

**ALBANIANS IN SERBIAN PRISONS:  
Kosovo's Unfinished Business**

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## **ALBANIANS IN SERBIAN PRISONS: Kosovo's Unfinished Business**

### **Executive Summary**

With the immense challenges facing the international community in its effort to secure and rebuild Kosovo, one critical outstanding matter that has received very little attention is the ongoing detention in Serbian prisons of several thousand Kosovar Albanians. Arrested by Serbian forces in the course of the Kosovo conflict, these prisoners were hastily transferred to Serbian jails and penitentiaries in the wake of the Kumanovo military-technical agreement, which ended the NATO air campaign and established a timetable for the withdrawal from Kosovo of all Serb forces.

The Kumanovo agreement did not, however, address the issue of the prisoners' release, and this omission would seem to have deprived the international community of any real leverage on the matter.<sup>1</sup> Belgrade appears to have little interest in releasing these prisoners, who have effectively become hostages in Yugoslav President Slobodan Milošević's efforts to keep Kosovo destabilised, jeopardise the success of the international mission there and demonstrate that Kosovo remains under his rule.

While the international community does not itself have the capacity to free these prisoners, it must find ways to exert maximum pressure on Milošević to order their release. Thousands of Albanian lives are at stake: reports from recently released prisoners and from family members make clear that the prisoners' conditions in the Serbian facilities are appalling, their health has been severely compromised, they are routinely subjected to mistreatment and torture, and their trials are travesties. In addition, many prisoners' families have been effectively ransomed by Serbian lawyers, who have promised to secure the release of prisoners for sums ranging from 10,000 to 50,000 DM. The emotional and material strain on prisoners' families contributes to Kosovo's continuing unrest and to the immense frustration Kosovars feel toward the

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<sup>1</sup> The prisoner issue was also left out of the 10 June 1999 United Nations Security Council Resolution 1244, which, based on an 8 June draft drawn up by the G-8 nations, served as the binding political instrument according to which all parties agreed to end the war.

international agencies which, in part out of a dearth of options to pursue, have not made a top priority of locating the prisoners or advocating on their behalf.<sup>2</sup>

In this paper ICG attempts to clarify the somewhat complex situation with regard to the Albanian prisoners, to make available first-hand information about Serbian prison conditions gathered in interviews with ex-prisoners and prisoners' family members, to elucidate the pertinent legal issues, and to propose a series of measures that governments and non-government organisations might take toward identifying the prisoners and securing their release.

These measures include co-ordinated and persistent advocacy in Belgrade; a United Nations Security Council resolution calling for the prisoners' release in accordance with international law; military-to-military contact to gain access to those prisoners who, as combatants, must be treated as prisoners of war whose immediate release is called for under the Third Geneva Convention; possible investigation leading to new indictments by the International Criminal Tribunal for the former Yugoslavia of those responsible, in the context of the prisoners, for continuing violations of the law of the customs of war and international humanitarian law; efforts to monitor all trials of Albanian prisoners in Serbian courts; secure transportation in and out of Serbia; and legal assistance to prisoners' families.

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<sup>2</sup> A 24 January 2000 protest attended by some 2000 persons in snowy Priština is indicative of how keenly many Kosovars still feel the prisoners' absence and abhor the ongoing injustice at Serb hands (*Agence France Presse*, 24 January 2000).



## **ALBANIANS IN SERBIAN PRISONS:**

### **Kosovo's Unfinished Business**

#### **I. INTRODUCTION**

On 18 June 1999, eight days after Yugoslav and NATO military officials signed the Kumanovo agreement ending the Kosovo conflict, the Serbian Ministry of Justice announced that it had moved prison inmates from Kosovo to Serbia "for their own safety" and promised to inform prisoners' families of their relatives' whereabouts.<sup>3</sup> Seven months later, most of those prisoners are still in Serbian custody (although many have yet to be charged), the Serbian justice ministry has failed to release the names and locations of at least several hundred prisoners, and the Serbian justice ministry has sped up the rate at which prisoners are being tried and sentenced on charges of terrorism.<sup>4</sup>

Belgrade has consistently maintained that because the Kosovo conflict was an internal armed struggle between the state and a secessionist guerrilla movement, Serbian forces were appropriately upholding their constitutional mandate when, in

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<sup>3</sup> *Glas Javnosti* (Belgrade), 18 June 1999.

