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Serbia and Montenegro

Amnesty International's concerns in Serbia and Montenegro

This report does not cover Amnesty International's concerns in Kosovo which since July 1999 has been under the control of the United Nations Mission in Kosovo (UNMIK)

March 2003 **Summary** **AI Index: EUR 70/004/2003**
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Amnesty International has a number of ongoing concerns regarding the human rights situation in Serbia and Montenegro, formerly known as the Federal Republic of Yugoslavia (FRY). Of particular concern is the continuing impunity of those responsible for human rights abuses and violations, including war crimes and crimes against humanity, which occurred throughout the 1990s in connection with the armed conflicts following the break-up of former Yugoslavia. The organization is concerned at the lack of co-operation with the International Criminal Tribunal for the former Yugoslavia (the Tribunal) in the Hague, as well as the rarity of domestic war crimes prosecutions. Amnesty International believes that, in order to create the conditions for respect and protection of human rights in Serbia and Montenegro, it is imperative that those responsible for these crimes be brought to justice in the course of proceedings which meet international standards of fair trials, and all victims of these crimes receive adequate reparation. In particular, there is an overwhelming need to resolve the hundreds of cases of enforced "disappearances" and abductions,[1] most of which constitute crimes against humanity.

Amnesty International also considers that the suffering of relatives of the "disappeared", in their attempts to establish what happened to their family members, amounts to a violation of their right to freedom from torture and inhuman or degrading treatment, and urges the authorities of Serbia and Montenegro to ensure reparation to the relatives of those "disappeared"

[1] Amnesty International makes a distinction between "disappearances" and abductions, the former being perpetrated by state authorities and the latter by non-state actors.

Amnesty International is also concerned about continuing numerous allegations of torture and ill-treatment by police throughout the country, and the apparent lack of will by the authorities to adequately address this issue. This failure to investigate and prosecute adequately perpetuates a climate of impunity similar to that which exists in relation to war crimes and crimes against humanity.

Amnesty International is also concerned at the apparent failure by the authorities of Serbia and Montenegro to take adequate measures to protect people from attacks by non-state actors on account of their ethnicity or sexual orientation, and to bring those responsible for such abuses to justice. The organization is also concerned at the continuing discrimination against Roma, especially Kosovo Roma displaced following the 1999 conflict.

Amnesty International is also concerned at the continuing imprisonment of some people who refuse to serve in the military for reasons of conscience.

This report summarizes a 25-page document (11,360 words), *Serbia and Montenegro: Amnesty International's concerns in Serbia and Montenegro* (AI Index: EUR 70/004/2003), issued by Amnesty International in March 2003. Anyone wishing further details or to take action on this issue should consult the full document. An extensive range of our materials on this and other subjects is available at http://www.amnesty.org and Amnesty International news releases can be received by email:

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Serbia and Montenegro[1]

Amnesty International's concerns in Serbia and Montenegro

Amnesty International has a number of ongoing concerns regarding the human rights situation in Serbia and Montenegro – formerly known as the Federal Republic of Yugoslavia (FRY).[2] Of particular concern is the continuing impunity of those responsible for major human rights abuses and violations, including war crimes and crimes against humanity, which occurred throughout the 1990s in connection with the armed conflicts following the break-up of former Yugoslavia. The organization is concerned at the authorities' lack of co-operation with the International Criminal Tribunal for the former Yugoslavia (the Tribunal) in the Hague, as well as the rarity of domestic war crimes prosecutions. Amnesty International believes that, in order to create the conditions for respect and protection of human rights in Serbia and Montenegro, it is imperative that those responsible for these crimes be brought to justice in the course of proceedings which meet international standards of fair trials, and all victims of these crimes receive adequate reparation. In particular, there is an overwhelming need to resolve the hundreds of cases of enforced "disappearances" and abductions,[3] most of which constitute crimes against humanity.

Amnesty International also considers that the suffering of relatives of the "disappeared", in their attempts to establish what happened to their family members, amounts to a violation of their right to freedom from torture and cruel or inhuman treatment, and urges the authorities of Serbia and Montenegro to ensure reparation to the relatives of those "disappeared".

Amnesty International is also concerned about continuing numerous allegations of torture and ill-treatment by police throughout the country, and the apparent lack of will by the authorities to adequately address this issue. This failure to investigate and prosecute

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[2] In November 2002, an agreement was reached on a new Constitutional Charter which changed the name of the country to 'Serbia and Montenegro'. The new name came into force on 4 February 2003 after acceptance by the respective parliaments. The constituent republics became semi-independent states running their own separate economies, currencies and customs systems, while the joint entity retained control of defence, foreign policy matters and UN membership, as well as being responsible for human and minority rights and civil freedoms. The agreement allowed either of the two republics to secede after three years.

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Amnesty International is also concerned at the apparent failure by the authorities of Serbia and Montenegro to take adequate measures to protect people from attacks by non-state actors on account of their ethnicity or sexual orientation, and to bring those responsible for such abuses to justice. The organization is also concerned at the continuing discrimination against Roma, especially Kosovo Roma displaced following the 1999 conflict.

Amnesty International is also concerned at the absence of a non-punitive and genuine alternative civilian service for conscientious objectors to military service, and the continuing imprisonment of some conscientious objectors to military service.

1. War crimes

1.1. Cooperation with the Tribunal

Amnesty International is seriously concerned at the lack of co-operation with the International Criminal Tribunal for the former Yugoslavia (the Tribunal) in the Hague by the authorities of Serbia and Montenegro. On 10 April 2002, the Federal Parliament passed the Law on Cooperation with the International Criminal Tribunal for the former Yugoslavia (the Tribunal). However, this legislation was deeply flawed and widely criticized. For example, Article 39 states:

> (1) The provisions of this Law on secession of criminal proceeding and extradition to the International Criminal Tribunal shall be applied on Yugoslav citizens against whom a valid and confirmed indictment has been brought before this Law has come into force.
>
> (2) Yugoslav citizens, who are indicted of severe violations of international humanitarian law committed in former Yugoslavia since 1991 by the International Criminal Tribunal or by the Public Prosecutor of the Federal Republic of Yugoslavia after this Law has come into force, shall be tried before domestic courts.

Amnesty International is concerned that the transferal of indicted people to the Tribunal is only applicable to those already indicted when the law came into force. On 24 April 2002 Tribunal Prosecutor Carla Del Ponte criticized the new law as being too restrictive. She told the Council of Europe's Parliamentary Assembly that "This law is incompatible with its [Yugoslavia's] international obligations, since it excludes the possibility of any transfer of a Yugoslav citizen accused after the law came into force." This 'retroactive-only' clause also leaves possible indictments in connection with Kosovo as outside of the proposed 'cooperation'.

Article 39 also foresees the extradition of suspects to the Hague rather than simple transfer. This was again referred to in part 3 of the Narrative to the Law which states: "Cooperation with the International Criminal Tribunal includes the following:..... *extradition of the indictees* and *execution* of the International Criminal Tribunal sentences by Yugoslav agencies" [emphasis in the original]. But the Tribunal does not require states to extradite their citizens. Under its statute, and under UN Security Council Resolution 827/1993, all states are obliged to surrender suspects indicted by the Tribunal remaining on their territory to the Tribunal's custody. Extradition is a process based on treaty provisions between two states for transferal of an individual to the custody of another for the purpose of judicial proceedings; the Tribunal is not a state and so extradition is not necessary. Moreover this is obliquely referred to in Article 2 (1) of the April cooperation law which states:

"The International Criminal Tribunal is the tribunal founded by the United Nation's Security Council. Therefore the general rules and legislation on the judicial cooperation with foreign countries [for example extradition] shall not be applied on the cooperation between the Federal Republic of Yugoslavia and this Tribunal."

