icmp International Commission on Missing Persons

THE SITUATION IN KOSOVO

A Stock Taking

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1. BACKGROUND

1. The issue of persons missing from armed conflicts, abuses of human rights and other crimes against humanity is a global concern. The International Commission on Missing Persons addresses the complexities of this problem on a political, human rights and technical level.

2. In the former Yugoslavia, the work of ICMP has made it possible to locate, identify and commemorate thousands of victims, thereby opening the path to eventual closure and reconciliation for those war-torn societies.

3. ICMP has been working in Kosovo since 1999 in an effort to assist UNMIK and the local authorities in identifying persons missing as a result of the conflicts in that region. In 2001, ICMP began operations in Serbia and Montenegro relevant to persons missing from the Kosovo conflicts who were buried in Serbia proper.

4. ICMP has signed three agreements with UNMIK to date, one of which included a donation of funds to UNMIK in the year 2000. The last Memorandum of Understanding signed with UNMIK on 26 November 2003 defines ICMP's technical assistance to UNMIK in relation to the work of the Office on Missing Persons and Forensics (OMPF), which has the lead responsibility for the issue within UNMIK.

5. ICMP's assistance to UNMIK, as defined in the MoU and the accompanying ICMP Standard Operating Procedures for a DNA-led identification system, includes the collection and DNA analysis of biological reference samples (blood) from family members of the missing living in or outside Kosovo. In addition, ICMP receives biological samples from exhumed mortal remains (bone and tooth) from UNMIK OMPF. ICMP compares genetic information from the blood references and bone samples, produces DNA reports and submits them report to UNMIK/OMPF.

6. Although the agreement with UNMIK calls for a DNA-led identification process, ICMP's technical assistance to UNMIK is limited to the DNA testing portion of the problem. Such assistance differs sharply from ICMP's normal working practices in other regions of the Balkans, where, in addition to DNA testing, ICMP supports or monitors the full range of recovery and identification procedures. This permits a high level of accountability and transparency in the process of locating and identifying the missing.

7. In October 2001, ICMP signed an agreement with the Coordination Centre for Kosovo and Metohija (CCK) of the Federal Government[1] of Yugoslavia and the Government of the Republic of Serbia, relevant to missing persons from the Kosovo conflict. This agreement also calls for a DNA-led process and allowed ICMP forensic archaeologists and anthropologists, supported by a team of local archaeologists, to assist in the actual excavations in Serbia proper (between 2001 and 2002) of persons missing from the Kosovo conflict. As for autopsies of human remains exhumed, ICMP did not oversee or assist in these, but conducted spot monitoring. The Belgrade District Court retained all autopsy reports. Bone and teeth samples taken during autopsy were handed over to ICMP through a court order and have undergone DNA analysis.[2] DNA reports regarding these samples are submitted to the CCK.

[1] Now Serbia and Montenegro (SCG).

[2] ICMP has published two reports, which are available to the public and posted on the ICMP website regarding the excavation process in Serbia proper.

2. SUMMARY

8. The subject of this paper is to contribute to the clarification of the fate and whereabouts of persons missing from the 1998/99 conflict in Kosovo. In so doing, this paper reviews the status of information available to ICMP concerning numbers of bone samples received from both OMPF and the CCK; the numbers of bone samples DNA profiled by ICMP and the number of unique profiles representing different individuals obtained by ICMP from these bone samples, as well as the number of blood samples ICMP has collected from family members who voluntarily gave blood samples to help identify their missing relatives. The paper also discusses the number of DNA Match Reports submitted to OMPF and the CCK.

9. The above information and numbers have led to questions that ICMP wishes to resolve. They include the following:

    - ICMP has received bone samples relevant to the Kosovo conflict that would enable ICMP to identify only up to 2,500 missing persons. If, according to OMPF reports, there were 4,450 persons missing after the cessation of the conflict and if there are currently 3,192 persons missing, how are the remainder to be accounted for?

