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INTRODUCTION

Amnesty International submits this briefing to the United Nations (UN) Human Rights Committee (the Committee) ahead of its examination, in October 2014, of Montenegro's initial report on its implementation of the International Covenant on Civil and Political Rights (the Covenant).

This submission document highlights some of Amnesty International's ongoing concerns in Montenegro, in relation to questions 8, 16, 19, 20 and 26 in the List of Issues¹. In particular, this submission highlights the organization's concerns with regard to the continuing impunity for crimes under international law committed between 1992 and 1999, in particular in relation to, but not limited to, the failure to respect the right to life and the absolute prohibition of torture and enforced disappearances. In addition the organization is also concerned about the absence of an effective reparation mechanism (Articles 6, 7 and 2); the failure of the authorities to guarantee the right to freedom of opinion and expression, including in the media, and to protect the rights of the LGBTI community (Articles 19 and 26). The organization also expresses concerns about discrimination, including the risk of statelessness of Roma, Ashkali and Egyptians displaced from Kosovo in 1999, and discrimination against them with respect to the right to adequate housing, (Articles 2, 26 and 27).

IMPUNITY FOR CRIMES UNDER INTERNATIONAL LAW

(ARTICLES 2, 6 AND 27)

The Montenegrin authorities have failed to comply with their obligation to investigate and, where there is sufficient admissible evidence, bring all those suspected of criminal responsibility for crimes under international law to justice.² Montenegro has also thereby – with a notable exception – denied the victims of crimes under international law (including war crimes) access to reparation, including: “Equal and effective access to justice; [and]

¹ CCPR/C/MNE/Q/1, 17 April 2014.

² Montenegro is a state party to the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention for the Protection of All Persons from Enforced Disappearance and the Rome Statute of the International Criminal Court.

adequate, effective and prompt reparation for harm suffered”.³

Where proceedings have taken place, decisions taken by the courts have often failed to be consistent 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 Committee against Torture in their Concluding observations on the second periodic report of Montenegro in June 2014;⁴ they have also been noted by the Council of Europe Commissioner for Human Rights and the European Commission,⁵ and in June 2014 by the UN Working Group on Enforced or Involuntary Disappearances.⁶

Responsibility for criminal prosecutions of crimes under international law lies with a specialized war crimes prosecutor within the Department for the Suppression of Organised Crime, Corruption, Terrorism and War Crimes, established in the Supreme State Prosecutor's Office in 2008. A specialised department of the judiciary was created to adjudicate in such cases at Montenegro's two Higher Courts, in Podgorica and Bijelo Polje.

Article 438 of the Basic Criminal Code provides for the prosecution of war crimes against the civilian population. In 2003, amendments to the Criminal Code introduced the offences of “Crimes against humanity” (Article 427); and “Failure to take measures to prevent the commission of criminal offenses against humanity and other values protected by international law”, (Art. 430). They were introduced on the basis that both constituted crimes, pursuant to ratified international treaties during the conflicts in the 1990s.

While Article 440 effectively introduced the doctrine of command responsibility, no

³ Article 11, UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by UN General Assembly resolution 60/147 of 16 December 2005.

⁴ CAT/C/MNE/CO/2, 17 June 2014, para. 13.

⁵ 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.

⁶ 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.hraction.org/?p=6823#more-6823>.

commanding police officers, military officers or senior political officials have been indicted under this article. The doctrine of command responsibility is a mode of individual criminal responsibility under customary international law whereby a superior, either a military commander or a civilian superior, may be liable for the acts of their subordinates – basically if he or she fails to undertake measures to prevent the commission of crimes or repress them.⁷ This is in addition and separate to other, no less important modes of responsibility, such as planning, ordering, and aiding and abetting, all of which may impute the responsibility of commanders or civilian superiors.

CRIMINAL PROCEEDINGS

Since 2008, four cases of crimes under international law have been prosecuted in Montenegro.⁸ They were, in the main, based on criminal complaints brought by non-governmental organizations; investigative proceedings commenced in 2006-7.

Final instance decisions, following all possible appeals, have now been rendered in each case.

- Four men were convicted in a final decision in the *Morinj case* in April 2014, another two were previously acquitted on appeal.
- Eighteen other defendants were acquitted in final decisions: all seven in the *Bukovica case* (March 2012)
- All nine defendants were acquitted in the *Deportations case* (June 2013).
- In December 2013, all eight defendants were acquitted in the first instance court in the *Kaluđerski laz case*.

To date no further investigations into war crimes and other crimes under international law have been opened by the Special Prosecutor's Office.

Decisions in these proceedings have cast doubts on the capacity of Montenegro to implement the rule of law and the willingness of the judiciary to apply international humanitarian and

⁷ Command responsibility is part of customary international law and has been included as a mode of responsibility in the Statute of the International Criminal Tribunal for the Former Yugoslavia 'Article 7(3), "The fact that any of the acts referred to in Articles 2 to 5 of the present Statute [grave breaches of the Geneva Conventions of 1949, violations of the laws or customs of war, genocide and crimes against humanity] was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof."

⁸ Each of these cases has been reported on in further detail in successive Amnesty International submissions to relevant UN treaty bodies and submissions to the European Commission. See also, Human Rights Action, *Report: War Crimes Trials in Montenegro*, May 2013, <http://www.hraction.org/wp-content/uploads/Report-War-Crime-Trials-in-Montenegro.pdf>

human rights law in Montenegro's courts. As explained below, the judiciary have rendered decisions which are inconsistent with generally held interpretations of international humanitarian law,⁹ the jurisprudence of the ICTY, and sentencing guidelines set out in domestic law.

The longevity of proceedings has in some cases denied the defendants' right to trial within a reasonable time, and the rights of the victims to justice and reparation. Finally, in three out of the four cases discussed below, the victims have been denied access to justice.

MORINJ CAMP

Six former members of the Yugoslav National Army (JNA), Mladen Govedarica, Head of the Security Unit of the Navy Base Administrative Command, an interrogator, Zlatko Tarle and reservists Ivo Gojnić, Spiro Lučić, Boro Gligić and cook Ivo Menzalin were indicted in 2008 for the torture and inhuman treatment of 169 Croatian prisoners of war and civilians at Morinj camp near Kotor in 1992. Over 160 persons detained in Mornij testified during the course of the original trial. In May 2010, the defendants were convicted under Article 430 in May 2010 of the torture and inhumane treatment of prisoners of war; Mladen Govedarica and Zlatko Tarle were found responsible of ordering the inhumane treatment.¹⁰

In December 2010, the Appeal Court quashed the original verdict and ordered a retrial on the grounds – amongst others - that the case was “political” and that insufficient evidence had been provided.¹¹ The Higher Court then acquitted Mladen Govedarica, who had remained at large throughout the proceedings and Zlatko Tarle, in accordance with the ruling of the Appeal Court, on the basis that there was no evidence that they had ordered the alleged beatings. No other commanding officers with authority at Morinj were indicted for the systematic torture and illtreatment described by the former prisoners who testified in the original trial.¹² Following retrial, on 25 January 2012, the remaining four defendants were convicted of war crimes against Croatian prisoners of war in Morinj. Boro Gligić was again sentenced to three years' imprisonment and Ivo Menzalin to four years; Ivo Gojnić's previous sentence was reduced by six months to two years, and Spiro Lučić's sentences was similarly reduced by six months to three years' imprisonment. The sentences failed to reflect the

⁹ Conversely, Article 9 of the Constitution provides that international agreements in force are part of the internal legal order of Montenegro and take precedence over domestic legislation; for example, “[t]he Constitution stipulated that ratified and published international treaties and generally accepted rules of international law were an integral part of the Montenegrin legal system, had supremacy over domestic legislation and were directly applicable where they regulated relations differently from domestic legislation, EC, *Screening Report, Chapter 24*, p. 7.

¹⁰ Mladen Govedarica was sentenced to two years imprisonment, Zlatko Tarle to a year and a half, Boro Gligić to three years and Ivo Menzalin was sentenced to four years imprisonment, Ivo Gojnić to two and a half years, Spiro Lučić to three and a half years, Boro Gligić to three years, and Ivo Menzalin to four years' imprisonment.

¹¹ Ksž.br. 20/10, http://sudovi.me/odluka_prikaz.php?id=2467.

¹² For the identification of other senior officials, see *Human Rights Action*, “On the third first-instance judgement in case of the war crime in camp “Morinj””, 31 July 2013, <http://www.hraction.org/?p=3785>.

gravity of the crimes, and were less than the statutory minimum of five years' imprisonment, as set out in Article 430 (War crimes against prisoners of war); mitigation was based on the defendants' previous good record, the fact they were married with children, and in poor health.

In July 2012, the Court of Appeal again reviewed the case, following appeals by the defence, and the prosecution - which appealed on the basis that the defendants had only been convicted of war crimes against prisoners of war, and not against the civilian prisoners, who made up around half of those held at Morinj. The court did not allow the prosecution appeal for procedural reasons. On 25 November 2012, the case against the four remaining defendants was sent for retrial on the basis of the defence appeal, excluding the charges related to civilian prisoners.