Carla Del Ponte has repeatedly criticized the government of the FRY/Serbia and Montenegro and in particular President Koštunica for not cooperating. In a letter of 16 May 2002 to Helmut Lippelt, Rapporteur on FRY's accession for the Council of Europe's Legal Affairs Committee, she wrote (emphasis as in the original):

> "In preparation for any discussion about FR Yugoslavia and its compliance with the international obligations, including co-operation with the ICTY [the Tribunal] I can inform you about general points of concern in regard to the status of co-operation with the FRY (Serbia), as stands right now:
>
> - There are **no arrests of fugitives** despite full knowledge on whereabouts of the fugitives (as stated by Interior Minister Mihajlović) and despite the provisions/time limits of the internal Yugoslav law on co-operation, not to mention international obligations;
> - There is still **no access to the requested archives, including for assessment purposes;**.....
> - There is **no access to specific requested documentation,** which most likely was not archived yet - there are 28 outstanding Requests for Assistance issued by my Office;
> - There is still **no answers to most of the requests from my Office**.....;
> - There is almost **no movement in regard to access to witness/suspects** for interviews, including on the Republican level and including access to some people close to the ruling coalition - there are 15 outstanding Requests;
> - There is simply **no co-operation from the VJ - Yugoslav Army** whatsoever;
> - There is **no sense of urgency** in regard to many outstanding request for assistance and no visible effort to promote pro-active co-operation (neither on Federal nor on Republican levels); recent statements by Prime Minister Djindić [sic] and his ministers were more confusing than helpful".

Amnesty International is concerned at the apparent complete lack of official will in arresting those indicted by the Tribunal in the country. For example, in February 2002 it was reported that Aleksandar (Aco) Tomić, appointed head of the FRY army (VJ) security by President Koštunica, met with Ratko Mladić, former leader of the Bosnian Serb army and one of the Tribunal's main outstanding indicted persons who is believed to be at large in Serbia and Montenegro, and told him that the VJ would continue to protect him and other indicted Bosnian Serbs.

Tribunal officials also pointed to problems posed by the authorities on access to witnesses who are not offered adequate protection, and who are officially warned of their obligations not to divulge official secrets and told to apply for exemption from having to give evidence to the Tribunal if they think this may be case - resulting in many exemptions. Such practice runs counter to Article 11 of the Law on Cooperation which states: "The Federal or Republican Government shall acquit a witness from the obligation of keeping a national or military secret and shall decide to declassify documents containing a national or military secret and make them available for investigation."

Immediately after the law was passed former Serbian Interior Minister Vlajko Stojiljković, who faced transfer to the Tribunal, shot himself in the head outside the Federal parliament in protest at the law's passing, and died two days later from his wounds. Following the adoption of the law, the authorities issued arrest warrants for 17 other suspects indicted by the Tribunal, and in line with the law, a National Council on Cooperation with the Tribunal was created.

Only one person, Ranko Česić accused of war crimes in Bosnia, was arrested and transferred to the Hague in 2002. Five others surrendered voluntarily in 2002: former Chief of General Staff of the Yugoslav Army (VJ) Dragoljub Ojdanić, and former Yugoslav Deputy Prime Minister Nikola Sainović, both accused of war crimes in Kosovo; Croatian Serb Milan Martić and former VJ commander Mile Mrksić, both accused of crimes in Croatia; and Momčilo Gruban, commander of the notorious Omarska detention camp in Bosnia. However, these surrenders appear to have been made within the context of economic pressure from outside actors, principally the United States of America (USA), rather than from any genuine will by the authorities to really cooperate with the Tribunal. In January 2003, former President of Serbia, Milan Milutinović, jointly indicted with former President Slobodan Milošević for crimes against humanity in connection with the conflict in Kosovo, voluntarily surrendered to the Hague after his term of office had expired.

In January 2003, an unnamed US state department source stated that the US would call for the winding-up of the Tribunal after the arrest and transferral of four high-profile suspects: former Bosnian Serb leader, Radovan Karadžić, Bosnian Serb army commander Ratko Mladić, and two suspects accused of war crimes in the city of Vukovar, Miroslav Radić and Veselin Šljivančanin. This appeared to be confirmed by US Ambassador-At-Large for War Crimes' Issues, Pierre-Richard Prosper, whilst he was visiting Belgrade at the same time.

Amnesty International notes that the Tribunal is a UN body and as such not specifically bound to act according to US wishes, although US funding is currently crucial to its work. Amnesty International also notes the reported statement of 2 February 2003 by Matteus Hellman of the Tribunal's Belgrade office, that the Tribunal would definitely not cease its work if these four suspects were apprehended, adding that there were some 50 people in various stages of the process, and 23 others still at liberty with investigations into approximately 100 people from all sides in the different conflicts. Amnesty International calls for all those suspected of having committed war crimes or crimes against humanity to be brought to justice in the course of proceedings which meet international standards of fair trial. The organization does not take a position as to whether these should be at the Tribunal or in domestic courts. However, as noted below, Serbia and Montenegro's record in investigating and prosecuting suspected war criminals in domestic courts is poor.

1.2 Domestic war crimes prosecutions

As noted above, the April law on co-operation with the Tribunal sets out domestic courts as the fora for all prosecutions of war crimes and crimes against humanity committed by Yugoslav citizens (or those currently residing in FRY) since 1991 and not already indicted by the Tribunal. The Tribunal does not have unlimited resources and is not seen as the natural body to try all war crimes and crimes against humanity which occurred in former Yugoslavia since 1991. Rather it concentrates on high profile cases such as former President Slobodan Milošević or Bosnian Serb leader Radovan Karadžić. For less high profile cases where the Tribunal has not issued indictments, domestic courts are seen as more appropriate.

This presupposes both the existence of political will in bringing to justice those responsible for such crimes, as well as the infrastructure needed to ensure that justice is carried out in a responsible manner. The need for an adequate domestic system for bringing those responsible for war crimes to justice is paramount. This would of necessity include adequate witness protection and measures to prevent the intimidation which have so far been a feature of domestic war crimes trials throughout the region.[4]

The record so far has been poor. To Amnesty International's knowledge, the following is the sum of domestic prosecutions for war crimes up to the time of writing.

On 9 September 2002 at Bijelo Polje District Court in Montenegro 37-year-old Nebojša Ranisavljević was sentenced to 15 years' imprisonment for "war crimes against the civilian population" for his part in the hijacking of the Belgrade-Bar train at Štrpci in Bosnia-

[4] See for example the trial in Croatia of seven former military policemen accused of murder of Serbs in Lora military prison in Split in 1992. There were widespread reports of intimidation of witnesses, reporters and observers, and the court was accused of failing to provide basic guarantees for the safety of witnesses coming from Bosnia-Herzegovina or Serbia.

Herzegovina on 27 February 1993, and the abduction and subsequent murder of 20 civilian passengers - 19 Muslims and one ethnic Croat. During the war in Bosnia-Herzegovina Nebojša Ranisavljević had been a member of a Serb paramilitary organization operating in the border areas between Serbia and Montenegro and Bosnia-Herzegovina.

He was arrested in October 1996, after a witness implicated him in the kidnapping, and was found guilty of shooting and wounding one of the hostages who was trying to escape. However, Nebojša Ranisavljević was not found guilty of actual murder and he remains the only person arrested and charged in connection with the hi-jack and abduction - despite evidence presented in the four-year-long trial substantiating the alleged involvement of a paramilitary group known as the *Osvetnici* (Avengers), led by Milan Lukić, in the abduction and subsequent murders - giving rise to suspicions that he had been made a scapegoat and that the trial was a token affair. Amnesty International was concerned at allegations that Nebojša Ranisavljević had been tortured in detention to force him to make incriminating statements, and at the length of his pre-trial detention.

A similar trial involving members of the Avengers opened in January 2003 at Belgrade District Court when Djordje Sević and Dragutin Dragičević, and two others, Milan Lukić and Oliver Krsmanović both tried *in absentia*, were accused of the abduction and murder in October 1992 of 17 Muslims, 16 of whom were taken from a bus, at Mioče near Sjeverin in Bosnia-Herzegovina. Oliver Krsmanović was reported by the Serbian media on 22 January 2003 to be living openly at his home in Višegrad in the RS with no apparent attempt to arrest him either by the RS authorities or by SFOR - the NATO-led international military force overseeing the Dayton Agreement which ended hostilities in Bosnia-Herzegovina. A spokesman for the RS Interior Ministry reportedly claimed that the RS authorities had not received a request from the Serbian authorities for Krsmanović's extradition.