    - As per the agreement signed in 2003, of the 1,008 DNA Match Reports submitted to OMPF by ICMP, of which 730 represent different individuals, ICMP has received a "Record of Death Certificate Handed over to Families" for only 253 cases. ICMP has, however, received lists from OMPF that indicate that around 460 cases may have been closed and returned to families. Therefore, the question is how many cases has OMPF closed using ICMP DNA Match Reports and if OMPF is not able to close cases, why not?

    - ICMP has compared DNA Match Reports submitted to CCK and OMPF. The comparison has shown that the DNA Match rate for unique profiles for CCK is 79.8 %, whereas the DNA Match rate for OMPF is only 43.6 %. That means the rate of bone samples taken from exhumations in Serbia proper matching blood samples taken from the relatives of the missing is much higher than that of bone samples taken from bodies exhumed in Kosovo. Could this mean that there are a considerable number of bodies that were buried in Kosovo without being accurately identified?

    - Furthermore, of the small number of presumptive cases submitted to ICMP from OMPF, in 37.1% of cases, the presumption proved incorrect, which lends further credence to the possibility of misidentifications.

10. This paper seeks to shed light on the precise nature of the problem of missing persons in Kosovo. Based on ICMP's information it appears that misidentifications may be a matter of concern. The fact that there appears to be a difficulty in locating bodies that have been exhumed and re-buried without having been identified has also added to this problem.

11. ICMP would suggest that if the above issues are not fully and transparently addressed in the context of Kosovo, we can look forward to a future where the international community as a whole would be implicated in misleading the families of the missing and the Kosovo authorities alike. In addition, beyond the context of Kosovo, we would be potentially setting the stage for replicating such precedents in other parts of the world.

3. THE NUMBERS

3.1. Bone Samples Received by ICMP from OMPF and CCK

12. ICMP has received a total of **3,763** bone samples[3] from OMPF and CCK combined. This number, however, requires qualification. Of the 3,763 bone samples received:

    - **182** from OMPF were refused by ICMP because they were not collected according the approved procedures for the collection of bone/teeth specimens as outlined in the SOP.[4] Accordingly, they must be subtracted from the total, yielding 3581.

    - **111** samples submitted by CIFA,[5] a British-sponsored forensic team based in Glasgow, were identified by the submitting agency ias duplicates of already archived bone samples. In a few instances, some of the samples were not bone at all, but remains of clothing found on victims or shrapnel. Accordingly, they must be subtracted from the total, yielding 3470.

    - **3470**, therefore, represents the total number of bone samples archived, as can be observed on the Tracking Chart for Kosovo Related DNA Cases. (cf. Tracking Chart.)

13. ICMP has asked OMPF and CCK to replace respectively **291** and **70** archived bone samples that had failed to yield DNA profiles.[6] According to the underlying agreements, such samples were to be replaced with reserve samples. OMPF submitted **81** reserve samples.[7] ICMP has received no reserve samples from CCK. The initial number of archived samples is consequently reduced by the difference between replacement samples requested and replacement samples received, i.e. by 280. Therefore, ICMP has currently **3,190** bone samples from Kosovo for purposes of DNA led identifications (note: 3763 plus 81 represents the Tracking Chart number of 3844).

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[3] The term "bone sample" does not necessarily refer to the number of bone samples, or specimens, received in a sample. A sample often contains more than one specimen, or discrete piece of skeletal material (e.g., Femur and Tooth or Skull and tibia). The reason for this is that if one specimen fails to yield results (cf. footnote 4 below), then the other can be tested and the need for requesting reserves samples is reduced. The number of bone samples cited above thus refers to the samples submitted with unique labels, not necessarily the actual number of specimens in each sample.

[4] FSP Supplement 1: ICMP Standard for Operating Procedures for the DNA-led Identification System. The SOP was included as an Annex to the MoU with UNMIK and is thus binding on both parties.

[5] Center for International Forensics Assistance.