<sup>4</sup> In an end-of-year interview in *Politika*, Belgrade's leading state-run daily, Minister of Justice Dragoljub Jankovic said, "A number of prisoners will be released, but most of them will be tried for the criminal acts of terrorism and hostile activities." (*Politika*, 29 December 1999.) In the same interview Mr Jankovic described the prisoners as "dislocated to Serbia" and claimed that their identity papers had been left behind which "created problems for identifying them." In fact, many prisoners, including all those at Lipljane prison, had had their documents returned to them on 10 June in anticipation of release.

It is important to note that the ongoing maltreatment and detention of the Albanian prisoners takes place within the larger context of a xenophobic state that nevertheless treats its own people with similar ruthlessness. For example, Serbia has dealt equally harshly and capriciously with the young Serb men charged with resisting the draft, whom retired Serbian military judges have estimated at more than 28,000 and Amnesty International estimates at at least 23,000 (Amnesty International, "The Forgotten Resisters: The Plight of Conscientious Objectors to Military Service After the Conflict in Kosovo," October 1999). Some 1000 of these young men are thought to be held in Serbian prisons, well over 15,000 are believed to have fled the country and to be living in precarious exile in Montenegro, Hungary, and elsewhere, and the balance are assumed to have gone underground. (US State Department documents; *The Washington Times*, 3 January 2000.) In addition, the state has continued to crack down on student activists, intellectuals, journalists and independent media outlets, and the judiciary (See footnote 83; see Helsinki Committee of Belgrade, "Report on the Increasing Repression in Serbia," [www.helsinki.org.yu/novo/repressionE.htm](http://www.helsinki.org.yu/novo/repressionE.htm)).

their attempt to quash the rebellion, they arrested, detained, or interrogated suspected "terrorists." Moreover, the regime has repeatedly justified its arrests on the grounds that its own troops have been abducted and detained by so-called terrorists belonging to the Kosovo Liberation Army (KLA).<sup>5</sup>

Certainly it has been to Milošević's advantage to remain intransigent both on Belgrade's version of events and on this divisive issue, which can only have a corrosive effect on both international and local peace-building efforts in Kosovo.<sup>6</sup> The international community, having left the issue off the table when negotiating an end to the Kosovo war, has been at a loss as to how to secure the release of these thousands of mostly male breadwinners, whose absence from Kosovo at this critical moment is inhibiting progress toward stability, reconstruction, and Kosovars' coming to terms with all that has been done.

On 16 July the United Nations Mission in Kosovo (UNMIK) Special Representative to the Secretary-General (SRSG) Bernard Kouchner announced the formation of an UNMIK commission on prisoners and missing persons. But that commission, like all the individual international agencies that participate in it, has made scant progress so far, but has served instead to raise expectations among Kosovars that are unlikely to be fulfilled. The Serbian government has continued to release a trickle of prisoners in what appears to be an unfathomable pattern – one here, 166 there – but the convictions and long sentences continue apace, as, once again, Kosovo's stability is threatened by the Belgrade regime.

The avenues for international advocacy and influence on this issue are admittedly few. Nevertheless, the failure of the international community to mount a concerted effort on these prisoners' behalf has prolonged their agony and that of their families, thereby damaging Western credibility in the eyes of many Kosovar Albanians and harming the prospects for a successful peace implementation.

In fact, international humanitarian law anticipated just such intractable circumstances with the protections offered prisoners in post-conflict settings under the Geneva Conventions of 1949 and their Protocols, and the international community is well within its legal authority to press in every way possible for the

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<sup>5</sup> *Voice of America*, 12 July 1999, aired a Serbian defence ministry claim that 39 Yugoslav Army officers were missing in action and were believed to have been abducted by members of the KLA.

<sup>6</sup> Council for the Defence of Human Rights and Freedoms President Pajazit Nushi warned that inaction on the prisoner issue "will radicalise families, who will continue to obstruct, "and end by becoming "a serious risk to security." Kosovare Kelmendi, of the Humanitarian Law Center in Priština, agrees: "Without a solution for this problem, there's never going to be stability and peace in Kosovo. You can be sure of that. No way." (*Associated Press*, 29 November 1999.) Association of Political Prisoners President Shukrie Rexha starkly laid out the threat posed by the prisoners' continued detention to the West's stated goals in Kosovo: "There can be no reconciliation possible between Serbs and Albanians if these people are still in prison. Why is the international community interested only in the reconstruction of Kosova, when there are as many as 7000 people whom we don't know whether they are dead or alive? These are mostly young people, people who could work, who could contribute to the reconstruction of Kosova, to elections, to rebuilding civil society." (ICG interview, 10 November 1999).

prisoners' immediate release. In this paper ICG attempts to point the way forward toward resolving this urgent and difficult matter.