On 31 July 2013, in a third first instance judgement, the Podgorica High Court confirmed the conviction and the sentences handed down to the four men.

Following the trial, in March 2013, the Association of Prisoners of Serbian and Montenegrin Concentration Camps of Dubrovnik-Neretva County protested on the Croatian-Montenegrin border, demanding that the defendants be transferred to Croatia for prosecution.¹³

On 27 February 2014, the Appellate Court in Podgorica upheld the convictions and confirmed the previous sentences.¹⁴

THE "DEPORTATIONS" CASE

Nine former police officials¹⁵ were indicted in January 2009 on charges of war crimes for the "deportation" (unlawful transfer) of at least 66 Bosniak (Bosnian Muslim) refugees who had entered Montenegro in April and May 1992 in order to seek protection from Bosnian Serb forces, but were instead arrested and in late May 1992 handed over to the Bosnian Serb Army on the orders of the then Minister of Interior Pavle Bulatović.¹⁶ Twenty one men were taken to the prison camp at Foča, where most were killed. Others are believed to have been

¹³ <http://www.balkaninsight.com/en/article/croats-protest-over-montenegro-s-morinj-trial>.

¹⁴ <http://www.balkaninsight.com/en/article/potvr%C4%91ena-presuda-za-zlo%C4%8Dine-u-logoru-morinj>; the final judgement is available at http://sudovi.me/odluka_prikaz.php?id=64283; HRA, "Human Rights Action's Statement on the Final Judgement for War Crimes in Morinj", 18 May 2014, [http://www.hraction.org/wp-content/uploads/Press-release-Morinj-18.5.2014..pdf](http://www.hrraction.org/wp-content/uploads/Press-release-Morinj-18.5.2014..pdf).

¹⁵ Branko Bujić, Chief of Bar Security Centre'; Sreten Glendža, chief of the Ulcinj Security Centre; Milorad Šljivančanin, commander of the Herceg Novi Militia Station; Božidar Stojović, head of State Security Sector in Ulcinj were arrested before the first trial; Milorad Ivanović, chief of the Herceg Novi Security Centre; Boško Bojović, Assistant Minister of Interior, responsible for the State Security Service; Radoje Radunović chief of the State Security Sector in Herceg Novi and Milisav Mića Marković, Assistant Minister of Interior (police) were initially tried in absentia. In 2010 they were placed in extradition detention under an agreement with Serbia; Duško Bakrač, State Security agent in Herceg Novi, remained at large.

¹⁶ KTS no. 17/08, 19 January 2009: Pavle Bulatović was assassinated in February 2000.

killed and thrown into the river Drina. The fate and whereabouts of over 35 of the “deported” remains unknown.¹⁷

Investigations had been initiated in 2005 (while victims and relatives of the missing were seeking reparation in civil courts, see below), and witnesses began to be heard in 2006. Despite the evidence presented to the court in November 2010 by Momir Bulatović, (President of Montenegro in 1992), of the complicity of the state of Montenegro, including that of the State Prosecutor, no other government official was indicted.

Amnesty International considers those victims to have been the victims of an enforced disappearance; however Montenegrin law fails to criminalize enforced disappearances.¹⁸

On 29 March 2011 all defendants were acquitted on the basis that they were not members of the armed forces of the Federal Republic of Yugoslavia, not in their service, nor did they participate in the armed conflict. The presiding judge Milanka Zizić, concluded that the prosecution had not proven that the defendants had committed the criminal offence of “war crimes against the civilian population”, although she found that it was beyond doubt that there had been a forced removal and that the transfer of the Bosniaks to Bosnian Serb forces was unlawful, because “Montenegro and its police were not party to the conflict in Bosnia and Herzegovina” the defendants could not be convicted of war crimes.¹⁹ The court also found that while the FRY was in armed conflict with BiH government forces (Armija BiH), the

¹⁷ According to the judgement of the Tribunal in Krnjelac (Case No: IT-97-25-T, 15 March 2002, paragraphs 190-1), 21 of these persons were transported from the police station at Herceg-Novi in Montenegro and taken to the “KP Dom” prison camp in Foča in present-day BiH, then under the control of the de facto Bosnian Serb authorities. On their arrival at “KP Dom” on 25 May 1992, the men were met by a group of 10 individuals in uniform who beat them as they got off the bus. It is believed that the majority of these 21 men were subsequently unlawfully killed at “KP Dom” in Foča.

The bodies of four out of the 23 men “deported” by bus from Herceg-Novi on 28 May 1992, who were reportedly to be transferred to the Srebrenica police, were subsequently discovered in a river at Sremska Mitrovica. The bodies of these men were subsequently exhumed, and forensic examinations concluded that they had been shot. The identity of these men was confirmed by DNA analysis in 2005, but the remaining 19 bodies have not yet been found. According to the deportation order, the remaining 35 were to be handed over to police officials in Čajniče, Srebrenica, Foča and Trebinje, in Bosnian-Serb occupied territory.

¹⁸ Montenegro ratified the International Convention for the Protection of All Persons from Enforced Disappearance on 20 October 2011 and recognized the competence of the Committee on Enforced Disappearance to receive and consider communications from or on behalf of victims and other states parties. Amnesty International recalls that the obligation under Article 4 requires that states parties define enforced disappearance as a separate and autonomous crime. It is not enough to define offences that are often linked with enforced disappearance, such as abduction, unlawful detention, illegal deprivation of liberty, torture or extrajudicial execution.

¹⁹ Judgement of the Podgorica High Court, Ks.no. 3/09, 29 March 2011.

armed conflict in Bosnia and Herzegovina was not international.

On 17 February 2012, the Appeal Court returned the case for retrial, on the basis “[t]hat the armed conflict in the territory of Bosnia and Herzegovina has the character of international armed conflict”; and that the first instance court had applied only those provisions of Common Article 3 of the Geneva Conventions which are applicable to non-international armed conflict, but failed to take into consideration other 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.

Despite a revised indictment, in November 2012 the Podgorica Higher Court failed to reach a proper determination on the guilt or innocence of the former police and government officials. Again, the court agreed that the defendants had unlawfully arrested the Bosniak civilians, but again acquitted them of war crimes on the basis they were not participants in the war in BiH or allied with any party to the war in BiH,²⁰ despite the fact that the police officials were agents of the republic of Montenegro, which at the time of the offence was part of the Socialist Federal Republic of Yugoslavia, which was a party to the armed conflict in BiH.

Further, the court characterized erroneously the war in Bosnia-Herzegovina, as a non-international armed conflict, even though the appellate court had previously made a determination - when reversing the first judgment - that the conflict was an international armed conflict and, thus, since the criminal acts were committed against civilians, they represented a breach of international humanitarian law. Finally, the court failed to recognize that the alleged crimes could also have been characterized as crimes against humanity.²¹

In February 2013, the Prosecutor appealed against the decision on the basis that the reasons handed down by the court in November for the acquittal were both unfounded and contradictory. In June 2013, the Appeal Court upheld the first instance decision.²²

In March 2014, the former defendants opened a case for compensation against Montenegro for €1 million on the grounds that they were unlawfully detained and deprived of their liberty.²³

BUKOVICA

In April 2010 five former Yugoslav army reservists and two former Montenegrin police officials were indicted for “Crimes against Humanity” committed in 1992 in the Bukovica

²⁰ Judgement of the Podgorica High Court, Ks.no.6/12, 22 November 2012.

²¹ Former President Bulatović, in November 2010, testified that the “deportation” was not an isolated incident, but a regular occurrence. In an analysis of the judgement shared with the Minister of Justice and relevant prosecutor, Amnesty International considered that the accused could have been charged with crimes against humanity, including the deportation or forcible transfer of population and enforced disappearance of persons.

²² <http://www.pobjeda.me/2013/04/13/apelacioni-sud-17-maja-razmatra-presudu-za-deportacije/>.

²³ <https://portalanalitika.me/drustvo/vijesti/139370-trae-milion-eura-zbog-hapenja-u-sluaju-deportacije>

area, near Pljevlja, in the predominantly Muslim/Bosniak Sandžak region of Montenegro. Investigations opened in December 2007, and heard testimony from over 40 witnesses and victims, (many still living as refugees in BiH) that some 200 Bosniak/Muslim families had been expelled from the village and surrounding area, that six Bosniaks were killed and two reportedly committed suicide after they were tortured. The defendants were charged with systematic ill-treatment, including the inhuman treatment of Bosniak and Muslim civilians, causing severe suffering, and endangering their health and bodily integrity – forcing them to leave their homes. On 31 December 2010, the defendants were acquitted and released, on the basis that there was insufficient evidence to prove the allegations.²⁴

In June 2011 the Appeal Court overturned the original verdict for procedural reasons,²⁵ and returned the case to Bijelo Polje High Court for retrial. On 3 October 2011 the defendants were again acquitted, again on the basis that there was insufficient evidence of a widespread or systematic attack against the Bosniak population.

