

@'Destination Unknown'

'Disappeared' in Former Yugoslavia

Recommendations

As the agony of conflict in former Yugoslavia goes on and on, there are practical steps which could make a real difference to the families, seeking truth and justice for victims of human rights violations.

"Disappearances" have been only one part of the human rights tragedy which has engulfed the former Yugoslavia since conflict broke out four years ago. When someone "disappears", not knowing whether they are alive or dead causes great suffering to their relatives. While victims of other human rights violations may in time be able to heal their wounds or mourn their dead, the relatives of the "disappeared" remain unable either to continue their own lives or to begin the process of grieving for what they have lost. Many are refugees themselves, sometimes living far away from their homes. This makes the task of finding out what has happened to their relatives all the harder. Even those who have become convinced that their loved ones are dead say that they can never be at ease until they know the truth.

"Disappearances" have been carried out by the hundreds and even thousands in the former Yugoslavia since the conflict began in 1991. A short war between the Yugoslav National Army (JNA) and Slovenian forces followed declarations of independence by the Yugoslav republics of Slovenia and Croatia. In Croatia and then in Bosnia-Herzegovina the conflicts have continued with gross human rights abuses, often committed far from the battlefield. In the meantime the fate of the "disappeared" remains unresolved.

The cases of "disappearance" in the former Yugoslavia range from individuals being taken from their homes by civilian or military police to mass arrests or abductions at the hands of military or paramilitary forces. One of the earliest cases of mass "disappearance" took place in November 1991, following the fall of the town of Vukovar in eastern Croatia. Following a protracted and destructive siege of the city by the JNA, its eventual surrender was followed by mass arrests and detentions. Although most of those detained were eventually registered and released in prisoner exchanges, the fate more than 1,000 remains unknown.

This pattern has been repeated again and again when towns or villages have come under the control of one or other of the warring parties. In western Bosnia in 1993, after the mainly Muslim Bosnian Government army took control of the town of Bugojno, members

of opposing Bosnian Croat forces were detained. Once again, although the majority of these were later released, some are still unaccounted for. Following the capture in July 1995 of Srebrenica in eastern Bosnia by Serb forces the fate of several thousand men is still unclear, and it is feared that some of them may have joined the ranks of "missing persons" - the term given to those "disappeared" by government forces or "missing" at the hands of non-governmental entities.

Whatever the term used, whoever the perpetrator, it is clear that the suffering of the victims and their families is the same.

These abuses have been carried out in the context of immediate military action, but just as frequent have been cases of individuals being taken away from their home or stopped while travelling by police or by members of paramilitary groups. Sometimes their families or companions are told that they are being taken for questioning and will be allowed to return; sometimes they are simply told to accompany the police with no explanation. In neither case are they seen again.

Like other gross human rights abuses committed in the former Yugoslavia, "disappearances" and "missing persons" have become the material of propaganda and currency in negotiations between the parties. Pleas for information or protests directed to the responsible authorities have frequently been met with counter claims about current or past abuses perpetrated by the other side, rather than with real action. Even relatives appealing to their own authorities for help in obtaining information have met with excuses and inaction. Some relatives have also attacked the lack of action and political will to become involved in tracing the "disappeared" shown by representatives of the international community.

'DISAPPEARANCES' AND INTERNATIONAL STANDARDS

"Disappearances" are clear violations of the earliest human rights instruments adopted by the United Nations. Article 3 of the Universal Declaration of Human Rights states: "Everyone has the right to life, liberty and security of person." These rights are threatened or violated when "disappearances" are perpetrated.

The rights to life, liberty and security of person are reiterated in the International Covenant on Civil and Political Rights (ICCPR, Articles 6 and 9). Article 7 of the ICCPR also reiterates the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Any state party which permits its officials to engage in "disappearances" has violated its obligations under this treaty.

