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Serbia and Montenegro Amnesty International's concerns and Serbia and Montenegro's commitments to the Council of Europe

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Summary

AI Index: EUR 70/002/2004

Serbia and Montenegro (SCG) joined the Council of Europe (CoE) on 3 April 2003. On joining SCG undertook to implement a number of commitments. While welcoming steps towards fulfilling some of these, Amnesty International remains, however, concerned at the ongoing failure by the authorities of SCG to fulfil some of the commitments: notably those referring to addressing the past legacy of war crimes, and the continuing prevalence of police torture and ill-treatment. The organization is calling on the authorities of SCG as a matter of urgency to fully address these issues and to fully implement these commitments. Amnesty International is also calling on the CoE, especially the Committee of Ministers, and the Parliamentary Assembly of the Council of Europe (PACE) in the context of their respective monitoring mechanisms, as well as the Secretary General - to take cognizance of the lack of progress, and to use its influence to help SCG fulfil fully the commitments aimed at ensuring respect for and protection of human rights of all persons.

Amnesty International has a number of ongoing concerns regarding the human rights situation in Serbia and Montenegro. Of particular concern is the continuing impunity for those responsible for grave 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 the former Socialist Federal Republic of 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, most of which constitute crimes against humanity.

Amnesty International also considers that the suffering of relatives of the "disappeared", because of the lack of knowledge of the fate and whereabouts of 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. The failure to investigate and prosecute such cases perpetuates the existing climate of impunity surrounding other crimes, including war crimes and crimes against humanity.

Amnesty International is also concerned at the continuing discrimination against Roma, especially Kosovo Roma displaced following the 1999 conflict. The organization is also concerned at aspects of legislation which for the first time introduced a genuine alternative civilian service for conscientious objectors to military service.

This report summarizes a 45-page document (20,909 words), *Serbia and Montenegro: Amnesty International's concerns and Serbia and Montenegro's commitments to the Council of Europe*, (AI Index: EUR 70/002/2004) issued by Amnesty International on 3 March 2004. 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's commitments
to the Council of Europe**



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Serbia and Montenegro

Amnesty International's concerns and Serbia and Montenegro's commitments to the Council of Europe

Introduction

Serbia and Montenegro (SCG) joined the Council of Europe (CoE) on 3 April 2003. On joining SCG undertook to implement a number of commitments.¹ Amnesty International welcomes steps towards fulfilling some of these commitments - such as the SCG Assembly in December 2003 passing for ratification² the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment - as well as the assistance afforded Serbia and Montenegro by bodies including the CoE, the Organization for Security and Co-operation in Europe (OSCE) and others in trying to help SCG undertake much needed reform of the police and the judiciary. However, Amnesty International remains concerned at the ongoing failure by the authorities of SCG to fulfil some of the commitments: notably those referring to addressing the past legacy of war crimes, and the continuing prevalence of police torture and ill-treatment. The organization is calling on the authorities of SCG as a matter of urgency to fully address these issues and to fully implement these commitments. Amnesty International is also calling on the CoE, especially the Committee of Ministers,³ and the Parliamentary Assembly of the Council of Europe (PACE)⁴ in the context of their respective monitoring mechanisms, as well as the Secretary General - to take cognizance of the lack of progress, and to use its influence to help SCG fulfil fully the commitments aimed at ensuring respect for and protection of human rights of all persons.

Amnesty International's concerns

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).⁵

¹ For the full list of commitments see Parliamentary Assembly of the Council of Europe, *Opinion No. 239 (2002), The Federal Republic of Yugoslavia's application for membership of the Council of Europe* [Serbia and Montenegro was known as the Federal Republic of Yugoslavia until February 2003], adopted 24 September 2002.

² The conventions are not technically ratified until deposit of the relevant instruments in Strasbourg which, Amnesty International is informed, is expected to take place on 3 March 2004. SCG is also expected to make certain reservations, for example to Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms which deals with effective remedy before a national court which is problematic under the new constitutional system (see footnote 5).

³ Composed of Foreign Ministers of member states.

⁴ Composed of delegations of parliamentarians from member states.

⁵ 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

Of particular concern is the continuing impunity for those responsible for grave 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 the former Socialist Federal Republic of 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,⁶ most of which constitute crimes against humanity.

Amnesty International also considers that the suffering of relatives of the "disappeared", because of the lack of knowledge of the fate and whereabouts of 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. The failure to investigate and prosecute such cases perpetuates the existing climate of impunity surrounding other crimes, including war crimes and crimes against humanity.

Amnesty International is also concerned at the continuing discrimination against Roma, especially Kosovo Roma displaced following the 1999 conflict. The organization is also concerned at aspects of legislation which for the first time introduced a genuine alternative civilian service for conscientious objectors to military service.

1. War crimes

The list of commitments SCG undertook on joining the CoE calls on the SCG authorities in section 12 iv. "As regards human rights":

- *"to do its utmost to track down all sixteen indicted persons who are still at large and to hand them over to the ICTY. The authorities must not give in when confronted by an indicted person who threatens them by whatever means;*

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.

⁶Amnesty International makes a distinction between "disappearances" and abductions, the former being perpetrated by state authorities and the latter by non-state actors

"to give clear instructions to the police and prosecutors to enable them to make immediate arrests as the law on extradition is deficient as regards time required for taking action;"⁷

1. 1 Co-operation with the Tribunal

In 2003 a number of suspects were indicted by the Tribunal and were transferred to the Hague. Those transferred included Former President Milan Milutinović and Vojislav Šešelj, leader of the Serbian Radical Party. Milutinović, who had enjoyed immunity while in office, voluntarily went to the Tribunal in January to face charges of crimes against humanity in connection with Kosovo in 1999. In February, Vojislav Šešelj was also indicted and flown to the Tribunal for crimes against humanity in connection with events in Croatia, Bosnia-Herzegovina and the Vojvodina in 1991-5. In May, former State Security chief Jovica Stanišić and JSO (a special police force set up under former Yugoslav President Slobodan Milošević) founder Franko "Frenki" Simatović were both indicted by the Tribunal for similar charges in connection with Bosnia-Herzegovina and Croatia in 1991-5 and were subsequently transferred to the Hague. On 21 February Miroslav Radić, indicted for involvement in a massacre at Ovčara of some 200 people taken from Vukovar hospital in Croatia, reportedly gave himself up and was transferred to the Hague on 17 May while a co-accused and the last of the so-called "Vukovar Three", Veselin Šljivančanin, was arrested in a high profile raid in Belgrade on 13 June and transferred to the Hague.

US officials had stated that continuance of aid to SCG was contingent on the authorities' cooperation with the Tribunal; and apparently as a result of the progress noted above, on 16 June the USA gave SCG \$110 million in financial aid. The Serbian authorities had also released a number of documents which hitherto had not been available.

However, this spirit of cooperation appeared to have deteriorated by late June 2003 with the Tribunal again stating that documents were unforthcoming, and that 16 indictees still remained at large in Serbia.

Cooperation with the Tribunal deteriorated further when the Serbian authorities refused to transfer four persons indicted by the Tribunal on 2 October 2003 for crimes against humanity and violating the laws or customs of law in Kosovo in 1999 (see below Batajnica). The indictees were Serbian Deputy Interior Minister and former Kosovo police chief Sreten Lukić, former Yugoslav army chief Nebojša Pavković, and two other generals, former commander of Priština Corps Vladimir Lazarević and former Assistant Minister of the Interior and former Chief of Public Security Department Vlastimir Đorđević. Serbian Interior Minister Dušan Mihailović publicly defended his deputy Sreten Lukić who remained in office.

⁷ Immediately after joining the CoE, the widely criticized Law on Cooperation with the Tribunal (see *Amnesty International: Serbia and Montenegro: Amnesty International's concerns in Serbia and Montenegro*, AI Index: EUR 70/004/2003, March 2003) was amended to allow immediate extradition of indicted suspects. Article 39 of the law, which stipulated that transfer to the Tribunal was only applicable to those already indicted when the law entered into force, was repealed.

Amnesty International is calling on the SCG authorities to:

- **immediately transfer Sreten Lukić, Nebojša Pavković, Vladimir Lazarević and Vlastimir Đorđević to the Tribunal;**
- **do the utmost as a matter of priority to transfer to the Hague all remaining indictees believed to be at large in the country; and**
- **to fully cooperate in making available to the Tribunal all official documents and other information requested.**

1.2 Domestic war crimes trials

The Tribunal does not have unlimited resources and is not seen as the natural body to try all persons suspected of war crimes and crimes against humanity which occurred in former Yugoslavia since 1991. Rather it concentrates on high profile cases such as the trial of former President Slobodan Milošević or Bosnian Serb leader Radovan Karadžić who remains at large. For less high profile cases in which the Tribunal has not issued indictments, domestic courts are seen as more appropriate, and in May 2003 the Tribunal transferred the case concerning the Ovčara massacre near Vukovar in Croatia in 1991 to Serbian courts - the first such transferral - while retaining jurisdiction over the three main accused (see above).⁸

In June 2003 Serbia signed an agreement with Croatia on war crimes that each would try its own nationals. In July 2003 legislation was approved which authorized a special war crimes prosecutor. In October 2003 a special war crimes court opened in Belgrade. On 19 January 2004 it was announced that eight people - Miroljub Vujović, Stanko Vujanović, Jovica Perić, Mirko Voinović, Ivan Atanasijević, Spasoje Petković, Predrag Madzarac and Milan Vojnović - charged in connection with the Ovčara massacre would be the first to be tried by the special war crimes court beginning on 9 March 2004.

The reliance on the domestic legal system 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 fair and thorough manner. The need for an adequate domestic system to bring those responsible for war crimes to justice is paramount. This would, of necessity, require mechanisms to ensure adequate witness protection including measures to prevent attempted intimidation which have so far been a feature of domestic war crimes trials throughout the region.

The record of the authorities so far has been poor. To Amnesty International's knowledge, as of mid-January 2004, the only domestic war crimes arrests, prosecutions and judicial proceedings in Serbia and Montenegro were the following:

⁸ In addition to the above-mentioned 'Vukovar Three' - all of whom were serving officers in the Yugoslav army at the time of the massacre - the Tribunal has also indicted the then President of Vukovar Municipality Slavko Dokomanović for aiding and abetting or otherwise participating in the events.

- a trial in 1996 in which Dušan Vučković was convicted and sentenced to eight years' imprisonment for war crimes and rape of Bosnian civilians in 1992;
- the proceedings in Prokuplje in which Ivan Nikolić, a former Yugoslav army soldier, accused of killing two ethnic Albanian civilians in Podujevo in Kosovo on 24 May 1999, was convicted and sentenced on 8 July 2002 to eight years' imprisonment;
- the case of Nebojša Ranisavljević, sentenced on 9 September 2002 by Bijelo Polje District Court in Montenegro 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-Herzegovina on 27 February 1993, and the abduction and subsequent murder of 20 civilian passengers - 19 Muslims and one ethnic Croat;
- the Sjeverin trial (see below);
- on 12 June 2003 the Supreme Military Court increased the sentences imposed for war crimes against Kosovo Albanians in 1999 by the Niš Military Court in October 2002 on Colonel Zlatan Mančić from seven to 14 years, Rade Radojević from five to nine years, Danilo Tesić from four to seven and Misel Sergej from three to five years;
- on 20 October 2003 the Supreme Military Court increased sentences imposed on 12 December 2000 on Major Dragiša Petrović from four years and 10 months to nine years, and on reservists Nenad Stamenković and Tomica Jović from four years six months to seven years for the killing of an elderly Albanian couple in Kosovo in 1999;
- proceedings in Požarevac where, after a re-trial ordered by the Supreme Court, police reservist Boban Petković was sentenced to five years' imprisonment for war crimes against civilians following his conviction for murdering three Albanians in Kosovo in 1999 while Đorđe Simić was acquitted;
- in April 2003 the trial of Saša Cvjetan, accused of involvement in the murder of 19 ethnic Albanians in Podujevo in 1999, resumed in Belgrade⁹ and was continuing as of mid-January 2004 - his co-accused, Dejan Demirović, who was tried *in absentia*, was apprehended in Canada on 20 January 2003 but released on 20 May 2003, apparently because of lack of evidence;
- those arrested in the Ovčara case (see above) who are expected to be the first domestic war crimes defendants to be tried in the new war crimes court in Belgrade.