## **II. MISSING, DEAD, OR IN PRISON? THE PROBLEM OF NUMBERS**

One of the most fundamental difficulties in addressing the prisoner issue is determining exactly how many of the 3000 or so Albanians said to be missing – estimates range from 2000 to 7000<sup>7</sup> - are in fact in Serbian prisons. The Serbian Ministry of Justice has published two lists of almost 2300 prisoners being held in Serbian prisons,<sup>8</sup> 336 of whom have since been released.<sup>9</sup> After undertaking their own investigations, the International Committee for the Red Cross (ICRC) and several key human rights groups believe the overwhelming majority of those missing beyond that number are dead.<sup>10</sup> However, many Albanians known to be

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<sup>7</sup> In late June UN officials in Priština estimated that number to be between 3000 (*The Sunday Times* [London], 20 June 1999) and 5000 (*The Guardian*, 25 June 1999); more recent Western estimates range from 2000-3000. The Kosovo daily, *Koha Ditore*, published a list of more than 5000 alleged prisoners prepared by the Council for the Defence of Human Rights and Freedoms, while the Association for Political Prisoners' estimate is as high as 7000. Estimates by former Kosovo Liberation Army (KLA) members are also high, while those by lawyers at the Humanitarian Law Center (HLC) tend to run only hundreds over the official number given by the Serbian justice ministry.

<sup>8</sup> The Association of Political Prisoners (APP) claims that the ICRC has underestimated those listed by the Serbian Ministry of Justice by 372 (ICG interview with Arianit Kurti and Shukrie Rexha, of the APP, 29 October 1999). Mr Kurti, a former prisoner and brother of prisoner Albin Kurti (see footnote 11 below), and Ms Rexha, APP president and wife of prisoner Avni Klinaku, expressed frustration that, although the Serbian ministry released what it claimed to be complete lists, the ICRC has repeatedly refused to publish them in their entirety. But according to ICRC Protection Coordinator Vittoria Romano, in fact some names are repeated on the Serbian lists, which would make them appear to be longer, but that in any case, the ICRC never releases prisoner lists, but deals only with the families of individual prisoners once they have been contacted by the agency (ICG interview, 4 November 1999). However, prisoners' families reported that even when the ICRC was able to visit individual prisoners, agency officials neglected to inform the families (ICG interview on 10 November 1999, with Miradie and Ali Aliu, parents of prisoner Liburn Aliu, currently detained in Niš).

<sup>9</sup> Interview with ICRC official, 12 January 2000, estimated 326 releasees; ICRC mission in Kosovo, [www.icrc.org/icrceng.nsf/Index/52FDEDAE8E2BC1DE41256862004A8F5B](http://www.icrc.org/icrceng.nsf/Index/52FDEDAE8E2BC1DE41256862004A8F5B), update 10 January. Another 10 were released on 12 January 2000 (Humanitarian Law Center communiqué, 13 January 2000), raising the total number to 336.

<sup>10</sup> ICG interview with ICRC Protection Coordinator Vittoria Romano, 4 November 1999; Arianit Kurti and Shukrie Rexha, APP president and wife of prisoner Avni Klinaku (29 October 1999); Natasa Kandic and Kosovare Kelmendi, Humanitarian Law Center (HLC), Priština, 28 October 1999. The ICRC estimates that, as of 1 November 1999, 2000 bodies had been exhumed from 160 gravesites, and that 1692 of the 1925 Albanians originally listed by the Serbian Ministry of Justice remained in Serbian prisons. HLC estimates the missing at 2000-2150, most of whom, HLC lawyers are convinced, are dead.

in detention in Serbia are not on the Serbian government lists,<sup>11</sup> and many Albanian family members of the missing, having seen their relatives abducted by Serbian police or paramilitary forces and loathe to admit that they may be dead, are convinced that they are in prison somewhere inside Serbia proper.<sup>12</sup>