In March 2012, the Appeal Court dismissed an appeal against the acquittal by the prosecutor and victims' families.²⁶ The Appeals Court found that at the time of the alleged offences, the defendants' actions “did not constitute a criminal act in the eyes of the law”.²⁷ This position presents an incorrect interpretation and misapplication of the legality principle (*nullum crimen sine lege*), which, in turn, leads to the impunity of those responsible for such crimes. Montenegro is obliged to investigate and, if there is sufficient admissible evidence, prosecute those suspected of criminal responsibility for crimes under international law – including crimes against humanity - irrespective of the date of their commission, as set out in several

²⁴ Lawyers acting for the victims claimed that relevant video footage was allegedly never shown in proceedings.

²⁵ According to the Criminal Procedure Code, the court should have been composed of three permanent judges, instead of a five member council.

²⁶ At that time, the majority of the Bosniak families have yet to return to Bukovica, According a statement by to the Minister of Labour and Social Welfare in December 2011, some 43 houses had been built in Bukovica for returnees; only 13 families had returned, <http://www.gamn.org/files/lzvjestaj%20YIHR%202012%20eng.pdf>

²⁷ “Crimes against humanity, Article 427: Anyone who in breaching of the rules of international law, as a part of a wider or systematic attack against civil population, orders: murder, placing entire population or its part under such living conditions so as to bring about their complete or partial extermination; enslavement; forced displacement; torture; rape; coercion to prostitution; coercion to pregnancy or sterilization with a view to changing the ethnic composition of population; persecution or expulsion on political, religious, racial, national, ethnic, cultural, sexual or any other grounds; detention or abduction of persons without disclosing information on it so as to deprive them of legal assistance; oppression of a racial group or establishment of domination of one such group over another; or any other similar inhuman acts intended to cause serious suffering or seriously harm health; or who commits one of the crimes listed above, shall be liable to imprisonment for a minimum term of five years or a prison sentence of thirty years”. <http://legislationline.org/documents/section/criminal-codes/country/57>

treaties to which Montenegro is a party.²⁸

The Appeal Court's conclusion also contravenes Montenegro's obligations under Article 15(2) of the ICCPR, which states that nothing "[s]hall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations". Montenegro is also a party to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, which declares that no statutory limitation shall apply to war crimes or crimes against humanity, *irrespective of the date of their commission*.²⁹ In any event, if internal law does not impose a penalty for an act which constitutes a crime under international law, that does not relieve the person who committed the act from responsibility under international law.³⁰

This was the first final verdict to have been reached in proceedings for crimes under international law in Montenegro; it leaves the victims without access to an effective remedy.

KALUĐJERSKI LAZ

Proceedings began in 2008 against a former Yugoslav Army (VJ) commander and seven reservists suspected of killing 18 Kosovo Albanian civilians, including a woman aged 80 and a child, and injuring others, including six persons in the village of Kaluđerski laz near Rozaje. The Kosovo Albanians had fled to Montenegro from the armed conflict in Kosovo in April and May 1999.

The investigation opened in March 2007, and an indictment was filed in August 2008. The trial opened on 19 March 2009. Around 108 witnesses were heard, but by August 2011, after three years in custody without a first instance decision, the five arrested defendants were released. In February 2012, the 2008 extradition request to Serbia for Predrag Strugar, was finally approved; he was rendered to Montenegro in July. In November 2012, he was acquitted and released on bail.³¹

A retrial opened in December 2012 at the Higher Court in Bijelo Polje. The defence claimed that two defendants had not been present at the time, and that as other Yugoslav Army

²⁸ "At the time the crime was committed, a written or unwritten norm must have existed upon which to base criminality under international law. The principle of legality (*nullum crimen sine lege*) is part of customary international law.", G. Werle, *Principles of International Criminal Law*, Second Edition, TMC Asser Press, p.192.

²⁹ <http://www2.ohchr.org/english/law/warcrimes.htm>

³⁰ "Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal, 1950", International Law Commission, Yearbook of the International Law Commission, 1950, Vol. II, pp. 374-378".

³¹ According to media reports, the lengthy trial was due to the reluctance of the Serbian authorities to submit evidence (relating to command responsibility for the alleged crime), the large number of witnesses, and poor investigation. The number of those killed was successively reduced from 23 to 18 to 15.

soldiers and Montenegrin police officers were present in the area at the same time, it could not be proven unequivocally that the defendants had discharged their weapons at the time of the event.

On 31 December 2013, the defendants were acquitted on the basis that there was no evidence that they had committed the crimes for which they had been indicted. Former commander Predrag Strugar was acquitted on the basis that it could not be proven that he had issued the relevant orders to the soldiers under his command.³²

OUTSTANDING CASES

Amnesty International has been unable to establish whether any new investigations have been opened into outstanding cases of crimes under international law. However, the organization is encouraged by the signing on 29 April 2014, of a "Protocol on Cooperation in Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide" between Montenegro and Bosnia and Herzegovina; similar agreements have already been signed with Croatia and Serbia.³³ Montenegro's reported commitment to resolve the fate and whereabouts of 61 persons who remain missing after the armed conflict is also an encouraging sign.

However, notable cases remain outstanding. No investigations have been opened in Montenegro into members of the then Yugoslav People's Army (JNA) for the 6 December 1991 shelling of Dubrovnik from Montenegrin territory. Some 19 civilians were killed, and another 60 people injured; civilian objects were also destroyed.³⁴ Yet the bulk of the JNA Operational group involved in the attack, was made up of the Montenegrin Territorial Defence - mobilized Montenegrin reservists - their use by the JNA authorised by Momir Bulatović, former President of Montenegro. Due to the lack of any provision permitting the extradition of those suspected of criminal responsibility for war crimes in the 2010 extradition agreement with Croatia, suspects residing in Montenegro may only be investigated and prosecuted in Montenegro.³⁵

Impunity also persists for crimes against the civilian population of Montenegro, including the enforced disappearance of Montenegrin citizens by Bosnian Serb paramilitaries (the Štrpci

³² <http://www.pobjeda.me/2013/12/31/donijeta-presuda-optuzenima-u-slucaju-kaluderski-laz-bivsi-vojnici-oslobodeni-optuzbe/#.U2JR2fit5cg>.

³³ EC, *Judicial cooperation between BiH and Montenegro*, 30 April 2014, http://europa.eu/rapid/press-release_STATEMENT-14-144_en.htm.

³⁴ For prosecutions at the Tribunal, see Strugar (IT-01-42) "Dubrovnik", <http://www.icty.org/case/strugar/4>; ; the indictment against Milan Zec withdrawn on 26 July 2002; In 2009, the Montenegrin Supreme State Prosecution Office stated that an investigation had not been opened, as no criminal reports against Montenegrin nationals had been filed by that date (Reply to a request for access to information, HRA archives, http://www.hraction.org/wp-content/uploads/war_crimes_FINAL.pdf).

³⁵ In 2009, the Dubrovnik county state prosecutor filed indictments (Ref. No. 46/09) against former JNA officers for their failure to prevent violations of the Geneva Conventions, http://www.hraction.org/wp-content/uploads/war_crimes_FINAL.pdf

and Sjeverin cases), and cases of the widespread and systematic torture and ill-treatment and persecution by the Montenegrin police, between 1992-5 of the Bosniak population in the Sandžak, on the basis that they were perceived to be pro-Bosnian and unsympathetic to the then government.³⁶

THE ŠTRPCI CASE

On 27 February 1993, 18 Montenegrin Bosniaks and one Croat were abducted while travelling on a train to the Montenegrin town of Bar, while it stopped in the town of Štrpci on Bosnian territory. Only one suspect has been brought to trial: Nebojša Ranisavljević, a member of the “Avengers”, a Bosnian Serb paramilitary group, was imprisoned for 15 years in 2002 following a trial in Bjelo Polje. No other members of the Avengers, reasonably suspected of responsibility for the crime, have been brought to justice.

Nor have investigations been conducted into credible allegations, including in testimonies to the ICTY, that the then SFRY authorities, including state, army, police and railway officials, knew that the “Avengers” were planning this action and failed to prevent it.

Only three of the bodies of the victims have been identified and returned to their families; the fate or whereabouts of the others remain unknown. Their families have not received compensation on any other form of reparation for their loss, or for the pain and suffering they have endured. Despite promises by the authorities, a memorial to the missing due to be built in Bijelo Polje, has not yet been built.