⁹ It had previously been held in Prokuplje but transferred, reportedly because of threats against the prosecutors.

In addition, the OSCE reported, from information received and published by the Ministry of Defence of Serbia and Montenegro, that the Military Prosecutor and Military Police had initiated criminal proceedings against 38 people for criminal offences including crimes under humanity and international law committed in Kosovo between 1 March 1998 and 26 June 1999. Of these 38 people, 26 were investigated for murder and eight for rape. Proceedings were stopped in two cases, while 12 cases, where 21 people were indicted with investigations into three others continuing, were transferred to civil courts.¹⁰

1. 2. 1 The Sjeverin trial

On 29 September 2003 Dragutin Dragičević (a Bosnian Serb) and Đorđe Sević were sentenced to 20 years' and 15 years' imprisonment respectively while Bosnian Serbs Milan Lukić¹¹ and Oliver Krsmanović received 20-year-sentences *in absentia* for 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 Republika Srpska (RS) in Bosnia-Herzegovina 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.

Amnesty International is calling for the arrest and trial of others allegedly responsible for the Štrpce and Sjeverin abductions and murders. In addition, documents from the state railway company presented at the trial of Nebojša Ranisavljević (see above) 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.

1. 2. 2 Interior Ministry concentrates on KLA abuses

The OSCE further noted that, from its investigations, it appeared that the Serbian Interior Ministry had devoted most of its work on war crimes to crimes allegedly committed by

¹⁰ OSCE Mission to Serbia: *War Crimes Before Domestic Courts*, Belgrade, October 2003, pp 17-18. These presumably included some of the above-mentioned cases such as those involving Colonel Mančić and Major Petrović.

¹¹ Milan Lukić was also accused of leading the paramilitary group, which included Nebojša Ranisavljević, and participating in the Štrpce abductions and murders, and is indicted by the Tribunal for other war crimes.

members of the Kosovo Liberation Army (KLA). The Ministry had forwarded records of eight crimes to the Tribunal together with over 10,000 pages of documents containing evidence and written testimony on some 125 KLA members alleged to have committed war crimes. The ministry also gave information on 114 killings, 120 abductions and other crimes including the forced expulsion of 237,151 people - mostly Serbs and Roma - from Kosovo. The OSCE stated:

"The conclusion is that the Ministry of Interior has largely investigated crimes committed by KLA soldiers and only a few cases where potential perpetrators were Serbian police and security forces. The underlying reason for the latter investigations was that the public had learnt about them, and the police had no choice but to begin an investigation."¹²

The Tribunal concurred. Spokesperson Jim Landale, in a letter to the *Wall Street Journal* published on 6 January 2004, while contesting the view that domestic war crimes trial in Serbia were preferable to the work of the Tribunal, wrote:

"So far, of the handful of war crimes trials held there over the past decade, none whatsoever have included senior leaders. Some observers have concluded that there appears to be a policy of exclusively trying low-level perpetrators, thus promoting a culture of impunity for the military and political leadership."¹³

1. 1. 3 Exhumations and returns – the scandal of Batajnica

"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 in 1991 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 Serbia and Montenegro in Novi Sad, Sremska Mitrovica region and Šabac region - many of these bodies had initially been dumped in the Danube and had subsequently been re-buried. They were exhumed in 2002.

At the beginning of 2002 there were also an estimated outstanding 4,000 cases of "disappearances" and abductions in connection with the Kosovo war. An estimated 1,200 of the victims 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

¹² OSCE *Op. Cit.*, p 17. This observation seems to be borne out in the Štrpce and Sjeverin 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.

¹³ Reported by B92, *UN Tribunal denies aiding nationalist cause*, 6 January 2004.

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

period following entry of KFOR, the multi-national 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 remains under UN control. The bodies of many ethnic Albanians, killed after being either abducted by Serb paramilitary forces or "disappeared" by regular Yugoslav army forces, were transferred to Serbia. According to autopsy reports carried out in 2001 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 300 bodies of ethnic Albanians, some of whom appeared to have been burned prior to burial, were exhumed from two mass graves in an Interior Ministry training camp at Batajnica near Belgrade, while over 70 similar bodies were exhumed from a mass grave at another Ministry of the Interior property in Petrovo Selo.

Exhumations continued throughout 2002 and some 400 more bodies of ethnic Albanians from Kosovo were exhumed from three other mass graves in the Batajnica training camp. At the end of 2002 it was believed that all the mass graves in Serbia containing bodies of Albanian Kosovars had been found and the exhumations completed. The lengthy process of identification, predominantly based on DNA analysis, of so many mortal remains continued throughout 2003. In June and July 2003 the bodies of 65 bodies previously found in a mass grave in Serbia were returned to Kosovo making a total of 110 repatriations out of the 820 or so ethnic Albanians from Kosovo exhumed from the mass graves in Serbia. In December 2003 a further 44 bodies of Albanians from Kosovo, exhumed from Batajnica, were returned to Kosovo.

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.

However, this progress is 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 or the one at Petrovo Selo. Indeed, the bodies of ethnic Albanians murdered in Kosovo and reburied in Batajnica are referred to in the indictment by the Tribunal against Sreten Lukić, Nebojša Pavković, Vladimir Lazarević, and Vlastimir Đorđević (see above). By refusing to transfer

them, the authorities are obstructing the Tribunal in bringing alleged perpetrators to justice.¹⁵ The Tribunal indictment, vividly describing the circumstances of the murders, stated:

“On or about 26 March 1999, in the morning hours, forces of the FRY and Serbia surrounded the vicinity of the BERISHA family compound in the town of Suva Reka/Suharekë (Suva Reka/ Suharekë municipality). Tanks were positioned close to, and pointing in the direction of, the houses. The forces of the FRY and Serbia ordered the occupants out of one of the houses. Men were separated from women and children and six members of the family were killed. The remaining family members were herded towards a coffee shop by forces of the FRY and Serbia. Those family members were herded, along with three extended BERISHA family groups, into the coffee shop. Forces of the FRY and Serbia then walked into the coffee shop and opened fire on the persons inside. Explosives were also thrown into the shop. At least 44 civilians were killed and others seriously wounded during this action. The bodies of the victims were dragged out of the shop and placed in the rear of a truck, which was then driven in the direction of Prizren. Three injured persons, thrown in among the other bodies, jumped out of the truck *en route* to Prizren. Property pertaining to at least six of the persons killed in the coffee shop was found in a clandestine mass gravesite at a VJ firing range near Korusa/Korisha. In addition, identification documents pertaining to at least five of the persons killed in the coffee shop were found on bodies exhumed from a clandestine mass grave located in Batajnica, near Belgrade, Serbia. (Those persons killed who are known by name are set forth in Schedule K, which is attached as an appendix to this indictment.)”¹⁶

As the United Nations Office of the High Commissioner for Human rights (OHCHR) stated on the occasion of the release on 22 October 2003 of a report on the mass graves in Serbia:

“It is OHCHR’s conclusion:

- that the mass graves, at the Batajnica site in particular, provide *prima facie* overwhelming evidence that gross and systematic human rights violations have occurred;
- that these violations appear to include the torture and/or ill-treatment, killing, removal, desecration and clandestine disposal of ethnic Albanian Kosovar civilians in 1999; and
- that it is inconceivable that an operation of this magnitude could have been undertaken without the knowledge and approval, or at least acquiescence, of

¹⁵ Indictment IT – 03 – 70, 2 October 2003, para 32 (d) and 32 (i) where the four indictees are accused along with Slobodan Milošević, Mialn Milutinović, Nikola Sainović, Dragoljub Ojdanić, Vlatko Stojilković and “others known and unknown” of the murder of hundreds of Kosovo Albanian civilians.

¹⁶ *Ibid* para 32 (d).

the relevant Military or Police authorities responsible for the Batajnica compound area.”¹⁷

The chronology of the official responses - or lack of them - is revealing. No official action seemed apparent until the publicizing of the investigative findings by journalists and non-governmental organizations into these large-scale coordinated actions to hide evidence of mass war crimes and crimes against humanity by the authorities. Finally in May 2001 the Serbian Ministry of Interior, under pressure from the media, formed a working group to investigate the issue of transfer of the bodies. In June 2001, the Serbian Ministry of Interior and senior police officials made a series of statements regarding the mass graves at Batajnica.¹⁸ On 2 July and 3 September 2002 evidence relating to the Batajnica graves was presented at the Tribunal in proceedings against Slobodan Milosevic and others implicating him and others in the crimes. On 24 June 2003, Vladan Batić, Serbian Minister of Justice specifically referred to the investigations at Batajnica and Petrovo Selo, indicating that these cases would be amongst the first to be prosecuted under the new Law on War Crimes when it entered into force on 1 July 2003. On 25 October, the Special Prosecutor for War Crimes Vladimir Vukčević reportedly stated that the Batajnica case had been processed and that unnamed persons were under investigation, and that indictments would be filed on completion of the investigation.¹⁹

However, over four and half years after these large scale organized mass burials and re-burials of murdered civilians in secret graves located in Ministry of the Interior property, no domestic indictments have yet been served.

Amnesty International continues to call on the authorities of Serbia and Montenegro to bring those responsible for these human rights abuses including war crimes and crimes against humanity to justice as a matter of urgency. The organization also considers that the suffering of relatives of the “disappeared”, because of lack of knowledge of the fate and whereabouts of their family members, amounts to a violation of their right to freedom from torture and cruel or inhuman treatment. Amnesty International urges the authorities of Serbia and Montenegro to ensure adequate reparation to the relatives of those “disappeared”.

¹⁷ OHCHR, *OHCHR calls for the establishment of a special commission to take over the criminal investigation into the mass graves in Serbia*, 22 October 2003. For full report see OHCHR, *Report with Recommendations on the Investigations into Mass Gravesites in Serbia*, October 2003.

¹⁸ OHCHR, *Report Op. Cit.*

¹⁹ Interview, B92, 25 October 2003; He also reported that they had received material from the Tribunal.

1. 2. 4 The need for new legislation

War crimes are criminalized in Chapter 16 of the Basic Criminal Code of Serbia and Montenegro²⁰ dealing with "Criminal Acts against Humanity and International Law". While the legislation penalizes those giving orders which result in such crimes, there are no express provisions criminalizing those with command responsibility *per se*. The Tribunal Statute defines command responsibility in Article 7 (3) which states:

"The fact that any of the acts referred to in articles 2 to 5 [dealing respectively with (2) grave breaches of the Geneva Convention of 1949, (3) violations of the laws or customs of war, (4) genocide, and (5) crimes against humanity] of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof."

Amnesty International continues to call for the inclusion in Serbia and Montenegro's domestic legislation of provisions criminalizing command responsibility. The organization urges that such provisions be retrospective in effect.²¹ Amnesty International believes that it is essential that the SCG authorities ensure legislative reforms are undertaken to bring national law into line with definitions, principles of criminal responsibility and defences under international law, including those set out in Article 7 (3) of the Statute of the International Criminal Tribunal for the Former Yugoslavia.²²

1. 2. 5 Victims and witness protection

Amnesty International stresses the importance of both ensuring effective protection of witnesses including victims and the right of the accused to a fair trial. Amnesty International furthermore stresses that the rights of victims and witnesses in the criminal justice 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 Recommendation 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 International Criminal Court (Rome Statute).

²⁰ The Basic Criminal Code is the former Federal Criminal Code which remains in force, despite the constitutional changes of February 2003 under this new name, alongside the separate Republic Criminal Codes until new legislation is passed by the respective republican parliaments.

²¹ In contrast to *retroactive* legislation, *retrospective* legislation in this context 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. Incorporating such retrospective provisions on command responsibility would be in conformity with Article 15 of the ICCPR to which SCG is a State Party.