More recently, the prohibition against "disappearances" has been spelled out in the UN Declaration on the Protection of All Persons from Enforced Disappearance (Declaration on disappearances). This Declaration was adopted without a vote by the UN General Assembly in 1992. The fact that the Declaration was adopted by the General Assembly without a vote is an indication of the consensus that "disappearance" is a grave violation, in that no UN member state wanted to go on record as opposing it.

Article 1 of the Declaration on disappearances states that "any act of enforced disappearance...is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights...". Article 2 of the Declaration states plainly that "No State shall practise, permit or tolerate enforced disappearances". Article 4 of the Declaration also states that "disappearances shall be offences under the criminal law punishable by appropriate penalties which shall take into account their extreme seriousness". Particularly appropriate to the context of the conflicts in former Yugoslavia is Article 7 of the Declaration, which states: "No circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances."

It should also be noted that the UN Working Group on Enforced or Involuntary Disappearances (WGEID), established in 1980, in its 1990 report, stated that "enforced or involuntary disappearances constitute the most comprehensive denial of human rights of our time". The Working Group has pointed out that "practically all basic human rights of a disappeared person are infringed in one way or another following an abduction...".

"Disappearances" also violate various provisions of the four Geneva Conventions of 1949 (supplemented by the two Additional Protocols adopted in 1977) – the basis of international humanitarian law. The Geneva Conventions set forth detailed safeguards to protect actual or potential victims of war. They are widely accepted as binding standards of behaviour which must be observed in armed conflict. Virtually all states are parties to the Geneva Conventions, and most are parties to the Additional Protocols.

The Geneva Conventions of 1949 apply to international conflicts – wars between nations. But Article 3 (a text common to all four Conventions) covers situations of "armed conflict not of an international character". Article 3 contains a list of fundamental rules for the protection of persons not, or no longer, taking an active part in the hostilities – which each party to the conflict is "bound to apply, as a minimum". The Article prohibits "violence to life and person, in particular murder of all kinds, mutilation cruel treatment and torture... at any time and in any place whatsoever with respect to the above-mentioned persons".

Thus the prohibition of such acts against protected persons in international wars is extended to "internal armed conflicts – a category of conflict which can be taken to include

some of the worst situations of disappearances". Persons protected by common Article 3 include wounded, sick or captured combatants as well as civilians. Furthermore, under the terms of common Article 3, this prohibition of deliberate and arbitrary killings in internal armed conflicts applies not only to government forces but to all parties to such conflicts including armed opposition groups. This prohibition is binding on all states parties to the Geneva Conventions; according to common Article 3, other parties to an internal conflict are also bound to apply its provisions.

SUMMARY OF AMNESTY INTERNATIONAL RECOMMENDATIONS

Amnesty International calls upon all parties to the conflicts in former Yugoslavia to respect minimum standards of humane behaviour as enshrined in international human rights and humanitarian law.

1) The international community should ensure that adequate resources are provided to UN agencies involved in clarifying the fate of the "disappeared" and "missing" in former Yugoslavia, particularly the "special process" set up by the UN Commission on Human Rights.

In 1994, the UN Commission on Human Rights established a "special process on "missing persons" in the territory of the former Yugoslavia". This new UN mechanism was "entrusted with the task of dealing with all cases of 'missing persons' in the territory of the former Yugoslavia, regardless of whether the victim was a civilian or a combatant or whether the perpetrators were connected to the Government or not". The use that the "special process" has made of the term "missing persons" applies to "disappearances" attributable to governments, as well as cases of people "missing" following abduction by non-governmental entities. The special process was set up as a joint mandate of the UN Special Rapporteur on the former Yugoslavia and the WGEID – and was defined by the latter in its January 1995 report as having a "strictly humanitarian and non-accusatory nature". An expert, Manfred Nowak, nominated by the Chairman of the WGEID, was appointed to carry out the work of this "special process". The expert's sole responsibility is to determine the fate and whereabouts of "missing persons", and does not extend to identifying who was responsible.

