

THE RIGHT TO KNOW:

FAMILIES STILL LEFT IN THE DARK IN THE BALKANS

The enforced disappearance and abduction of tens of thousands of people constitutes one of the most serious unresolved human rights violations from the armed conflicts in the Balkans in the 1990s and 2001. These violations cannot be consigned to the past. They result in ongoing, daily pain for the relatives still waiting to know the fate and the whereabouts of their loved ones, still searching for truth, justice and reparations.

Since 1991, 34,700 people have been reported to the International Committee of the Red Cross (ICRC) as missing in the whole territory of former Yugoslavia, of which around 30,000 are from Bosnia and Herzegovina (BiH). Some 14,000 people remain unaccounted for. Of these, more than 10,500 are linked to the conflict in BiH, 2,400 to the conflict in Croatia and some 1,800 to the conflict in Kosovo. The ICRC estimates that these missing people affect the lives of another 200,000 people who still search for their family members.

Enforced disappearances and abductions constitute a crime under international law, and in certain circumstances can amount to a crime against humanity or a war crime. The governments of Croatia, BiH, the former Yugoslav Republic of Macedonia (Macedonia), Montenegro, Serbia and Kosovo have failed to abide by their obligations, as set out in international law, to investigate and prosecute enforced disappearances and abductions, and to bring those responsible to justice.

Lack of investigations and prosecutions into war crimes related to enforced disappearances and abductions remains a serious concern throughout the Balkans. There are continuing obstacles to the investigation and prosecution of war crimes, crimes against humanity and genocide. This occurs especially where members of the government, ruling political parties and their allies, and members of the military and police forces are suspects. The governments have also failed to provide adequate, effective and prompt reparation to the victims and their families.

Although some perpetrators have been brought to justice, many more are still at large. The International Criminal Tribunal for the Former Yugoslavia (ICTY) is nearing the end of its mandate, but domestic courts in the region have been slow to abide by their responsibility to seek out, identify and prosecute the remaining perpetrators.

This document brings together examples of cases of enforced disappearances and abductions from five countries in the former Yugoslavia. Many cases of enforced disappearances and abductions are far from resolved and victims are still waiting for justice. The governments in the region must commit to addressing these crimes.

What are enforced disappearances and abductions?

The International Convention for the Protection of All Persons from Enforced Disappearance specifies enforced disappearance as when:

- There is an arrest, detention, abduction or any other form of deprivation of liberty.
- That conduct is carried out by agents of the state or by persons or groups of persons acting with the authorization, support or acquiescence of the state.
- The conduct is followed either by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which places such a person outside the protection of the law.

Amnesty International distinguishes enforced disappearance – in which state agents are directly or indirectly involved – from abduction carried out by non-state actors, such as armed opposition groups.

Every enforced disappearance and abduction violates a range of human rights including: the right to security and dignity of person, the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, the right to humane conditions of detention, the right to a legal personality, right to a fair trial, the right to a family life, and when the disappeared person is killed, the right to life. As enforced disappearances can violate several human rights simultaneously, they have been referred to as “multiple” or “cumulative” human rights violations.

The right to justice and adequate and effective reparation for all victims

The governments must ensure that all victims and their families have access to justice and receive, without further delay, adequate and effective reparation for the harm they have suffered.

The victims of enforced disappearance come from different ethnic groups and from all walks of life: some were soldiers, some civilians. They include men, women and children. Their relatives are themselves victims of a human rights violation. In the majority of cases those responsible have not been brought to justice and the trauma of the relatives of the disappeared has not been healed. The families have no information about either the fate or the whereabouts of their loved ones. They do not know if they will ever return, so they cannot mourn and adjust to the loss. Their anguish is often exacerbated by poverty if the missing person was the mainstay of the family's finances.

Each victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and the result of the investigation and the fate of the disappeared person. The governments must take all appropriate measures to search for, locate and release disappeared persons and, in the event of death, to locate, respect and return their remains. For the families of the victims, the return of the body of their loved ones for burial is the first step towards achieving justice. From the perspective of some families, this may be the most important step.

The victims of enforced disappearance also have the right to obtain reparation and prompt, fair and adequate compensation. The right to obtain reparation covers material and moral damages and, where appropriate, other forms of reparation such as: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

International Convention for the Protection of All Persons from Enforced Disappearance (ICCPED)

The duty to investigate and prosecute enforced disappearances and abductions is set out in the International Convention for the Protection of All Persons from Enforced Disappearance.