²² Similar provisions to those of the Tribunal Statute on command responsibility can be found in Article 28 of the Rome Statute of the International Criminal Court to which Serbia and Montenegro is a State Party.

Provisions for witness protection are set out in the Criminal Procedure Act (2001) and Article 109, paragraph 3 of the SCG Criminal Procedure Code. However, Amnesty International is concerned at the inadequacy of these provisions. During the Sjeverin trial (see above), for example, in the absence of appropriate provisions in the relevant law, the judge had to use public order provisions, rather than witness protection legislation, to close the court and protect the identity of a key witness by excluding the public from the trial during his testimony. Observers of this trial also expressed concerns that the full details of where of each witness lived were read out in court.

Amnesty International considers it essential that the SCG authorities 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 other effective national witness protection programs.

1. 2. 6 Reparation, including compensation, of victims and/or their relatives

Amnesty International urges the authorities to ensure that victims – including surviving relatives of deceased victims – of serious human rights violations receive adequate reparation. As set out 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), reparation includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

1. 2. 7 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 greater and effective regional cooperation in bringing to justice those responsible for war crimes and crimes against humanity which occurred in the Balkans in the 1990s. In particular the organization considers that greater cooperation between Serbia and Montenegro, Bosnia-Herzegovina, and Croatia, is required 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 measures states should undertake 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.²³

²³ 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.

Amnesty International continues to call on the authorities of Serbia and Montenegro to live up to the country's international obligations of fully addressing the legacy of war crimes. Specifically Amnesty International calls for the authorities of Serbia and Montenegro to:

- honour its obligations to bring to justice those responsible for war crimes and crimes against humanity;
- include in Serbia and Montenegro's domestic legislation provisions criminalizing retrospectively command responsibility for crimes against humanity;
- set up a comprehensive system, which ensures adequate protection of witnesses and victims from reprisals and the threat of reprisals;
- ensure adequate reparation for 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.

2. Police torture/ill-treatment and impunity

SCG's commitments to the CoE include in 12 iii (f):

"to revise, in co-operation with Council of Europe Experts, the legislation and regulations concerning the prison system, war crimes and torture, so as to ensure prosecution before the courts of crimes which are not prosecuted by the ICTY [The international Criminal Tribunal for the former Yugoslavia (Tribunal)], and also to prevent ill-treatment of citizens by the police;"

SCG (as the Federal Republic of Yugoslavia) has ratified the ICCPR and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which prohibits torture or cruel, inhuman or degrading treatment in all cases and circumstances, as does Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) which Serbia and Montenegro signed on accession to the Council of Europe. On 26 December 2003 the SCG assembly passed for ratification the ECHR and the European Convention for the Prevention of Torture.²⁴ The (UN) Committee against Torture had recommended in November 1998 that FRY make torture, as defined in the UN Convention against Torture, a specific crime in its national legislation and on 17 December 2003 Montenegro adopted a new criminal code which included torture as a specific crime; Serbia has yet to do so.²⁵

²⁴ See footnote 2.

²⁵ Under current legislation in Serbia the maximum sentences for police officers torturing or ill-treating detainees is three years' imprisonment under Article 191 of the Basic Criminal Code dealing with ill-treatment by an official in the course of duty, or five years' under Article 190 if the force was used to try and extract a confession (the

However, despite these binding obligations, allegations of torture and ill-treatment by law-enforcement officers continued to be widespread, especially in connection with "Operation Sabre" (see below), and Amnesty International is concerned that the authorities continue to fail to take adequate measures to ensure the prompt, independent and thorough investigations of such allegations to punish those responsible and to ensure reparation to the victims. The following sections 2.1 to 2.6 detail the situation in Serbia, while the situation in Montenegro is covered in section 2.8.

2. 1 Deaths in custody

Amnesty International is informed of three deaths in custody since January 2002 in which there are allegations or suspicions that the cause of death was police torture or ill-treatment.

Dejan Petrović, aged 29, was arrested on 16 January 2002 on suspicion of theft. The following day police informed his parents that he had leapt from a second floor window and that he was in a coma at the Emergency Treatment Centre. He was suffering from a number of injuries to internal organs as well as broken ribs and a broken left femur and a large bruise to the head. He died without regaining consciousness on 15 February 2002. Amnesty International is informed that the window in question is a double window (to retain heat) of some 40cm by 45cm on the outside, one metre off the floor. Amnesty International is further informed that Dejan Petrović was a tall man of some 181 cm who was handcuffed at the time, and that on the broken glass there was no trace of blood, hair or skin and that a piece of glass had fallen inside the room. Moreover, there was no blood on the packed snow on the ground outside, and the organization is informed that police officers made contradictory statements. A criminal procedure was opened but has been the subject of repeated delays for reasons which are not clear and was still ongoing in mid-January 2004. Amnesty International considers that there are grounds to believe that Dejan Petrović may have died due to police torture.

Dragan Malešević Tapi, arrested on 27 October 2002 on suspicion of involvement in the murder on 10 June 2002 of former police chief Boško Buha, died on 29 October 2002 during interrogation at Belgrade police station following his arrest. Reportedly, the first results of an autopsy reported that he died of a heart attack. However, in the light of detailed allegations of serious police torture made by others who had also been arrested on suspicion of involvement in the murder (see below) there remain suspicions about the nature of his death. On 12 November 2002 Amnesty International called on the Serbian authorities to

analogous articles in the Serbian criminal code are Articles 66 and 65). Amnesty International notes that under Article 95 of the Basic Criminal Code, which deals with statutes of limitation, a criminal prosecution can only be undertaken within a three-year period from the date of the offence for use of torture or ill-treatment or within a five-year period if the torture or ill-treatment was used to try and extract a confession. Amnesty International further notes that the penalty for grievous bodily harm (Article 53) carries heavier sentences than those for police officers torturing detainees: sentences of between six months' and five years' imprisonment for such offences or between one and 10 years' imprisonment if the victim suffers permanent injury.

undertake a full investigation into the death of Dragan Malesević Tapi in a manner consistent with the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions²⁶ and to be informed of the findings. The Serbian authorities have not replied.

On 5 December 2002 24-year-old Milan Jezdović was allegedly tortured to death at the '29 November' main 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 reported that 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. Amnesty International also notes that, according to the deceased's father, Milan Jezdović did not suffer from a weak heart, and that his health was so robust that he been drafted into the parachute regiment in 1999 when performing his compulsory military service. Amnesty International also notes that he was a student of physical education at Belgrade University. Both these facts would mitigate against the likelihood of an unprovoked heart attack.

On 12 December 2002 Amnesty International raised its concerns regarding Milan Jezdović's death with the Serbian authorities who replied in a letter of 6 October 2003 from the Serbian Minister of the Interior, describing the circumstances of his death. The letter stated:

²⁶In particular Principles 13, 16 and 17. Principle 13 states inter alia: "Detailed colour photographs of the deceased shall be included in the autopsy report in order to document and support the findings of the investigation. The autopsy report must describe any and all injuries to the deceased including any evidence of torture." Principle 16 states: "Families of the deceased and their legal representatives shall be informed of, and have access to, any hearing as well as to all information relevant to the investigation [into the death], and shall be entitled to present other evidence. The family of the deceased shall have the right to insist that a medical or other qualified representative be present at the autopsy..... The body of the deceased shall be returned to them upon completion of the investigation." While Principle 17 states: "A written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. The report shall also describe in detail specific events that were found to have occurred, and the evidence upon which such findings were based, and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. The Government shall, within a reasonable period of time, either reply to the report of the investigation, or indicate the steps to be taken in response to it."

"... All of them [Milan Jezdović and eight others arrested with him] were taken by the official vehicles of the Belgrade Secretariat of the Interior to the official premises of the Fourth Section of the Belgrade Secretariat of the Interior. They were interviewed there. The topics of the interviews were their activities regarding the sale of drugs and illicit possession of weapons. About 23:55 hours, Mr. Jezdović got sick during the interview. The Emergency Response Health Service were called via the Shift Chief of the Duty Service of the Belgrade Secretariat of the Interior, and immediately after the doctors were called in, the employees of the Fourth Section started giving first aid to Mr. Jezdović. The Emergency Response Health Service arrived at 00:36 hours, and the doctor of the service determined that Mr. Jezdović was dead. After that, the scene was investigated by Duty Investigative Judge of the Regional Court in Belgrade, Mrs. Nadežda Mijatović in the presence of Deputy Regional Public Prosecutor Mr. Dragan Lopusina. After the scene had been examined, it was ordered to take the body to the Forensic Institute to perform an autopsy."

Amnesty International believes that this does not sufficiently explain the circumstances surrounding Milan Jezdović's death. Several points are immediately apparent: why did it take the emergency services 40 minutes to arrive at the scene; why did Milan Jezdović's co-arrestees heard him screaming that he could not breathe; and finally, how did Milan Jezdović come to receive the two burn marks on his forehead, which are clearly visible on post-mortem photos and, according to the second autopsy report, are consistent with those made by electric shock equipment.

Amnesty International is informed that criminal proceedings have been initiated in this case but have been stalled due as a result of the arrest of one of the lawyers during "Operation Sabre" (see below).

2. 2 Alleged torture during "Operation Sabre"

On 12 March 2003 Prime Minister Zoran Đinđić was assassinated. Immediately following the assassination the authorities introduced a state of emergency which remained in operation until 22 April 2003. The authorities also initiated "Operation Sabre" - a large-scale clampdown on elements of organized crime seen by the authorities to have been behind the assassination. On 21 April the Ministry of Internal Affairs announced that over 10,000 people had been detained during the state of emergency of whom some 4,500 remained in custody.

On 3 April 2003, on the occasion of SCG's accession to the Council of Europe, Amnesty International publicly expressed its concern that some aspects of the emergency regulations might give rise to human rights violations in contravention of international standards including the ECHR which SCG signed on the day of its accession.²⁷ The organization was especially concerned about emergency regulations which allowed the

²⁷ See *Serbia and Montenegro: Accession to the Council of Europe*, NS No 075, AI Index: EUR 70/009/2003, 3 April 2003.

Ministry of the Interior to detain people for up to 30 days without access to a lawyer or family, and without their detention being authorized by a competent judicial body, in breach of international standards.

The non-derogable nature of the right to *habeas corpus*, even in times of emergency, has been confirmed by the (UN) Human Rights Committee.²⁸ Judgments by the European Court of Human Rights have ruled that the right to be brought before a judicial body for review of detention applies in any emergency situation and even during armed conflicts.²⁹ At that time, Amnesty International warned that given the continuing prevalence of allegations of police torture and ill-treatment of detainees – allegations which Amnesty International has repeatedly raised with the authorities of Serbia and Montenegro³⁰ – such a period of 30 days incommunicado detention of hundreds of suspects could only be a cause for concern.

On 11 April 2003 the Serbian Assembly approved amendments to the Law on Organization and Jurisdiction of Government Authorities in Suppression of Organized Crime provisions of which were in even clearer breach of international human rights standards. In particular the amendments allowed the Interior Ministry to authorize detention of up to 60 days without authorization from a court or judicial body. There was widespread criticism of the amendments from many quarters including Amnesty International. On 5 June 2003 the Constitutional Court of Serbia ruled the amendments to be unconstitutional and suspended them.

²⁸ UN Human Rights Committee, *General Comment No. 29: States of Emergency (Article 4)*, which states: "Safeguards related to derogation, as embodied in article 4 of the Covenant, are based on the principles of legality and the rule of law inherent in the Covenant as a whole. As certain elements of the right to a fair trial are explicitly guaranteed under international humanitarian law during armed conflict, the Committee finds no justification for derogation from these guarantees during other emergency situations. The Committee is of the opinion that the principles of legality and the rule of law require that fundamental requirements of fair trial must be respected during a state of emergency. Only a court of law may try and convict a person for a criminal offence. The presumption of innocence must be respected. In order to protect non-derogable rights, the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention, must not be diminished by a State party's decision to derogate from the Covenant." CCPR/C/21/Rev.1/Add. 11, 31 August 2001.

