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# **Challenges in implementation of Declaration on Missing Persons within the legislative framework of Brussels Dialogue**

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## EXECUTIVE SUMMARY

The Declaration of Missing Persons, adopted within the framework of the Brussels Dialogue, represents a significant step towards addressing the long-standing issue of missing persons in the post-conflict societies of Kosovo and Serbia. However, the implementation of this declaration holds several challenges that must be justly addressed to ensure the overall success of the legal implementation of the document. This policy paper examines the key challenges that hinder the performance of the Declaration of Missing Persons and provides recommendations to overcome these obstacles, by presenting diverse narratives from each party included in the Brussels Dialogue process and those highly familiar with it.

The paper begins by providing an overview of the Brussels Dialogue and the importance of the Declaration of Missing Persons in facilitating the process of accounting for missing persons in Kosovan and Serbian areas of the 98-99' conflict. It highlights the fundamental principles enshrined in the declaration, including the main principles of transitional justice, which serve as the guiding framework for its implementation.

Subsequently, the paper identifies and analyzes the significant challenges that arise during the implementation phase. These challenges encompass political, legal, logistical, and socio-cultural aspects. The prominent obstacles examined are the lack of political will and cooperation among relevant stakeholders, inadequate legal frameworks, and the complex nature of identifying and repatriating missing persons.

To address these challenges, the paper proposes a series of recommendations. These recommendations emphasize the need for increased international cooperation and coordination, enhanced legal frameworks that encompass the rights of victims and their families, improved technical capabilities for identifying and repatriating remains, and robust engagement with local communities to ensure their active participation and support.

Furthermore, the paper underscores the importance of comprehensive transitional justice mechanisms that address not only the issue of missing persons but also broader issues of accountability, truth-seeking, and reconciliation. It highlights the significance of involving civil society organizations, humanitarian agencies, and relevant international bodies in the implementation process to leverage their expertise and resources.

In conclusion, this policy paper sheds light on the challenges that hinder the effective implementation of the Declaration of Missing Persons within the context of the Brussels Dialogue. By recognizing these challenges and offering practical recommendations, it aims to support policymakers and relevant stakeholders in their efforts to overcome these obstacles and achieve meaningful progress in accounting for and honoring missing persons in conflict-affected regions.

## INTRODUCTION

The Declaration on Missing Persons established within the Brussels Dialogue is a significant initiative aimed at addressing the issue of missing persons in the context of the Kosovo-Serbia conflict, and it is urgent to be implemented for the sake of reparations, stability of relations, and ever-seeking truth of victims' families. The Brussels Dialogue represents a series of high-level negotiations facilitated by the European Union (EU) between the Republic of Kosovo and the Republic of Serbia. The negotiations began in 2011 and focused on various aspects of the relationship between Kosovo and Serbia, including the normalization of relations, security, governance, and other important issues that emerged after the escalation of the conflict.

The Declaration on Missing Persons was adopted on 2nd May of 2023, as a result of the Brussels Dialogue.

The issue of missing persons appeared as a pressing humanitarian concern in the aftermath of the Kosovo-Serbia conflict of the late 1990s. The conflict resulted in significant loss of life and displacement, with many individuals going missing. The fate of these missing persons became a source of enormous affliction for their families and communities, necessitating a continuous effort from the political, intergovernmental, and civil structures to resolve this particular problem. As the Brussels Dialogue became a main channel for engagement of both Kosovo and Serbia in the direct talks, the parties recognized the issue of missing persons and the necessity for a solution, and thus involved in the dialogue agreed to establish the Declaration on Missing Persons.

The primary objective of the Declaration on Missing Persons is to facilitate the search, identification, and repatriation of missing persons from the conflict. It emphasizes the need for a comprehensive and coordinated approach involving various stakeholders, including the relevant authorities, organizations, and families of the missing persons. The Declaration sets forth a framework for cooperation, information sharing, and practical steps to locate and identify missing persons. It focuses on several key areas, such as conducting excavations and exhumations, ensuring proper handling and identification of human remains, establishing a central database, supporting the families of missing persons, and promoting reconciliation and understanding.