Amnesty International is calling for the arrest and trial of others allegedly responsible for these abductions and murders. In addition, documents from the state railway company presented at the trial of Nebojša Ranisavljević clearly demonstrated the knowledge of former political and military authorities about the planning of such abductions. Amnesty International is also calling for a new investigation to be opened in order to bring to justice not only those who carried out the abductions, but also those involved in planning and sanctioning these war crimes against the civilian population. The organization is also disturbed by reports that the trial of Nebojša Ranisavljević was apparently delayed many times by obstructions by the Republika Srpska (RS) police and judiciary in cooperating with the Bijelo Polje court. Amnesty International urges as a matter of priority that the Serbia and Montenegro and RS authorities establish genuine and effective cooperation to address these and other cases of war crimes and crimes against humanity

In Prokuplje in June 2002 the first domestic trial outside of Kosovo of a Serb accused of war crimes in connection with the 1998-9 Kosovo war began with Ivan Nikolić, a former Yugoslav army (VJ) soldier, accused of killing two ethnic Albanian civilians in Podujevo in Kosovo on 24 May 1999. Ivan Nikolić had originally been charged with murder, but the

charges were changed to those of war crimes in April. On 8 July 2002 he was sentenced to eight years' imprisonment. The depth of public opposition to such trials was shown by large demonstrations outside the court, reportedly organized by the Association of War Veterans. An official from the OSCE told Amnesty International that the presiding judge, Dragan Tačić, had received threats on a daily basis and had to be armed for his own protection.

At the time of writing, the only other trial in the FRY/Serbia and Montenegro for crimes in connection with the Kosovo conflict was one in which the charges against the accused were for murder rather than for war crimes. At the end of 2000 Captain Dragiša Petrović and two army reservists, Nenad Stamenković and Tomica Jović, were found guilty by Niš Military Court of the murder of two Kosovo Albanian civilians on 28 March 1999. Dragiša Petrović was sentenced to four years' and 10 months' imprisonment while Nenad Stamenković and Tomica Jović were each sentenced to four and a half years' imprisonment. However, in this case the Supreme Military Court ordered a retrial which, at the time of writing, had not taken place.

These cases remained unique despite the initiation in 2001 by both civil and military courts of investigations and proceedings under domestic law for crimes allegedly committed by the police and the army in Kosovo. On 12 May 2001, Vukadin Milojević, president of Niš Military Court confirmed that 193 military personnel - mainly reservists - had been indicted for crimes committed against the civilian population in Kosovo that "caused the death or jeopardized the lives and security of people, their dignity or morale, as well as their property" between 1 March 1998 and 26 June 1999. In an acrimonious dispute between the military and the police, General Nebojša Pavković, commander of the VJ in Kosovo during the 1999 NATO air strikes, repeatedly denied the involvement of the army in any abuses of human rights or war crimes. In April 2002 the Prokuplje prosecutor brought an indictment for war crimes against two former VJ reservists, Saša Cvijetan and Dejan Demirović, accused of killing 19 ethnic Albanians in March 1999 in Podujevo.

Thus the only domestic war crimes arrests and prosecutions in Serbia and Montenegro are those in connection with the abductions and murders from Štrpci and Sjeverin,[5] the proceedings in Prokuplje and the murder trial in Niš which was returned for retrial.

1.2.1 The question of the need for a special domestic war crimes court(s)

Domestic war crimes prosecutions in the Serbia and Montenegro are, as noted, so rare that it gives rise to the suspicion that the few which have taken place are merely token trials

[5] Cases where the families of the victims, international organizations, as well as domestic public opinion in the Sandžak (from where most of the Muslim victims originated), have ceaselessly campaigned for justice.

undertaken mainly to placate international opinion. Public opinion remains strongly opposed to prosecuting Serbs for war crimes.[6] The trial of Ivan Nikolić, where the judge reportedly had to be armed for his own protection, amply illustrates the problems. Given this, some have called for the need for a special domestic war crimes court or courts.

At the OSCE conference on 'War Crimes and State Responsibility for Justice' held in Belgrade on 15 June 2002, it was concluded that domestic courts were for the most part not capable of trying war crimes, and there was clear agreement on the need for a special court or courts. In his speech to the conference US Ambassador-At-Large for War Crimes' Issues, Pierre-Richard Prosper, said that 'specialized chambers' were one mechanism to provide sufficient protection to witnesses and other trial participants. He called for select prosecutors, judges and other officials to be appointed to sit in such specialized chambers and vetted to ensure impartiality and competence. International participants could also, he suggested, be added to provide expertise as needed. Furthermore, he went on to state that the USA "offers political, financial, logistical and technical support to build and enhance Yugoslavia's legal capacities, and is willing to help develop creative mechanisms to address any deficiencies in the chambers handling war crimes cases".[7]

Moreover, there already is a precedent in Serbia with the setting up, as foreseen in Article 12 of the Law on Organization and Jurisdiction of Government Authorities in Suppression of Organized Crime, of a special department within the Belgrade District Court for dealing with cases of organized crime where similar concerns on witness protection and intimidation occur.[8] This law in Article 2 states that it applies to criminal offences "against humanity and international law" but only when there is also "the element of organised crime".

There are a number of different ways of setting up such specialised legal systems. Amnesty International notes this apparent US initiative outlined by Ambassador Prosper. The organization has previously called for an international component in similar courts in Bosnia-Herzegovina which could take the form of an international judge sitting in these trial chambers alongside local judges, with international experts participating in the prosecution case.[9] However, the organization also pointed to the risk of possibly creating a parallel justice

[6] T-shirts emblazoned with pictures of Radovan Karadžić and Ratko Mladić as 'Serbian heroes' are openly on sale and there is a 'Committee for the Truth about Radovan Karadžić' whose president is Kosta Čavoski, seen as a close associate of President Koštunica. The few, such as Sonja Biserko of the Yugoslav Helsinki Committee, who call for prosecutions of Serbs for war crimes routinely top the public opinion polls for the most unpopular people in Serbia.

[7] Quotes from transcript of Ambassador's speech, US Embassy, Belgrade.

[8] This law was passed by the Serbian government in July 2002. A federal version has, at the time of writing, not yet been passed.

[9] See *Bosnia-Herzegovina: Memorandum to the High Representative of Bosnia-Herzegovina*, AI Index: EUR 63/009/2002 .

system, which would undermine both the work of the specialized chambers as well as other efforts to bring justice home throughout the country and lay the foundation for a lasting functioning criminal justice system. Similar potential concerns are present in these proposals for the FRY.

Furthermore Amnesty International warns of the potential dangers of possible undue influence if the sole financier was the USA, and looks to European bodies such as the OSCE and the Council of Europe to play an active part in such a process. If such a project was undertaken, finance could be channelled through international organizations like the OSCE or the Council of Europe, or alternatively through a trust fund.

International cooperation (especially with the successor states to the former Socialist Federal Republic of Yugoslavia)

Amnesty International stresses in particular that urgent attention needs to be given to effective regional cooperation in bringing to justice those responsible for war crimes and crimes against humanity, in particular cooperation between Serbia and Montenegro, Bosnia-Herzegovina, and Croatia, in view of the movements of refugees during and after the war. In this respect, Amnesty International recalls the provisions set out in the UN Principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity, adopted by the UN General Assembly in Resolution 3074 (XXVIII) of 3 December 1973. This resolution sets out an extensive list of obligations of states to cooperate in the investigation and prosecution of war crimes. In particular, Amnesty International underscores the fundamental principle that states must not shield persons, suspected of crimes under international law, from justice, and that they are under the obligation to either investigate and prosecute such persons, or extradite them to states that are willing to exercise jurisdiction.[10]

The need for new legislation

Amnesty International calls for the inclusion into Serbia and Montenegro domestic legislation of certain (categories of) crimes under international humanitarian law. Such legislation would be retrospective rather than retroactive.[11] These additions in particular should include criminalization of crimes against humanity and the provisions specifying command responsibility (consistent with Article 7 (3) of the Tribunal Statute). It will be essential to

[10] See also *Amnesty International: Universal Jurisdiction: The duty of states to enact and enforce legislation; Chapter Five (Crimes against Humanity: The legal basis for universal jurisdiction)*. AI Index: IOR 53/008/2001, September 2001.