[6] Numerous factors may account for the failure of a bone sample, including the condition of the remains upon exhumation or improper storage of bone samples after exhumation. In order to extract DNA from a bone and produce a profile, the sample must not only be cut from the appropriate type of bone (hard tissue types such as teeth, which are usually more replete with amplifiable DNA; or long, dense bones such as femurs), but it must also be selected from bones in relatively good condition (chemicals in the soil from which the bone is exhumed impact the quantity of amplifiable DNA still in the bone) and cut according to very strict standards. When bone samples fail, it is usually because the quantity of amplifiable DNA is extremely low. At about 10%, the failure rate for extraction of DNA from bone specimens in the region is low. This is due to techniques ICMP has developed in its labs over the course of the last years that have enabled it to extract DNA even from bone with very low levels of amplifiable DNA.

[7] Though ICMP has received more than 81 sample submissions from OMPF since the requests for 291 reserve samples were submitted, it has only received 81 that correspond to the labels of the 291 samples requested. It is impossible, therefore, to establish on the basis of the labels, or chain of custody indicators, whether any of the samples received in excess of the 81 in fact fulfill the 291 requests submitted. The problem of improper labeling and/or re-labeling is recurrent. Due to circumstances beyond its control, ICMP cannot establish on the basis of identification codes, or labeling, the whereabouts of 210 requested reserve samples.

14. Broken down in terms of OMPF and CCK, this means:

    - **2,300** bone samples from OMPF;
    - **890** bone samples from CCK.

3.2. DNA Profiles Obtained from Bone Samples Submitted

15. ICMP has obtained profiles for **3,041** of the **3,190** bone samples, representing **95.3%** of the samples from CCK and OMPF. 149 bone samples are in queue for profiling, all from OMPF.

    - **2,151** profiles were obtained from the total of 2300 bone samples from OMPF;
    - **890** profiles were obtained from the 890 samples from CCK.

16. The total number of profiles obtained is not equal to that of the individuals represented thereby. Of the 3041 profiles, **2,466** are unique in that each represents a different individual, while 575 profiles are duplicate profiles, which would indicate that some commingling of remains has occurred. ICMP has obtained:

    - **1673** unique DNA profiles from the bone samples from OMPF, and
    - **793** unique DNA profiles from the samples from CCK.

3.3. Blood Sample Collection

17. In order to produce a DNA Match Report confirming the identity of a missing person or an exclusion report excluding the possibility of a familial relationship, DNA samples must be collected from living families members putatively related to a missing person, as well as from a missing person's remains.

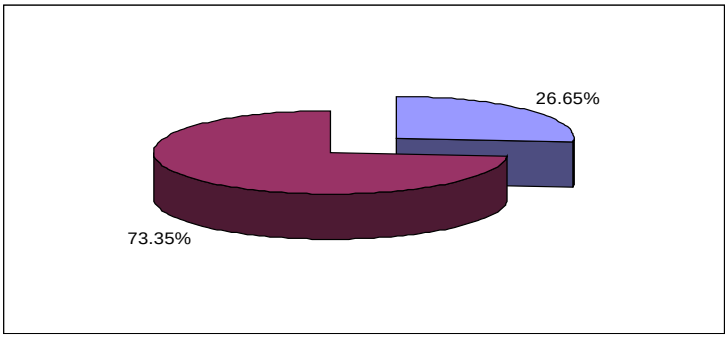
18. In order to accurately determine familial relationships, blood samples from several relatives of a missing persons are required and, to date, ICMP has collected a total of **11,730** blood samples related to **3,756** individuals missing from the 1998/99 Kosovo conflict. It has collected:

    - **9,698** in Kosovo and
    - **2,032** in Serbia proper.

19. ICMP has collected sets of blood samples (i.e. samples from a sufficient number of relatives of a missing person) to obtain DNA matches for **2,755** missing persons. It has thus collected **73.3%** of the total blood samples needed to obtain DNA matches on the 3,756 missing individuals represented in its database.