Since his appointment last year, the expert has been able to make only one trip of just over a week to Croatia and Bosnia-Herzegovina accompanied by a single staff member from the UN Centre for Human Rights. Logistical problems in both Croatia and Bosnia-Herzegovina drastically shortened the time available for meetings with government representatives and with representatives of non-governmental organizations. In Croatia, a blockade of checkpoints by Croatian refugee organizations meant that the expert's time in the especially critical UN Protected Area Sector East (UNPA-East) was heavily curtailed. Key

cities such as Vukovar and Osijek in Eastern Croatia have yet to be visited, as a result. Logistical problems with UNPROFOR flights into Sarajevo likewise resulted in the cancellation of the expert's meetings with the ICRC in Sarajevo and the Bosnian Committee for Human Rights. Information about "missing persons" in certain areas of Bosnia-Herzegovina, chiefly in the south and the west of the country, has been all but unobtainable. Having received information on more than 5,000 cases of "missing persons" in Croatia and Bosnia-Herzegovina by the end of 1994, the expert had at last report been able to forward only 600 of these to the relevant authorities.

Amnesty International believes that the current level of resources made available by the UN for the "special process" – given little more than a very limited mission thus far in which to try and obtain information on cases of thousands of "missing persons" in Croatia and Bosnia-Herzegovina - is clearly inadequate to the task at hand. The organization is calling on the international community, through member states of the UN, to provide whatever resources are required – whether it is a question of funding, staffing, or logistical help and political support – to ensure that the "special process" is a genuinely concerted and comprehensive effort to document and resolve the cases of thousands of "missing persons" in the former Yugoslavia.

2) The ICRC should be granted unrestricted access to all places of detention where prisoners of war or civilian detainees are held.

Amnesty International is calling on all parties to the conflicts in former Yugoslavia to ensure full and appropriate access to detainees by the ICRC. As the organization mandated to work for the observance of humanitarian law, its work in visiting and registering prisoners is an important step in ensuring that "disappearances" and political killings are prevented.

3) Unrestricted access to places of detention should be granted to qualified and experienced personnel whose independence and impartiality are guaranteed by command and control distinct from the authorities in charge of administration of places of detention.

In accordance with Principle 29 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly in 1988, the practice of visits of inspection to places of detention should be regarded as a requirement for the protection of human rights. In addition, Principle 29 provides that places of detention must be visited regularly by "qualified and experienced persons". These persons should be appointed by, and responsible to, an authority "distinct from the authority directly in charge" of administration of the place of detention.

The requirement that prisoners must be held only in officially recognized places of detention is also established in the Declaration on disappearances (Article 10).

4) The international community should extend all necessary financial and political support to UN efforts to exhume mass graves and conduct proper autopsies. Victims' remains should be returned to their families for burial.

Amnesty International is concerned that the international community, through UN member states, has shown insufficient resolve on the matter of the exhumation of mass graves in Croatia and Bosnia-Herzegovina. Partial efforts at locating and excavating these sites have not been followed-up. Much valuable time has been lost. Opposition from the Serb *de facto* authorities in UNPA-East in Croatia has been allowed to effectively block the UN's attempts to excavate the mass grave site at Ov_ara, near Vukovar. It is alleged that a considerable number of "missing persons" from Vukovar were extrajudicially executed and buried in a mass grave at this site.

In a 1994 report on a visit to the former Yugoslavia by a member of the WGEID, the delegate noted that "...for the purposes of clarifying cases of 'missing persons', all bodies must be exhumed and if possible identified. Apart from manifold sensitivities -- political will must be unconditional -- such an undertaking would be a Herculean task. The UN should seek to establish such a forensic enterprise under its auspices, help to find available experts and procure funds, if need be from private sources."

Amnesty International calls on UN member states to address this matter with urgency, and to make available all resources necessary to set up an effective forensic enterprise in Croatia and Bosnia-Herzegovina in accordance with the view of the representative of the WGEID.