[11] In this context, *retrospective* legislation is the introduction into domestic criminal law of conduct which is already criminal either under existing international law or under a different classification in domestic legalisation, while *retroactive* legislation, which is forbidden by international law, is the introduction of new crimes for conduct which when committed was lawful.

ensure that reforms bring national law into line with definitions, principles of criminal responsibility and defences under international law, including those reflected in the Rome Statute of the International Criminal Court (Rome Statute). Amnesty International would recommend that, apart from the suggested additions to the criminal code, special attention is given to the incorporation into domestic law of the crimes of extra-judicial executions, "disappearances" and torture, in order for these grave human rights violations to be rendered eligible for criminal prosecutions when committed as individual acts (i.e. not as part of war crimes or crimes against humanity).

Amnesty International also supports the inclusion of provisions to enable prosecutions for failure to prevent or punish abuses. The organization would also underscore the provisions stipulated in Article 15 of the International Covenant on Civil and Political Rights (ICCPR) that, while " (n)o one shall be held guilty of any criminal offence on account of any act *or omission* which did not constitute a criminal offence under national or international law, at the time when the criminal offence was committed", this provision shall not "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" (emphasis added).

Training of domestic judges and lawyers

To Amnesty International's knowledge, there has already been training of the judiciary under the auspices of the OSCE mission in the Serbia and Montenegro and other international bodies and non-governmental organizations (NGOs) such as the American Bar Association's Central and East European Legal Initiative (ABA-CEELI). After October 2000 and the fall of the Milošević government, groups of judges were invited to a number of European countries to gain experience of European systems and how to bring the Serbia and Montenegro judicial system in line with European standards. In Serbia, selected judges have been trained to travel round the country and educate judges at all levels on the European norms of judicial behaviour. There have also been short courses implemented by the OSCE and ABA-CEELI to train lawyers. Amnesty International recommends that an evaluation be carried out into the content of this training, and the organization understands that the OSCE are planning a year's project to monitor trials to see what problems arise and what solutions should be implemented. The organization is informed that the International Committee of the Red Cross (ICRC) has also organized training seminars to promote international humanitarian law, especially in southern Serbia and Kosovo, and in March 2002, the Faculty of Political Science in Belgrade, supported by the ICRC and the Yugoslav Red Cross, launched the first specialized course on international humanitarian law with students from the Federal Ministries of Defence, Justice and Foreign Affairs and the Serbian Ministry of the Interior.

Amnesty International is informed that a program to train judges in human rights law is being devised with assistance from the Council of Europe. Amnesty International would recommend as a matter of course that training for legal personnel involved in domestic trials of suspects accused of war crimes and crimes against humanity includes training in human

rights law and international humanitarian law, and be conducted by experts in the field of international humanitarian law - as far as possible including local experts, and/or lawyers from the region who have defended suspects before the Tribunal. Training should be offered free of charge and extended to judges, prosecutors and lawyers, and possibly at a later stage to local and regional non-governmental organizations (NGOs) who have brought and supported private criminal prosecutions, so that they in turn can continue this training. The organization would furthermore refer to its own program on human rights training and education, which is set out in the publication: *A 12-point guide for Good Practice in the Training and Education for Human Rights of Government Officials.*[12]

Victims and witness protection

Amnesty International stresses the importance of balancing the serious need for effective protection of witnesses and the right of the accused to a fair trial. In ensuring a correct balance, the Rome Statute provides an excellent model. Amnesty International furthermore stresses that the rights of victims and witnesses in the process should be guaranteed in compliance with the provisions set out in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (A/RES/40/34) of 29 November 1985, the Council of Europe's Recommendations on the Position of the Victim in the Framework of Criminal Law and Procedure (1985) (Recommendation R(85) 11 of the Committee of Ministers, as well as the provisions in Article 68 of the Rome Statute.

It will be essential to develop an effective witness protection program in close cooperation with the Office of the Prosecutor and the Victims and witnesses' Unit at the Tribunal and with effective national witness protection programs, such as those in the USA, the UK and Italy.

Reparation, including compensation, of victims and/or their relatives

Amnesty International stresses the obligation of the state to offer reparation, including compensation, to victims of serious crimes, including human rights violations, in particular in light of the recommendations made in the Draft Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law (UN Doc: E/CN.4/2000/62 at Annex). This document defines reparation as including restitution, compensation, rehabilitation, satisfaction and guarantees on non-repetition.

[12] AI Index: ACT 30/1/98, February 1998.

1.3 "Disappearances" and abductions[13]

"Disappearances" and abductions on a massive scale were a feature of the wars in former Yugoslavia in the 1990s. Although the largest number of these cases took place in Bosnia-Herzegovina in the period 1992-5 and the bodies of those killed were buried there,[14] many victims from the war with Croatia in1991 and especially from the war in Kosovo in 1999 were buried in clandestine cemeteries in the FRY. Over 200 Croats from the war with Croatia were buried in clandestine cemeteries in the Serbia and Montenegro - many of these bodies had initially been dumped in the Danube and had subsequently been re-buried. At the beginning of 2002 there were an estimated outstanding 4,000 cases of "disappearances" and abductions in connection with the Kosovo war. An estimated 1,200 of these were Serbs, Roma and members of other minority groups believed to have been abducted by the Kosovo Liberation Army or by other ethnic Albanians, particularly in the period following entry of KFOR, the international Kosovo Force, into Kosovo in July 1999. The whereabouts of the bodies of these victims are believed to remain for most part in Kosovo which is at the time of writing under UN control. The bodies of many ethnic Albanians, killed after being either abducted by Serb paramilitary forces or "disappeared" by regular VJ forces, were transferred to Serbia. According to autopsy reports carried out in 1991 on 48 individuals, all of whom appeared to have been shot, who were exhumed from Bajina Bašta near Lake Perućac, the bodies had spent some time in water before being re-buried, apparently confirming allegations that a freezer truck containing bodies transported from Kosovo had been dumped in the lake in May 1999. Also in 2001, over 400 bodies of ethnic Albanians, some of whom appeared to have been burned prior to burial, were exhumed from two mass graves in Batajnica training camp near Belgrade. The fact that the victims exhumed and identified (see below) were non-Serbs - either ethnic Albanians from Kosovo, or Croats from the 1991 war - is welcomed as a positive sign, especially in comparison to exhumations in Bosnia-Herzegovina - both in the Federation and in the Republika Srpska - and Croatia where the respective authorities appear unwilling to be involved in exhuming and identifying bodies of those not belonging to their respective ethnicities.

Exhumations are continuing of these bodies of ethnic Albanians transported from Kosovo to Serbia during the NATO Operation Allied Force. In January 2002 the police reported that it possessed reliable data that there were at least three more mass graves at the Batajnica police training camp, as well as at least one mass grave in the region of Vranje in southern Serbia. The United Nations Interim Mission in Kosovo (UNMIK) and the governments of Serbia and the FRY committed themselves to establishing the fate of the "disappeared" and abducted - of all ethnic communities - from Kosovo, in the November

[13] Amnesty International makes a distinction between "disappearances" and abductions, the former being perpetrated by state authorities and the latter by non-state actors.

[14] Numbers vary, Amnesty International believes the outstanding figure for those still missing in Bosnia-Herzegovina is in the region of 20,000.