In this context Amnesty International welcomes the commitment made by Montenegro 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 2014.³⁷

THE RIGHT TO REPARATION

Montenegro lacks an effective administrative reparation framework to provide the victims of crimes under international law access to remedy, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.³⁸ The Law on the Protection of

³⁶ See *Amnesty International, FRY: Still Seeking Justice in the Sandžak*, <http://www.amnesty.org/en/library/asset/EUR70/005/2003/en/10647833-d72e-11dd-b0cc-1f0860013475/eur700052003en.pdf>; *Serbia and Montenegro: Legal Loopholes Allow Impunity for Torturers in the Sandžak*, <http://www.amnesty.org/en/library/asset/EUR70/002/2003/en/87535eea-d756-11dd-b024-21932cd2170d/eur700022003en.pdf>

³⁷ <http://www.balkaninsight.com/en/article/montenegro-to-investigate-wartime-missing-persons>; “Bosnia and Herzegovina, Croatia, Montenegro and Serbia sign ICMP’s Declaration on Missing Persons”, <http://www.ic-mp.org/press-releases/bosnia-and-herzegovina-croatia-montenegro-and-serbia-sign-icmps-declaration-on-missing-persons/>

³⁸ As set out in the Article 11 of the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by UN General Assembly resolution 60/147 of 16 December

War Veterans and Disabled Persons,³⁹ provides administrative reparation only to those individuals who have suffered bodily damage to an extent of at least 50% due to wounds or injuries. It fails to provide any form of reparation or compensation to the majority of civilian victims of war, including to the families of missing persons, who are not recognised as civilian victims of war.

Therefore victims of human rights violations and of crimes under international law have been required to bring civil suits for damages against public officials or the state of Montenegro. In the majority of cases, they have met with little success in proceedings that have been characterized by their longevity, as in cases documented by the NGO Human Rights Action and relating to events in the Bukovica region, between 1992-1995. In the majority of around 20 civil cases where the lower court has decided that reparation be awarded in the form of compensation, the High Court has overturned those decisions on appeal.⁴⁰

On 25 December 2008, after four years of attempting - and failing - to obtain reparation through the courts,⁴¹ 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, and 28 of their family members, as well as 156 relatives (parents and brothers and sisters) of the 33 men who were killed after being transferred by the Montenegrin police into the hands of Bosnian Serb military forces. Such was the exceptional nature of this measure that the lawyers acting for the families described it as "an historical event of an international importance".⁴² Yet with the conclusion of

2005.

³⁹ Official Gazette of the Republic of Montenegro, no. 69/03.

⁴⁰ In 2008, in a case lodged in 1998, the Podgorica Basic Court ruled that Mušan Bungur be paid €8,133 compensation for the destruction of his house. In March 2010, the Podgorica Basic Court ruled that Montenegro pay 10,000 Euros each to Šaban Rizvanović and his wife Arifa Rizvanović for the physical and mental anguish they suffered at the hands of the Yugoslav Army in Bukovica in 1992, after which the couple fled; they have never returned to Montenegro. In April 2010, the Podgorica Basic Court awarded €1,500 to Zlatija Stovrag, whose husband Himzo committed suicide in 1992, out of fear of the police. In April 2010, Osman Ramović, Zlatija Alema and Amela Bungur filed a civil claim against the Ministry of Defence, and Ministry of Internal Affairs and the Police Directorate for €20,000 for mental anguish and unlawful imprisonment. In each of these cases, the Superior Court overturned the verdict and ordered a retrial: for further details, see http://www.hraction.org/wp-content/uploads/war_crimes_FINAL.pdf, pp. 15-16.

⁴¹ 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 reparations, including compensation. See Amnesty International, *Montenegro: The right to redress and reparation for the families of the "disappeared"*, EUR 66/001/2006, <http://www.amnesty.org/en/library/info/EUR66/001/2006/en>

⁴² Public Announcement on Occasion of the Decision of the Government of Montenegro to Settle Reparation Cases with Victims of 1992 Deportation of Refugees War Crime, http://www.prelevic.com/Documents/Deportation_Public_Announcement.pdf

proceedings in the “deportations” case (described above), the families and survivors still remain without access to justice, or any form of reparation, other than compensation. A request for a memorial to the victims to be built in Herzeg Novi remains unanswered by the government.

However, in March 2014, seven former prisoners of war held at Morinj camp were awarded reparation in the form of compensation, ranging from €20,000 to €30,000, following a decision of the Basic Court in Montenegro. Another 200 former prisoners of war held at Morinj are reportedly in the process of claiming reparation.⁴³ The victims of the other two criminal cases – Kaluđerski laz and Bukovica – as well as the victims of cases which remain to be investigated - have yet to receive access to justice, or reparation.⁴⁴

Recommendations to the Montenegrin authorities:

- Proceedings in cases of crimes under international law, including war crimes, should be conducted impartially and in accordance with international law and standards for fair trial;
- Courts should respect international humanitarian law and take note of the jurisprudence of the ICTY;
- All victims of crimes under international law, including war crimes allegedly perpetrated by members of the former state of the Socialist Federal Republic of Yugoslavia and its successors (of which Montenegro remained a part until 2006) should be guaranteed access to justice, truth and reparation;
- The State Prosecutor should take immediate measures to conduct a mapping exercise of all outstanding reports and allegations of crimes under international law, and to develop a prosecution strategy, so that investigations may be opened into all outstanding cases of crimes under international law, including war crimes;
- Provisions of the International Convention for the Protection of All Persons from Enforced Disappearance should be implemented into national law, along with the introduction of an effective administrative reparation framework for victims (including the relatives of the missing).

⁴³ “Crna Gora počela isplate odšteta hrvatskim logorašima iz Morinja”, <http://www.dubrovackidnevnik.hr/vijesti/crna-gora-pocela-isplate-odsteta-hrvatskim-logorasima-iz-morinja>, 3 March 2014.

⁴⁴ Amnesty International notes that the EC, in another context, has required Montenegro to ensure the rights of victims. “Montenegro stated that its legal framework did not comply with Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings and Council Directive 2004/80/EC relating to compensation to crime victims. Montenegro does not have a definition of ‘victim’ in its legislation. Montenegro intends to amend its legislation to introduce this concept and to provide compensation to victims”, *Screening Report, Chapter 24*, p.8. http://ec.europa.eu/enlargement/pdf/montenegro/screening_reports/20130218_screening_report_montenegro_ch24.pdf

NON-DISCRIMINATION AND FREEDOM OF OPINION AND EXPRESSION

(ARTICLES 2, 19 AND 26)

FREEDOM OF EXPRESSION: THREATS AGAINST THE MEDIA

Enduring concerns remain about the right to freedom of expression in Montenegro, which continues to be threatened and undermined by continued attacks on and threats against journalists. Following the decriminalization of defamation in 2011, and an amnesty law for those convicted of defamation in May 2012, there has been a decrease in the number of civil cases brought against journalists, as well as a reduction of the penalties - following successive decisions of the Supreme Court that penalties should be consistent with international standards, and by decisions of the Constitutional Court that penalties should be proportionate. However, there was still a backlog of defamation cases in the courts as of December 2013. These included allegations of defamation for “insulting” President Djukanović and/or members of his family. According to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, “[T]he fines levied by courts are still high on occasion, and civil defamation lawsuits seem to disproportionately target some sectors of the media considered to be critical of the authorities”.⁴⁵

However, the main threat to freedom of expression is the continued impunity for physical attacks and threats against independent or investigative journalists and print or electronic media critical of the authorities.

Under pressure from the European Commission, in November 2013, the Ministry of Interior, established an 11-member *Commission for Monitoring Actions of Competent Authorities in the Investigation of Cases of Threats and Violence against Journalists, Assassinations of Journalists and Attacks on Media Property*.⁴⁶

The Special Rapporteur on the promotion and protection of the right to freedom of opinion

⁴⁵ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, Addendum, Mission to Montenegro, A/HRC/26/30/Add.1, 29 April 2014, para.17. In particular, the daily newspapers, Vijesti and Dan and the weekly Monitor. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/140/05/PDF/G1414005.pdf?OpenElement>

⁴⁶ The Commission first met on 6 February 2014. It includes six representatives from the State Prosecutor’s Office, Police Administration and Agency for National Security, four journalists – including the Assistant Chief Editor of Dan, who chairs the Commission – and a representative of civil society.

and expression, following his visit to Montenegro in June 2013, had urged Montenegro to set up such a mechanism, in order to prevent and resolve cases of attacks against reporters and media outlets.⁴⁷ Similar concerns were expressed by the Council of Europe's Commissioner for Human Rights in April 2014.⁴⁸

The legacy of unsolved murders and attacks on the lives and property of independent journalists and media in Montenegro, dates back to the murder of Duško Jovanović, editor-in-chief and publisher of the independent daily, Dan, who was shot dead leaving his office in Podgorica on 27 May 2004.⁴⁹ More than 25 other cases have been documented in detail by the non-governmental organization (NGO) Human Rights Action (Akcija za Ludska Prava).⁵⁰

In February 2014, prosecutors re-opened the investigation into the murder of Duško Jovanović, reportedly interviewing former police officials including the former head of the Podgorica force, Milan Vijanović, and senior officers Milan Tomić and Tihomir Gačević. According to the State Prosecutor in July 2014, Prime Minister Milo Djukanović was shortly due to be questioned.⁵¹

There are also reports of progress in the case of Tufik Softić, a journalist for both Vijesti and the weekly journal, Monitor. He was badly beaten outside his home in Berane in 2007, and received further threats and attacks, the most recent in August 2013, when an explosive device was detonated in front of his home. In February 2014, he was placed under police protection.⁵² In July, the police announced that two men had been arrested in Budva on suspicion of his attempted murder in 2007.⁵³

Following a visit to Montenegro, in July 2014 OSCE representative on media freedom, Dunja

⁴⁷ "Insecurity will prevail as long as cases of attack against journalists and media property remain unresolved. The impunity of well-known cases of violence against journalists is unacceptable", OHCHR, *Montenegro: "Impunity of violence against journalists is unacceptable"*, 17 June 2013, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13467&LangID=E>.