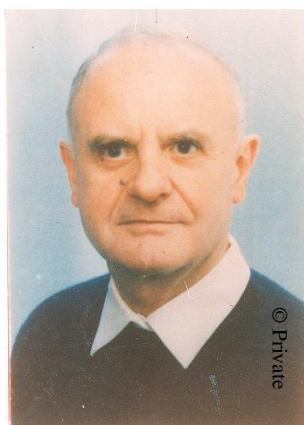
The Convention aims to ensure that states establish the truth about enforced disappearances, bring perpetrators to justice, and provide full reparations to victims and their families. In the Balkans, the Convention has so far been ratified by Serbia in May 2011, Montenegro in September 2011 and Bosnia and Herzegovina in March 2012. The governments of Croatia and Macedonia are yet to ratify it.

Ratification of the Convention by Croatia and Macedonia must include making declarations under Article 31 and 32 recognizing the competence of the Enforced Disappearance Committee to receive and consider communications from or on behalf of individuals claiming to be victims of enforced disappearance or abduction. These declarations are of the utmost importance since the Committee cannot admit any case from a State Party that has not made such a declaration. To date, BiH has ratified the Convention but has not made these declarations.

CROATIA

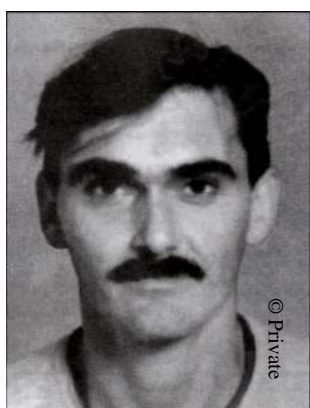
During the 1991-1995 war between the Croatian Army and Croatian Serb armed forces, aided by the Yugoslav People's Army, war crimes were committed by both sides. Twenty years later, many of those crimes, including enforced disappearances and abductions, remain unaddressed.

Of the 6,406 people reported to the ICRC as missing in Croatia, it has been possible to establish the fate of 4,084. More than 2,300 people remain missing out of which 1,735 are Croatian citizens. Information has still not been made available regarding the whereabouts of the graves of many missing persons. In addition, there are 900 sets of remains awaiting identification in mortuaries and several hundred sets of remains that have yet to be exhumed from known gravesites. The relatives of the victims are still denied access to justice and adequate and effective reparation.



Vladimir Urban, an ethnic Croat and a retired Yugoslav People's Army Colonel, disappeared on 17 November 1991 in Vukovar while fighting in the Croatian Army as a Lieutenant Colonel. The only information the family received after his disappearance was in December 1991 from Croatian prisoners returning from the Serbian camp in Niš, Serbia, where Vladimir was allegedly seen by dozens of people, including by Zvonko Ruskaj. Holding a photo of Vladimir while speaking to Vladimir's family in January 1992, Zvonko confirmed "Yes, he is in Niš and he is alive. But, you know, he doesn't look like himself anymore. He is very skinny and you can see the mole on his face a lot clearer now. His hair is long and curly, like a black man's

hair." Vladimir was also allegedly seen by Ivan Kovačić, just before he was transferred to Niš from camp in Stajićevo, Serbia. The family has not received any other information about Vladimir since. They are still hoping to uncover his fate and bring to justice those responsible for his disappearance.



Milorad Milosavljević, the son of Croatian Serbs, was 27 years old when he was on active duty with the army of the Republic of the Serbian Krajina during operation "Flash". He was reportedly captured by the Croatian Army on 3 May 1995 in Benkovac near Okučani, Croatia and, on the same day, was seen on Croatian television being interviewed by a Croatian journalist. He has not been seen since. Milorad's family have received no information from the authorities about either the fate or the whereabouts of Milorad or any investigation into his disappearance.

It is the responsibility of both Croatian and Serbian authorities to provide the families of the missing with answers regarding the whereabouts and fate of their loved ones. They must also ensure that those responsible for the enforced disappearances and abductions face justice. So far both governments have failed to fully live up to those obligations. As a result, victims and their families are denied the right to truth, justice and reparation and the majority of perpetrators remain at large.

Croatia is expected to join the EU in 2013; Serbia still awaits a date for the start of negotiations. During the accession process, Croatian authorities made statements about their commitment to resolving the outstanding issue of impunity for war crimes, including for enforced disappearances. Despite recent progress made by both the Croatian and the Serbian judiciary in addressing impunity, there are still many barriers to the effective investigation and prosecution of war crimes in both countries, including enforced disappearances and abductions, which have not been adequately addressed by either government. There is a lack of political will to recognize crimes committed by the Croatian armed forces against Croatian Serbs.