2001 agreement - known as the UNMIK-FRY Common Document - signed by the authorities of Serbia and Montenegro and UNMIK. This document addressed several human rights concerns expressed by the Kosovo Serb community including the lack of progress on the issue of missing persons. In February 2002 three protocols were signed establishing collaboration between the UNMIK and the Coordination Centre for Kosovo-Metohija (under the leadership of Serbian Deputy Prime Minster Nebojša Čović), on cross-boundary repatriation of identified remains, exchange of forensic expertise and joint verification teams on hidden prisons. The exhumations were carried out under the auspices of the Ministry of the Interior, and were monitored and aided by the International Commission on Missing Persons (ICMP). On 1 February 2003, the head of the Coordination Centre's office for missing and kidnapped people, Gvozden Gagić, reported that some 900 bodies, predominantly ethnic Albanians, had by that time been exhumed from mass graves in Batajinica, Petrovo Selo and Bajina Bašta. However, only 11 bodies, all from Petrovo Selo region, had been identified and returned to their place of origin: three to the USA and eight handed over to UNMIK for return to Kosovo. However, no suspects have so far been charged.

With regard to the exhumations of bodies of Croats and Bosnians from the wars of 1991-5, which began in March 2002 after years of negotiations between the FRY and the relevant authorities, by the end of the year 223 bodies had been exhumed from Novi Sad, Sremska Mitrovica and Belgrade. Positive identification of these bodies awaited DNA analyses. In this matter of identifying the victim there was welcome progress, apparently due to directives from Serbian Vice Premier Nebojša Ćović, with the setting up in mid-2002 of a DNA laboratory at the Institute of Forensic Medicine in Belgrade, which was incorporated into the ICMP centralized system of recognition using facilities in Bosnia-Herzegovina for analyzing blood and bone samples.

However, this progress was again contrasted by the apparent lack of will in finding the perpetrators of these crimes and initiating judicial proceedings against them: even when a mass grave was located in an official site like the police training compound at Batajnica. Amnesty International is calling on the authorities of Serbia and Montenegro to bring those responsible to justice as a matter of urgency. The organization also considers that the suffering of relatives of the "disappeared", in their attempts to establish what happened to their family members, amounts to a violation of their right to freedom from torture and cruel or inhuman treatment, and urges the authorities of Serbia and Montenegro to provide appropriate compensation to the relatives of those "disappeared".

2 Police torture/ill-treatment and impunity

Amnesty International continues to be seriously concerned about numerous allegations of police torture and ill-treatment throughout the country, the issue of impunity for such violations, and the apparent lack of will by the authorities to adequately address this issue. In May 2001 the UN Committee against Torture (CAT) found the FRY in violation of its obligations under the Convention against Torture over the case of Milan Ristić who was alleged to have been killed by police on 13 February 1995. The CAT ordered the FRY

authorities of to ensure the right of Ristić's parents to legal remedy, conduct a full impartial investigation, and report back to the Committee on the steps taken within 90 days. However, no such action was taken by the FRY authorities. In November 2001, the Belgrade-based Humanitarian Law Centre (HLC) submitted a report to the CAT detailing continuing allegations of ill-treatment, and identifying the FRY's failure to comply with its obligations under the Convention failing to reform the police forces or make the changes in personnel required to "to make a clear break with the practices of the former regime". Subsequent reform of the police and judiciary, despite a wide reaching program led by the OSCE, has been disappointingly slow.

In March 2002 a new criminal procedure code was adopted.[15] Article 13 of this code allows people detained on suspicion of crimes covered by the criminal code immediate access to defense counsel.[16] While torture as a crime is not specifically defined as a criminal offence, Article 12 of the new code forbids and makes punishable the use of any kind of violence on a detainee. However, as detailed below, numerous allegations of ill-treatment by police continued to be made with little apparent redress.

In the very few reported cases in which police officials were tried for ill-treatment and found guilty, the sentences imposed were below six months, with the exception of the apparently unique case where the Serbian Supreme Court on 25 January 2002 raised to 18 months a policeman's previous sentence of 10 months' imprisonment for torturing Radivoje Janković on 7 April 1997.[17] On 13 June 2002 two officers were sentenced to two months' imprisonment suspended for one year for torturing Georg Tani on 23 November 2000, while on 8 July 2002 two other officers received three-month sentences for torturing a Rom in May 1998 - the maximum sentence under current legislation is three years while sentences of six months or above would necessitate dismissal from the police force. These nominal sentences imposed in rare instances help prolong a climate of impunity. The police force in Serbia remains almost totally unreconstructed from the era of former President Slobodan Milošević and in many parts of the country reportedly continued to use ill-treatment as a routine part of police work.

[15] The new code is not being applied in Montenegro which, until new constitutional arrangements on the make-up of the state are agreed, does not recognize new federal laws.

[16] Police can still detain people under the petty crimes law for up to 24 hours without access to counsel. In addition Article 226 of the new criminal procedure code allows police to summon people for questioning as witnesses for up to four hours. The right to access to defense counsel only applies if the police decide in the course of the questioning that the person is a suspect and likely to be charged.

[17] The original sentence of 10 months' imprisonment was passed on 9 November 2001 by the Vranje District Court. However, in this case the other officer (both officers' names are known to Amnesty International) accused of torture including *falaka* - beatings on the sole of the feet - was exonerated and subsequently promoted and is reportedly working at a Serbia and Montenegro consulate in Greece. The victim, Radivoje Ranković, was himself accused by both this second officer and the Surdulica public prosecutor - who was alleged to have been present at intervals during the torture session - of falsely accusing them, and on 13 May 2002 he was found guilty by the Vranje Municipal Court and sentenced to three months' imprisonment.

In other cases, even where courts have substantiated claims of torture and ill-treatment, no disciplinary or criminal proceedings have been taken against the perpetrators. In November 2002, the Novi Sad Municipal Court, in the context of a civil proceeding taken by the HLC, awarded damages of 240,000 dinars from the Serbian authorities to Stevan Dimić, a Rom, for his unlawful arrest and torture by police. On 23 July 1998 police officers had arrested Stevan Dimić on suspicion of raping a 15-year-old girl, and tortured him to force a confession. He was, so the court established, made to lie on the floor while a police officer sat on a chair placed on his back and beat him with a truncheon and metal bar while another officer kept him pinned to the floor by placing his boot over Stevan Dimić's head. He was then kicked in the genitals and racially abused and told that he would be unable to have children after the police were through with him. During his 12-day detention he was, so the court established, further subjected to degrading treatment and racial abuse by police officers. He was subsequently acquitted of the charge of rape on 8 April 2000 by the Novi Sad Municipal Court and this decision was upheld by the District Court in December 2000. Amnesty International is informed that no disciplinary or criminal proceedings have been taken against the officers allegedly involved. The organization is calling for a thorough investigation into these allegations of torture which have been corroborated in a civil court.

The HLC reported a number of cases of alleged police-ill-treatment from Serbia. For example, on 16 March 2002 six policemen broke up a student birthday party in Belgrade after complaints had been made about loud music. When the students refused to leave the apartment, quoting from a brochure 'The Police and Human Rights' published by the Federal Ministry of Internal Affairs, the police allegedly severely beat Kosta Stanković and Nemanja Jovič, who suffered a burst eardrum. When Milan Milovanovič took down the officers' numbers and said he would sue, he was reportedly bundled into a police car, repeatedly beaten and taken to the Zvezdara woods where he was kneed in the head several times.

The Leskovac-based Committee for Human Rights reported that from January to June 2002 there were over 100 allegations of police ill-treatment in the Leskovac area alone. For example, in June 2002, 18-year-old Nenad Miljković was reportedly tortured by *falaka* (beatings on the soles of his feet) by three policemen at Vučje police station near Leskovac to try and make him confess to stealing a wallet which he denied (the 'missing' wallet was subsequently found whilst he was being allegedly tortured and he was then released without charge). On 30 May 2002 Nenad Živković was stopped in his car in Leskovac by two policemen (whose names are known to AI) who allegedly punched him repeatedly. The policemen then took him to his home where they allegedly physically assaulted his mother 65-year-old Stojanka Živković by pulling her ears. Nenad Živković was subsequently hospitalized for bruises to his head and body. The Committee also reported that police routinely harass and steal from those selling goods on the "black market "- the harsh economic conditions force many to do this to survive - beating those who object, as well as force young women vendors to have sex with them.