⁴⁸ "Lack of journalists' safety and impunity for crimes committed against journalists remain a serious problem in Montenegro too", CoE Commissioner for Human Rights, "Keep the press free", 2 May 2014, <http://www.coe.int/en/web/commissioner/-/keep-the-press-free>

⁴⁹ Damir Mandić was convicted of being an accomplice to the murder in 2012, and sentenced to 18 years' imprisonment.

⁵⁰ HRA, *Prosecution of attacks on journalists in Montenegro*, January 2014, <http://www.hraction.org/?p=5491>.

⁵¹ <http://www.balkaninsight.com/en/article/montenegro-s-pm-to-be-examined-on-journalist-murder-case>, The prosecutor will also take statements from Interior Minister Andrija Jovčević, investigative judge Miroslav Basović and the current Deputy Prime Minister and Justice Minister Duško Marković, Head of State Intelligence in 2004.

⁵² *Balkan Insight*, "Montenegro Gives Journalist Police Protection", 28 February 2014, <http://www.balkaninsight.com/en/article/montenegrin-journalist-gets-police-protection>

⁵³ <http://www.balkaninsight.com/en/article/two-held-in-montenegro-for-attacking-journalist>

Mijatović, welcomed progress made by the authorities in these historic investigations, she emphasized that “[t]here is still a long way to go until there is no impunity for attacks against journalists in Montenegro”.⁵⁴

Whilst some suspects in recent attacks have been brought to justice or arrested⁵⁵ impunity continues to be the norm, and attacks continue. In November 2013, security cameras recorded people throwing stones and rocks at the entrance of the newspaper Vijesti. The office was also attacked during the Podgorica Pride in October 2013. On 16 December 2013, the car of journalist Darko Ivanović, editor of investigative TV programme “Robin Hood”, was attacked and damaged. On 26 December 2013, an explosive device detonated outside the offices of the newspaper Vijesti, shattering windows and damaging the facade; fortunately none of the 16 staff were injured. The perpetrator was recorded on security cameras, yet no one has been arrested.

On 13 January 2014, an explosion occurred outside the home of Jevrem Brković; a 2006 attack on the same writer remains unresolved.⁵⁶ Also in January, the premises of NTV Montena were stoned,⁵⁷ and 12 February 2014, yet another vehicle belonging to the Montenegrin newspaper Vijesti was set on fire, the fifth in a series of attacks on the newspaper’s vehicles since 2011. Further intimidation of a journalists and photographer for the newspaper Dnevne novine took place on 30 June, when unknown persons forced them to delete the photographs they had taken of alleged members of a criminal gang outside the Podgorica hospital.⁵⁸

Recommendations to the Montenegrin authorities

- Take prompt and effective action to address a decade of virtual impunity for attacks on independent media and journalists, including through ensuring that new Commission is fully supported and provided with sufficient resources to rigorously monitor progress by the investigative authorities in bringing those responsible to justice;

⁵⁴ OSCE, “Media freedom situation in Montenegro remains complex, impunity still key obstacle, says OSCE representative”, 2 July 2014, <http://www.osce.org/fom/120703>

⁵⁵ In July 2012, Podgorica Basic Court sentenced Ivan Bušković to nine months imprisonment for an attack in March 2012 on Vijesti reporter Olivera Lakić; further investigations continue into who was behind the attack. Arrests have been made in the case of Lidija Nikčević, correspondent for daily newspaper Dan, who was set upon by masked men with a baseball bat as she was leaving her office in Nikšić in January 2014, <http://www.gov.me/en/News/137092/Montenegro-s-police-arrest-suspected-attackers-on-daily-Dan-journalist-Lidija-Nikcevic.html>; as of August 2014, six defendants await trial, amid allegations of ill-treatment by the police, “Rodbina optuženih za napad na Nikčević sjutra ispred ZIKS-a”, <http://www.cdm.me/tags/lidija-nikcevic>

⁵⁶ HRA, “On the last night’s explosion in front of Jevrem Brković’s flat”, 14 January 2014.

⁵⁷ HRA, *Prosecution of attacks on journalists in Montenegro*, p. 45.

⁵⁸ HRA, “Regarding the attack on the daily Dnevne Novine crew”, <http://www.hracion.org/?p=6831>; <http://www.cdm.me/drustvo/hronika/ispred-urgentnog-centra-napadnuta-ekipa-dnevnih-novina>, 30 June 2014.

- Ensure that all reports of new threats and attacks on journalists, media workers and members of NGOs are promptly, thoroughly, impartially and independently investigated.

THE RIGHTS OF LGBTI PEOPLE

During its progress towards membership of the EU, Montenegro has taken significant measures to guarantee the rights of LGBTI people. These include an Action Plan and Strategy for Improving Quality of Lives of LGBT Persons (2013-2018), launched in August 2013;⁵⁹ training for members of the police force, prosecutors and judiciary, including the appointment of an LGBT focal point within the police. In June 2014, the Supreme Court of Montenegro and NGO LGBT Forum Progress jointly published the report, *LGBT Rights: Standards and Jurisprudence*, covering international and European standards and domestic law.⁶⁰ In August 2014, legislation allowing for same-sex marriage was being drafted.⁶¹

However, despite the holding of two Pride marches in 2013, Montenegro has yet to guarantee LGBTI people the right to freedom of expression and to be free from discrimination, including through the authorities' failure to effectively investigate and prosecute threats, attacks and other crimes motivated by discrimination on the basis of sexual identity and sexual orientation ("hate crimes").⁶² Amnesty International has identified numerous gaps in legislation and a lack of application and implementation of existing legislation to discrimination and crimes committed against LGBTI individuals and organizations,

The 2010 Law on the Prohibition of Discrimination, prohibits discrimination based on gender identity and sexual orientation in all areas of life.⁶³ However, criminal law provisions aimed at tackling discrimination, including Article 370 of the Criminal Code (C.C.), (Causing national, race and religious hatred, divisions and intolerance) and Article 443 C.C., (Racial and other discrimination) do not explicitly include sexual orientation and gender identity as protected grounds of discrimination. However, the latter states in paragraph 2, "[t]he punishment

⁵⁹ Amnesty International notes that concerns have been raised by some NGOs about the transparency of the process of the involvement of NGOs in the drafting of the Action Plan and its subsequent implementation.

⁶⁰ <http://lgbtprogres.me/2014/06/nova-publikacija-lgbt-prava-standardi-i-sudska-praksa/>

⁶¹ <http://www.balkaninsight.com/en/article/montenegro-plans-to-legalize-gay-marriages>

⁶² The European Court of Human Rights has stated that the failure to take all reasonable steps to unmask this motive amounts to a failure to distinguish between situations which are fundamentally different and so it is a violation of the prohibition of discrimination, *Nachova and Others v Bulgaria*, Applications nos. 43577/98 and 43579/98, 6 July 2005, *Stoica v Romania*, Application no.42722/02, 4 March 2008, *Šecić v Croatia*, Application no. 40116/02, 31 May 2007.

⁶³ Article 19, "Every differentiation, unequal treatment or bringing to unequal position of persons on the basis of gender identity or sexual orientation shall be considered discrimination. Everyone has the right to express one's gender identity and sexual orientation. Gender identity and sexual orientation are a private issue of every individual and no one may be asked to publicly declare his/her gender identity or sexual".

referred to in Paragraph 1 of this Article shall be imposed on persons who persecute organizations or individuals for their efforts to ensure equality of people”, although Amnesty International has been informed that this provision has not been applied to protect LGBTI people and organizations.⁶⁴ Additionally, even if applied to LGBTI persons and organizations, in Amnesty International’s view, the scope of the crimes this law would cover is limited; it would only cover conduct which ‘persecutes’ efforts deemed to be ensuring equality, not necessarily hate crimes against LGBTI individuals.