It is also crucial that the Croatian Government allocates adequate financial resources and provides full political support to the Croatian justice system so that prosecutors and courts are able to carry out their work independently and effectively. Both the Croatian and the Serbian authorities must urgently improve witness protection measures, including technical and material conditions in the courts to allow full protection of witnesses' identities.

Both the Croatian and the Serbian government must increase the number and quality of prosecutions, improve processes for the identifying and returning the bodies of missing persons and ensure effective access to reparations for their relatives.

BOSNIA AND HERZEGOVINA

Victims of crimes committed during the 1992-1995 war and their relatives in Bosnia and Herzegovina (BiH) are still being denied access to justice and to adequate and effective reparation. Out of a population of 3.4 million at the end of the conflict in 1995 an estimated 30,000 people were reported as missing. The fate of an estimated 10,500 people, most of whom are Bosnian Muslims (Bosniaks) but also Bosnian Croats and Bosnian Serbs, remains unknown. The families of more than 7,000 people deliberately and arbitrarily killed in 1995 in the Srebrenica genocide are still waiting for justice and reparation. Many alleged perpetrators continue to live in the same communities as their victims and their families.

Some progress has been made in recent years. High-ranking political and military leaders allegedly responsible for crimes committed in Srebrenica, including former Bosnian Serb leader Radovan Karadžić and Bosnian Serb general Ratko Mladić, have been put on trial by the ICTY. However, despite progress which has been made in the search for and identification of the disappeared as well as the prosecution of crimes in BiH, much remains to be done to fulfil the rights of the disappeared and their families to justice and reparation.

The major obstacle to bringing perpetrators to justice is a persistent lack of political will. As a result, the justice system lacks the necessary resources to effectively investigate and prosecute these crimes. Political obstruction of the functioning of the Court of BiH and an ongoing climate of impunity has been perpetuated by statements by high ranking politicians that deny that certain crimes were committed during the armed conflict. Thus, in the absence of commitment to implement the State Strategy for War Crimes, there is a backlog of more than 1,300 registered cases. There is a limited co-operation and co-ordination between state and entity institutions, which negatively impacts on the effective planning of the workload of prosecutors and courts, as envisaged by the Strategy. Further, the definition of enforced disappearance in the Criminal Code of BiH is not in line with the ICCPED, as it cannot be regarded as an autonomous crime, which means that it can only be punished if qualified as a crime against humanity.

The non-implementation of the 2004 Law on Missing Persons of BiH creates many problems for the families of the disappeared. This includes the failure to establish the independence of the Missing Persons Institute, the non-existence of the Fund for Providing Assistance to the Families of Missing Persons, and the failure to establish an operational Central Records for the Missing Persons. There is also a lack of adequate funding for exhumations of grave sites and the identification of victims.

As a result, the families of the missing are unable to obtain information about the fate and whereabouts of their loved and are being denied access to justice and to adequate and effective reparation.

Avdo Palić, Dragan Mitrović and Father Tomislav Matanović are only three of the thousands of victims of enforced disappearances committed by members of armies, police forces and paramilitary groups involved in the 1992-1995 war.



Avdo Palić was subjected to enforced disappearance on 27 July 1995. He was a war-time commander of the Army of the Republic of Bosnia and Herzegovina in the UN “safe haven” of Žepa. He had gone to the UN Protection Forces compound in Žepa in eastern BiH to negotiate the evacuation of civilians from the town, which had surrendered to the Bosnian Serb Army. He succeeded in saving Žepa’s civilian population, but was taken away by soldiers. On 5 August 2009, eight years after a number of

bodies were exhumed, the International Commission for Missing Persons (ICMP) identified his remains as being among them. His widow Esma campaigned to force the government of the Republika Srpska (RS) to investigate the case and bring perpetrators to justice. She filed lawsuits in the State Court of BiH and the European Court of Human Rights in Strasbourg. In January 2002 she received financial compensation from the government of the RS, but she is still waiting for justice to be done.



Dragan Mitrović, a soldier in the Army of Republika Srpska (VRS), disappeared after his capture near the city of Jajce, on 16 September 1995. His unit was captured by the Croatian Council of Defence during a joint operation with the Bosnian Government. On 17 September, he appeared in a report on Croatian television which had filmed the capture of the area. Despite his appearance in the television report, the Bosnian Government and de facto Bosnian Croat authorities have subsequently provided no information about his whereabouts.