20. The blood collection rate of 73.3% for the entire Kosovo conflict corresponds roughly to the DNA matching rate of 78.6% (as explained in Section D)

Comparison: Reported Missing / Complete sets of Blood samples



Reported Missing to ICMP	3756	
Need to be collected	1001	**26.65%**
Complete sets of Blood collected	2755	**73.35%**

3.4. DNA MATCH Reports Submitted by ICMP

21. When ICMP matches a profile obtained from a bone sample to DNA profiles in its Family Reference Database[8], it is able to issue a DNA Match Report. A DNA Match Report is issued whenever a familial link is found and confirmed between the Bone Database and the Family Reference Database.[9]

22. At the time of this writing, ICMP has generated a total of **2,066** DNA Match Reports from the samples received. Of those reports, **1,708** have been submitted, 198 are pending review and 160 are in the process of being submitted (140 destined for OMPF and 40 for CCK). Of the 1708 reports submitted,

    - **1,008** have gone to OMPF and
    - **700** have gone to CCK.

23. The total number of reports submitted relating to different individuals is **1,363**, of which:

    - **730** have gone to OMPF and
    - **633** to CCK.

24. A comparison of the number of unique profiles with the number of DNA Match Reports yields the following results:

    - **730** DNA Match Reports represent **43.6 %** of **1673** unique profiles obtained from OMPF;
    - **633** DNA Match Reports represent **79.8 %** of the **793** unique profiles obtained from CCK.

[8] The Family Reference Database consists of the DNA profiles obtained from blood samples of putative family members of the missing.
[9] This report does not constitute a legal identification; proper follow-up is required prior to the legal identification of this individual.

4. ISSUES IN NEED OF DISCUSSION

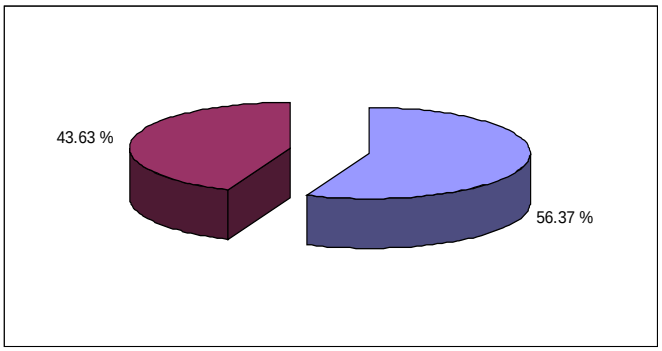
4.1. Unaccounted for Skeletal Remains

25. At the time of this writing, ICMP has profiled **95%** of the bone samples in its custody related to the Kosovo conflict, as discussed in section B above. Given that the amount of useable bone that has been profiled (3,041 of 3,190) yielded unique profiles for only 2,466 individuals, it is unlikely that the remaining 149 bone samples in the queue are going to yield a significant number of new profiles representing different individuals of over 2500. This situation is alarming if, as OMPF estimated, the number of open cases is in the range of 3,000 (3,108 according to the OMPF 28 January 2005 estimate). This is particularly true if OMPF has submitted bone samples for all the skeletal material in its custody.

4.2. Discrepancies in Matching Rates on Reports submitted

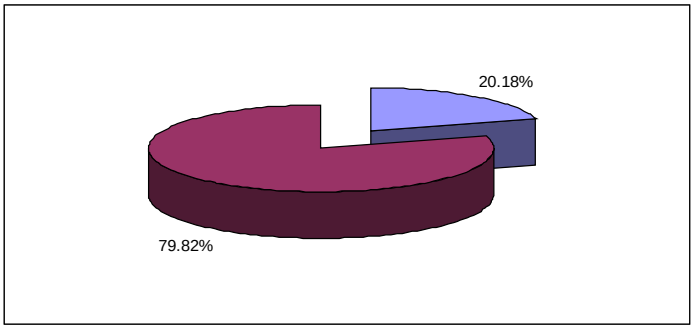
26. The rate of DNA matching is significantly higher in Serbia proper than it is in Kosovo. Since the numbers relate to the same conflict, other factors must account for the differences. Exhumations were conducted in both Kosovo and Serbia proper. Following the conflict, there was a sizable return process in Kosovo. Simultaneously, ICTY was conducting a criminal investigation of war crimes that led to the deployment of numerous forensic teams, the identification of grave sites, and resulting exhumations. In Serbia proper, there was no significant return process. The exhumation process was court driven, conducted by CCK and assisted by ICMP.