Further, the 2002 Law on Media prohibits the publication of information inciting discrimination, hatred or violence against persons on the basis of gender or sexual orientation.⁶⁵

Also Article 159 of the Criminal Code (Infringement of equality of citizens), provides that: “(1) Anyone who, due to national affiliation or affiliation to an ethnic group, race or confession, or due to absence of such an affiliation or due to differences in political or other beliefs, sex, language, education, social status, social origin, property or other personal status denies or restricts human rights and freedoms prescribed by the Constitution, laws or other regulations or general enactments or recognized by international treaties or, on the grounds of such differences, grants privileges or exemptions, and provides for aggravating circumstances; (2) Should the act referred to in Paragraph 1 of this article be performed out of hate towards the member of the group determined on the basis of race, skin colour, religion, origin, state or national affiliation, the perpetrator shall be sentenced to three months to five years” - two years more than the maximum set out in Article 1. However, neither this provision nor the provisions of the media law have been used in prosecutions on grounds of sexual orientation or gender identity.⁶⁶

Further, Article 42a of the Criminal Code, introduced in 2013, provides for “[s]pecial circumstances for determination of sentence for hate crime”, and provides that, “[i]f a criminal offence is committed from hate based on race or religion, national or ethnic affiliation, sex, sexual orientation or gender identity of another, the court shall consider such

⁶⁴ Consistent with recommendations of the HRC, see *Toonen v. Australia*, (CCPR/C/50/D/488/1992), UN Human Rights Committee, 4 April 1994, available at <http://www.unhcr.org/refworld/docid/48298b8d2.html>, *Young v. Australia*, (CCPR/C/78/D/941/2000), UN Human Rights Committee, para. 10.4; *X v. Colombia*, (CCPR/C/89/D/1361/2005), UN Human Rights Committee, para. 9; and Concluding Observations on Mexico (CCPR/C/MEX/CO/5), 17 May 2010, para. 21, and Uzbekistan (CCPR/C/UZB/CO/3), 7 April 2010, para. 22. Further information from HRA.

⁶⁵ Under Article 23, “It is forbidden to publicise information and opinions that instigate discrimination, hatred or violence against persons or group of persons based on their belonging or not belonging to a certain race, religion, nation, ethnic group, sex or sexual orientation”, Law on Media, Official Gazette of Montenegro nr. 51/2002-1, 23 September 2002.

⁶⁶ Tea Gorjanc Prelević, *Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity, Legal Report: Montenegro*, http://www.coe.int/t/Commissioner/Source/LGBT/MontenegroLegal_E.pdf, p. 9, see also pp.11-15.

circumstance as aggravating except when it is not stipulated as a feature of the criminal offence".⁶⁷

However, as far as Amnesty International has been able to establish, the provisions of Article 42(a) have not yet been invoked by the prosecution or in judgements in criminal proceedings in relation to sexual orientation and gender identity.

Amnesty International's research elsewhere on homophobic and transphobic hate crimes has found that legislative gaps, as well as flaws in implementing existing legislation, policies and practices on hate crimes, result in underreporting, partial investigation, the lack of provision of sufficient support to victims and lack of comprehensive data collection mechanisms.⁶⁸

More specifically, research by Montenegrin NGOs has demonstrated that, despite the legislative provisions available to police and prosecutors, they have not been invoked in criminal or other investigations into alleged crimes, apparently motivated by hate, against the LGBTI community. This is demonstrated in the lack of effective police and prosecutorial responses to attacks on both Pride marches held in 2013, especially the Podgorica Pride, and attacks on the LGBTIQ centre and its activists, which took place after the introduction of Article 42(a).

Some 88 people were arrested in connection with the Prides, 22 in Budva, (held on 24 July 2013), for attacks on the police and the injury to two participants. Another 60 were arrested during the Podgorica Pride (held on 20 October 2013) for attacks on police protecting the Pride, 20 of whom were reportedly injured. Only 17 people were reportedly investigated for misdemeanours, despite the severity of the attacks, the numbers of police officials injured and the amount of damage reportedly caused to property. There was no consideration by the authorities of the potential discriminatory motive of the attacks.⁶⁹

To date, in misdemeanour cases, one person has been fined, the case against seven individuals was dismissed for lack of evidence, and other cases are still in progress.⁷⁰ It appears that the investigations were neither thorough nor effective: according to information requested from the State Prosecutor by Human Rights Action, only one criminal charge was brought, against "unidentified persons" for serious bodily injury, namely throwing stones at police officers during the Podgorica Pride.

⁶⁷ Adopted 30th July 2013, and entered into force on 21st August 2013.

⁶⁸ Amnesty International, *Because of who I am : homophobia, transphobia and hate crimes in Europe*, <http://www.amnesty.org/en/library/asset/EUR01/014/2013/en/c256ac8a-9555-4955-8131-c1d2deee6d5d/eur010142013en.pdf>

⁶⁹ For the investigation of discriminatory motive associated with a misdemeanour, see Amnesty International, *Inadequate Protection: Homophobic and Transphobic Hate Crimes in Croatia*, <http://www.amnesty.org/ar/library/asset/EUR64/001/2012/en/702383c5-062b-4330-b874-f405486da82c/eur640012012en.pdf>

⁷⁰ *Myths and Stereotypes*, pp.106-11.

With the exception of the effective police protection provided to the Budva and Podgorica Prides, the authorities have failed to protect LGBTI individuals and activists, and prevent threats to their life and property. Following the Budva Pride, one of the country's leading LGBTI activists fled the county. He had received explicit death threats in the period running up to the Pride, including that mock obituaries in the form of "death notices" were prominently displayed in the town. He was granted refugee status in Canada in November 2013, on the basis that Montenegro was unable to protect him against alleged threats and attacks, including that the prosecutor's office had failed to address the "hate, violence and threats of death" with due seriousness.⁷¹

On the night of 20-21 April 2014, the LGBTIQ social centre was stoned by unknown persons; on 9 May, there was a tear gas attack on a gathering of around 100 people in the area of the centre. According to the NGO LGBT Forum Progress, by July 2014, the LGBTIQ Social Centre had been attacked 23 times since its opening in February 2014, and its activists attacked on many occasions.⁷² In addition, according to the NGO Juventas, LGBTI activists and individuals have reported receiving threats via social media and on their mobile phones.

In the vast majority of cases the authorities have failed to carry out prompt and effective investigations. In an analysis of 218 reports of discrimination and "hate crimes" made to the police and state prosecutors by 314 individuals during the period January 2013 to March 2014, the NGO LGBT Forum Progress found that around a third (108) complaints resulted in proceedings for misdemeanours under the Law on Public Peace and Order, 48 of which (approximately half) were concluded, the majority with fines imposed. Unresolved cases included for example, the throwing of smoke bombs at a concert organized and attended by mostly LGBT people in 2011. Only three complaints had by May 2014, resulted in criminal prosecutions; all were for "endangering safety" under Article 168(1) of the Criminal Code.⁷³ As far as the available evidence suggests, even where convictions have been secured, the provisions of Article 42(a) have not been applied.

It has been suggested that the failure of the police and prosecutors to effectively investigate such cases lies partially in their lack of capacity, and that further training is required by the judiciary in the interpretation and application of the law in accordance with international and European standards.⁷⁴ Amnesty International notes in this respect that in November 2013, the Montenegrin police and other relevant bodies have benefitted from training in ODIHR's Training against Hate Crimes for Law Enforcement (TAHCLE).⁷⁵

⁷¹ Email to Amnesty International from Z.C., 25 November 2013.

⁷² See, for example, *On the beating of NGO LGBT Forum Progress activist*, 22 May 2014, <http://www.hraction.org/?p=6675>.

⁷³ Aleksandar Zekovic et al, *Myths and Stereotypes: Violence And Hate Speech Towards The LGBT Community: Police And Judicial Practice In Montenegro*, <http://media.lgbtprogres.me/2014/05/Myths-and-stereotypes-eng.pdf>.

⁷⁴ *Myths and Stereotypes*, pp. 187-194.

⁷⁵ <http://www.osce.org/odihr/109084>.

Amnesty International notes that, the 2014 Podgorica Pride, planned for June, was postponed for security reasons, and organizers are, at the time of writing, in discussion with the police, and hope that the Pride will take place in September or October 2014.⁷⁶

Recommendations to the Montenegrin authorities

The government should publicly condemn threats and attacks on the LGBTI individuals and organizations, and take measures to ensure their protection, including through:

- Introducing a specific amendment to Article 433 of the Criminal Code, to include any and all protected characteristics under international human rights law including sexual orientation and gender identity;
- Requiring that police and prosecutors investigate any alleged discriminatory motives, including motives based on sexual orientation and gender identity, associated with any alleged criminal offence or misdemeanour. Prosecutors should bring any alleged discriminatory motives associated with a crime in charges and indictments issued against suspects and in all other relevant legal proceedings when there is sufficient evidence to do so;
- Ensuring that police and prosecutors conduct prompt, impartial and effective investigations into any attacks or threats made against LGBTI individuals or organizations in the context of the Pride, or at any other time, including by ensuring that when sufficient admissible evidence exists the perpetrators are promptly brought to justice;
- Ensuring that the relevant bodies collect data on hate crimes at all levels, including reporting, investigation, prosecution and sentencing, disaggregated by discriminatory motive including sexual orientation and gender identity. This data should be made publicly available (while taking account of privacy) and authorities should develop policies to combat all forms of discrimination on the basis of such data;⁷⁷
- Taking all necessary measures to guarantee the rights of LGBTI individuals and organizations to freedom of expression and freedom of peaceful assembly,

⁷⁶ Earlier in 2014, Suad Numanović, Deputy Minister for Human and Minority Rights, was reported in the Montenegrin media as stating that he did not consider it necessary for the Podgorica Pride, then scheduled for 22 June 2014, to take place this year. He considered that having supported and provided protection for two Pride marches in 2013, the state of Montenegro need not do so again. The Minister later clarified his remarks and the journalist admitted to some misrepresentation.