Father Tomislav Matanović, the Croatian Roman Catholic parish priest of Prijedor in north-western BiH, was arrested by the local Serb police on 24 August 1995 and detained in the Prijedor police station overnight. The following day he was taken to the house of his parents Josip and Božena Matanović, and all three were placed under house arrest. The Matanović family remained in detention, guarded at all times by local police officers until 19 September 1995, when they were taken to the Urije police station. They were not seen alive again. In September 2001 the remains of three handcuffed bodies were found at the bottom of a well in the village of Biščani, near Prijedor, by Bosnian Muslim refugees

who were returning home. Forensic tests identified the bodies as Father Matanović and his parents.

In January 2003, 11 former policemen were charged with war crimes in connection with the illegal detention of the Matanović family. The trial opened in May 2004 and on 11 February 2005 all suspects stood trial for the illegal detention of Tomislav and his family, but the case collapsed due to lack of evidence. Another investigation by the RS Ministry of Interior in co-operation with the RS Chief Prosecutor was still ongoing in October 2011. None of the 11 former police officers have been charged with the murders.

MACEDONIA

The armed conflict in Macedonia between the ethnic Albanian National Liberation Army (NLA), and the Macedonian security forces escalated from the start of January 2001. An agreement was reached in Ohrid between the parties in August 2001, setting the groundwork for improving the rights of ethnic Albanians. Victims of crimes committed during the armed conflict and their relatives are still being denied access to justice and to adequate and effective reparation.

Eleven years later, the authorities are still failing in their duty to promptly initiate independent, impartial and thorough investigations into allegations of enforced disappearance and abductions during the armed conflict.

On 19 July 2011, the parliament of Macedonia approved an “authentic interpretation” of the 2002 Amnesty Law, which extended the provisions of that law to four war crimes cases which had been returned to Macedonia for prosecution from the ICTY in 2008. This effectively ended the prosecution of war crimes.

Since 2001, no adequate measures have been taken to investigate the cases of six ethnic Albanians believed to be the victims of enforced disappearances by the Macedonian Ministry of Interior police during the armed conflict.

Nor have any effective measures been taken to investigate the abduction of 12 ethnic Macedonians and one Bulgarian national. Their bodies were found in three graves near the village of Neprošteno -Tetovo in November 2001, and subsequently exhumed by the Ministry of Interior and the Office of the Prosecutor. All these men are believed to have been abducted by the NLA during the armed conflict. No further investigation has been carried out by the authorities.

The Association of Relatives of Kidnapped and Missing Ethnic Macedonians expressed both surprise and anger at the parliament’s decision of July 2011:

“Prime Minister Gruevski clearly told us that there would not be an amnesty for the so-called Hague cases at our last meeting, we are very surprised. We will sue the state for releasing from indictment those who are responsible for the disappearance of our loved-ones.”

Vena Dimovska, the wife of one of the Macedonian men abducted, is still waiting for a decision of the court on the motion she filed in November 2011 disputing the Macedonian parliament’s decision on “the authentic interpretation of the Amnesty law”.



Vaško Mihailovski, an ethnic Macedonian, was reportedly abducted on 24 July 2001, the day after his wedding, from his home in Neprošteno. At 1.30pm NLA fighters were said to have abducted him and his wife Lenche, and five other people in the house. They were taken to a house belonging to an ethnic Albanian where some 30 people, mainly women, elderly people and children, were being held captive. Vaško Mihailovski, the only young adult male among the captives, was reportedly taken away at approximately 6pm, his hands

ted. The other captives were later released. He was never seen again.

Hajredin Halimi

On 7 August 2001, a Macedonian police unit carried out a raid in the house of Musofer Halimi, in Skopje. Hajredin, together with his brother Fikri, nephew Elam and Musofer were taken to the Gazi Baba police station in Skopje. They were placed in separate cells and were interrogated. According to Fikri and Elam Halimi, they heard Hajredin's voice for the last time two hours before they were released from the police station on 9 August 2001. After that there is no information about the fate of Hajredin. Musofer remained detained, and was later sentenced for connections with the NLA, but was released by presidential pardon.