²⁹ See the following two cases where the countries involved had derogated from provisions of the ECHR on the basis of states of emergency. These cases examine measures taken regarding detention in light of the necessity and proportionality of the measures taken. *Brannigan and McBride v. the UK*, Judgment of the European Court of Human Rights, 26 May 1993, in which the Court stated that a period of seven days before bringing a detainee before a court was legitimate in an emergency situation, it noted that in Northern Ireland all detainees had the right to *habeas corpus* and access to a lawyer after 48 hours, and to a doctor and family; while in *Aksoy v. Turkey*, Judgment of the European Court of Human Rights, 18 December 1996, the Court considered 14 days was too long even in a region suffering armed conflict, especially as there was no right of *habeas corpus* and access to a lawyer, doctor or relative was denied.

³⁰ See for example *Federal Republic of Yugoslavia (Serbia and Montenegro): Continuing police torture and ill-treatment*, AI Index: EUR 70/001/2003, and *Serbia and Montenegro: Legal loopholes allow impunity for torturers in the Sandžak*, AI Index: EUR 70/002/2003

Amnesty International called for all those responsible for Prime Minister Đinđić's assassination to be brought to justice, but underlined that attempts to do so must be carried out with respect for international standards and must not resort to torture.

Past police use of torture and ill-treatment by the police, and the emergency legislation allowing lengthy incommunicado detention gave cause for concern about the possible use of torture against the thousands arrested in "Operation Sabre". On 14 and 15 April representatives of the UNHCHR, the OSCE and the OSCE Office of Democratic Institutions and Human Rights (ODIHR) were allowed to visit Belgrade central prison and the main police station. Their initial findings and recommendations noted that the delegation heard allegations or saw indications of torture or ill-treatment during arrest concerning two of the eight detainees interviewed. The delegation also noted that the conditions under which some were being held amounted to cruel, inhuman or degrading treatment. Although many detainees, when eventually released after lengthy periods, were too scared to openly allege that they had been tortured, apparently due to fear or re-arrest and possible similar repeat treatment, a number of detailed torture allegations did eventually emerge. These indicated that the use of torture had been widespread.

For example,³¹ Sandra Petrović informed Amnesty International that her husband, Goran Petrović, and brother, Igor Gajić, were arrested in Kruševac on 14 March and kept in incommunicado detention until 13 May during which they were allegedly tortured by police officers in an attempt to extract confessions of extortion from them. She informed Amnesty International that after 15 days in detention in Kruševac, Goran Petrović had allegedly been taken by police to Čuprija where police officers had taken him to a nearby forest, taped a bag over his head and had beaten him so severely, injuring his spine so that when she saw him on 13 May he still had difficulty in walking. She informed Amnesty International that her brother had similarly been taken to the forest where police also taped a bag over his head and beat him. She alleged that in detention Igor Gajić had also been tortured by electric shocks to his body after being doused with water, also while having a bag taped over his head. Marija Jotić informed AI that her husband, Zoran Jotić, was arrested at the same time, and that after 15 days' detention he had been taken to Niš, and similarly to the others, had been beaten while having a bag taped over his head. She also reported that he had been beaten by pistol blows to his head and that he had been subjected to mock executions.

A high-profile case involved Milan Sarajlić, Deputy Public Prosecutor of Serbia, arrested on 19 March and kept in incommunicado detention until 11 April. He was taken to the infamous '29 November' Belgrade police station where, Amnesty International was informed, many other detainees were also allegedly tortured before and during "Operation Sabre". His wife, Danila, and a lawyer acting on behalf of the family informed Amnesty International that they were unable to divulge details of the charges under which he was being

³¹ For more details on these and some 15 other cases see *Serbia and Montenegro: Alleged torture during "Operation Sabre"*, AI Index: EUR 70/019/2003.

held - Article 540v of the Code of Criminal Procedure, introduced in April, forbade publicizing details of the pre-trial process in cases of organized crime without written permission from the prosecutor and penalized such disclosure with possible prison sentences under Article 208 of the Serbian Criminal Code for infractions. However, they could divulge details of his alleged torture as these had also been officially given to the investigative judge. They alleged that over an extended period he had been physically tortured with electric shocks to his temples while having a bag taped over his head. They also alleged that he had been subjected to a variety of psychological pressure including threats to kill his daughter, and that on three occasions he was taken in a trunk with a bag on his head to an unknown location, where he was subjected to mock execution by rifle fire. As a result of his treatment in detention he lost 20 kilograms of weight and suffered psychiatric problems - the latter confirmed by the Institute for Neurology, Psychiatry and Mental Health in Novi Sad where he was transferred while remaining in custody.

Amnesty International raised its concerns about these and 15 other similar cases connected to "Operation Sabre" with the Serbian authorities on 20 August 2003. In September 2003 leading Serbian officials made statements to the media refuting the allegations but promising that the Interior Ministry would look into the issue and punish any police officers guilty of torture or ill-treatment.³² However, the authorities did not respond directly to Amnesty International.

Amnesty International's concern

Amnesty International remains deeply concerned about allegations of torture of detainees by security forces in SCG in connection with "Operation Sabre", and the apparent lack of adequate, if any, investigations into these widespread and credible allegations. The torture allegations include asphyxiation by taping plastic or other material bags over the head, beatings, electric shocks to the head and body, and mock executions. The organization is also concerned at the possible use, in trials connected with "Operation Sabre", of testimony obtained under torture.

2.3 Continuing allegations of torture and ill-treatment

Allegations of police ill-treatment and torture received by Amnesty International, however, are not confined to people arrested during the course of "Operation Sabre". For example, just after midnight on 22/23 January 2003 in Kruševac a group of policemen allegedly severely beat Zoran Todorović, and insulted and sexually molested his partner, Danijela Bogojević,

³² Serbian police chief Sreten Lukić, who as noted above was later indicted by the Tribunal, reported by *Reuters* on 4 September 2003. On 5 September 2003 Minister for Human and Minority Rights and Ethnic and National Minorities for Serbia and Montenegro Rasim Ljajić was reported in the London daily *The Independent* as having denied the allegations saying detainees had not been ill-treated in prison but he acknowledged that he had no knowledge of circumstances surrounding the arrests and police detention (the alleged torture reported by Amnesty International referred to police stations not prisons).

after bursting into their rented apartment without a warrant and without any apparent motive. The beating allegedly continued even though the police reportedly received radio confirmation from headquarters that no charges of any kind had been filed against either of them. The policemen left telling them to move out by the following morning. In June the Humanitarian Law Centre (HLC - a non-governmental organization in Belgrade) filed a suit against the Republic of Serbia in the First Municipal Court in Belgrade, seeking compensation for the victims.

Similar allegations have continued, although local human rights groups have noted that allegations of systematic torture, such as the frequent use of taped bags over a victim's head, prevalent in the era of former President Slobodan Milošević and apparently continuing until and during "Operation Sabre", appears to have declined. However, the Yugoslav Lawyers' Committee for Human Rights (YUCOM), which, similarly to the HLC, takes up cases of alleged police torture and ill-treatment, reported on 12 December 2003 that since Operation Sabre some 11 cases of alleged police ill-treatment in the Belgrade area alone had been reported to YUCOM.

For example, a unit of the Belgrade police raided cafés in Banovo Brdo area of Belgrade on 21 June 2003. According to his lawyer, Bojan Stojanović objected to the police harassment and said to one officer "Easy sir, you not going to beat us?". The officer then, in the presence of four witnesses who were also harassed, allegedly hit him in the throat and several times to the head and chest so that he fell to the ground where he was then allegedly beaten with a truncheon. His lawyer, Žarko Petrović of YUCOM, was present just after the event and took him for emergency medical aid where there were two other people similarly injured in the same raids. Bojan Stojanović, Žarko Petrović and one of the other victims went to Belgrade Police Headquarters in 29 November Street to report the incidents. The police were reportedly very reluctant to take any action but eventually were persuaded to take a statement. However, no action was taken by the Second Municipal Public Prosecutor's Office - the relevant public prosecutor - and on 3 July YUCOM, acting for Bojan Stojanović, filed a criminal complaint against the police as well as a civil suit against the state for damages.

This case highlights a crucial factor in the apparent ongoing police immunity for torture and ill-treatment: namely the failure of the organs of state to initiate, thoroughly investigate and bring to justice perpetrators. The Code of Criminal Procedure, which came into force on 28 March 2003, clearly obligates all state officials (and all members of the public for that matter) to report criminal offences, and if there are grounds for suspicion that a criminal offence subject to public prosecution has been committed, the police authorities shall be bound to take necessary measures aimed at discovering the perpetrator.³³

³³ "ARTICLE 222 [of the Code of Criminal Procedure]: All state authorities, territorial autonomy and local government authorities, public companies and institutions are bound to report criminal offences subject to public prosecution about which they have learned themselves or have learned in a different way. When submitting crime reports, crime report submitters referred to in paragraph 1 of this Article shall indicate evidence known to them

However, over a long period of time Amnesty International and others have pointed to a woeful lack of adequate investigation by the authorities into most allegations of torture and ill-treatment by police officers. Moreover, in the very few reported cases in which police officials were tried for ill-treatment and found guilty, nominal sentences were the norm helping to bolster a climate of impunity. In other cases, even where civil courts substantiated claims of torture and ill-treatment, no disciplinary or criminal proceedings were taken against the perpetrators.³⁴

2.4 The failure of the police to investigate allegations

The initial responsibility for the failure in investigating such allegations lies with the police and the Ministry of Interior themselves. Although there have been criminal charges brought in some cases³⁵ - notably ones where there has been widespread publicity and pressure by domestic and international NGOs including Amnesty International and others - these remain the exception rather than the rule. As the HLC noted:

"The police authorities in Serbia and Montenegro continue to side with officers accused of torture and other violations of fundamental human rights. Disciplinary boards that have investigated HLC allegations of police misconduct and torture as a rule chose to believe their fellow-officers in spite of strong evidence to the contrary. Furthermore, a frequent reaction of law enforcement agencies to the filing of complaints is to charge the victims with acts such as preventing a police officer in the performance of his duty or breaches of the public peace. The HLC has also recorded cases of police resorting to threats in order to discourage torture victims from filing complaints, or inducing them to drop charges or change their statements in the course of proceedings."³⁶

In June 2003 the Ministry of the Interior set up an Inspector General's Office within the ministry whose remit was, among other things, to oversee the conduct of Interior Ministry

and undertake measures to preserve traces of the criminal offence, the objects upon which or by which the criminal offence was committed as well as other evidence. ARTICLE 223: Everyone shall report a criminal offence subject to public prosecution. Cases in which a failure to report a criminal offence is a criminal offence is prescribed by the Criminal Code. ARTICLE 224: The report shall be filed with the competent State Authority in writing or orally. If the report is filed orally, the person who filed it shall be warned about the consequences of a false report. An oral report shall be entered in the record and if the report was conveyed by telephone, an official note shall be made. If the report was filed with the court, the police authority or a State Attorney lacking jurisdiction, they shall receive it and immediately forward it to the State Attorney having jurisdiction. ARTICLE 225: If there are grounds for suspicion that a criminal offence subject to public prosecution has been committed, the police authorities shall be bound to take necessary measures aimed at discovering the perpetrator, preventing the perpetrator or accomplice from fleeing or going into hiding, discovering and securing traces of the criminal offence and objects of evidentiary value as well as gathering all information which could be useful for successfully conducting criminal proceedings."

³⁴ See Amnesty International, *Serbia and Montenegro: Amnesty International's concerns in Serbia and Montenegro*, AI Index: EUR 70/004/2003.

³⁵ E.g. the cases of Nenad Miljković and Nenad Tasić referred to in Amnesty International, *Serbia and Montenegro: Amnesty International's concerns in Serbia and Montenegro*, AI Index: EUR 70/004/2003..

