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Committee on Enforced Disappearances  
Human Rights Treaties Division  
Office of the United Nations High Commissioner for  
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## INFORMATION IN ADVANCE OF THE ADOPTION OF THE LIST OF ISSUES ON MONTENEGRO

Dear Ms Bianchi,

Amnesty International would like to draw your attention to the first section of our report *Montenegro: Submission to the United Nations Human Rights Committee: 112th session* (AI Index: EUR 66/005/2014, 7 October 2014).

Pages 5-17 outline Amnesty International's long-standing concerns on continued impunity for crimes under international law. In particular, the organization would like to draw to the attention of the United Nations (UN) Committee on Enforced Disappearances' (the Committee) the failure of the authorities to bring to justice those alleged to be responsible for enforced disappearances - a continuous crime - during the armed conflicts in the region between 1992-1995, and in 1998-9.

### DEFINITION OF ENFORCED DISAPPEARANCES IN NATIONAL LEGISLATION

The Montenegrin Criminal Code fails to provide an adequate definition of enforced disappearances, as set out in articles 2 and 4 of the Convention.

Article 428 of the Basic Criminal Code provides for the prosecution of war crimes against the civilian population. While it includes, for example, "taking of hostages, illegal capture and detention; deprivation of right to a just and impartial trial", it fails to include the crime of enforced disappearance. Similarly the offence of "Crimes against humanity" (Article 427), introduced in amendments to the Criminal Code in 2003, includes only a partial definition, namely, "detention or abduction of persons without disclosing information on it so as to deprive them of legal assistance".

The 2003 amendments also introduced the doctrine of command responsibility in Article 440, "Failure to take measures to prevent the commission of criminal offenses against humanity and other values protected by international law". However, the definition does not seem to be in full accordance with article 6 of the Convention.

Although these articles were introduced on the basis that both constituted crimes, pursuant to ratified international treaties during the conflicts in the 1990s, indictments have generally been brought under Article 428.

The consequences of the failure to adequately define enforced disappearances can be seen in the "Deportations case" (pp. 9-11), which the organization considers to be a clear case of enforced disappearance.

This case clearly shows that where prosecutions of enforced disappearance have taken place, neither the victims nor their relatives have received justice. In this particular case, the decision taken by the court was inconsistent with international humanitarian law, the jurisprudence of the International Criminal Tribunal for the former Yugoslavia (ICTY), and with the relevant provisions of domestic law.

These failings were noted by the UN Committee against Torture in their Concluding observations on the second periodic report of Montenegro in June 2014;<sup>1</sup> they have also been noted by the Council of Europe Commissioner for Human Rights and the European Commission,<sup>2</sup> and in June 2014 by the UN Working Group on Enforced or Involuntary Disappearances.<sup>3</sup>

The Montenegrin non-governmental organization, Human Rights Action (Akcija za Ljudska prava), is currently seeking a review of the legality of the decision in the "Deportations Case).

## **FAILURE TO INVESTIGATE AND PUNISH ACTS OF ENFORCED DISAPPEARANCES**

Further concerns arise from the lack of prompt, though and effective investigations on enforced disappearances cases. In the majority of cases, investigations into crimes under international law in Montenegro did not commence until 2006-7, almost 15 years after some of the crimes set out in the report took place, and then only after criminal complaints had been brought by non-governmental organizations.

With respect to cases of enforced disappearances, where earlier investigations took place (see Štrpci, p. 15), they were neither thorough nor impartial, failed to address the matter of command responsibility, and resulted in the conviction in 2002 of only one minor participant in the enforced disappearance of 19 people. Impunity persists for a similar case, where 22 residents of the village of Sjeverin were abducted allegedly by the same group of Bosnian-Serb paramilitaries, while on a bus travelling through Mioče in Bosnia-Herzegovina.

Amnesty International welcomes commitment made in August 2014, to resolve the fate of 61 persons who remain missing after the armed conflicts, and the signing by Montenegrin President Djukanović, of a regional *Declaration on the Role of the State in Addressing the Issue of Persons Missing as a Consequence of Armed Conflict and Human Rights*, on 29 August 2014.

However, in this context the organization is concerned by the reported remarks of the President of the Supreme Court that there would be no further prosecutions for crimes under international law, and the proposal by the incoming Special Prosecutor, that responsibility for the investigation and prosecution of such crimes would be removed from the jurisdiction of the Department for the Suppression of Organised Crime, Corruption, Terrorism and War Crimes, established in the Supreme State Prosecutor's Office in 2008.

## **REPARATION**

Finally, we would like to draw your attention to the failure to provide adequate reparation to the victims and relatives of the missing and the absence of a comprehensive administrative framework to guarantee the right to reparation. Although victims of enforced disappearance were, in an extra judicial decision, awarded

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<sup>1</sup> CAT/C/MNE/CO/2, 17 June 2014, para. 13.

<sup>2</sup> Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to Montenegro, from 17 to 20 March 2014, CommDH(2014)13, 23 June 2014, <https://wcd.coe.int/ViewDoc.jsp?id=2202711&Site=COE>; for example, "The processing of war crime cases needs to be stepped up and fully aligned with international human rights and humanitarian case law," Commission Staff Working Document, Montenegro, 2013 Progress Report, Brussels, 10.10.2012, SWD(2012) 331 final, [http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/mn\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/mn_rapport_2012_en.pdf).

<sup>3</sup> The WGEID reportedly expressed concern that in final decisions in the Bukovica and "deportation" cases, no responsibility had been established for these crimes because the courts had "interpreted international humanitarian law erroneously and failed to fully apply domestic law". They also found that that the verdict in the "deportations" case, was based on an alarming "legal theory under which some of the acts do not constitute war crimes either because the conflict in Bosnia and Herzegovina was not an international armed conflict or because Montenegro was not a part of the conflict", Human Rights Action, "Regarding the Preliminary Report of the UN Working Group on Enforced or Involuntary Disappearances", 1 July 2014, <http://www.hraccion.org/?p=6823#more-6823>.

compensation in the “deportations case”, they have received no other form of reparation. Further, in the absence of a law on missing persons, the rights of the victims and their relatives, with respect to clarification of the legal status of disappeared persons whose fate has not been clarified, with respect to family law, property rights and other financial and legal matters.

The review of Montenegro’s first report provides the Committee with a key opportunity to call on the Montenegrin authorities to abide by their obligations under the Convention, including in particular, to establish an investigative strategy to resolve the fate and whereabouts of the 61 persons who remain missing after the armed conflicts of the 1990s.

We would appreciate if you would distribute a copy of the report and this letter to the Committee members.

Yours sincerely,

Anna-Karin Holmlund  
International Advocacy Program