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Kosovo court important step, but questions about impunity gap linger

Following the approval by the Kosovo Assembly of a special court for Kosovo, Amnesty International welcomes the step towards justice for the families of an estimated 400 Kosovo Serbs believed to have been abducted by the Kosovo Liberation Army (KLA), and subsequently transferred to Albania, where they are alleged to have been killed.

The special court will adjudicate on alleged serious human rights abuses, including by senior members of the KLA, which took place during and after the 1998-1999 armed conflict in Kosovo, which were originally set out in a 2010 report to Parliamentary Assembly of the Council of Europe (PACE) by Swiss Senator Dick Marty.

Amnesty International has for over a decade urged the relevant authorities to investigate the widespread abductions of Serbs, Roma and members of minority communities in Kosovo in the immediate aftermath of the 1998-9 war. The organization considers that the abductions which took place after June 1999 were part of a widespread and systematic attack on a civilian population and as such should be tried as crimes against humanity.

The organization therefore welcomed the establishment of the Special Investigative Task Force (SITF) in 2011 to follow up on the Marty report as the first comprehensive investigation in Kosovo into the abduction of missing Serbs.

Amnesty International considers that the court may be the best possibility for victims, who include the relatives of the missing to access justice. However, the international community must support the Court to ensure that trials are conducted in accordance with international law. This includes ensuring that the court is fully resourced to complete its mandate.

However, while the establishment of a court to ensure the prosecution of these crimes under international law marks a significant step towards justice for the victims and their relatives, Amnesty International considers that the establishment of the court raises further questions about the future of prosecutions of crimes under international law in Kosovo.

Amnesty International is concerned that since 1999, international and Kosovo police and prosecutors in Kosovo have failed to bring to justice those responsible for the abduction and murder of hundreds of other Kosovo Serbs, as well as Roma and members of other minority communities, also believed to have been abducted by the KLA, during and after the armed conflict. If these outstanding cases are not included in the mandate of the new court, will their relatives still receive justice in the Kosovo courts?

The fact that the court has been established only to try those suspected of the abduction and murder of Kosovo Serbs and others unlawfully deprived of their liberty by the KLA, and of alleged organ trafficking, is – despite yesterday's vote – perceived amongst a wide cross section of society

in Kosovo as biased and lacking impartiality, as it means singling out one category of victims while ignoring others.

Although the court will be seated within Kosovo, negotiations are in progress to establish an additional chamber in the Netherlands to take evidence from witnesses. The need to establish a chamber outside Kosovo clearly points to the failure since 1999 of the international community, including the UN Interim Administration Mission in Kosovo (UNMIK), the European Union (EU)-led police and justice mission in Kosovo (EULEX), and EU member states, to provide the necessary resources needed to develop an effective and comprehensive witness protection programme within Kosovo.

Recognizing that the chronic failure to provide adequate witness protection has been a fundamental barrier to the investigation and prosecution of crimes under international law, Amnesty International considers that hearings should take place outside Kosovo only to the extent necessary for witness protection, otherwise it risks further externalising efforts to provide justice. It is essential that justice be seen to be done within Kosovo to strengthen the rule of law.

The establishment of this court also signals the failure by the international community to assist Kosovo in the creation and development of an impartial and independent prosecutorial and judicial system.

Amnesty International considers that international judges and prosecutors still have a crucial role to play in the Kosovo courts. In 2012, in a series of recommendations to EULEX, we called for increased support for Kosovo prosecutors and judiciary to assist in the development of an impartial, independent and effective body of local prosecutors and judges, with the capacity to prosecute and adjudicate case of crimes under international law. The organization envisaged that this could lead to the possibility of establishing a long term mechanism or institution for the future investigation, prosecution and adjudication of war crimes by local institutions when EULEX leaves Kosovo.

Amnesty International considers that many of the allegations set out in the Marty report should be charged as crimes against humanity. The organization therefore welcomes that in defining applicable law, the draft statute provides the court with jurisdiction over all crimes under international law, including crimes against humanity. We urge that where appropriate the suspects should be charged with crimes under international law rather than other criminal laws, to ensure that those responsible are held accountable for the most serious offences.

Amnesty International further welcomes the creation of the Office of Victim Participation as this ensures that victims have the opportunity to have their views and concerns presented to the court through their own legal representatives.

Background

In December 2010, a report for the Parliamentary Assembly of the Council of Europe (PACE) by Swiss Senator Dick Marty alleged that Prime Minister Hashim Thaçi and other members of the KLA were involved in 1999 in the abduction, torture, ill-treatment and murder of Serb and Albanian civilians transferred to prison camps in Albania. In one of the camps, detainees were allegedly murdered and their organs removed for trafficking. The report was approved in December 2010 by the PACE Legal Affairs and Human Rights Committee of the PACE, and adopted by the PACE on 25 January 2011.

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International Secretariat, Amnesty International, 1 Easton St., London WC1X 0DW, UK

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