³⁶ HLC press statement of 29 July 2003.

officials. However, there appear to be problems with staffing to the new office which in December 2003 had some 20 staff (and hoped to expand to some 60) as well as with equipment,³⁷ and its record on investigating cases of alleged police torture and ill-treatment has to date been disappointing. Even the Minister for Human and Minority Rights and Ethnic and National Minorities for Serbia and Montenegro, Rasim Ljajić, admitted in December 2003 that while there had been a slight improvement in the previous month, his office had problems in getting information from the police authorities.³⁸

2. 5 Investigative judges and prosecutors failing in their duty

With the police authorities failing to adequately investigate credible allegations of torture and ill-treatment, responsibility lies with the state prosecutors and investigative judges. However, it is noticeable that these bodies are singularly failing in their responsibility in this regard: the majority of cases brought to the courts alleging police torture and ill-treatment are currently brought by NGOs such as the HLC or YUCOM and others, and even when these are successful, the state organs appear reluctant to perform their official duties in prosecuting the perpetrators.³⁹

Lawyers such as Borivoje Borović⁴⁰ have informed Amnesty International that in all of the cases in which their clients or their co-accused, prosecuted for criminal charges, credibly allege police torture and even appear in court with visible injuries and/or medical documentation to back up their claims, neither the state prosecutors nor the investigative judges take action. For example, Dragan Ilić, accused of the June 2002 murder of Belgrade Police Chief Boško Buha, read out in court on 16 September 2003 a long and detailed statement about his alleged torture by the police following his arrest on 27 October 2002. In his statement he alleged:

"...when we arrived in the forest, the inspector who was sitting next to me, was trying to strangle me with a bag over my head and was beating me up with his gun, trying to break my ribs while the inspector, who was driving the car, was squashing my genitals and telling me that I will be unable to have any more children. ...

They pushed me on the floor and started kicking me more than 20 times and then they tried to strangle me and threatened to kill me. After this they left the office. ...

After a 10 minute drive the car stopped, they opened the car boot and took me out... They were kicking me and beating me with their weapons, sticks and other objects; two of them were dragging me by my legs telling me that this was just the beginning and if I don't co-operate with them I would die in the biggest pain. Then the other car arrived and three masked men came out, one was very tall and the other two of

³⁷ Information from Peter Vanhoutte, OSCE, Belgrade, 12 December 2003.

³⁸ OHCHR press conference 10 December 2003.

³⁹ Although, as noted above, in some high profile cases where there is strong public pressure the state prosecutors will, in rare instances, take over such cases.

⁴⁰ Interview 23 July 2003.

average build. One of those two asked: 'did you bring the little bird'? They sat me, I was all wet and covered in blood and I only had my pyjamas on. The tall man said to me: 'listen to me carefully. First of all, they are not the police. We are. Secondly, it was announced on TV that you are kidnapped. We have permission personally from the Minister of the Police to kill you like a dog. Thirdly, your wife and your child are in our hands and if you don't agree to make the statements we want you to make, we will kill them in front of you. Fourthly, if you are clever and you agree to the above, we will return you the money we took from you, we will give you double the amount back; we will give you and your family different identity; we will give you different passports and we will give you police protection for as long as you need it. I had to admit that I didn't really have a choice but I still didn't accept all this as I knew what they were trying to get me involved in. The same tall man who was asking me to agree on this started hitting me very hard with his weapon all over my body – my back, legs head so I very soon lost consciousness from the pain. When I came to, he told me to get up but I couldn't as my leg was broken. They sat me down again and the same man said: 'I will break both of your legs and arms and then I will crucify you alive'. The other man took some tool out of the car and started to cut my toes. I lost the consciousness again.

When I came to, one of the medium build men told me: 'this is your last chance to change your mind. Much stronger men than you didn't survive this, and apart from that, your wife and child are in our hands'. Then he said to the others: 'when you make him see some sense, and you know how to do that, bring him there'. In that moment I recognised the voice of that inspector who had been beating me up and trying to strangle me before in the police office. He left with two men and five of the others stayed with me, all masked. They carried on with the torture cutting my toes, one by one, and every time I lost consciousness and came round they would repeat that I should start co-operating with them or even worst things would happen to me. They wanted to break my hands too but I would not let them and kept them tight together – they hit them with some strong metal object and broke them both. The pain was so strong that I lost consciousness again. When I came round one of the men started hitting and breaking my fingers on my hands while the others carried on cutting my toes. I would like to stress that they were laughing and having fun while doing this to me and causing me so much pain. This went on for a while until then they realised that I would not change my mind and agree to participate in their game. Then they did the worst possible thing that one human being could possibly do to another. One of them made a phone call from his mobile phone and asked: 'are his wife and a child there'? As the answer was positive he said: 'bring them here so we can kill them while he is looking'. I still didn't believe this was true, I thought they were trying to trick me so I remained quiet and didn't say anything. Then the same man made another phone call saying: 'don't bring them just yet. First of all cut the child's finger off, the one the child is sucking, so it is clear that this is not a joke.' When I heard this I was certain that they were in my house with my wife and my child

as only my wife and I know that our child sucks the finger of his right hand while asleep.

Then the boss said that I should be filmed from the side, I suppose as I was not looking myself any more as a result of being so badly beaten up. This torture of me lasted the whole night. They used to go to another room to edit the recordings while the others were torturing me. I suppose they did to me what they used to do to captured soldiers and civilians during the war. They broke my nose, beat my back and ribs and who knows what else when I was unconscious. They were not happy with the recording as it didn't appear that I was spontaneously telling them the story. I have to also say that in one moment the person who was editing the recording in the other room came to me and told me in an angry voice: 'you are going to talk as we tell you or you will end up in one of the holes like many others before you...'"

...they took me to emergency centre where they told the doctors that I was a dangerous criminal and that they had been looking for me for the past three years. The doctor referred me to get an x-ray of: my head, chest, nose and both legs and arms.... The policemen said if they could x-ray only the most necessary parts and that the rest would be done in the prison hospital. The doctor said that I had a broken leg that needed to be taken care of as well, and that I should stay in the hospital as the rest of my wounds were serious and could develop in something even more serious if the treatment didn't start immediately. One of the police officers talked to someone on the phone and then said that I was not allowed to stay in the hospital. Then the other person got involved in all of this – I suppose he was the person who works on behalf of the police in hospital in cases like mine – he takes the details of people like me who came to the hospital. This person talked all the time to the police officers who took me there. Also he didn't want to take my personal statement about what had happened to me. The same person was waiting for my arrival with the doctors in the emergency centre."

His injuries, including fractures to both hands and legs, fingers and jaw were reportedly visible at the court proceedings. However, even in such an extreme case as this neither the prosecutor nor the investigative judge took any action. Similarly there has been no official action taken, nor reply to Amnesty International concerns when raised with the Ministry of Interior, into the serious allegations of torture by his co-defendant Nikola Maljković.⁴¹

2. 6 Nominal sentences by the courts and procrastination in paying compensation

As noted above, in the very few reported cases in which police officials were tried for ill-treatment and found guilty, nominal sentences were the norm helping to bolster a climate of

⁴¹ See Amnesty International, *Serbia and Montenegro: Amnesty International's concerns in Serbia and Montenegro*, AI Index: EUR 70/004/2003.

impunity.⁴² For example, 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.

Amnesty International believes that any law enforcement official convicted of torture or serious ill-treatment should be subjected to punishment which is commensurate with the severity of the crime, and should be dismissed from the police force.

The Serbian Constitution states in Article 25 that:

"Everyone shall have the right to compensation for material and non-material damages sustained as the result of the unlawful or improper action of an official or state agency or organization exercising authority in accordance with law. The compensation shall be paid by the Republic of Serbia or organization exercising authority in accordance with law."

Even when the courts do award damages, as noted above, almost invariably in civil cases brought by human rights groups such as the HLC or YUCOM, to a victim of police brutality, the victims experience difficulties in obtaining the money from the state.

For example, Anika Krstić was severely beaten by policemen during a peaceful demonstration in September 1999 against the government of Slobodan Milošević. As a result of the beating she suffered damage to her left eye which despite surgery left her retina permanently damaged. The HLC raised a criminal complaint against unknown policemen which was not taken up by the authorities. With the help of YUCOM she filed a civil suit for damages on 28 August 2000. On 9 January 2003 the Second Municipal Court of Belgrade awarded her damages of one and a quarter million dinars of which 700,000 dinars was for her personal suffering and the rest was for medical costs. However, a second hearing on 26 June 2003 by the Belgrade District Court reduced the figure for non-material damages (i.e. personal suffering) to 200,000 dinars but referred the claim for material damages (medical costs etc) back to the court of the first instance for re-examination. Despite this final court judgement regarding non-material damages, Anika Krstić had, as of mid-January 2004, not yet received payment from the state despite repeated requests - including a registered letter sent by YUCOM on her behalf on 20 September 2003 - to the relevant body, which, in this case, was the Fourth County Court. Amnesty International was informed in late January 2004 that the court had finally responded and that the payment was imminent, however the

⁴² There have been exceptions such as the 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.

organization notes that this promise was only given after protracted action by Anika Krstić's legal representative.

Anika Krstić is the program manager of International Aid Network (IAN), a member of an international NGO network working to help torture victims overcome the mental and physical traumas resulting from their torture. She informed Amnesty International that her experience of procrastination is by no means unique and happens to many other torture victims in Serbia: the state practice appears often to be to postpone, reduce or even refuse payment.

Amnesty International considers that there are serious deficiencies in adequately addressing ongoing police torture and ill-treatment at all levels in the system: from the police, through to the prosecutors, investigative judges, to the judgments of some of the courts themselves, right through to problems in implementing court decisions awarding damages. Amnesty International believes that the combination of these failures has perpetuated a climate of impunity for police torture and ill-treatment.

2. 7 Ombudsperson and other bodies

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 in the SCG where the legacy of impunity from the era of former President Slobodan Milošević continues.

SCG's list of commitments to the CoE included in iv (f) "*to enact, within one year of its accession, legislation creating the office of ombudsman*". In Montenegro the relevant legislation was passed in July 2003. However, in Serbia the draft law - criticized by Amnesty International and others⁴³ - had not been brought to parliament by mid-January 2004. An Ombudsperson, Petar Teofilović, was appointed specifically for the Vojvodina in September 2003 but, as of mid-January 2004, was not yet operational due to lack of office space.

Another body, set up in 2000, to oversee the police and security apparatus in Serbia is the Serbian Parliamentary Defence and Security Committee, but this body, despite being in operation for some three or four years is still in its infancy as regards the use of its power as an overseeing body. Its record in bringing the executive branches of government to task for alleged human rights violations has been poor to date.

⁴³ See Amnesty International, *Serbia and Montenegro: Amnesty International's concerns in Serbia and Montenegro*, AI Index: EUR 70/004/2003.

2. 8 Alleged torture in Montenegro

Allegations of torture were not confined to Serbia but were also received from Montenegro where there was a similar apparent lack of will by the authorities to investigate the allegations and bring perpetrators to justice. On 15 June 2003 three named police officers in Pljevlja allegedly severely beat and tortured Admir Durutlić, Dragoljub Džuver, Jovo Čosović and Mirko Gazdić in an attempt to force them to confess to drug dealing. The HLC reported that during the police raid on an apartment in the town, the police took Admir Durutlić into the bathroom and while two of them held his hands behind his back, the other hit him in the stomach. They then allegedly knocked him to the ground, grabbed him by the hair and shoved his head into the toilet bowl. The police then reportedly ordered him to strip and, when he was naked from the waist up, allegedly continued to hit and kick him, including with blows to the genital area. The police then took Dragoljub Džuver into the bathroom and allegedly hit him repeatedly in the stomach and ribs, demanding that he confess "where the marihuana was". Following this, the police officers brought all four men to the police station in Pljevlja, where they were allegedly individually beaten by the officers over a period of three hours. They were all released the next morning. The Surgical Department of Pljevlja General Hospital noted that they had numerous bruises and welts. In June the HLC filed criminal charges with the Basic Prosecutor's Office in Pljevlja against the three policemen.