Since its establishment, the implementation of the Declaration on Missing Persons has seen both progress and challenges. Whilst the implementation of the document is supposed to reflect numerous legislative needs to finalize the process, such as excavations, identification, and holistic support to families of missing persons, *the Declaration seems to be either frozen and, non-functional or early developed and unable to produce any actions due to inadequate utilization*. As the process started facing many obstacles, the primary ones are incomplete documentation and the complexity of identifying remains due to the passage of time and the nature of the conflict, as well as the lack of access to certain locations and the reluctance of individuals with information to come forward have posed challenges to the successful implementation of the Declaration. The international community, including the European Union, is obliged to support the strengthening of both political sides in technological, and financial assets as well as the implementation of the documents' vision in totality.

## PROBLEM STATEMENT & ANALYSIS:

As previously stated, the issue of missing persons is yet one of the core problems that must be resolved in the upcoming future, but, not with a goal of satisfying aims of political agendas, but with providing truth and peace to families whose members went missing during the occurrence of the Kosovo-Serbia's conflict in the estimated timeframe conducting cases from the year of 1998 (January 1st) to the year of 2000 (31st December). In this timeframe, according to research conducted by the European Union, 13.535 people were killed and / or have forcibly disappeared. As per the forced disappearances, 1.082 missing persons were Albanian, 428 were Serbs, 83 were RAE, 23 were Bosniaks, and there are 43 victims without proper ethnic identification, which sums the total of unresolved cases of missing persons in Kosovo and Serbia's conflict. Until the end of the conflict in June 1999', an estimated number of 4.500-5.500 people went missing, according to ICMP's sources. Certain cases were resolved, leaving us with 1.659 cases that are yet to be resolved.

The Declaration, in its roots, has established working principles that have a sole tendency to seek and provide truth, whilst following the understandings of ICRC, which include the term "enforced disappearances". In the case of non-regular completion of the formed joint goals, many relevant political and civil issues will intensify, endangering the stability of current progress in the general area of interethnic dialogue. The main question that arises from all other concerns regarding the implementation is "What if this is only another dead letter on paper?"

## CAUSES:

On the 2nd May of 2023, in Ohrid, after Declaration was signed as part of the Anex on Agreement on normalization of relations, the reactions of media, civil society, and other relevant actors that have stimulated, initiated and fastened the process were diverse, but many of them indicated that the implementation won't reach its peak due to different factors of influence.

*"Representatives of several Associations of Missing Persons from Kosovo gave a negative response when the question of implementation was tackled, expressing their concerns on the overall processes, but many of them indicated that the implementation won't reach its peak due to different factors of influence." [Glas Amerike, Radio Slobodna Evropa](#).*



Civil society representatives applauded the agreement, but, with a skeptic approach remaining. As the Declaration itself is shaped concisely and almost is at a perfect theoretical scale, there is still a lack of trust coming from the participating third parties which are not a direct part of negotiations. The causes behind this negative effect impacting proper approach to the situations in the area of missing persons are next:

- RECOM / REKOM - Civil Society Initiative of all former Yugoslavian countries, formed in the year 2006, with a profound goal of establishing a commission for truth. RECOM / REKOM was supposed to deal with war crimes and violations of human rights which occurred in the timeframe of 1st January 1999. to 31st December of the year 2001. The initiative is still non-functional, due to a **lack of cooperation between all former Yugoslavian countries.**

\* Civil society representatives from the mentioned territory and of all ethnic groups impacted by dazzling conflicts of ex-Yugoslavia have gathered at the Western Balkans Summit in London, held on 9th and 10th July of 2018., while nurturing the hope that the RECOM would be officially launched, which, unfortunately, was not realized. After the completion of the Summit in London, Mrs. Denisa Kostovicova, a Research Fellow at the London School of Economics and Political Sciences, in her article published by the European Western Balkans, on date of 24th July 2018, stated next : *“Their disappointment lays bare dilemmas facing not just the Summit’s host, but also the EU’s policy towards the legacy of war crimes in the Western Balkans. The dilemma is stark given that the closure of the Criminal Tribunal for the former Yugoslavia in The Hague (ICTY) at the end of last year, which was the lynchpin of the EU’s policy toward the criminal legacy in the region and reconciliation, reveals the void in this policy area.”*