⁷⁷ Amnesty International considers that ensuring that the hate motive is identified also makes it possible to collect statistics and develop effective strategies to combat and prevent future hate crimes. More effective strategies, coupled with denunciations of hate crimes by public officials, help build confidence in targeted groups in the ability and willingness of the state to protect their rights. This in turn promotes reporting of crimes to police by marginalized individuals or members of groups and communities, and facilitates more successful investigations and prosecutions.

including through cooperation with the Pride organizers so that it may take place without obstruction or hindrance;

- Publicly condemning all threats, harassment and violence directed towards the organizers of and participants in the Pride march.

DISCRIMINATION AGAINST ROMA, ASHKALI AND EGYPTIANS DISPLACED FROM KOSOVO

ARTICLES 2, 26 AND 27

Amnesty International is deeply concerned about the failure of the Montenegrin authorities to guarantee the rights of Roma, Ashkali and Egyptians displaced from Kosovo in 1999. This chapter focusses on two areas of discrimination against these groups: the risk of statelessness and the denial of the right to adequate housing.⁷⁸

AT RISK OF STATELESSNESS

While Amnesty International welcomes Montenegro's ratification of the Convention on the Reduction of Statelessness on 5 December 2013, the organization considers that Montenegro has failed to implement its obligation to prevent and reduce statelessness amongst Roma, Ashkali and Egyptians from Kosovo.⁷⁹ Their legal status remains precarious in that many do not possess identity and citizenship documents, and are effectively stateless. Prior to the armed conflict in Kosovo, and due to systematic discrimination, many Roma, Ashkali and Egyptians have no proof of their original citizenship, as they were not registered in citizenship registers.

In December 2011, based on data collected during the 2011 census, the UN refugee agency, UNHCR, estimated that at least 4,312 were without citizenship, of whom around

⁷⁸ Refugees and internally displaced persons; arts. 2, 6 & 7, Q.16 in the list of issues); rights of minorities, arts 26 & 27; Q.26 in the list of issues).

⁷⁹ Convention on the Reduction of Statelessness, Preamble, <http://www.unhcr.org/3bbb286d8.html>; ratified by Montenegro on 5 December 2013.

1,600 were Roma, Ashkali and Egyptians - predominantly those displaced from Kosovo.⁸⁰ The Law Amending the Law on Foreigners, introduced in 2009, provided that any of the 16,500 refugees in Montenegro (defined as “displaced persons” from Croatia and BiH, and Serbs, Roma and others “internally displaced” from Kosovo) could apply for the status of a foreigner with permanent residence.⁸¹

Roma, Ashkali and Egyptians displaced from Kosovo have faced particular obstacles to obtaining permanent residence status, in that – even when they lived in Kosovo - many often lacked any forms of personal documentation. For others, as they fled, documents were lost or destroyed. In order to obtain residency they require a passport, but in order to obtain a passport, they are required to travel to Kosovo, where they need to acquire up to 28 different documents in order to receive a passport. However, without travel documents they are unable to cross the border. Despite assistance from the Ministry of Interior and UNHCR, when they do enter Kosovo, they have met with obstruction from municipal authorities, from whom documentation must be obtained. For some, there are no records, as they may not have been registered at birth or later recorded in citizenship registry books.

By December 2011, 1,957 refugees from BiH and Croatia had acquired the status of “foreigner with permanent residence”; but only 150 Roma, Ashkali and Egyptians had applied. By December 2012, another 150 Kosovo Roma, Ashkali and Egyptians had obtained the personal documentation they needed to apply for residency, although only around 40% of that group had applied for the status. Only a few of them had been granted status by the end of 2012.

Following further pressure from UNHCR and the European Commission, the government agreed in principle to extend the application date to 31 December 2013, yet by April 2013, the deadline had not yet formally been extended, so no further applications could be made. Finally in November 2013, the deadline for submitting an application was extended to December 2014.⁸² By early 2014, only 64% of “refugees” had applied for the status of foreigner. According to information received from UNHCR, by the end of July 2014, 9,340 individuals (56.6% of the “displaced/internally displaced) had been granted the status. However, no disaggregated figures for 2013 or 2014 were available from the Ministry of Interior, who merely reported that some 50-60 applications are received each month.⁸³ After further lobbying by UNHCR, the Ministry reportedly collected some 150 applications from residents in the Konik camps, and had agreed to assist 500 residents who still lacked the

⁸⁰ Submission by UNHCR, Universal Periodic Review, Montenegro, www.refworld.org/pdfid/4ffd355f2.pdf

⁸¹ Amnesty International notes that this measure effectively prevented them from acquiring the status of refugee as set out in the 1951 Refugee Convention.

⁸² Izvjestaj o radu Ministarstva rada I socijalnog staranja za 2013.godinu <http://www.minradiss.gov.me/biblioteka?query=raseljena%20lica&sortDirection=desc> p.76

⁸³ Information received from UNHCR Podgorica.

personal documentation they needed from Kosovo.⁸⁴

In the absence of statistics disaggregated by ethnicity, it is impossible to estimate the number of “refugees”, including Roma, Ashkali and Egyptians, who have not yet applied or been granted the status of foreigner with permanent residence, and remain at risk of statelessness. While media reports suggest that many Roma have instead decided to return to Kosovo, under a 2011 agreement on voluntary returns, according to UNHCR the actual numbers returning are small. UNHCR continues to affirm that Roma in Kosovo “face a particular risk of persecution or serious harm in Kosovo, including through cumulative discriminatory acts”.⁸⁵ In 2013, nine families with 63 members voluntarily returned to Kosovo,⁸⁶ and by the end of the year 103 families had expressed their wish to return to Kosovo (46 families were approved).⁸⁷ According to UNHCR in Kosovo, only 13 individuals (Ashkali and Egyptian) had returned by the end of July 2014.⁸⁸

In March 2014, the Committee on the Elimination of Racial Discrimination (CERD) expressed concerns that “many such persons [displaced Kosovo Roma, Ashkali and Egyptians] are at risk of becoming stateless”, and recalling its general recommendation No. 30 on discrimination against non-citizens, made a series of detailed recommendations in this respect.⁸⁹ The CERD requested that Montenegro “provide information, within one year of the adoption of the present concluding observations, on its follow-up to the recommendations”.

Amnesty International remains concerned that unless more effective measures are taken to assist Kosovo Roma, Ashkali and Egyptians – and other displaced persons – to overcome the obstacles they face to acquiring the relevant documentation, many remain at risk of

⁸⁴ Amnesty International thanks UNHCR Montenegro for this information.

⁸⁵ UNHCR, *UNHCR's Eligibility Guidelines for Assessing the International Protection Needs of Individuals from Kosovo*, 9 November 2009, HCR/EG/O9/O1, p. 17, <http://www.refworld.org/docid/4af842462.htm>; see, for example, <http://www.balkaninsight.com/en/article/hundreds-kosovo-refugees-from-montenegro-want-to-return-to-kosovo>.

⁸⁶ *Izvjestaj o radu Ministarstva rada i socijalnog staranja za 2013*, p. 18, <http://www.minradiss.gov.me/biblioteka?query=akcioni&sortDirection=desc>.

⁸⁷ In July 2013 Istok/Istog municipality provided land for 10 families, as part of a UNHCR voluntary return project financed by the EU. However in Djakovica/Gjakovë, a construction project building homes for Roma, Ashkali and Egyptian returnees was halted due to local opposition, “Ne Hereq se duan kthimin e komunitetit RAE, dyshojne ne te kaluaren e tyre”, *Koha ditore*, 11 May 2014, <http://koha.net/?id=9&l=9629>

⁸⁸ UNHCR Kosovo, *Statistical Overview, Update at end July 2014*, p.5.