The organization also urges the Serb *de facto* authorities in Croatia to comply with the request of the UN "special process" to be permitted, as stated in a report submitted by Mr Nowak in January 1995, to proceed with "the excavation of mass graves in the territory under their control such as Ov_ara".

5) All parties to the conflict should cooperate with the UN "special process" to trace "missing persons", making records available and permitting access to territories under their control.

While the Croatian and Bosnian authorities have already been cooperating with the UN "special process" and the expert appointed to carry out its work, the expert's request to visit the Federal Republic of Yugoslavia (Serbia and Montenegro) in 1994 was rejected by the government authorities. As the expert has written in his report, he can "carry out his difficult mandate efficiently only if he receives the full support and cooperation of all Governments

involved". With regard to the refusal of the Belgrade authorities to allow his visit, he adds that "as long as the special process is not known to the families and all relevant governmental and non-governmental institutions in the Federal Republic of Yugoslavia (Serbia and Montenegro), the expert is unable to provide his assistance to them".

Article 13 of the UN Declaration on disappearances reminds states of their obligations to assist investigating bodies with regard to access to relevant documents and with necessary on-site visits.

Amnesty International calls on the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) to comply with the recommendation of the expert that the Belgrade authorities "cooperate with the special process and ... invite the expert to carry out a visit with a view to introducing the special process to all governmental, intergovernmental and non-governmental organizations concerned".

In addition, the organization is calling on the Croatian and Bosnian Governments to continue cooperating with the UN "special process" and to take note of the specific requests of the expert appointed to carry out its mandate. In particular, the expert has requested that the Croatian authorities "provide their good offices for the purpose of tracing 'missing persons' from Bosnia and Herzegovina". The expert is also requesting that the Bosnian Government "make the special process better known among the people under its jurisdiction and ... assist relatives of 'missing persons' in submitting cases to the expert".

6) All parties to the conflicts should investigate cases of "disappearances" and "missing persons" attributed to their forces.

Amnesty International is calling on all parties to the conflicts in former Yugoslavia to comply with the recommendation of the UN expert that they make every effort to establish full and impartial investigations of cases of "disappearance" or "missing persons" attributed to their forces. Specifically, the expert has urged that all parties "include in cease-fire agreements and peace treaties explicit provisions which guarantee that alleged cases of 'missing persons' are thoroughly investigated. Independent bodies should be established to monitor compliance with such agreements". The expert notes in his January 1995 report that "as experience in other countries shows, the investigation and clarification of the fate and whereabouts of 'missing persons' is a precondition for a process of reconciliation that might lead to a lasting peace based on justice and respect for human rights".

In the same 1995 report, the expert spells out plainly the need for the Yugoslav (Serbia and Montenegro), Croatian, and Bosnian Governments to meet their obligations under the Declaration on disappearances to investigate thoroughly a number of specific cases of alleged "disappearance" for which they are responsible. Likewise, the UN expert urges the Serb *de facto* authorities in Croatia and Bosnia-Herzegovina to establish similar investigations

of cases of "missing persons" that have allegedly occurred in territory under their control and for whom they are allegedly responsible. The expert also requests that "the Yugoslav authorities ... provide their good offices for the purpose of tracing 'missing persons' allegedly held by the Serb de facto authorities in Croatia and Bosnia and Herzegovina".

With regard to the conflict in Croatia in 1991-92, the Croatian and Yugoslav (Serbia and Montenegro) Governments established a Joint Commission to Trace Missing Persons and Mortal Remains, chaired by the ICRC, on 16 December 1991. This particular body has made no progress since July 1992. More recently, the two governments have set up another joint commission to deal with the questions of "missing persons", refugees and displaced persons. This, too has made little progress. This commission has met only once, in February 1995. Amnesty International urges that such initiatives be revived immediately, and that both governments display genuine political will in the effort to resolve the cases of thousands of "missing persons" from the 1991-92 conflict.

