear violation of the rights of the disappeared and those of their close relatives (including their rights to justice; their right to truth; their right to an effective remedy; as well as their procedural rights in relation to other guaranteed fundamental rights).

1. **THE NEED FOR A HOLISTIC APPROACH – THE CASE FOR A COMMON, NON-JUDICIAL, APPROACH**

A multiplicity of organisations have been or are involved with the issue of disappearances linked to the Kosovo conflict. This includes, *inter alia*, EULEX’s Head of Mission, the EU’s Special Representative for Kosovo, the SPRK, the HRRP, the HRAP, the OSCE, the Red Cross, etc. Their efforts have, for the most part, remained individualized and estranged of one another. There appears to have been little efforts on the part of some of those organisations to coordinate efforts and centralize relevant records. This has resulted in duplication of efforts, waste of resources and information collections being disseminated.

It is suggested that a new approach to this issue is necessary to ensure the effective protection of the rights of the disappeared and their close relatives. As a basic preliminary step, it is essential that any such initiative should ensure that all relevant organisations are invited to participate and to contribute to that initiative within the scope of their responsibilities and expertise. The Head of Mission and/or the EU’s Special Representative would be ideally placed to help centralize those individual contributions.

It is suggested that a basic, three-tiered, approach should be adopted for the purpose of creating an effective procedure to deal with those cases:

***Preliminary steps – Verifying, recording and centralizing of records***

1. Each and all organisations dealing with this issue should be identified and contacted. They should be informed about the existence and nature of the initiative and asked to designate a contact person or focal point to assist that initiative.
2. A register of cases of disappearance should be prepared, updated and maintained that centralize all relevant individual records of such cases together with the information pertaining to them. This joint record should be available to each/all these organisations.
3. Each of the organization should be asked to review their respective records and identify any material in its possession relevant to these cases. Where such material is identified, it should be submitted to a centralizing authority that would be responsible for keeping detailed records of these cases.
4. Efforts should be made, in each case, to identify surviving relatives of the disappeared. They should be informed of the existence of the process and be invited to provide any information that they might have in their possession in regard to those cases.

***Criminal investigations***

1. Un-investigated or inadequately investigated disappearance cases should be treated as “extraordinary” cases in accordance with Article 7(A) of the Amended Law on Jurisdiction and thus come within the competence of EULEX. These cases should be treated as investigative priorities by EULEX.
2. Each and all of these cases should be subject to an expeditious and detailed review by SPRK. A specialized, designated, group of international prosecutors should be tasked with the review of those cases with a view to determining whether any additional investigative step(s) should be taken in relation to any particular case. If such steps are identified, they should be promptly and effectively taken by SPRK.
3. In relation to those cases for which no further investigative steps are reasonably open, they should be listed in the record of cases as having been stayed for lack of sufficient information.
4. Once these further investigative steps have been taken, EULEX Prosecutors should without delay determine whether to bring such cases to trial or it should render a reasoned explanation for its decision not to do so. For cases not prosecuted, they should be added to the list of cases that have been stayed for lack of sufficient information.

***A non-penal fact-finding and reparatory mechanism***

1. For all those cases that are evidentially incapable of a criminal prosecution, another route to justice should be provided.
2. It is suggested that consideration should be given to creating a non-judicial fact-finding body – similar in kind to certain national commissions of inquiry – that would be tasked with
3. Reviewing the record of each case;
4. Make detailed factual findings based on the information available as regard the circumstances surrounding each case of disappearance, thus guaranteeing some level of truth and recognition to the victims;
5. Formally acknowledge the status of the disappeared and their close relatives as victims of rights violations;
6. Where relevant and at its discretion, hear the testimony of relevant witnesses (in particular, close relatives of the disappeared);
7. Provide non-monetary forms of reparation (including acknowledgment as victims of rights violations);
8. Should a fund be established for that purpose, this money could be used in a variety of possible ways, e.g.:
9. Medical and psychological assistance to relatives;
10. Monetary reparation to the victims;
11. Financing of research projects on the Kosovo conflict;
12. Financing of joint events or remembrance occasions for victims’ families.