- Kosovo’s Commission on Truth and Reconciliation - Official Initiative was formed in the year of 2017. by the former president of Kosovo, Mr. Hashim Thaçi, gathering the academic community, civil society and different stakeholders who were interested in resolving the issue of missing persons. After Mr. Hashim Thaçi was accused by the Specialized Chambers of Kosovo based in The Hague of war crimes and crimes against humanity, in November 2018, he resigned, **leaving the idea of Commission at mercy of upcoming generations of political leaders.**

\* In 2018, a team was formed to prepare the law for the establishment of the commission, and was functional until the end of the second third of the year 2021.

\* In Balkan Insight's interview, named "Kosovo Truth Commission's Future in Doubt After Thaci's Indictment", published by a journalist Serbeze Haxhiaj, Artan Murati, then advisor to Vjosa Osmani, mentioned that "this issue wasn't yet discussed".

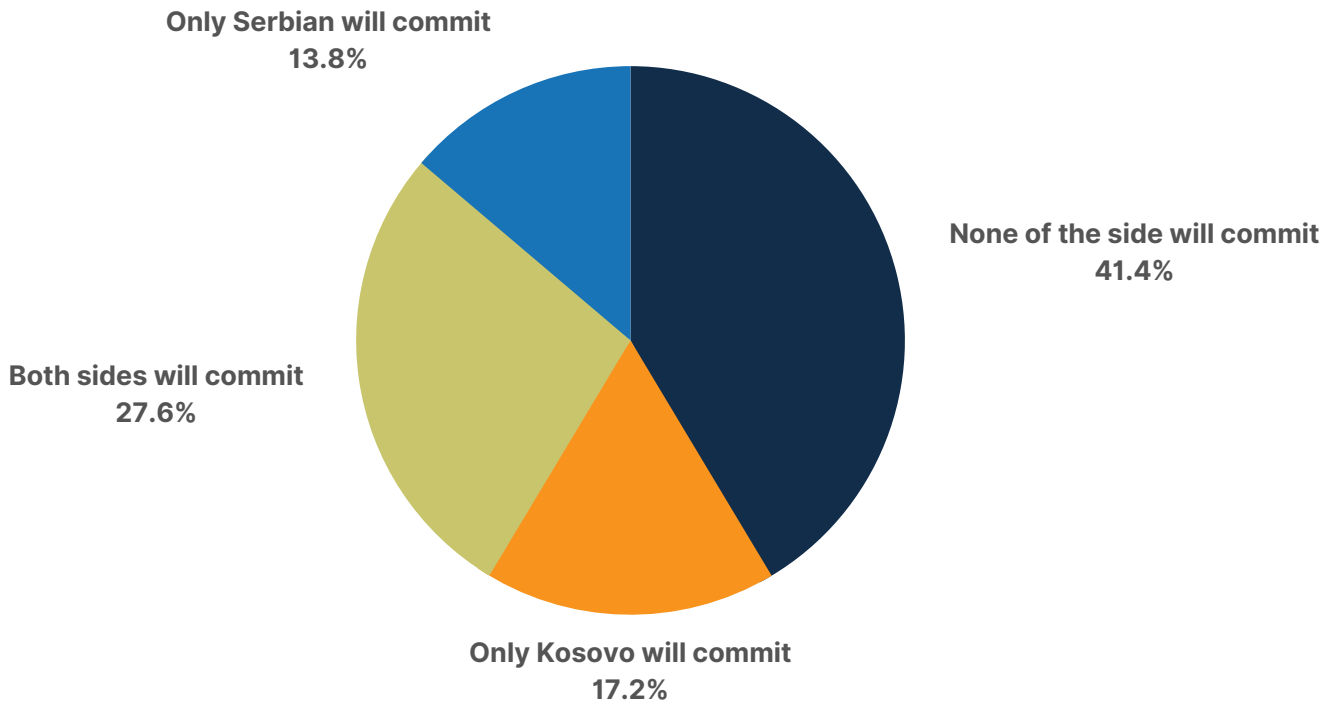
- Reparations - "The making of amends for a wrong one has done, by paying money to or otherwise helping those who have been wronged." - Oxford Dictionary. Within the lawful and legitimate context of reparations, several ways of supporting transitional justice processes and providing legal support to victims and their families are; *rehabilitation, compensation, satisfaction, quo ante*. The way of providing reparations can vary according to the case or situation, but, Kosovo and Serbia haven't been in a nonproblematic chance of satisfying the collective need for reparations of those negatively impacted by the conflict.