The HLC reported that on 17 May 2003 Igor Zindović was taken into custody by police in Bar on suspicion of theft and allegedly was severely ill-treated and abused over several days. The alleged ill-treatment initially took place at Bar Police Station and then subsequently at Ulcinj Security Centre where he had been transferred after two days, and once more at Bar Police Station where he was returned. Specifically it is alleged that during the first two days of his detention, two named police officers threatened to kill him and throw his body in to the sea to make him confess to a robbery which he denied any knowledge of. On the third day he was driven to Ulcinj. During the journey it is alleged that he was made to bow his head onto his knees, and that one of the named police officers allegedly repeatedly hit him on the back of the head. On arrival at Ulcinj Security Centre, the same police officer allegedly punched him in the head and stomach. Igor Zindović was then allegedly beaten by a third named police officer until he agreed to "confess" to anything the police requested. He was then returned to Bar where he was allegedly beaten again by the police officers who then took him to the police chief. threatened that, if he did not sign a statement prepared by the police, he would be wrapped in a fishing net and thrown into the Bojana River. Igor Zindović signed the statement that the police had prepared and was then taken to an *ambulanta* (a local medical centre) where he was given first aid and prescribed medication for dizziness and stomach pains due to the alleged beating. On 20 May Igor Zindović was taken to Spuž prison and questioned on 21 May by investigating judge Radomir Ivanović. Amnesty International is informed that Igor Zindović told the investigating judge that his confession had been extracted from him by force, and denied any involvement in the robbery. On 10 June the prosecutor dismissed the case against Igor Zindović and he was released.

The HLC also reported the case of Nikola Popović, from Podgorica, who was allegedly ill-treated by a police officer on 21 August 2003. Nikola Popović, who has had two operations for a throat tumour and in the past had suffered from a stroke, had gone to the police station in the Podgorica district of Zabjelo after being informed that his son had been detained there by a named police inspector. Nikola Popović alleged that, without any provocation, the named police inspector punched him and knocked him semi-conscious whereupon he was carried out of the station by two uniformed police officers and pushed backwards over a low metal fence. The two uniformed officers then pinned his shoulders to the ground with their feet while the same inspector allegedly kicked him repeatedly in the mouth and nose and threatened to beat him with his truncheon if they met again. Nikola Popović was then handcuffed and taken to the Security Centre in Podgorica and held for three hours before being taken for medical treatment, initially to an *ambulanta* and then to an Emergency Treatment Centre. After being treated for his injuries he was returned to the Security Centre and detained for three days. Amnesty International is informed that, fearing further physical ill-treatment, he signed a number of statements presented to him by the police.

Amnesty International is calling on the Serbian and the Montenegrin authorities to ensure that:

- prompt, thorough and impartial investigations are carried out into all allegations of torture and ill-treatment;
- no prosecutions are based on “confessions” allegedly obtained as a result of torture, ill-treatment or duress;
- in cases in which a confession is a source of evidence, the courts carry out a thorough investigation, which includes detailed examination of medical evidence, to determine whether the confession was lawfully obtained before it is admitted as evidence in the trial;
- in cases in which there is reasonable suspicion that torture or ill-treatment has been used against detainees, the state prosecution institutions should immediately undertake measures to identify the perpetrators and bring them to justice;
- all victims of torture and ill-treatment receive adequate reparation in a timely manner;
- any law enforcement responsible for ill-treatment face disciplinary proceedings and criminal charges where appropriate;
- any law enforcement official convicted of torture or serious ill-treatment be subjected to appropriate criminal sanctions commensurate with the severity of the crime, and be dismissed from the police force;
- torture, as defined in the UN Convention against Torture, be made a specific crime in Serbia as recommended by the (UN) Committee against Torture in November 1998.

3. Conscientious objection to military service

SCG's list of commitments to the CoE included:

"(e). to enforce legislation concerning conscientious objectors and, within three years, to enact legislation on an alternative type of service;"

Amnesty International supports the right of conscientious objection to military service. The organization has previously called on the Serbia and Montenegro government to guarantee conscientious objectors a non-punitive and genuine alternative civilian service in accordance with international standards as recommended by the (UN) Human Rights Committee, the Council of Europe and the European Parliament, and to release all those imprisoned for refusing military service on grounds of conscience.

In light of this, Amnesty International notes the adoption of the Regulation on Civilian Service by the Committee of Ministers of Serbia and Montenegro on 27 August 2003 which came into force on 15 October 2003. This offers for the first time a genuine alternative to military service (of 13 months instead of the normal nine-month service),⁴⁴ recognizing service in civilian institutions of a humanitarian nature. Serbia and Montenegro's commitment to the enactment, within three years of accession on 3 April 2003, of legislation on an alternative type of service was a condition of joining the Council of Europe and Amnesty International notes the enactment of this legislation over two years before the Council of Europe's deadline. There were some initial problems in implementing the new regulation due to apparent ignorance of the legislation by lower levels of the military, and an initial absence of availability of a genuine alternative service. However, the system was operational in December with some, 400 conscientious objectors starting their service in 2004 in the 575 civilian institutions, such as hospitals, recognized as places where conscientious objectors could serve.

However, Amnesty International considers that the new SCG legislation is defective in a number of ways. Article 8 of the new legislation stipulates when a person can apply for civilian service. This states that conscientious objectors can apply for civilian service only before recruitment, or, for those already recruited, during the first three months of military service. Amnesty International believes that people should be allowed to register as conscientious objectors at any time and that this should not be restricted to the first three months of service. Furthermore, Amnesty International is informed that there is no provision for permanent members of the armed forces to apply for the granting of conscientious objector status.

⁴⁴ Serbia and Montenegro state President Svetozar Marović announced on 10 June 2003 that military service was to be reduced to eight months. However, Amnesty International is informed that while such action by the President was allowed under the old FRY Constitution, the President does not have similar powers under the new Constitutional Charter, and military service remains at nine months.

Article 10 forbids alternative service to people in a number of categories including those: who have a license to carry weapons; who have been sentenced to criminal acts involving violence in the three-year period before submitting an application; who have applied for a licence to carry weapons within this same three-year period; and members of hunting and rifle associations or whose work is to sell or repair weapons. These restrictions appear to deny that anybody who has used, or is connected with firearms - for example for sport, pleasure or hunting - could by reason of their conscientiously held beliefs possibly be genuinely opposed to war or military service, and appears to confuse conscientious objection by those genuinely opposed to military activities with other pastimes seemingly unconnected with military affairs apart from the shared use of firearms. The restriction on those sentenced for criminal acts involving violence is another tendentious stipulation as such convictions do not necessarily rule out a genuine conscientious objection to military service; Amnesty International believes that such people's claims for conscientious objector status should be dealt with on a case by case basis. Furthermore, the three-year period, similarly to the objection to Article 8, does not make allowance for conscientious objection for people who change their beliefs after this period.

Amnesty International has similar objections to those raised above in connection with Articles 8 and 10 concerning Article 11 which states that civilian service "will be interrupted if one commits acts that are contrary to the reasons he stated in the application for civilian service (fighting, use of weapons or fire arms, violent behaviour...)".

Amnesty International calls on the authorities of Serbia and Montenegro to amend the legislation on conscientious objection:

- to remove the stipulations which restrict the time frame in which a person can apply for conscientious objector status;
- to remove the categories of people forbidden to apply for alternative civilian service so that the regulation applies to all those who genuinely object to military service on grounds of conscience; and
- to allow for permanent members of the armed forces to apply for the granting of conscientious objector status.

4. Roma⁴⁵

The list of commitments which SCG undertook to fulfil upon joining the CoE also includes in 16: *"In the post-accession monitoring procedure, special attention should be paid to combating discrimination against, and promoting equal treatment of, Roma."*

⁴⁵ While Roma as a whole remain, as in most countries in Europe, among the most disadvantaged groups in SCG, it must be stressed that the Roma do not form a homogenous group. They are widely differentiated and are present in all social classes from highly educated and/or financially successful to those less advantaged. This section concentrates on those in the SCG who are less privileged, and whose harsh circumstances are made worse by discriminatory practices.

The state of Serbia and Montenegro is a party to the International Convention on the Elimination of All Forms of Racial Discrimination which obliges all states parties 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 prohibits discrimination and, in Article 26, 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", and to the International Covenant on Economic, Social and Cultural Rights (ICESCR) which in Article 2 (2) obligates States Parties to guarantee the rights enunciated in that treaty similarly without discrimination. These rights include: the right to work (Article 6); the right to an adequate standard of living and housing (Article 11); and the right to education (Article 13). On 11 May 2001 the FRY ratified the Council of Europe's Framework Convention for the Protection of National Minorities. This in Article 4 prohibits any adverse discrimination based on belonging to a national minority, and obliges states "to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority".⁴⁶ In February 2002, the Federal Parliament passed the Law on the Protection of Rights and Freedoms of National Minorities, which foresaw the setting up of minority National Councils to participate in decisions at all levels of government on education, language use and culture. These were set up in 2003, and after elections in May 2003 a 35-member Romani National Council was formed with its headquarters in Niš.

However, widespread discrimination against Roma continues in SCG. A memorandum in April 2003, prepared by the European Roma Rights Center (ERRC, an international NGO), in association with the UNHCHR, found that there was widespread discrimination against Roma in almost every aspect of everyday life.⁴⁷

4.1 Violence against Roma

Roma were regularly reported to be victims of ill-treatment by the Serbian and Montenegrin police. There were also attacks on Roma by racist groups with little apparent protection against such attacks afforded by the authorities. For example, on 27 February 2003, groups of youths armed with baseball bats attacked Roma in a settlement in Belgrade with no apparent action by the authorities in response.

In November 2002 the (UN) Committee against Torture (CAT) – the expert body which monitors states' implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – considered a case brought by 65 Roma

⁴⁶ The CoE's mechanism for monitoring states' implementation of the Framework Convention issued an opinion on SCG in November 2003, but this has not yet been made public.

⁴⁷ ERRC, UNHCHR, *Memorandum: The Protection of Roma Rights in Serbia and Montenegro*, April 2003.

who had been the victims of an organized mob attack against Roma in Danilovgrad, Montenegro, in 1995. The CAT concluded that the police, although they were aware of the danger and were present at the scene of the events, "failed to act in accordance with their legal obligations" and "did nothing to halt the destruction of the Roma settlement", thus implying their acquiescence with the attacks. 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 concluded that the authorities had failed to adequately take significant measures to find or prosecute the perpetrators or to compensate the victims for destruction of their houses and property.⁴⁸

4. 2 Registration

Registration of Roma has perennially been a problem as large numbers of Roma have never registered marriages or births, and effectively have lived almost completely outside of the state system in illegal or semi-legal settlements such as the shanty towns around Belgrade. Roma without requisite documentation or evidence of citizenship are routinely denied access to health and social welfare, and children are discriminated against in the provision of education in both Serbia and Montenegro. The majority of the Roma who were internally displaced after fleeing Kosovo after July 1999 faced additional severe problems in obtaining registration due to the 'parallel system' whereby documents and information from local government centres in Kosovo were transferred to parallel registry offices situated around the country. For example all personnel records for displaced people from Uroševac and Peć were transferred to Leskovac. This system required displaced people to go to the relevant parallel 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. However, in the Subotica area - one of the three areas of high Roma concentration (the other two being Belgrade and Southern Serbia) - Romani internally displaced people (IDPs) from Kosovo who were without documentation were granted official temporary residence status from the police in 2002 just by claiming that they were IDPs from Kosovo, this allowed them access to basic health care.⁴⁹ Amnesty International is unaware whether this *ad hoc* solution has been followed in other parts of Serbia.

4. 3 Housing

Housing for Roma in Serbia and Montenegro remains an acute problem. Impoverished Roma throughout the country usually reside in substandard unhygienic settlements. Some 30,000 – 40,000 Roma in Belgrade alone continue to live in substandard unhygienic settlements without adequate, or in many cases, any services and this situation is repeated throughout the country for many Roma settlements. Roma are also vulnerable to evictions from their makeshift homes: six families were forcibly evicted in April 2002 in the Belgrade

⁴⁸ Hajrizi Dzemajl et. al. vs. Yugoslavia, CAT/C/29/D/161/2000.

⁴⁹ Information from Ivanka Kostić, project manager of the Civil Rights Project of the Norwegian Refugee Council, Belgrade 10 December 2003.