In July 2002, the Serbian Interior Minister, Dušan Mihailović, reportedly stated that the Serbian Interior Ministry would set up an advisory committee for human rights and

freedoms which would examine any allegations of torture by the police. However, by the end of January 2003, it remained unclear as to whether this committee had been formed, or if it had, what actions it had undertaken in relation to the continuing allegations of police torture.

For example, the Leskovac Committee informed Amnesty International of the case of 23-year-old Nenad Tasić from Vranje. On the night of 17/18 August 2002 he and three associates had reportedly burgled a number of houses in Vranje and were attempting to burgle another house when the police arrived on the scene. The other three men (names known to Amnesty International) were arrested whilst Nenad Tasić managed to flee and was arrested half an hour later at his parents' home and taken to the police station in Vranje. There he was allegedly savagely beaten by two officers (names known to Amnesty International) with truncheons to try and get him to disclose the whereabouts of 40 Euros he was accused of stealing. He lost consciousness due to being hit repeatedly on the head and attempts to revive him with cold water in the police station failed. He was taken unconscious to Vranje hospital who diagnosed him as being in a deep coma with serious complications, and he was rushed to the neuro-surgical department in Niš for an emergency brain operation. Despite the operation he was diagnosed as suffering from severe brain damage and loss of control over the right side of his body, and there were fears that he might die. He remained in a deep coma until 2 September when he opened one eye and although he still could not speak he reportedly recognized his father.

On 8 November 2002, the HLC reported that two Roma brothers, M.Š. aged 13 and A.Š. aged 11, were taken into custody in Nikšić in Montenegro on suspicion of theft despite being below the legal age (14) of criminal responsibility. Both were allegedly beaten on the soles of their feet and on their bodies with truncheons by two policemen. M.Š. was also allegedly kicked on the head, and A.Š. threatened with a knife.

On 5 December 2002, 24-year-old Milan Jezdović was allegedly tortured to death in Belgrade police station after being arrested with eight others on suspicion of drug dealing. All his co-arrestees reportedly stated that the police put sealed plastic bags over their heads and that some of them were beaten and tortured with electric shocks. Some reported hearing Milan Jezdović screaming that he could not breathe due to the bag over his head. An initial official autopsy found he had died of a heart attack, but a second doctor engaged by the family found burn marks on his head consistent with those made by electric shocks.

The Leskovac Committee has taken up a number of cases of ill-treatment but, with the sole exception of the sentencing of a police officer to one and a half years' imprisonment on 25 January 2002 (see above), there have been no successful prosecutions and the Ministry of the Interior did not reply to their letters. Similarly the Sandžak Committee for the Protection of Human Rights and Freedoms reported cases of alleged police brutality in which the offending officers had been involved in similar incidents in the past, detailing 34 cases where named officers over an extended period had repeatedly practised ill-treatment and torture with impunity. Again the committee received no reply from the public prosecutor after submitting the documentation to the authorities. In early July 2002 the committee was

informed through sources in the district court that all the statements alleging torture and ill-treatment had been rejected. Those cases taken up by Belgrade organizations such as the HLC appeared to have a greater chance of success, albeit limited, than those taken up by local organizations. The most successful cases were those involving members of the student group *Otpor* (Resistance) alleging ill-treatment and harassment by the police in the Milošević era. *Otpor* played a leading part in the protests which saw the overthrow of Milošević and the election of the new authorities. Compensation, mostly of around 50,000 dinars (approx $750), was awarded in a number of cases brought by the HLC on behalf of members of the *Otpor*. In addition, the courts have awarded compensation in a number of cases brought by the HLC involving the forcible conscription in 1995 of 708 Serb refugees from Croatia and Bosnia-Herzegovina, 65 of whom were killed after being dispatched to war-zones.

2.2 Ombudsperson

Amnesty International considers that a key institution in promoting human rights protection and independently investigating violations of human rights is the office of an Ombudsperson with sufficient remit and powers. Such an office is especially important in the current situation where the legacy of impunity from the era of former President Slobodan Milošević continues.

However, the proposals by the Serbian Ministry of Justice for the creation of such an office in Serbia have serious defects, and Amnesty International regrets that the Serbian authorities appear not to have sufficiently heeded international advice in setting up such an institution. For example, the Organization for Security and Cooperation in Europe (OSCE), the Council of Europe and the United Nations High Commissioner for Human Rights (UNHCHR) in December 2001 jointly made extensive constructive comments, article by article on the draft law on the creation of the office of an Ombudsperson in Serbia, raising many concerns with the draft and encouraging the Serbian authorities to comply with the *Principles relating to the Status of National Institutions* as adopted unanimously by the United Nations General assembly - known as the *Paris Principles* (United Nations (UN) General Assembly resolution 48/134, 20 December 1993, annex). However, most of these comments appear to have been ignored by the Serbian government which in March 2002 produced another draft law on the creation of a "Protector of Human Rights" (Ombudsperson) which is pending before the Serbian parliament. Amnesty International considers that this draft law contains several serious defects.

For example, Article 9 of this draft law states:[18]

"Protector will be authorised to carry out control, without any notice, in institutions liable for institutional sanctions, as well as talk in privacy with all liberty deprived persons."

[18] Official translation from the Ministry of Justice.

This envisions visits of penal institutions and as such leaves outside of the Ombudsperson's competence visits to police stations where the majority of allegations, received by Amnesty International, of ill-treatment and torture are alleged to occur. Amnesty International considers that the Ombudsperson should be able to inspect all places of detention at will without any prior notice, and be able to talk freely and confidentially with all those deprived of their liberty whether they be convicted or in pre-trial detention.

Article 12 deals with the submission of complaints to the Ombudsperson. This article states:

> "A complaint will be submitted in writing, without any specially determined form and it will be tax-free. Exceptionally, blind and illiterate persons can lodge a complaint orally, in a form of a report, made in the Protector's office.
>
> Complaint will include the name of the organ to which work it relates, description of the right injury, facts and evidences supporting the complaint, information which legal remedies have been used, as well as the submitter's name and address.
>
> Liberty deprived persons, *except those on remand* [emphasis added], will be authorised to submit their complaints in a sealed envelope."

Amnesty International considers that paragraph three of the above should be amended so that *all* those detained have the right to submit a complaint. Again, as noted above, the frequency of allegations of torture and ill-treatment from pre-trial detainees makes the explicit exclusion of such people from submitting complains a particular concern. The organization also believes that while this article refers to a 'sealed envelope', the principles of confidentiality of all correspondence with the Ombudsperson must be respected and should be explicitly referred to in the law.

Amnesty International is particularly concerned about Article 13 which states:

> "Protector will institute a procedure after the exhaustion of all other remedies for the abatement of injuries, shown by the submitter.
>
> Exceptionally, the Protector can institute a procedure even if not all other remedies are exhausted and if he/she evaluates that the complaint submitter could suffer a great and irreparable damage if he/she waits for the procedure cessation by regular and exceptional remedies."

This stipulation that the Ombudsperson can only (except in exceptional cases) take up cases after all other remedies have been exhausted severely weakens the remit of the office. It implies that the office is seen more as a body to oversee the correct implementation of laws rather than as a protector of human rights. Amnesty International considers it vital that the Ombudsperson should be able to take up cases and initiate action at any time to protect

people's human rights.

Finally, while Articles 1, 5 and 6 define the competence and authority of the Ombudsperson as protecting human rights as established in the Constitution and the laws, Amnesty International considers that the provisions of international treaties signed and ratified by Serbia and Montenegro should also be explicitly stated to come within the remit of the Ombudsperson in his/her work in defending human rights in the FRY.