Many other unresolved cases within this singular context provide an ability for insight into the issue of missing persons. Due to recent happenings in the North of Kosovo, escalation of political destabilization, and others, expert Mrs. Sofija Todorović, Executive Director of YIHR Srbija has stated : "Establishing this kind of document in the period of the current happenings feels like a world miracle."

## **EFFECTS:**

After RECOM / REKOM & KCTR were assigned to a non progressum status , the impact on development of paranoid approach has increased, while the trust of civil society organizations and its representatives has decreased to a certain level. While talking to expert Mr. Bekim Blakaj, Executive Director of HLC in Kosovo, he stated "We have the right to doubt that both parties will fulfill what they agreed...But, what is good is that in case where any of the sides might not commit to promised, the sanctions by European Union will occur, due to strengthened monitoring processes of this particular situation and its outcomes."

## Commitments to the Declaration - Will the sides commit to promised?

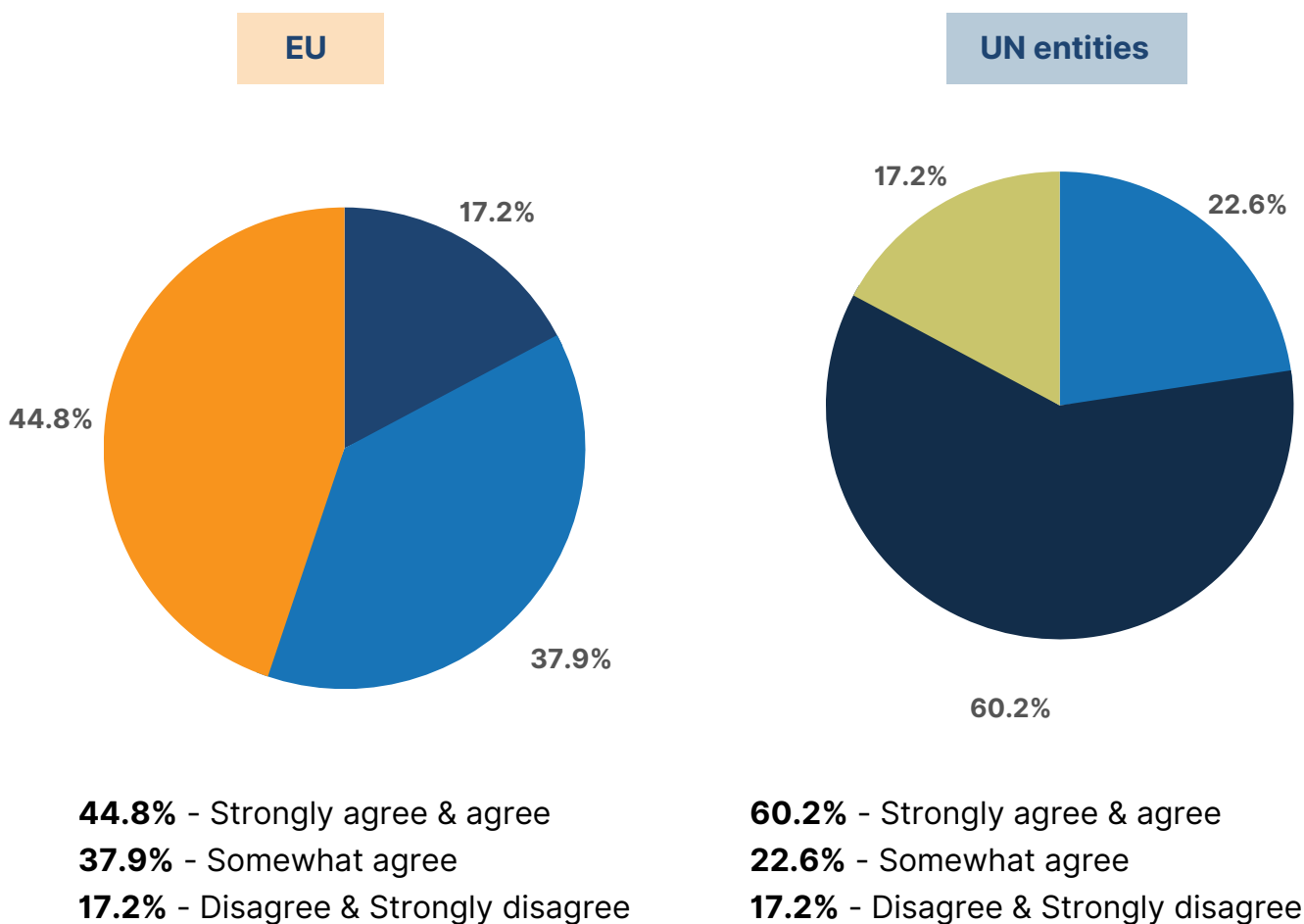


**Data from July 2023.**  
**(Sample of 100 civilians in Serbia and Kosovo)**

After the conduct of the quantitative research purposed for the use of this Document, out of the sample of 100 civilians residing in Serbia and Kosovo, aged from 18 - 36, with a 95% rate of academic degree possessions in spheres of social sciences directly related to political subjects, the majority of the examinees - 41.4%\*, believe that none of the sides will commit to the implementation of the Declaration on Missing Persons, whilst 27.6% examinees oppose the belief by stating that both of the sides will commit to the implementation. Behind the methodology of the research, one answer eliminates all the other responses available and takes in a dominant manner of an examinee's opinion, resulting in providing concise responses.