Many Albanians are convinced that Belgrade has spirited their family members off to secret prisons, and claim that since the war ended, Belgrade operatives in Kosovo have managed to secretly detain dozens of Albanians inside the province despite the presence of some 50,000 NATO troops.<sup>13</sup> Veteran human rights investigators consider such claims to be highly unlikely, for the reason that the prisoners are only useful to the regime insofar as their known detention can be exploited as a potential bargaining chip.<sup>14</sup>

Prisoners are known to be detained at 13 sites in Serbia, including at a number of municipal and district prisons, three penitentiaries, one juvenile detention center, and a prison hospital.<sup>15</sup> The ICRC has visited several dozen prisoners in military detention facilities, and many more Albanians are reported to have been transferred to military prisons, although no names have been released by the Serbian authorities.<sup>16</sup> A Serbian Ministry of Justice document details the number of prisoners transferred from each Kosovo facility to Serbian facility, and specifies whether in fact the warden has also been transferred along with his charges.<sup>17</sup> In

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<sup>11</sup> Including such prominent Kosovars as Dr Flora Brovina, pediatrician and poet, who was arrested on 22 April and sentenced on 9 December 1999 by the Niš municipal court to 12 years for anti-state activities, and Albin Kurti, former student activist and KLA political spokesman whose name does not appear on either government list but who has reportedly been recently transferred to the prison in Niš in anticipation of his trial there. The Priština office of the United Nations High Commissioner for Human Rights (UNHCHR) has also confirmed the detention in Serbia of a number of other prisoners not on the Serb ministry lists (ICG interview with UNHCHR spokesperson in Priština, 17 November 1999).

<sup>12</sup> However, international agency officials are not so sure. In the course of active tracing in the Djakovica region, the ICRC found more than 1000 missing persons in Djakovica alone whom family members insisted had been arrested, and found another 310 or so missing from the village of Meja. While the bodies of these people are indeed missing, and there is no other evidence that they are in fact dead, neither is there any evidence that they are in Serbian prison, according to the ICRC protection officer working in the Djakovica region (2 November 1999).

<sup>13</sup> ICG interviews with prisoners' families, 10 November 1999; ICG interviews with Mitrovica residents, late-October, early November 1999.

<sup>14</sup> ICG interviews in Priština with Natasa Kandic, HLC, 28 October 1999, and Sonja Biserko, Helsinki Commission, 31 October 1999.

<sup>15</sup> These sites, according to Serbian Ministry of Justice documents obtained by ICG, are as follows: Sremske Mitrovica, Prokuplje District Prison, Zajean prison, Pozarevac penitentiary, Niš penitentiary, Leskovac Detention Center, Vranje, Krusevac District Prison, Krusevac Juvenile Detention Center, Novi Pazar District Prison, Belgrade Central Prison, Belgrade Prison Hospital, and Padanska Skala penitentiary.

<sup>16</sup> ICG interviews with Pierre Kraehenbuehl, Head of Operations for Central and South-Eastern Europe, ICRC, 12 January 2000, and with ex-prisoners and Association for Political Prisoners officials, 29 October and 10 November 1999.

<sup>17</sup> According to the same documents, the prisoners from Mitrovica were transferred to Niš, Novi Pazar, and Pozarevac, and the Mitrovica prison director was moved to Niš; 347 Lipljane prisoners and the Lipljane prison director were transferred to Sremske Mitrovica; 94 prisoners from Prizren were transferred to Prokuplje, 211 from Peć and Djakovica were transferred to Leskovac and Zaice, 44 were transferred



many cases, the presiding Serbian judge from each Kosovo jurisdiction has also been transferred, in an apparent attempt to head off constitutional appeals of convictions on jurisdictional grounds.<sup>18</sup>

The ICRC has been allowed to visit those on the Serbian ministry lists. However, there are countless prisoners whose whereabouts are unknown or who have not been permitted to meet with representatives of any international agency.<sup>19</sup> In a particularly Kafka-esque twist, 175 prisoners in Niš are not allowed to be visited by their lawyers because they have no documents, these having allegedly been taken from them by the Serbs at the time of their capture.<sup>20</sup> Belgrade has repeatedly refused to release any information pertaining to those interned in military detention facilities.<sup>21</sup>