3. Identity-based violations and abuses

Reports of racist incidents in Serbia and Montenegro periodically occur. In February 2001 leaflets bearing a Nazi swastika were stuck onto the door of the Belgrade Rex cinema, where an exhibition on the history of Roma in Belgrade was being shown; similar leaflets were also posted on a synagogue and a Jewish municipal building, and in the Jewish cemetery in Belgrade. The Centre for Cultural Decontamination in Belgrade came under a similar attack. In Kikinda, Vojvodina, anonymous letters making death threats were reportedly sent to several Jewish families, and the facades of their houses sprayed with swastikas in April 2001. In the same month racist flyers produced by a group calling themselves the Council of Serb nationalists, appeared in Apatin. Anti-Semitic and racist graffiti continue to be reported.

The first Gay Pride celebration in the FRY took place on 30 June 2001 in Belgrade. Prior to the event, the organizing group contacted the police to report both anonymous threats and public announcements by groups stating that they would prevent the celebration taking place. These included the nationalist organization *Obraz* (Honour), the Saint Sava Youth (associated with the SRS - Serbian Radical Party) and the *Crvena Zvezda* (Red Star) football supporters, who published homophobic statements on their web-site. The celebration was prevented from taking place by a counter-demonstration of up to 800 people - mainly men - and including groups from known nationalist organizations. Shouting homophobic threats, the crowd made a series of violent attacks on the Gay Pride participants, also attacking bystanders, journalists and the police using fists, bottles, stones and clubs. A planned press conference was also prevented by assaults and further threats against several gays and lesbians who tried to attend the meeting. Reportedly 40 civilians and eight police officers were injured. Amnesty International was concerned at reports that police were heard to question why they should provide protection for lesbians and gay men, and called on the Chief of the Belgrade Police to open an investigation into the failure of the police to act with due diligence to prevent the violence against the Gay Pride celebration. The organization also called on the authorities to ensure the initiation of full and prompt investigation into those responsible for organizing the violence. To Amnesty International's knowledge, the authorities have not responded.

The organization, *Obraz,* was alleged to be responsible for some of the reported attacks on ethnic minorities and involvement in the attack on the Gay Pride march in Belgrade. The organization, whose web-site contains anti-Semitic and racist content, was founded five years ago, and is now estimated to have a membership of up to 30,000 in Montenegro and Republika Srpska, as well as in Serbia. The HLC has requested that the public prosecutor take

steps against the organization under Article 134 of the Serbia and Montenegro Criminal Code, which prohibits the incitement of ethnic and religious hatred. To Amnesty International's knowledge, no action has been taken by the authorities against this organization.

3. 1 Discrimination against Roma

Both the Federal and Republic constitutions explicitly prohibit discrimination on ethnic or racial grounds. The state of Serbia and Montenegro is a party to the International Convention on the Elimination of All Forms of Racial Discrimination which charges signatories to take all appropriate measures to prohibit and eliminate racial discrimination by any person, group or organization. The state of Serbia and Montenegro is also a party to the International Covenant on Civil and Political Rights which in Article 26 also prohibits discrimination and guarantees "to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". On 11 May 2001, the FRY signed the Council of Europe's Framework Convention for the Protection of National Minorities: a move welcomed by Council of Europe Secretary-General Walter Schwimmer who said that adherence to the convention was a giant step for the institution, and the FRYas well, in helping its integration into European institutions. In February 2002, the Federal Parliament passed the Law on the Protection of Rights and Freedoms of National Minorities, which foresees the setting up of minority National Councils - envisaged as participating in decisions at all levels of government on education, language use and culture. However, the lack of corresponding legislation on the republican level, especially in view of the continuing constitutional question, gave rise to doubts of the effectiveness of the new law in practice.

Amnesty International is concerned that discrimination against Roma in Serbia and Montenegro, including those displaced from Kosovo, continued to be widespread and systematic. Roma continued to suffer disproportionally from unemployment and lack of access to adequate housing and other services. Roma were also regularly reported as victims of ill-treatment by the Serbian police. Frequent attacks on Roma by non-state actors with little apparent protection afforded by the authorities against such attacks resulted in many Roma feeling too scared to leave their settlements after the end of the working day: a form of self-imposed ethnic curfew. In a rare exception, following a complaint made by the Humanitarian Law Centre (HLC), proceedings took place against two skinheads accused of inciting racial, ethnic or religious hatred in an attack on a 15-year-old Roma boy and his father on 8 April 2000 in Niš. On 16 May 2001 the two skinheads - Oliver Mirković and Nataša Marković - were both sentenced by the Niš District Court to six months imprisonment, suspended for two years, in the first case in which an attack on members of a minority group was accepted by a court as incitement of racial, religious or ethnic hatred. Oliver Mirković and Nataša Marković were alleged - along with a minor against whom separate proceedings were taken, and several other unidentified persons - to have kicked and punched the Roma boy outside a supermarket in Niš, shouting, "Gypsy - what are you doing in Serbia!" The boy's father, Nebojša Ajdarević - who came to his son's aid - was also attacked. After arrest, and in the presence of several police officers, Nataša Marković is reported to have told Nebojša Ajdarević that she hated

"Gypsies" and that "Gypsies have to get out of Serbia". Despite this landmark ruling, racist slogans against Roma remain commonplace in Niš and elsewhere.

Some 30,000 - 40,000 Roma in Belgrade alone continued, at the time of writing, to live in substandard unhygienic settlements without adequate, or in many cases, any services. The majority of Roma who fled Kosovo after July 1999 continued to face severe problems exacerbated by problems regarding their registration and acquiring legal identity cards. Roma without adequate documentation or evidence of citizenship are routinely denied access to health and social welfare, and children discriminated against in the provision of education in both Serbia and Montenegro. For example, records for Priština had been transferred to Kraljevo, while those from Gnjilane were in Niš, requiring displaced people to go to the relevant place to acquire identity cards: a bureaucratic procedure problematic for many Roma living in extreme poverty on the margins of society. In other cases, the bureaucracy reportedly actively discriminated against Roma by refusing to issue identity cards to those who had the necessary documentation. For example, all personnel records for displaced people from Uroševac and Peć were transferred to Leskovac but Roma (and Albanians) from those areas reportedly found the authorities in Leskovac unwilling to help them. Kosovo Roma were also vulnerable to evictions from their makeshift homes: six families were so evicted in April 2002 in the Belgrade Autokomanda neighbourhood. Further forced evictions occurred in September, October and November of Roma, predominantly Kosovo Roma, from unofficial sites in Belgrade with minimal notice and no provision for alternative housing. In October human rights groups protested against plans to introduce separate classes in schools in Subotica for Kosovo Roma children.

In November 2002 the UN Committee against Torture (CAT) ruled in a case brought by 65 Roma who had been the victims of an organized mob attack against Roma in Danilovgrad, Montenegro, in 1995. The CAT ruled that the police, although they were aware of the danger and were present at the scene of the events, did not take any steps to protect the complainants, thus implying their acquiescence with the attacks that ensued. The Committee reiterated its concerns about "inaction by police and law-enforcement officials who fail to provide adequate protection against racially motivated attacks when such groups have been threatened". The Committee also ruled that the authorities had failed to adequately take significant measures to find or prosecute the perpetrators or compensate the victims for destruction of their houses and property, and ordered the FRY authorities to do so and report back to the CAT on the steps taken within 90 days.