What remains a highly fascinating segment is the fact that the engaged examinees (with the same stratified research samples) have been likewise presented with questions addressing their perspective on the efforts of the international community in the implementation of the Declaration. The majority of the examinees have strongly agreed that support of European Union and UN entities in direct implementation of the Declaration is absolutely inevitable for the future success. According to the research, the support of EU and UN entities must be maximized in order for both sides to commit to successful progress on this matter. Apropos of that piece of information, it is proven that the bigger percentage of trust from the examinees is redirected to the international community, which possesses only a mediator status within the context of the dialogue, than to actual political sides that are directly involved in the dialogue framework, which are Kosovo and Serbia.

### Importance of direct support of the International community in the implementation of the Deceleration



## **POSSIBLE SOLUTIONS:**

In spite of the fact that Brussels Dialogue in its totality has not lived to fame for its continuous positive growth and positive outcomes, there is still a valuable and non-decreased potential for both countries to develop individually and jointly on common grounds, especially on the matter of missing persons. This issue is indeed intersectional, and thus, it is required to be saluted with its intersectional and complex nature in mind. Possible solutions for establishing communion among Serbia and Kosovo on the matter of missing persons, thus creating space to implement Declaration completely, are next:

**1**

Provide safe, mindful, and holistic spaces for civil society and academia to contribute to the process;

**2**

Both sides must understand that question of missing persons doesn't represent a political question, but a humanitarian issue that must be resolved as soon as possible - in spite of highly-developing technology, the passage of time proceeds to shape hardships for excavations and identifications;

**3**

Building effective communication channels for a wide range of civic and academic participation in the processes;

**4**

Focusing on positive examples built by civil society until the moment of the Declaration's implementation and the ways they can be successfully utilized in the political context and official reconciliation.