Article 13 of the Declaration on disappearances makes a number of precise recommendations for the prompt, thorough and impartial investigation of alleged cases of "disappearance" – including the independence and competence of the investigating authority; the ability of such an authority to conduct the investigation effectively and without hindrance; and the protection of witnesses and all other persons participating in the investigation against ill-treatment, intimidation or reprisal. Article 13 also stipulates that "the findings of such an investigation shall be made available to all persons concerned, unless doing so would jeopardize an ongoing criminal investigation". Finally, Article 13 urges that the investigation of an individual case "should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclarified".

7) The governments of the FRY, Croatia and Bosnia-Herzegovina should ensure that those responsible for "disappearances" and other human rights violations are brought to justice. Investigations and trials should always be in accordance with international standards of fairness, and the death penalty should never be imposed or carried out. The perpetrators should not benefit from any legal measures exempting them from criminal prosecution or conviction. In addition, the Bosnian Serb and Croatian Serb *de facto* authorities should take all the necessary steps to clarify the whereabouts of all cases of "missing persons".

Amnesty International is calling on the governments of the FRY, Croatia and Bosnia-Herzegovina to ensure that those responsible for "disappearances" and other human rights violations in territory under their control are brought to justice in accordance with Article 14 of the Declaration on disappearances and the recommendations of the UN expert. States should also cooperate fully with the investigations and prosecutions of the UN War Crimes Tribunal for former Yugoslavia in The Hague.

Article 14 states that "all States should take any lawful and appropriate action available to them to bring all persons presumed responsible for an act of enforced disappearance, found to be within their jurisdiction or under their control, to justice". Article 18 states that individuals who have or who are alleged to have been responsible for "disappearances" should not be protected by an "amnesty law or similar measures that might have the effect of exempting them from any criminal proceedings or sanction".

In its 1990 report, the Working Group on disappearances noted that "perhaps the single most important factor contributing to the phenomenon of disappearances may be that of impunity. The Working Group's experience over the past ten years has confirmed the age-old adage that impunity breeds contempt for the law. Perpetrators of human rights violations, whether civilian or military, will become all the more brazen when they are not held to account before a court of law".

8) All parties to armed conflict should take all measures necessary to prevent actions which might result in "disappearances" or "missing persons". All members of the armed forces should be instructed that they have a right and a duty not to obey orders which might result in "disappearances" or other human rights violations.

Amnesty International is calling on the governments of the FRY, Croatia and Bosnia-Herzegovina to recognize that the prevention of "disappearances" is part of the state's obligation to protect human rights. That obligation entails a responsibility on the part of the highest authorities of the state, as well as of lower officials. Article 3 of the Declaration on disappearances makes plain that "each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction".

Amnesty International is also calling on the Serb *de facto* authorities in Bosnia-Herzegovina and Croatia to comply with the recommendations made by the UN expert in his January 1995 report "to take all necessary measures" to investigate thoroughly all cases of "missing persons" alleged to have occurred in the territory under their control or for which forces under their control are regarded to be responsible and in particular to halt "the practice of 'ethnic cleansing' and similar acts which might cause the disappearance of persons under their control".

Furthermore, all members of the armed forces should be instructed that they have the right and duty to refuse to obey any order to participate in a "disappearance" as spelled out in Article 6 of the Declaration on disappearances.

9) Victims of "disappearance" or their dependents should be able to obtain fair and adequate redress from the relevant authorities. This should include financial compensation, supported with funding from the international community if necessary.

Amnesty International is calling on all parties to the conflicts in the former Yugoslavia to recognize that victims, their dependents and relatives should obtain redress for the injuries they have suffered as a result of a "disappearance". The right to redress is a part of the right to an effective remedy for human rights violations, as established in the leading UN instruments on human rights.

Article 19 of the Declaration on disappearances provides that victims and their family "shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible", and it also establishes that the dependents of people who die as a result of "disappearances" shall be entitled to compensation.