MONTENEGRO

In May 1992 some 83 Bosniak civilians, who had fled the armed conflict in BiH, were arrested in Montenegro by members of the Montenegrin police. They were subsequently transferred into the hands of the then de facto authorities in the RS in BiH, including to the VRS and to the RS police. Nine survivors returned from a prison camp in Foča in BiH, but another 21 men are believed to have been killed there. The remains of six people were exhumed and identified at Sremska Mitrovica and Miljevina. The fate and whereabouts of at least 34 people remain unknown.



Bosniak civilians transferred to BiH by bus in 1992 include Sanin Krdžalija, a 26-year-old professional musician. Sanin, apart from being a musician, also owned a restaurant in Bosnia, and in spite of his youth was the main source of income for his mother and sister.

Other victims include Saud Karačić, a 26-year old waiter, Safet Buljubašić, a 46-year-old mechanic, Nikola Divljak, then aged 19, Nikola Gravić, then aged 18, Vladimir Stolović then aged 15... The list goes on.

On 25 December 2008, the government of Montenegro officially recognized its responsibility for the “deportation” of the Bosniak refugees in 1992 and agreed to pay compensation to all 193 people affected by the enforced disappearances. They included the nine survivors of the Bosnian Serb army concentration camp at Foča, 28 of their family members and 156 women and children, the parents and brothers and sisters of 33 men who were killed after being transferred by the Montenegrin police into the hands of Bosnian Serb military forces.

Previously, the relatives had filed civil cases against the government, seeking compensation for the disappearance of their loved ones, but the government had appealed against each decision made in favour of the relatives. In effect they blocked the victims’ access to redress and reparations, including compensation.

In March 2011, nine former police officers and government officials were acquitted (five in their absence) on charges of war crimes against the civilian population on the basis that they could not have been convicted on charges of war crimes, as there was no armed conflict in Montenegro in 1992. This verdict fails to respect international humanitarian and human rights law, and the jurisprudence of the ICTY. At all stages of their arrest and unlawful detention to their transfer out of the country, Montenegrin officials were responsible for the violations suffered by the refugees. The enforced disappearance of Bosniak refugees carried out by the Montenegrin authorities in the context of the armed conflict in BiH constituted a war crime.

In June 2011, the Supreme State Prosecutor’s office appealed against the acquittal. In February 2012, the Appeal Court of Montenegro returned the case for retrial, ruling “That the armed conflict in the territory of [BiH] has the character of international armed conflict” and that the first instance court failed to take into consideration provisions of common Article 3 and of Article 2 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War. The retrial opened on 29 May 2012 but was adjourned.

SERBIA and KOSOVO

The ICRC lists some 3,600 people reported missing in Kosovo during the 1998-9 armed conflict and in its immediate aftermath. They include more than 3,000 ethnic Albanian victims of enforced disappearances by Serbian military, police and paramilitary forces. They also include Serbs, Roma and members of minority communities (an estimated 600), who are believed to have been abducted by Kosovo Albanians, including the Kosovo Liberation Army (KLA), both during and in the immediate aftermath of the war. Since 1999, the bodies of around 1,800 people registered as missing have been found, identified, and returned to their families for burial and an estimated 1,797 people remain unaccounted for.

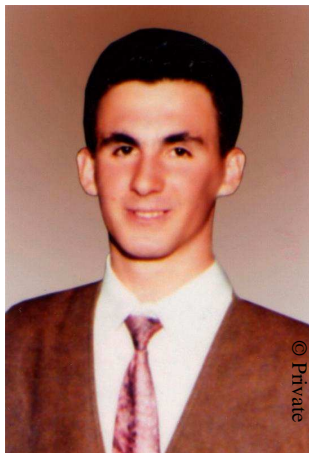
Families in both Kosovo and Serbia are still waiting for the bodies of their relatives to be exhumed, identified and returned to them for burial.

In April and May 1999, the bodies of ethnic Albanians killed and buried in Kosovo by Serbian forces were exhumed from different locations by the Serbian Ministry of Interior and transported to Serbia, where they were reburied. In total, the remains of at least 900 individuals who were killed in Kosovo have to date been exhumed in Serbia from mass or individual graves.

Even where the bodies have been found and returned to their families, few of the perpetrators of these enforced disappearance and abductions have been brought to justice.

“If I could know where my son Albion is, and if I could bury him and put a flower on his grave and I would be in a better place”, Nesrete Kumnova.