## CONCLUSION & RECOMMENDATIONS:

After we generated the stance that TRUST in all its forms is a necessary component that will lead the points of Declaration to their complete shine in the legislative sense, it must be comprehended that only countries that are able to provide justice to the families of the victims, and thus free them from emotions of grief, agony, and uncertainty, are the countries that can stimulate positive civil change and tailor the concept of role models for themselves.

As it can be concluded from this paper, Kosovo and Serbia sincerely hold great potential for improvement in this field, but, as we move forward, it is necessary to remove all barriers that are stopping the ongoing process of seeking justice and implementing the main principles of transitional justice in the post-conflict societies of Kosovo and Serbia. Dealing with the Past is a “Cross” or “Crescent and Star” of Serbia and Kosovo’s relationship that can not be erased due to all the unfortunate occasions which embosomed thousands of families with tragedy, and this Declaration is a holder of an enormous ability to transform the present and future of both countries. This Declaration is key to moving forward and delivering justice for the victims whose fate is currently unknown, and truth to all people that still await the arrival of their parents, children, spouses, siblings, cousins, neighbors, friends, acquaintances, and others.

Through interviews with experts in the area of transitional justice, and, quantitative research with residents of Kosovo & Serbia, the built recommendations for the implementation of the Declaration on Missing Persons, signed by Mr. Aleksandar Vučić, president of the Republic of Serbia, and Mr. Albin Kurti, Prime Minister of the Republic of Kosovo, on the date of 2nd May 2023, are next:

- 1 Both governments must be open to unreserved, sincere and prolonged cooperation that includes constant communication, involvement of external experts working in the accurate fields that could foster and stabilize the navigation, excavations, and identification of bodies. This also means that countries must be able to create compromises and find common ground for resolving issues in internal communication that could produce negative effects on the process;

- 2 Both governments must be transparent in the pieces of information they possess and in their sharing, including actions of opening the archives and the documents that are labeled as CONFIDENTIAL, which can't be done without the first step coming into realization;
- 3 Both governments must create spaces that are directly supported by the Governments for the engagement of civil society initiatives and organizations, with a specific focus on associations working on the issue of missing persons, and academia. This underlines the vitality of cross-participation in various activities embracing the current progress and stimulating the work that has been done so far, thus understanding that participation of these two groups is a necessity in the process;
- 4 Both governments must be open to creating direct cooperation between the Prosecutor's Offices, which is interpreted as creating common prosecution ground for the crimes that happened in the scope of the 98'-01', with a special focus on missing persons;
- 5 Both governments must be prepared and open to communication with the public, without exclusions, which is related to the second point and transparency of the pieces of information. Progress must be visible in order to be acknowledged and later formed as a positive example;
- 6 Both governments must invest needed funds into the technology that can ease or support the work on the field;
- 7 Both governments must understand the importance of rebuilding trust within the societies individually and collectively. In order for this Declaration and any other document dealing with the humanitarian issue of Missing Persons in the context of Kosovo and Serbia to be successful, we must be agents of change who are going to nurture the ability to transform hatred, toxic and biased narratives. This has much to do with the successful implementation of the Declaration, but way more with changing lives, minds, and upcoming generations.

It is needed to understand that Dealing with the Past, especially in the context of Kosovo & Serbia, which can be described as extremely delicate due to complex background of conflict, requires a holistic approach in order to resolve its matters, but, what is out of absolute importance to encompass is that these processes, in all their sensitivity, must be resolved with care and respect. They are a portal to the future, where peace is praised, embraced, and integrated into all spheres of life of both countries. In order to achieve peace, it must take part in all of our agendas, political, social, individual, and others, but, a society without possession of a proper, official legacy for all the victims and mutual understanding for the accumulated pain is only destined to repeat destructive paradigms.

In order to avoid that prediction, this Policy Paper solely serves as a map that locates the issues and proposes solutions with all due respect for the joint and individual progress of both Kosovo and Serbia that has been made until this moment in the area of missing persons.



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