A rare exception to this pattern of institutionalized racism occurred on 8 July 2002 when the Municipal Court in Šabac ordered the local Krsmanovac sports and recreation centre to publicly apologize to three Roma, Merihana Rustenov, Jordan Vasić and Zoran Vasić, for not allowing them access to the swimming pool on 8 July 2000. The judge also ordered the centre to stop its discriminatory practices. The case arose after complaints by Roma that staff at the centre had systematically and for a long period denied Roma admission. Following these complaints, the HLC, the Democratic Union of Roma and the Oaza organization sent a six-person team - three Roma and three non-Roma all dressed similarly - to obtain tickets of

entry on 8 July 2000. The three non-Roma encountered no problems, but the three Roma were refused entry and threatened with ejection by security. Following this, the HLC filed a criminal complaint with the Šabac Municipal Prosecutor's Office but the complaint was dismissed as unfounded, so the HLC brought a private case. While welcoming the outcome, Amnesty International notes that this was the first such anti-discrimination verdict passed in FRY, and one only brought about privately (moreover by an influential Belgrade-based non-governmental organization) after the municipal prosecutor had refused to take the case up.

4 Conscientious objection to compulsory military service

Under an amendment to the Yugoslav Army Law which came into force on 18 January 2002, conscientious objectors are required to serve 13 months in non-combatant units of the Yugoslav Army (VJ). However, under Article 137 of the constitution of the FRY, "Any citizen who for religious or any other reasons of conscience does not want to perform military service under arms will be allowed to perform national service in the Yugoslav Army or in civilian service according to Federal law". Under Federal law, Article 297, paragraph 1 of the Yugoslav Army Law, provided for "Civilian service [to be] performed in military-economic, health-care, general rescuing organizations or institutions of common interest". However, Amnesty International is informed that this law is no longer operational.[19] The organization is not aware of any conscientious objectors being able to perform civilian service in anything but a military institution.

Under current circumstances, many of those who apply for civilian service are sent to a psychiatrist who generally deems them unfit to serve, thus dismissing their objection to military service as a medical condition, rather than affording them the right to civilian service guaranteed by the Serbia and Montenegro constitution. However, this arbitrary procedure is not applied in every case, and in 2002 at least seven people were tried in military courts and sentenced for conscientious objection. Most received suspended sentences and were freed after being held in custody for up to a few weeks prior to trial, but at least three people were imprisoned for conscientious objection. Amnesty International is informed that all those tried declared themselves willing to accept service in civilian institutions. On 24 April 2002, Jehovah's Witness Nenad Kostović was tried and imprisoned for four months for refusing military service. He was subsequently called up again and faced the possibility of a second trial and sentence. Jehovah's Witness Dušan Djorković was imprisoned on 13 November 2002 after being sentenced to six months' imprisonment for conscientious objection. Amnesty International considers all those imprisoned on account of their conscientious objection to military service to be prisoners of conscience and calls for their immediate and unconditional release.

[19] Amnesty International is informed that the law was mostly applied to members of proselytising religious organizations. The authorities reportedly became concerned at the numbers of patients these members were converting, and consequently rescinded the law.

In a letter dated 2 September 2002, Amnesty International was informed by Prof. Savo Marković, the Federal Minister of Justice, that the issue of legislation on conscientious objection

> "has become an integral element of the Constitutional Charter [of Serbia and Montenegro, which at the time of writing was being drafted]. Since it is also one of the preconditions for the accession of the Federal Republic of Yugoslavia to the Council of Europe, the law regulating this matter will certainly be adopted. The authorities of the Federal Republic of Yugoslavia are aware of the fact that this right of the citizens was neglected in the previous period without good reason."

The new Constitutional Charter of Serbia and Montenegro in chapter xviii states that "[c]onscripts are guaranteed the right to conscientious objection", but there was no reference to the availability of genuine alternative civilian service for conscientious objectors. However, under chapter ix, a "Charter on human and minority rights and civil freedoms, which consists an integral part of this Charter, shall be adopted according to the procedure and in mode anticipated for the Constitutional Charter adoption". While Article 4 of the Law on implementation of Constitutional Charter of the Joint State of Serbia and Montenegro states: "[t]he charter on human and minority rights and civil freedoms will be adopted before the Assembly of Serbia and Montenegro is constituted". This charter was adopted by the respective republican parliaments in February 2003. Article 28 stated:

> "In the state union of Serbia and Montenegro conscientious objection is recognized. Nobody is obliged, against his beliefs or convictions, to fulfil military or other obligation which includes the use of arms. Such people can request to undertake corresponding civilian service according to the law."

However, there was at the time of writing, no such law regulating the conditions of civilian service.

The new Constitutional Charter of Serbia and Montenegro also calls for the ending of military courts before which conscientious objectors are tried. Chapter xviii states that: "[t]he authority of the military judicial bodies shall be transferred to the regular ones in accordance with the Law", while Article 23 of the Law on implementation of Constitutional Charter of the Joint State of Serbia and Montenegro, "[t]he military judicial bodies will continue their work until the enactment of the law ... [which] will be enacted at the latest within six months from the day that the Constitutional Charter comes into force".

In the absence of laws on the conditions of alternative civilian service, and on the transferral of military courts to civilian ones, the status quo apparently remains whereby people continue to face the possibility of trial by military courts and possible imprisonment for conscientious objection to military service.

Amnesty International supports the right of conscientious objection to military service,

and calls on the Serbia and Montenegro government to guarantee conscientious objectors a non-punitive and genuine alternative civilian service, under civilian control, and in accordance with international standards as recommended by the UN Human Rights Committee, the Council of Europe and the European Parliament. In the absence of such a genuine alternative civilian service, Amnesty International considers anybody imprisoned for conscientious objection to military service to be a prisoner of conscience.

5. Amnesty International recommendations

5.1 Bringing to justice war criminals

Amnesty International calls on the authorities of Serbia and Montenegro to live up to its international obligations and fully address the legacy of war crimes. Specifically Amnesty International calls for the authorities of Serbia and Montenegro to:

- demonstrate the political will to honour its obligations to bring to justice those accused of and responsible for war crimes and crimes against humanity;

- remove the stipulation in Article 39 of the Law on Cooperation with the Tribunal that only those already indicted when the law came into force in April 2002 should be transferred to the Tribunal;

- include in Serbia and Montenegro domestic legislation certain (categories of) crimes under international humanitarian law - in particular criminalization of crimes against humanity and the provisions specifying command responsibility;

- train, with international assistance, domestic judges and lawyers in international humanitarian law;

- set up a comprehensive system to adequately protect witnesses and victims from reprisals and the threat of reprisals;

- pay adequate compensation to victims of war crimes and crimes against humanity, including the families of those "disappeared" and abducted;

- engage in regional and international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity

5.2 Stopping police torture and ill-treatment

Amnesty International calls for an end to the apparent impunity for police torture and ill-treatment. Specifically the organization calls on the authorities of Serbia and Montenegro to:

- make torture as defined in the UN Convention against Torture a specific crime as per the November 1988 recommendations of the (UN) Committee against Torture;

- undertake prompt, thorough, independent and impartial investigations into all allegations of police torture and ill-treatment;

- bring to justice the perpetrators of torture or ill-treatment, and to award adequate compensation to the victims as required by international standards;

- amend the draft law on the creation of an Ombudsperson so that his/her remit covers

(a) those in pre-trial detention as well as in prisons,
(b) human rights violations covered by international treaties to which Serbia and Montenegro is bound,
(c) cases of human rights violations regardless of whether all domestic remedies have been previously exhausted.

5.3 Ending discrimination

The authorities of Serbia and Montenegro should:

- implement and enforce laws to ensure discriminatory practices, especially the institutionalized racism and widespread discrimination against Roma, are eliminated;

- the enactment of republican legislation on the rights for minorities and adequate funds allocated to begin to address the problems;

- ensure that police are trained to protect those who are attacked on the grounds of their ethnicity or sexual orientation;

5.4 Implementing a genuine alternative civilian service

The authorities of Serbia and Montenegro should:

- immediately and unconditionally release all those currently imprisoned for refusing military service on grounds of conscience, and drop all court proceedings against other conscientious objectors;

- introduce legislation which guarantees conscientious objectors a non-punitive and genuine alternative civilian service, under civilian control, and in accordance with international standards as recommended by the UN Human Rights Committee, the Council of Europe and the European Parliament.