Autokomanda neighbourhood. Further forced evictions of Roma, predominantly Kosovo Roma, from unofficial sites in Belgrade occurred in September, October and November 2002. Evictions were carried out with minimal notice and no provision made for alternative housing. In May 2003 another unofficial Roma site in Belgrade was destroyed and its inhabitants - over 300 mostly Kosovo Roma (the majority of whom were children) - were forcibly evicted, again with no provision having been made for alternative housing.

On 5 November 2003 the Geneva-based NGO, Centre on Housing Right and Evictions (COHRE), reported that some 1,500 Roma in SCG were without homes in 2002 and 2003, and that they faced:

“dehumanising discrimination and related housing rights violations... Serbia & Montenegro has failed to provide appropriate housing and to respect the housing rights of the Roma minority in the country. Roma communities are routinely forced to live in totally inadequate housing conditions, including garbage dumps such as Vuca Vrcevic in the capital, Belgrade... During 2002-2003, more than 1,500 Roma faced forced eviction in Serbia & Montenegro. Those evicted were neither offered nor provided with alternative accommodation, which constitutes a violation of international human rights law. To make matters worse, evictions of Roma have increased in 2003. Up to 20,000 Roma refugees from Kosovo face routine discrimination in their search for accommodation, forcing them to reside [sic] in totally inadequate housing conditions.... Serbia & Montenegro continues to discriminate severely against the Roma, many of whom live in conditions far worse than many of the most horrendous slums found in the developing world”.⁵⁰

The NGO awarded SCG the joint prize (along with Indonesia and Guatemala) for Housing Rights Violator 2003.⁵¹

4. 4 Education

Many Roma remain severely disadvantaged throughout the education system in Serbia and Montenegro. While as noted above, Roma without documentation but with the temporary residence permits are allowed access to basic health care, a birth certificate is needed to enrol in schools. In addition, most of the Romani children from Kosovo who previously attended schools there would have been educated in Albanian rather than Serbian, and this, combined with inadequate housing, doubly disadvantaged Romani children. Although Article 25 of the law on primary schools provides for basic Serbian language lessons for pre-school-aged children, in practice this is rarely forthcoming.⁵² In addition, many Romani children who come from severely disadvantaged backgrounds and who do not speak Serbian are wrongly

⁵⁰ COHRE, Press Kit, *The COHRE Housing Awards 2003*, Geneva, 5 November 2003.

⁵¹ *Ibid.*

⁵² HLC, *Roma in Serbia (1998-2003)*, Belgrade 2003, p. 124.

classified as educationally handicapped and sent to special schools: some 50 - 80 per cent⁵³ of all pupils at such special schools are Roma. Psychologists have pointed out the deficiencies in the testing process which unfairly stigmatize Romani children as being disabled.⁵⁴ Discrimination continues in ordinary schools: for example, "special" desks are allocated to Romani children in classrooms in Niš and Leskovac,⁵⁵ and Roma are placed in separate classes in three primary schools in Subotica. On 11 October 2002 the HLC and the Budapest-based European Roma Rights Centre (ERRC) publicly protested at these 'parallel' classes stating that they amounted to racial discrimination and constituted a violation of fundamental human rights.⁵⁶

4. 5 Employment

Roma continue to suffer disproportionately from unemployment. A study on social integration of Roma in 2000 found that only 20 per cent of Roma in Serbia who were fit for work, were permanently employed with the state sector employing five per cent,⁵⁷ and this situation remains. Discrimination on racial grounds against Romani job applicants is both widespread and unpunished by the authorities.⁵⁸

4. 6 Discrimination in social settings

Discrimination against Roma remained widespread throughout society in Serbia and Montenegro with little sanction from the authorities. A rare exception to this pattern of institutionalized racism occurred on 8 July 2002 when the Municipal Court in Šabac in Serbia 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 in an action brought by the HLC, the Democratic Union of Roma and the Oaza organization. The judge also ordered the centre to stop its discriminatory practices. The case arose after complaints that staff at the centre had systematically and for a long period of time denied Roma admission. On 28 October 2003 the Šabac District Court upheld the verdict. While welcoming the ruling, Amnesty International, notes that this case was brought not by the authorities (who are charged under international law with the obligation to bring to an end such overt illegal discrimination) but by NGOs.

Similar discriminatory practices remain widespread. In October 2003 it was again left to NGOs to take action against discrimination against Roma; the HLC, the ERRC, and the Center for Minority Rights (CMP). These NGOs filed a criminal complaint against

⁵³ *Ibid* gives the figure at 80 per cent while the Ministry for Education and Sport put the figure at 50- 80 per cent, interview at the Ministry, 9 December 2003.

⁵⁴ *Ibid* pp. 124-131.

⁵⁵ Statement made by Centre for Minority Rights representative at OHCHR press conference, Belgrade 10 December 2003.

⁵⁶ These are the Matko Vuković Primary School, the Đuro Salaj Primary School, and the Sečenji Istvan Primary School, see, HLC, *Roma in Serbia (1998-2003)*, Belgrade 2003, pp. 133-7.

⁵⁷ Helsinki Committee for Human Rights in Serbia, *Manjine u Srbiji*, Belgrade, 2000, p. 96.

⁵⁸ See HLC, *Roma in Serbia (1998-2003)*, pp. 145-8.

unidentified private security guards at the Acapulco Club in Belgrade for denying Petar and Ljutvija Antić and Zorica Stojković admission to the premises because of their Roma ethnicity. The organizations also instituted a civil action against the owner, seeking compensation for the violation of the Roma's rights, an apology and an end to the practice of discrimination at this boat restaurant. Also in October 2003, the same three NGOs jointly filed a criminal complaint against three people for incitement to ethnic, racial and religious hatred and intolerance in connection with an incident on 25 September 2003, when a Romani man, Nebojša Radosavljević, and his mother, Danica Radosavljević, came to a plot of land in the Sremčica suburb of Belgrade on which they had paid a deposit and on which they intended to build a house. The three accused lived in the adjacent property and allegedly racially insulted them and threatened them with violence if they moved in. Because of the threats, the Roma decided not to buy the lot and forfeited their deposit.

4. 7 Official plans in Serbia to address the problems

The authorities have recognized the severe difficulties faced by Roma in Serbia, and have taken steps to attempt to at least try and begin to address the huge problems.

4. 7. 1 Draft Strategy for the Integration and Empowerment of the Roma

On 13 December 2002 a team set up by the SCG Ministry of Human and Minority Rights drew up a 112-page Draft Strategy for the Integration and Empowerment of the Roma. Although the Ministry for Human and Minority Rights is a SCG body and the Minority National Councils are seen as SCG bodies, in reality, the draft only looks at Serbia, while the situation in Montenegro is left to the Montenegrin authorities, but the draft does, on p. 102, recommend that "both Republics, could, however, make use of the present document as a basis for the development of their own Republican strategies". The draft looked in detail at: education; housing; employment; specific problems of IDPs; the issue of the return of asylum-seekers from Western European countries; personal documentation; access to social security; access to health; the specific situation of women; the media; culture; political participation; and general discrimination within society at large. The document included detailed recommendations. However, the draft noted that:

"[t]he scope of the problems and the limited financial and social capacities currently at the disposal of the authorities (and of society as a whole) do not allow for fast and visible improvement in many aspects of the situation of the Roma."⁵⁹

The draft now awaits comment from an inter-Ministerial group comprised of the Serbian Republican Ministries of: Construction and Urban Planning; Labour and Employment, Health; Social Affairs; Education and Sport; Interior; as well as the Commissariat for Refugees. The draft will then go to the Romani National Council for their comments and then to the SCG Assembly Council of Ministers for official adoption, and finally to the separate republican

⁵⁹ SCG Ministry of Human and Minority Rights, *Draft Strategy for the Integration and Empowerment of the Roma*, Belgrade, 2002, p. 102

assemblies for approval. However, the political uncertainty in Serbia following elections (where there was no clear winner) of 28 December 2003 may delay this process. In addition to the current political uncertainty, a number of draft laws have, in the past, undergone drastic changes in the Serbian Assembly before adoption.

In the meantime, in April 2003, a four-member Roma Secretariat was set up in SCG Ministry of Human and Minority Rights to help finalize the draft and organize round-table discussions on different aspects of the draft. Such round-table discussions have been held in Bujanovac (on education), Prokuplje (on political dimensions), Šabac (on social and gender issues), Novi Sad (on the media) and Belgrade (on economic empowerment and housing).

4. 7. 2 Strategy for improvement of Roma education in the Republic of Serbia

More concretely in the short term, in June 2003 the Serbian Ministry of Education and Sport prepared its own ministerial *Strategy for improvement of Roma education in the Republic of Serbia*. This acknowledged the problems faced by Roma in the educational sector referred to above, and again outlined a number of recommendations to try and address the problems. The strategy was presented at a conference with participation from the OSCE on 10 October 2003 and an Action Plan was drawn up. The Ministry's strategy remains in draft form but Amnesty International is informed that, in the meantime, it is being implemented in part. Before the adoption of new legislation in June 2003, the Centre for Interactive Pedagogy within the Ministry of Education was responsible for school and pre-school education, but since then the responsibility has been transferred to the Ministry of Social Affairs; in practice the relevant municipality is the main state actor in this field. The salient features of the implementation of the strategy are:

- a policy of positive discrimination in favour of Roma in secondary education and at universities which has seen some 40 – 50 university students so enrolled;
- stipends for 40 Romani children, mostly girls, in secondary schools;
- a competition involving 78 schools, of which 74 received material assistance from the government, on devising projects to improve Roma education;
- liaising with Romani NGOs to set up pre-school groups of Romani children where the respective municipalities would provide every material assistance (e.g. buildings) except salaries;
- seeking professional psychological assistance in assessing the tests which result in Romani children making up the majority of those diagnosed as 'educationally handicapped';
- finances - 1.5m dinars provided from the Ministry of Education and Sport, 1m dinars each from the Ministry of Social Affairs and the Ministry for Human and Minority Rights, and the rest by fundraising - to provide free textbooks for 5,886 Romani elementary pupils;
- a policy to try and recruit Roma, especially Romani women, into the Ministry of the Interior with a competition beginning in January 2004 for places at the Ministry of the Interior's secondary school and academy. Successful candidates, who are obliged

to sign on for three to eight years depending on whether for secondary school or the academy, get a stipend, free housing and uniforms.⁶⁰

4. 7. 3 Housing

There is also an official plan to try and recruit at least one Romani functionary in all of the 120 municipalities in Serbia with Romani residents, along with the holding of seminars to explain to Roma how the state functions at the municipal levels so that they can both know and exercise their rights, and impart the knowledge back to their respective communities. For example, often the 'illegal' Romani housing is constructed on private land owned by those living there but who had either not correctly applied through the bureaucracy, or were unaware of the regulations. In mid-January 2004 the Serbian state was looking for foreign donors to pay an estimated €300,000 of the €500,000 (the other €200,000 coming from various ministries and municipalities) total needed to train these 120 proposed Romani functionaries.⁶¹

On 4 June 2003 Belgrade Mayor Radmila Hrustanović announced that the Belgrade municipal assembly had drafted a program with a budget of €12.5m for clearing unhygienic settlements, which foresaw the construction of 5,000 apartments for some 50,000 Roma from some 100 unhygienic settlements. This program was still underway as of mid-January 2004. Belgrade also adopted in the autumn of 2003 a master plan for the city which specifically looks at vulnerable and socially disadvantaged groups which includes the Roma as a specially endangered group. In mid-January 2004 this initiative was still very much in the planning stage – preparing budgets and clarifying legal situations – but its supporters believe it shows serious intent by the authorities to try and tackle the issues.⁶²

In addition a Poverty Reduction Strategy Paper from the Ministry of Social Affairs, was adopted in November 2003, with financial assistance from the World Bank. This aims at legalizing 'illegal' settlements, including Romani ones, and giving the inhabitants access to adequate housing. There are also plans to attempt to improve the living conditions of Roma in Southern Serbia, an area which has the largest number of impoverished Roma and which is itself one of the poorest areas in the country.⁶³

Thus, there are a number of ambitious plans to try and address discrimination across a wide spectrum of social issues faced by Roma. Amnesty International welcomes these

⁶⁰ Information from Radmila Gošović of the Serbian Ministry of Education and Sport, 9 December 2003. and Milica Gajić-Janković of the Roma Secretariat of the Ministry for Human and Minority Rights, 5 December 2003.