Following the conviction in February 2011 of former police General Vlastimir Đorđević by the ICTY, Amnesty International believes that the War Crimes Prosecutor in Serbia should, without further delay, open an investigation into Ministry of Interior police employees under the general’s control. Some of these took part in an operation to conceal the bodies of ethnic Albanians killed in Kosovo, including by transporting them in refrigerated trucks to Serbia, where they were reburied.



Albion Kumnova from Đakovica/Gjakovë is believed to be among those whose bodies were transported to Serbia, but his body has not yet been found, and no one has been brought to justice for his enforced disappearance.

During the armed conflict in Kosovo in 1999, Serbian police forced their way into the Kumnova family home. Six men were taken away and never seen alive again. Five of their bodies were subsequently exhumed in 2001 near Bajna Bašta in Serbia in September 2001, and were returned to their families in September 2005 and September 2006.

Albion Kumnova’s body was never found. He is still listed as missing by the ICRC. Twelve years after his disappearance the perpetrators have not been brought to justice. An investigation into the enforced disappearance and killing of the six men was reportedly opened by the UN Interim Administration Mission in Kosovo (UNMIK), but no progress was made. However, in 2011 the EU-led police and

justice mission (EULEX) in Kosovo officially launched a criminal investigation into the enforced disappearance of Albion Kumnova.



*On 28 June 1999, **Petrija Piljević** (left), a 57-year-old Serb woman, was abducted from her flat in Pristina by men wearing Kosovo Liberation Army uniforms. She was never seen alive again.*

A year later her body was exhumed from a cemetery in Pristina by a team of experts working for the ICTY. Petrija Piljević's son

Dragan (right) identified his mother's body by the clothing she was wearing. Following their mother's disappearance he and his brother Zoran had fled to Serbia.

Twelve years since her abduction and murder, Petrija Piljević's killers have not been brought to justice. She is not alone. Very few such cases have been investigated due to a lack of political will in Kosovo to bring KLA members to justice.

UNMIK opened an investigation into the abduction of Petrija Piljević, but Dragan Piljević was never informed of any progress after 2003. According to EULEX, the Special Prosecution Office of Kosovo does not consider the abduction and killing of Petrija Piljevic to be a war crime, because it occurred after the end of the armed conflict in Kosovo. Consequently, in early 2009 Petrija's case was handed over to the EULEX prosecutor in the Pristina District Prosecutor's office. In 2010, her son's complaint that UNMIK had failed to conduct an effective investigation into her abduction was declared admissible by the Human Rights Advisory Panel, and is due to be considered during 2012.

Petrija Piljević is one of the estimated 800 Kosovo Serbs, Roma and members of other minority communities who were abducted and killed by the KLA, during and after the 1999 conflict in Kosovo. Some Kosovo Serbs were taken across the border to Albania where, according to allegations made in January 2011 in a report for the Parliamentary Assembly of the Council of Europe (PACE), they were subjected to torture, and others were murdered. Allegedly some had their organs removed. In 2011, as a major step forward, EULEX appointed a Special Investigative Task Force to investigate the allegations made in the PACE report.

Recommendations

Amnesty International calls on the governments of Croatia, Bosnia and Herzegovina, Macedonia, Montenegro, Serbia and Kosovo to:

- *Demonstrate a clear commitment to implementing the necessary measures to end impunity for enforced disappearances and abductions;*
- *Carry out prompt, independent, effective and impartial investigations of crimes under international law, including enforced disappearances and abductions;*
- *Guarantee the rights of victims and their families to protection, support, information about criminal and civil proceedings at all stages and participation in criminal and civil proceedings;*
- *Ensure prompt, independent, impartial and effective procedures for families to receive reparations in accordance with international standards.*

Amnesty International urges the governments of Croatia and Macedonia to:

- *Ratify the Convention for the Protection of All Persons from Enforced Disappearance and implement it in national law;*
- *Implement the Convention into national law and to recognize the Enforced Disappearances Committee as competent to receive and consider communications from or on behalf of individuals claiming to be victims.*

Amnesty International calls on the European Union to:

- *Provide support to the governments of Croatia, Bosnia and Herzegovina, Macedonia, Montenegro, Serbia and Kosovo for improving the functioning of their justice systems, so that each is equipped to bring the perpetrators of enforced disappearances and abductions to justice.*

Amnesty International urges the European Commission through the accession process to:

- *Ensure progress is made towards ending impunity for enforced disappearances and abductions. This includes progress towards ensuring the right to justice and to adequate and effective reparation for the victims of enforced disappearances and abductions and their relatives.*