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from Gnjilane to Vranje, 13 from Priština to Krusevac, Pozarevac, and Sremske Mitrovica, and an unknown number were transferred to Pozarevac from Istok prison in Dubrava, Kosovo, where, after NATO bombs killed 23 prisoners, 100 were killed by Serbian military and paramilitary forces, and prison guards in a well-documented post-bombing massacre (HLC, Priština, 30 October 1999; see the indictment of Milošević by the International Criminal Tribunal for the former Yugoslavia in The Hague [ICTY]). Two hundred more were badly injured and remain in detention; four survivors who escaped remain severely traumatised by the experience. (ICG interview with Shukrie Rexha, APP president, 10 November 1999.) Documents obtained by ICG signed by Deputy Minister of Justice Zoran Stevanovic states that many prisoners who were not killed by the bombing escaped, and that those who remained were transferred to Pozavarec prison "for their own safety." The statement went on to say that Serbian state security forces were conducting an investigation, the results of which would be made public as soon as it was complete.

<sup>18</sup> For example, the former judge in Mitrovica was transferred to Kragulevac, and both the judge and prosecutor in Flora Brovina's trial had worked in the Priština District Court until they were hastily transferred to Niš when the Serbian administrators of Kosovo withdrew. (*The Independent* [London], 19 December 1999).

<sup>19</sup> According to United Nations High Commissioner for Human Rights Special Envoy Barbara Davis (ICG interview 17 November 1999), those deemed to be extremely vulnerable and those about whose condition the ICRC has real concern are visited by ICRC officials once each four to six weeks, but Association for Political Prisoners officials insist that, as of 30 October 1999, the ICRC visits had been extremely limited and that hundreds of wounded prisoners who had in fact been visited by Red Cross officials still had not been visited by physicians.

In mid-November Ms Davis met with the Serbian Minister of Justice to request the release of, or at least increased access to, the most vulnerable prisoners (ICG interview, UNHCHR spokesperson in Priština, 17 November 1999).

<sup>20</sup> ICG interviews in Priština with Natasa Kandic, HLC, Vittoria Romano, ICRC, Sonja Biserko, Helsinki Committee Belgrade, and Barbara Davis, UNHCHR, late October – mid-November 1999.

<sup>21</sup> It is not clear, for instance, how it was determined who would be transferred to the military facilities, and the prisoners' own combat record appears to have been unrelated to this decision. One recently released prisoner told ICG that in the course of an interrogation his brother was severely beaten and cursed when he "admitted" that he was an English teacher, and was subsequently sent to the military prison in Niš (ICG interview with former prisoner Shaban Hoxha regarding his brother Tomar, Priština, 10 November 1999). Another prisoner detained there is Bekim Kastrati, the former chief security officer for the Organisation for Security and Co-operation in Europe (OSCE) Kosovo Verification Mission under Ambassador William Walker. Mr Kastrati, on whose behalf Amb. Walker and the OSCE human rights bureau have mobilised, was arrested on 8 April 1999, 19 days after the internationals in the KVM mission were evacuated and 15 days after the NATO bombing began. He was charged under Serbian law's infamous Article 128, with spying. The UNMIK Commission has devised no strategy as of yet for gaining access to the military prisons (ICG interview, UNHCHR official in Priština, 17 November 1999).

The Albanian prisoners in Serbia fall into three main categories:

- the several hundred arrested in the course of the Kosovo conflict who, instead of being released when the war ended, were transferred into Serbia proper and whose detention and convictions appear to stand in violation of international humanitarian law;
- the approximately 2000 arrested during 1998-99, in the months preceding NATO's intervention, and the perhaps thousands more believed to have been swept into detention during the bombing, who, if alive, have reportedly not yet been charged and are therefore illegally detained under Serbian law;<sup>22</sup>
- the estimated 200 or so who were convicted and sentenced before the NATO bombing began, who, as such, are not technically being illegally detained and who therefore require an amnesty for their release.

Among those in the last category, and to whom amnesty should be granted, are many young Albanian men who received long sentences for belonging to radical groups advocating Kosovo's independence, such as the Kosova Liberation Movement (LKCK). Serving time in Serbian prison is nothing new for many Kosovars, for whom it has actually been a badge of honour worn at one time or other by most male family members.<sup>23</sup>

Many among the large second group are believed by human rights monitors to be in the process of being hastily charged, tried, and sentenced in Serbian courts and therefore in urgent need of legal services.