⁸⁹ CERD, *Concluding observations on the combined second and third periodic reports of Montenegro*, 13 March 2014, CERD/C/MNE/CO/2-3, para. 12, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=894&Lang=enhttp

statelessness.⁹⁰

THE RIGHT TO ADEQUATE HOUSING

Amnesty International has repeatedly expressed serious concerns about the continued failure of the authorities to respect and fulfil the rights of Roma, Ashkali and Egyptians in Montenegro, including those displaced from Kosovo. In particular, the organization is concerned about the lack of progress made by the authorities in meeting its international obligation to guarantee the right to adequate housing to both Roma citizens of Montenegro,⁹¹ and to Kosovo Roma, Ashkali and Egyptians, without discrimination.⁹² This failure was criticized in 2013 during the Universal Periodic Review of Montenegro,⁹³ and further underlined by the CERD in March 2014.⁹⁴

In 2010 the government had agreed on plans with the European Commission,⁹⁵ (adopted in 2012),⁹⁶ to provide housing to Roma, Ashkali and Egyptians who had lived since 1999 in

⁹⁰ The Alliance of Displaced People in Montenegro in early 2014 announced they were considering a complaint to the European Court for Human Rights against the government of Montenegro, on the grounds that government policy discriminated against DP and IDPs by denying them access to citizenship. <http://www.politika.rs/rubrike/region/Raseljeni-u-Crnoj-Gori-ostali-bez-zdravstvene-zastite.lt.html> and <http://www.cdm.me/drustvo/crna-gora/jovanovic-udruzenje-raseljenih-pripremilo-tuzbu-protiv-crne-gore-sudu-u-strazburu>; see also <http://www.balkaninsight.com/en/article/montenegro-refugees-risk-being-declared-illegal>.

⁹¹ More than 78% of Roma and Ashkali believed that they did not have the same living conditions as the other residents of Montenegro. Some 42.39% of Roma, Ashkali and Egyptians live in “shacks”, while 1.44% live in tents. PGF Montenegro, *Report on Needs Assessment Of Roma And Egyptians And their Knowledge on the EU and the EU Integration Process of Montenegro*, October 2013, p. 12, <http://www.cedem.me/en/programmes/empirical-research/other-opinion-polls/finish/41-opinion-polls/447-needs-assessment-of-roma-and-egyptian-population-in-montenegro.html>.

⁹² As set out in the *2011–2015 Strategy for Durable Solutions of Issues regarding Displaced and Internally Displaced Persons in Montenegro, with Special Emphasis on the Konik Area*, adopted in July 2011.

⁹³ More than 10 recommendations related to the rights, including to adequate housing, and status of Roma IDPs, were made by member states to the UPR, see UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review : Montenegro*, 21 March 2013, A/HRC/23/12, <http://www.refworld.org/docid/51a71f454.html>

⁹⁴ CERD, *Concluding observations on the combined second and third periodic reports of Montenegro*, *op.cit.*, para 13.

⁹⁵ Montenegro was required by the European Commission in 2010 to “*guarantee the legal status of displaced persons, in particular Roma, Ashkali and Egyptians, and ensure respect for their rights. This will include the adoption and implementation of a sustainable strategy for the closure of the Konik camp*”. http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/mn_opinion_2010_en.pdf, p. 10-11.

⁹⁶ “The situation in the Konik area remains a matter of concern: a plan to change the Konik area was adopted in February 2012, but the capacity within the administration to effectively implement projects

wooden barracks in camps in the Konik area of Podgorica. In March 2012, the Directorate for Refugees stated that construction on the housing would begin in 2013.⁹⁷ Two years later, in March 2014, the Minister of Social Welfare, Predrag Bošković, announced that the building of flats for refugees and displaced people in Podgorica (including in Konik) and Nikšić and would begin in September and June.⁹⁸

In July 2012, a fire broke out in Konik 1 camp, destroying around two thirds of the barracks; and leaving around 100 families homeless. They were initially provided with tented accommodation, and in November 2012, with metal containers. Some sixty families remained in wooden barracks, which were not destroyed in the fire, but were frequently affected by flooding caused by heavy rains. In August 2014, the sixty families were moved into 100 containers donated in September 2013 by the US Army, and originally intended to rehouse 66 other families, who remain living in Konik 2 camp.⁹⁹ Amnesty International does not consider that any metal containers meet the criteria for adequacy of housing set out by the Committee on Economic, Social and Cultural Rights in its General Comment 4.¹⁰⁰

In February 2014, the CERD expressed serious concerns about the “deplorable conditions” at Konik, and “that the construction of housing for the inhabitants of the Konik camp has still not begun”. The Committee then made a series of recommendations with respect to the residents of Konik, including to:

“(a) Take urgent measures to improve the living conditions in the Konik camp and implement a sustainable strategy aimed at its prompt closure; (b) Urgently begin building the 60 housing units for Konik residents that were announced for 2014 by the delegation of the State party, start construction of the other several hundred housing units without delay, and continue to ensure the availability of funds, including through fundraising with donors; (c) Foster the local integration of persons of Roma, Ashkali and Egyptian origin, including the residents of Konik, in communities throughout the country

on this scale is poor.”, European Commission, *Screening Report, Chapter 23*, p. 31.

⁹⁷ In March 2012, the director of the Montenegrin Directorate for Refugees, Zeljko Sofranac, promised that the building of 90 flats in the area of Konik 1 would start in 2013, “[z]gradnja stanova počinje iduće godine kroz IPA projekat, koji je predvidio izgradnju 90 stanova na prostoru Kampa 1. To će biti na neki način početak ovih aktivnosti, dok će se ostali objekti graditi od donatorskih sredstava”, *Pobjeda*, <http://www.pobjeda.me/2012/07/28/zeljko-sofranac-naredne-godine-pocinje-izgradnja-90-stanova/#.U3ohoPldWON>

⁹⁸ <http://www.pobjeda.me/2014/03/12/vlade-crne-gore-kosova-podsticu-povratak-raseljenih-za-povratak-zainteresovano-700-lica/#.U006oPIT5cg>

⁹⁹ Information received from UNHCR Montenegro; see also <http://www.balkaninsight.com/en/article/montenegro-kosovo-refugees-move-into-containers>.

¹⁰⁰ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, 13 December 1991, E/1992/23, <http://www.unhcr.ch/tbs/doc.nsf/MasterFrameView/469f4d91a9378221c12563ed0053547e?Opendocument>.

and ensure that they are provided with adequate living and housing conditions, in order to avoid segregation".¹⁰¹

Other Roma displaced from Kosovo also remain without adequate accommodation, and some are at risk of forced evictions. Seven households (14 adults and 20 children), including five Roma families displaced from Kosovo in 1999, have lived in an informal settlement at Zverinjak in Nikšić for the past eight years. Since they settled there, the land has passed into private ownership.¹⁰² The landowner had previously been authorized by the Nikšić court to evict the families and demolish their houses. For three years, he had, on several occasions, agreed to postpone the eviction, to allow the authorities time to provide alternative accommodation. In March 2014, the landowner again agreed to postpone the eviction until 15 May.

Following appeals by the NGO Human Rights Action, and an Urgent Action issued by Amnesty International calling on the authorities to halt the eviction and urgently provide the affected people with adequate alternative accommodation, on 15 May 2014 the Municipality of Nikšić (see above) made a written commitment to the landowner to provide alternative housing by 1 February 2015.¹⁰³

Although domestic NGOs and Amnesty International have called on the Montenegrin authorities to provide adequate alternative accommodation, the authorities have repeatedly failed to provide these families with any of the safeguards and protections set out in international law, including adequate alternative housing.¹⁰⁴

Recommendations to the Montenegrin authorities

- Intensify efforts to end discrimination against Roma, Ashkali and Egyptians, in particular those from Kosovo, in order to guarantee their civil, political, social and economic rights;
- Fully implement the recommendations of the Committee on the Elimination of Racial Discrimination, related to the "Housing situation of persons of Roma, Ashkali and Egyptian origin in the Konik camp" and the "Legal status of "displaced" and "internally displaced" persons";
- Take proactive measures, including through bilateral agreements with the Kosovo government, and the provision of free legal aid, to ensure that the remaining Kosovo Ashkali and Egyptians are provided with every assistance in obtaining

¹⁰¹ CERD, *Concluding observations on the combined second and third periodic reports of Montenegro*, *op.cit.*, para 13.

¹⁰² The two other households include a single mother and her children, and two retired men.

¹⁰³ *Montenegro: Further information: Eviction halted and resettlement promised*, 15 May 2014, <http://www.amnesty.org/en/library/info/EUR66/004/2014/en>.

¹⁰⁴ These include adequate prior notice and information, access to legal remedies and compensation for any losses suffered. The authorities should have engaged in meaningful consultation on the resettlement with the affected families, including to identify feasible alternatives to the eviction.

documentation, including passports, which they need to apply for temporary or permanent residence in Montenegro;

- Implement the Konik building programme and associated integration measures without any further delay;
- In consultation with Kosovo Roma, Ashkali and Egyptians living in the Konik camps, ensure that their resettlement into permanent housing is carried out in accordance with international human rights standards, including the UN Guiding Principles on Internal Displacement and the Basic Principles and Guidelines on Development-Based Evictions and Displacement;¹⁰⁵
- Refrain from, and prevent, forced evictions, which should only be carried out as a last resort after all other feasible alternatives to eviction have been explored, and with the procedural protections required under international human rights law in place, in particular the requirements on consultation, adequate notice and adequate alternative housing.

¹⁰⁵ The UN Guiding Principles on Internal Displacement and the Basic Principles and Guidelines on Development-Based Evictions and Displacement,
www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf

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