⁶¹ Information from Milica Gajić, 5 December 2003.

⁶² Information from Aleksandra Mitrović of the Society for the Improvement of Local Roma Communities (DURN), 1 December 2003. An example of the serious intent was the construction in 2003 by the authorities of some 300 new apartments in Belgrade for socially impoverished people (not necessarily Roma) in comparison to the previous decade when the number of such constructions in Belgrade was nil.

⁶³ *Ibid.*

initiatives. However, many of these plans remain in the draft stage and/or will have, in the short to medium term at least, only a small impact on the enormous problems.

4. 8 Romani asylum returnees

SCG has signed a number of readmission agreements with European Union (EU) member states for the return of failed asylum-seekers – the majority of whom fled from the then-FRY (including Kosovo) in the 1990s – currently in EU countries. Under these agreements it is foreseen that 40,000 – 50,000 Roma will be returned to SCG, the largest number from Germany. Thus, despite the laudable plans by the authorities to try and address the acute problems faced by Roma currently in SCG – plans which it is foreseen will remain ‘on paper’ and whose impact, if implemented, will not significantly change the situation for a considerable length of time – large numbers of Roma will be returned to live in sub-standard conditions.

For example, the ERRC reported the case of a Rom, B. H., who with his wife was forcibly deported, with only 15 minutes warning, from Germany to the Sandžak area in south-western Serbia in December 2002 after having lived in Germany since 1991. B. H. told the ERRC on 11 February 2003 that in the village of Blaževo, near Novi Pazar, there were some 200 Roma who had been deported from Western Europe since September 2002 with new arrivals each week. Some 40 per cent of those so deported were under 15 years old of whom most did not speak Serbian as they had been born or raised in Western Europe. He further stated that some of the deportees were without necessary personal documents and so would likely be deprived of basic social and economic rights.⁶⁴

Some CoE member states are pursuing policies to try and ease integration. For example, Amnesty International is informed that Luxembourg has agreed with the SCG authorities to teach Serbian to the children of failed asylum-seekers before returning them to SCG, and to continue with such classes even after they return.⁶⁵ However, there appears little consistency by CoE member states on this issue. Moreover, there is inconsistency within Germany itself with some regional authorities deciding to temporarily halt deportations of Roma to SCG while other German *länder* continue to do so.⁶⁶

On 25 November 2003 the Parliamentary Assembly of the CoE (PACE) issued a recommendation, *Forced returns of Roma from the former Federal Republic of Yugoslavia, including Kosovo, to Serbia and Montenegro from Council of Europe member states, Recommendation 1633 (2003)*. This states that:

⁶⁴ See ERRC submission to the UN Committee on the Rights of the Child, 15 December 2003, which contains other similar cases. <http://errc.org/publications/legal/index.shtml>.

⁶⁵ Information from Radmila Gošović of the Serbian Ministry of Education and Sport, 9 December 2003.

⁶⁶ For example, the Berlin Senate decision, reported by media on 11 November 2003, to cease forcible deportation of people to SCG until 31 March 2004. ERRC *Op. Cit.*

"3. Roma constitute a particularly vulnerable group of the displaced population. In Kosovo, their security cannot be guaranteed. In Serbia and Montenegro, their economic and social situation, as well as living conditions, are very precarious. Everywhere in the region they are confronted with a pattern of subtle discrimination on the part of both the local population and the local authorities, which are often reluctant to accept them.

4. According to estimates, between 50 000 and 100 000 Roma from Serbia and Montenegro, including Kosovo, who had fled the conflict in the Balkans at different stages and left the region, still stay in different European countries with no permanent status. The majority live in Germany (25-30 000), the Netherlands (12 000), Belgium (3 000), Switzerland (3 000) and Luxembourg (2-3 000). They fall into the category foreseen for readmission.

5. Forced returns are carried out on the basis of bilateral readmission agreements concluded between Serbia and Montenegro on the one hand, and different sending European countries on the other. They started shortly after the democratic changes following the presidential elections in Yugoslavia in September 2000. So far, approximately 1 000 Roma have been forcibly returned, mainly from Germany.

6. The main concerns relating to forced returns of Roma can be divided into three areas. The first group of issues puts into question the legitimacy of certain decisions on expulsion taken by the host countries. The second group relates to the conditions in which forced returns take place, and the third one to the situation in which forcibly returned Roma find themselves upon their return to Serbia and Montenegro.

7. It is particularly worrying that readmission agreements do not clearly define the conditions for the reception of returned persons and do not put any responsibility on the receiving state in regard to reintegration of returnees.

8. The Assembly is also concerned by so-called "voluntary returns" which in some cases are so strongly induced that they may amount to disguised forced returns.

9. Therefore, the Assembly recommends that the Committee of Ministers:

i. urge the members states of the Council of Europe hosting Roma from Serbia and Montenegro, including Kosovo, to ensure that:

a. any decision on a forced return of Roma to Serbia and Montenegro is taken on a case-by-case basis taking into account all relevant circumstances; in particular, humanitarian grounds should be considered as a sufficient justification for granting a residence permit;

- b. every Roma who seeks international protection is given access to fair and effective asylum procedure;
 - c. there are no forced returns of Roma originating from Kosovo neither to Kosovo, nor to Serbia and Montenegro, as long as the security situation in Kosovo does not allow for returns of Roma;
 - d. Roma representatives are given an opportunity to be involved, with an advisory voice, at an early stage of a preparation for a possible forced return of Roma;
 - e. forcibly returned Roma have got appropriate documents which will enable them to be recognized as full-fledged citizens upon their return;
 - f. the procedures of deportation comply with international law and take into account recommendations included in Recommendation 1547 (2002);
 - g. they contribute financially to the elaboration and implementation of effective reintegration programmes for returning Roma. These programmes should be complemented by funding for the new wider Roma strategy;
- ii. urge the Serb and Montenegrin authorities to:
- f. adopt and implement, as a matter of priority, binding legal measures with the aim of preventing statelessness of Roma returnees, in particular to ensure that local authorities carry out the procedures necessary to provide Roma returnees with identity documents. Urgent measures should be taken to improve the access of returned Roma to public services necessary for the exercise of their human rights;
 - g. facilitate the speedy provision of school enrolment certificates to Romani children educated abroad so that they continue their education in Serbia and Montenegro;
 - h. stop the practice of returning Romani children to attend classes they had already successfully completed abroad;
 - i. provide supplementary classes for Romani children to learn the Serbian language;
 - j. ensure that no ethnic segregation arises in schooling provisions of returnee children."

In February 2004, the CoE's Committee of Ministers had yet to reply on this recommendation.

Amnesty International supports these recommendations. Moreover, the organization urges that in assessing individual asylum cases issues surrounding access to economic and social rights and the rights of children are thoroughly examined. Amnesty International is particularly concerned that, where Serbs and Roma are unable to return to Kosovo, it has been proposed to forcibly return them elsewhere in Serbia and Montenegro. However, in considering whether an internal relocation alternative is available for minorities in other parts of Serbia and Montenegro, UNHCR have also concluded⁶⁷ that internal displacement in such conditions as are available in Serbia or Montenegro do not offer an adequate or reasonable alternative to international protection.

Amnesty International calls on:

- the SCG authorities to do its utmost to implement the plans to ameliorate the desperate situation of the majority of its Romani population as quickly as possible;
- the international community and international bodies, such as the European Union, the CoE and the OSCE, to assist SCG in this;
- CoE states to only promote voluntary returns of Roma to SCG in situations when these can take place in conditions of safety and dignity;
- CoE states to ensure Romani asylum-seekers from SCG have access to a full and fair asylum procedure, through making sure that all Romani asylum-seekers have access to a full and fair individual asylum procedure where issues surrounding access to economic and social rights and the rights of children are thoroughly examined;
- CoE states to exercise utmost cautions in forcibly returning failed Romani asylum-seekers in light of the widespread discrimination against Roma in SCG;
- CoE states to ensure that no Roma originating from Kosovo are forcibly returned to SCG.

5. Summary of Amnesty International's recommendations

5.1 War crimes

Amnesty International is calling on the SCG authorities to:

- immediately transfer Sreten Lukić, Nebojša Pavković, Vladimir Lazarević and Vlastimir Đorđević to the Tribunal;
- do the utmost, as a matter of priority, to transfer to the Hague all remaining indictees believed to be at large in the country;

⁶⁷ UNHCR's amended revised Position on the Continued Protection Needs of Individuals from Kosovo, January 2003, 23 January 2003, which is still operational.

- fully cooperate in making available to the Tribunal all official documents and other information requested.;
- demonstrate the political will and take measures to honour obligations under international law to bring to justice those accused of and responsible for war crimes and crimes against humanity, including all those responsible for and involved in the murder and secret burial of the bodies at Batajnica and Petrovo Selo;
- include in Serbia and Montenegro domestic legislation provisions criminalizing command responsibility for certain crimes under international humanitarian law, including crimes against humanity;
- to bring to justice all persons allegedly responsible for the Štrpce and Sjeverin abductions, including those involved in planning and sanctioning of these war crimes against the civilian population;
- set up a comprehensive system to adequately protect witnesses and victims from reprisals and the threat of reprisals;
- ensure adequate reparation 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, trial and punishment of persons responsible for war crimes and crimes against humanity

5. 2 Police torture and ill-treatment

Amnesty International is calling on the Serbian authorities and the Montenegrin authorities to ensure that:

- thorough and impartial investigations are carried out into all allegations of torture and ill-treatment;
- no prosecutions are based on confessions allegedly obtained as a result of torture, ill-treatment or duress;
- in the prosecution cases in which a confession is the main source of evidence, the courts carry out a thorough assessment, including detailed examination of all relevant medical evidence, to determine whether the confession was obtained in a manner consistent with international standards, *before* it is admitted as evidence in the trial;
- in cases in which there is reasonable suspicion that torture or ill-treatment has been used against detainees, the prosecution should immediately undertake measures to identify the perpetrators and bring them to justice;
- all victims of torture and ill-treatment receive adequate reparation;
- all law enforcement officials found to be responsible for ill-treatment face disciplinary action and, where appropriate criminal, charges;

- any law enforcement official convicted of torture or serious ill-treatment be subjected to appropriate sanctions commensurate with the severity of the crime, as well as immediate dismissal from the police force;
- torture, as defined in the UN Convention against Torture be made a specific crime in Serbia.
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5.3 Conscientious Objection to military service

Amnesty International is calling on the authorities of Serbia and Montenegro to amend the legislation:

- to remove the stipulations which restrict the time frame in which a person can apply for conscientious objector status;
- to remove the categories of people forbidden to apply for alternative civilian service so that the regulation applies to all who genuinely object to military service on grounds of conscience; and
- to allow for permanent members of the armed forces to apply for the granting of conscientious objector status.

5.4 Roma

Amnesty International is calling on:

- the SCG authorities to do its utmost to implement the plans to ameliorate the desperate situation of the majority of its Romani population in both Serbia and Montenegro as quickly as possible;
- the international community and international bodies, such as the European Union, the CoE and the OSCE, to assist SCG in this daunting task;
- CoE states to only promote voluntary returns of Roma to SCG in situations when these can take place in conditions of safety and dignity;
- CoE states to ensure Romani asylum-seekers from SCG have access to a full and fair asylum procedure, through making sure that all Romani asylum-seekers have access to a full and fair individual asylum procedure where issues surrounding access to economic and social rights and the rights of children are thoroughly examined;
- CoE states to exercise utmost cautions in forcibly returning failed Romani asylum-seekers in light of the widespread discrimination against Roma in SCG;
- CoE states to ensure that no Roma originating from Kosovo are forcibly returned to SCG.