### **III. LEGAL ISSUES AND AVENUES FOR ADVOCACY**

Perhaps because all previous cease-fire agreements included provisions for the release of and amnesty for political prisoners, Serbian prison officials seemed prepared to free their charges when a peace agreement was signed. Indeed, on 10 June, the prisoners in Lipljane were given back their documents and valuables, as if in anticipation of release.<sup>24</sup> But on 12 June, once the military-technical agreement (MTA) was signed at Kumanovo, the prisoners were herded

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<sup>22</sup> Serbian law allows for suspects to be detained for up to six months without being charged.

<sup>23</sup> For instance, Liburn Aliu, a 22-year-old architecture student now serving a nine-year sentence for having been an LKCK member, is the son of an economist who served an eight-year sentence and two other prison terms and the nephew of four men, one a university dean, all of whom served prison terms and one of whom was killed by Serbian police. Dr Vjosa Dobruna, a pediatrician and human rights activist, traveled with her grandfather every month from the time she was six to visit one or another of her four uncles in Serbian prison (ICG interview, 1 November 1999).

<sup>24</sup> ICG interviews with former prisoners, 29 October and 10 November 1999.

onto buses and trucks and transferred to prison facilities inside Serbia proper, where their valuables and identity papers were again confiscated.<sup>25</sup>

Senior NATO and Pentagon officials have confirmed that the earliest drafts of the Kumanovo agreement did include provisions regarding the Albanian prisoners.<sup>26</sup> However, the Yugoslav commanders charged with negotiating the agreement insisted they had no authority to negotiate any provisions not explicitly spelled out in the 8 June document drawn up by the G-8 nations.<sup>27</sup> Washington, eager to stop the bombing and cognisant of its allies' eagerness to bring the war to an end, decided to drop the provisions relating to the prisoners among others deemed objectionable by the Serbs.<sup>28</sup> The final version of the military-technical agreement, according to one Pentagon official, "was a bare-bones document that we were confident the Serbians would accept."<sup>29</sup>

The inter-agency process by which this determination was made in Washington reveals a great deal about how, in democratic governments, it is possible to formulate policy at one level that might be at odds with stated and carefully crafted foreign policy writ large. The inter-agency group that managed the process in Washington, consisting of representatives from the National Security Council, the Department of Defense, Department of State, the Joint Chiefs of Staff, and the Central Intelligence Agency, is a decision-making body that, whatever its other utility, enables each of those agencies to avoid individual responsibility for tough calls believed to be necessary in the interests of preserving the Western alliance, minimising troop risk, or simple expediency. In this instance, although President Clinton and other allied leaders had decided to intervene in Kosovo avowedly to save the ethnic Albanian population there from

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<sup>25</sup> Ibid.

<sup>26</sup> ICG interviews, late November and mid-January, with officials at the Pentagon, Supreme Headquarters of Allied Powers in Europe (SHAPE), Supreme Allied Command for Europe (SACEUR), and the Allied Rapid Reaction Corps (ARRC).

<sup>27</sup> The G-8 document, which had relegated a number of controversial issues from the main text to the footnotes in order to gain approval from all signatories, would become the basis for the UN Security Council Resolution 1244, which was passed by the UNSC on 10 June 1999 and which gave the Kumanovo agreement its binding legal authority (and which, as mentioned in footnote 1, also left out the prisoner issue). But in this case, the diplomatic art of the side letter and footnote backfired when, according to NATO officials close to the process, the Yugoslav negotiators made clear that their superiors had rejected inclusion in the peace accords even of the footnotes to the G-8 document.

<sup>28</sup> ICG interviews, NATO and Pentagon officials, mid-January 2000. One NATO official close to the talks recalled that, "We had no political support to insist on more than was unanimously construed to be derived from the G-8 text.... That turned out to be a very serious and disappointing weakness. It meant that Gen. [Mike] Jackson had very little leverage thereafter. "According to these officials, other important issues were also dropped early on in the negotiation process, including the question of how many uniformed Serbs would ultimately be allowed back into Kosovo.

<sup>29</sup> ICG interview, Pentagon official, 18 January 2000. Lt. Col. Paul Brook, Gen. Mike Jackson's chief of media, pointed out in a separate 18 January interview with ICG that, "The agreement is not in itself a legal contract. It is merely a technical mechanism for replacing one military force with another. It is no substitute for a proper legal and binding agreement," Lt. Col. Brook stressed, adding that the MTA "unlocked the door" to make possible the UN Security Council Resolution 1244 of 10 June, it was in fact the UNSCR 1244 which gave the MTA its legal force.