Kosovo



Total number of unique bone profiles	1673	
Non-Matched unique bone profiles	943	**56.37%**
Matched unique bone profiles	730	**43.63%**

Serbia Proper



Total number of unique bone profiles	793	
Non-Matched unique bone profiles	160	**20.18%**
Matched unique bone profiles	633	**79.82%**

27. In Serbia, as elsewhere in the region, rates of blood collection correspond to rates on DNA matching. Despite the fact that CCK has submitted bone samples from badly commingled remains found in secondary graves, and OMPF states having submitted only samples for complete bodies, the matching rate is considerably higher with samples submitted by CCK than with those submitted by OMPF. The significantly lower rates in Kosovo suggest that there may have been a considerable number of misidentifications and/or that there are grave sites that have yet to be identified. That the rates vary so significantly raises questions about the manner in which bodies have been stored, samples taken, and records kept.

4.3. Presumptive Cases

28. A presumptive case is a case in which evidence or information exists that leads to a presumption regarding the possible identity of a recovered body. Such a case is given priority by ICMP and is entered at the head of the DNA testing queue. For presumptive cases, one of the following reports will be issued: an Exclusion Report, a DNA Match Report, an Inconclusive Report or a No Result Report.

29. According to procedures laid out in the ICMP Standard Operating Procedures, OMPF and CCK may submit paper request forms for review of presumptive cases to ICMP. A presumptive case represents a single bone sample and a single name.

30. ICMP has received a total of 178 requests for review of presumptive cases. All of these requests have come from OMPF. In line with the MOU between ICMP and OMPF, ICMP has made every effort to process such requests as swiftly as possible. Of the 178 requests received, 159 (89%) have been processed to date. The tests yielded 100 positive identifications confirming presumptions of identity and 59 exclusion reports. In other words, the initial presumption of identity was excluded in 37.1% of such cases.

31. Of the 19 pending cases, 4 are in the process of review. The remaining 15, however, deserve special mention and attention:

    - In 7 of the 19 pending cases, DNA extraction failed and ICMP submitted requests for reserve samples, none of which have been received.

- In 7 other of the 19 pending cases, there was a lack of donor blood. Without blood samples from putative family members, it is impossible to prove or disprove kinship unless ICMP can obtain a DNA match between bone profiles in the system. Though ICMP will continue to compare the DNA profiles obtained from the bone samples to its database of blood samples, it cannot provide results until a match is obtained.
- In the last remaining case, a written request for a DNA analysis of a presumptive identification was submitted, but the request was submitted without a corresponding bone sample.

4.4. Closing Cases

32. ICMP issues DNA Match Reports that indicate a 99.9 % probability of identification. It is up to the governmental authorities, or OMPF in the case of UNMIK, to legally close a case. According to the terms of the MOU between ICMP and OMPF, OMPF is responsible for conducting ante-mortem and post-mortem data comparison that draws upon osteological and genetic indicators and for closing the case, issuing a death certificate, and returning mortal remains to the family in question.

33. Though CCK may issue death certificates when it closes a case under its jurisdiction and declare that individual legally dead. CCK cases are considered closed only once CCK has repatriated the bodies to Kosovo and transferred custody to OMPF. OMPF has the responsibility of re-examining the bodies and issuing its own death certificates.[10] ICMP does not count cases CCK has closed as officially "closed" until OMPF has sent ICMP the corresponding "Report of Death Certificates handed over to families."

34. The MOU between ICMP and OMPF signed in November 2003 defines the terms according to which cases are to be closed as well as the manner in which cases closed by OMPF are to be communicated to ICMP so that it, in turn, can register the closure of the case in its databases. Articles 3.14, 3.15, and 3.16 of the MOU read:

> 3.14 OMPF will do everything within its power to complete within 14 working days of receipt of a DNA match report pursuant to Articles 4 and 5 of Schedule C Part II of SOPs the identification through the comparison of the ante mortem and post-mortem data with the DNA results reported.
> 3.15 OMPF shall provide ICMP with the official results of identification efforts. OMPF shall provide ICMP in particular with a record of death certificates issued.
> 3.16 It shall be the responsibility of OMPF to notify family members of DNA-led identifications in a timely and ethical manner.