Serbian state-sponsored terror and oppression, the US government found it collectively possible to leave untold numbers of Kosovar Albanian prisoners in the hands of the Serbian authorities in order to bring the costly intervention to a timely close.

The result has been to bequeath to those now in charge of the international mission in Kosovo the unresolved and destabilising matter of the Albanian prisoners.<sup>30</sup> More thorough-going consultations with all pertinent agencies<sup>31</sup> and more rigorous attempts to reconcile short-term with long-term goals might have avoided this unhappy outcome.

All that said, the omission of the prisoners issue from the MTA as well as from the UN Security Council Resolution of 10 June 1999 neither relieves Belgrade of its obligation to release the prisoners, nor the international community of its obligation to procure their timely release. Because the war in Kosovo between NATO and the Federal Republic of Yugoslavia (FRY) was clearly an international armed conflict, the Third and Fourth Geneva Conventions of 1949 should apply.<sup>32</sup>

The Third Geneva Convention spells out the widest range of protections for prisoners of war (POWs),<sup>33</sup> which apply from the time they are captured "until

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<sup>30</sup> As one NATO official put it in an interview [20 January 2000], "The people who made those decisions have moved on. The only people who have to deal with [the repercussions] now are the implementers."

<sup>31</sup> Including, for instance, the office of the Assistant Secretary of State for Democracy, Human Rights, and Labor, which has been so active on the prisoner issue and might well have argued for keeping the prisoner-related provisions in the MTA.

<sup>32</sup> ICG interviews and correspondence with Kathy Ward, of the Coalition for International Justice; Dr Kenneth Anderson, of the Washington College of Law at American University, and Dr Paul Williams, a former US State Department attorney now also at American University as professor of international law and international relations, December 1999 and January 2000.

<sup>33</sup> Article 4 of the Third Geneva Convention defines prisoners of war as those meeting the following criteria:

1. Members of the armed forces of a Party to the conflict, as well as members of militias or volunteer corps forming part of such armed forces;
2. Members of other militias and members of other volunteer corps, including those of organised resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organised resistance movements, fulfil the following conditions: (a) that of being commanded by a person responsible for his subordinates; (b) that of having a fixed distinctive sign recognisable at a distance; (c) that of carrying arms openly; (d) that of conducting their operations in accordance with the laws and customs of war.
3. Members of regular armed forces who profess allegiance to a government or an authority not recognised by the Detaining Power.
4. Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorisation, from the armed forces which they accompany, who shall provide them for that purpose with an identity card....
6. Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

their final release and repatriation"<sup>34</sup> and which include access by the ICRC,<sup>35</sup> the Fourth Geneva Convention details a similar, if somewhat weaker<sup>36</sup>, set of protections for civilians detained in the course of an international armed conflict. Arguably, even those Albanians captured prior to the NATO intervention, when the conflict was purely an internal one, should enjoy the same rights because the conflict became internationalised with NATO's intervention: the Atlantic Alliance's informal co-operation with Kosovo Liberation Army (KLA) combatants made the KLA a party to the international conflict.<sup>37</sup>

The Third Geneva Convention makes clear in Article 118 that prisoners of war are to be released "without delay after the cessation of active hostilities."<sup>38</sup> The sole exception to the protective power guaranteed under Article 118 is provided in the cases of prisoners convicted of or prosecuted for criminal offences, who may be detained until the end of legal proceedings or, if necessary, until they have completed their sentences.<sup>39</sup> This exception may explain the alacrity with which the Serbian judiciary has lately begun to file charges and dispose of prisoners' cases,<sup>40</sup> which, if charges of "terrorism" are to be construed as criminal offenses, would legalise Serbia's continued jurisdiction over the prisoners by redefining their status as criminal defendants or sentenced criminals.<sup>41</sup>

Civilians are protected under the Fourth Geneva Convention, where requirements regulating their detention and release are virtually identical to those that apply to POWs, including the right to be visited by the International Committee of the Red

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<sup>34</sup> Article 5, Third Geneva Convention, 1949.

<sup>35</sup> Article 126, Third Geneva Convention.

<sup>36</sup> ICG interview with Dr Kenneth Anderson, 9 December 1999. "It is not a violation under international law not to include [the prisoner issue in the text of a formal armistice], but the Parties are not relieved of the obligation...."

<sup>37</sup> Analysis from internal legal memorandum prepared by Kathy Ward of the Coalition for International Justice.