35. Of the 730 DNA Match Reports submitted for different individuals to OMPF, ICMP estimates that OMPF may have closed around 460 cases. This estimate is based on various lists and some historical data OMPF provided; however, ICMP cannot responsibly confirm these numbers because, to date, OMPF has provided it with records of death certificates accounting for only 253 cases. Without such records (as detailed in Article 3.15 of the MOU), ICMP cannot register cases as closed.

[10] Cf. Protocol On the Exchange of Forensic Experts and Expertise, based on the Common Document signed between FRY and UNMIK on 05.11.2001. According to the protocol, OMPF reserves the right to re-examine the bodies once they have been transferred back to Kosovo and to issue its own death certificates.

36. Of the 633 reports ICMP submitted to CCK, CCK has repatriated 421 (67%) sets of remains to Kosovo, i.e. 67% of the cases for which ICMP has issued DNA reports. ICMP is still waiting on 212 confirmations from CCK. It should be noted, once again, that cases related to Kosovar Albanians -- but closed by CCK -- are not officially closed according to the MOU until OMPF has reviewed them and issued its own death certificates (see para. 33 above). Of the repatriated cases ICMP has information from OMPF lists that indicate approximately 90 of these cases are still open.

5. PROBLEMS WITH CHAIN OF CUSTODY AND RE-LABELING

37. Chain of custody and re-labeling also warrants specific attention, as the case of Ruhot village illustrates. On 19 May 2002, the UNMIK Police Missing Persons Unit (MPU) reportedly exhumed 26 complete bodies from illicit graves near Ruhot village in Kosovo. In July of the same year, OMPF began submitting samples for this site with the labels "UNID 2002-108…." In total, OMPF sent ICMP 45 bone samples related to this site in July 2002; and ICMP profiled them. On the basis of the 45 bone samples, ICMP generated and submitted 33 DNA Match Reports, 10 for different individuals and 23 for reassociation. ICMP submitted DNA Match Reports for some of these cases as early as 2003.

38. Three years later, in January of 2005, OMPF instructed ICMP to cancel all the "UNID 2002" series, including those related to Ruhot village. It simultaneously submitted 90 additional bone samples related to the site, re-labeling them "AAK". For a site from which the remains of 26 complete bodies were exhumed, OMPF submitted **135** bone samples, representing **19.25** bone samples for each body.

39. It is highly unusual that 135 bone samples should be submitted for a site that contains the remains of 26 complete bodies; it is suspect that samples should be cut, re-cut, labeled, and re-labeled, particularly three years after the initial submission. In addition, many of these cases have been shown as "closed" in OMPF historic lists and yet bone samples continue to be re-submitted. At the very least, this example raises serious question about OMPF's handling of chain of custody records.

40. Chain of custody (CoC) is a document recording the individuals who have had possession of a DNA sample at any particular point in time, and who have accepted responsibility for the security of that sample while in their possession. It is effectively the record and history of a sample's trajectory. Though all samples whether blood or bone should have chain of custody records, this record is of unique importance in the case of bone samples. Families of victims have a right to the return of the remains of their loved ones just as surely as they have a right to know their fate.

41. In the case of Ruhot village and others, it would appear that OMPF needs assistance in re-associating the body parts of individuals commingled after the event of exhumation. OMPF has not indicated whether the 90 new bone samples it sent in January are for reassociation purposes or re-testing.[11] Because the total number of samples compared with the number of bodies to be identified is so high and because of the three year time lapse, ICMP can only assume that these samples have been submitted for the purpose of reassociation. It can, furthermore, only conclude that bodies in OMPF's custody have been commingled by OMPF or by persons under its authority.

[11] For "bone-to-bone" testing, ICMP employs a technique referred to as "mini-amplification" that is highly cost-effective but can be employed only for the specific purpose of re-associations. Bone to bone matches involve full-band matches (that is, from both chromosomes); thus the probability of relatedness between bones with matching DNA profiles is statistically very high.