<sup>38</sup> Article 118, Third Geneva Convention. It is worth noting that this article refers only to POWs, not to so-called political prisoners, which, according to Dr Kenneth Anderson, "is not a defined term within humanitarian law." (ICG interview, 9 December 1999).

<sup>39</sup> Article 119, Third Geneva Convention. According to Dr Anderson, the quality of the trial or the judgement does not affect the power accorded by Article 119 to the government in question to maintain custody over its criminal offenders. "If the trials violate international human rights law, that is still not a remedy." (ICG interview, 9 December 1999).

<sup>40</sup> The Humanitarian Law Center (HLC) in Belgrade estimates that in October and November, roughly 150 Albanians were convicted and sentenced to prison terms ranging from 3-15 years (AFP, 16 December 1999). The expiration in late 1999 of Serbia's six-month legal detention period is also believed to have been a motivating force behind expedited trials (ICG interviews, Natasa Kandic, HLC). Indeed, on 14 January 2000, another 144 prisoners from Djakovica, currently detained in three central Serbian prisons, were charged with "terrorist acts" (*Associated Press*, 14 January 2000).

<sup>41</sup> According to Dr Kenneth Anderson, parties are "not obligated to release prisoners who are serving judicially mandated sentences for violations of the laws of war. If prisoners are legally convicted of acts of terrorism in the course of conflict, there is no obligation to release." (ICG interview, 9 December 1999).

Cross (ICRC)<sup>42</sup> and the obligation incumbent upon their captors to release them "as soon as possible after the close of hostilities."<sup>43</sup>

Despite its guaranteed access to POWs and detained civilians under the two Geneva Conventions, the ICRC was denied access to the Albanian prisoners for weeks.<sup>44</sup> Because the ICRC generally draws its visitation authority from formal peace agreements, and because provisions relating to the prisoners were left out of the military-technical agreement ending the war, ICRC officials have felt powerless to advocate for increased access.<sup>45</sup>

However, legal scholars argue that the Third and Fourth Geneva Conventions accord the ICRC authority under international law which supersedes any formal armistice and obliges all parties to a conflict to cooperate with the ICRC by granting unfettered access to prisoners and facilitating their timely release.<sup>46</sup> Therefore the absence of any explicit mention of the prisoners or the ICRC in the military-technical agreement should not preclude the ICRC from asserting its rightful authority.<sup>47</sup>

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<sup>42</sup> Article 143, Fourth Geneva Convention; the protections relating to the conditions of internment are spelled out in Articles 79-135 of the fourth convention.

<sup>43</sup> Article 133, Fourth Geneva Convention. In addition, specific provisions in the Fourth Convention protect civilians with regard to visitation (Article 16), to management of their property (Article 114), and to facilities for legal proceedings (Article 115). However, Dr Kenneth Anderson maintains that Fourth Convention protections for civilians are "nowhere near as clear as [those for POWs] in the Third" ICG interview, 9 December 1999).

<sup>44</sup> The first announcement by the ICRC that it had received lists of prisoners from the Serbian Ministry of Justice and that ICRC officials had been able to visit 331 prisoners came on 12 July 1999 (*Associated Press*). Also on 12 July, a full month after the cessation of hostilities, *Voice of America* reported that Daloni Carlisle of the ICRC announced the release by the Serbian justice ministry of the names of 2095 people being held as "security detainees....The Red Cross human rights group is pleased by the quick release of the information about the prisoners," the VOA report added.

<sup>45</sup> ICG interview, 4 November 1999 with ICRC's Vittoria Romano in Priština; ICRC statement by Pierre Kraehenbuehl in Geneva, calling the lack of "reference to the issue of missing persons or detainees in either the technical military agreement or the UN Security Council resolution... unfortunate, because it makes tracing the whereabouts of missing persons more difficult." (*Voice of America*, 6 July 1999).

<sup>46</sup> ICG interview with Kenneth Anderson, 9 December 1999. Dr Anderson points out that the Geneva Conventions do not require that the resolution of POW issues be specifically addressed in any formal document relating to the cessation of hostilities. Indeed, the Third Geneva Convention was drafted for the express purpose of guaranteeing protection to, and the repatriation of POWs, regardless of whether or not a formal armistice ending an international conflict is ever drafted or signed. However, Dr Anderson continued, "you still need a practical way of doing it. Any document [ending a conflict] should include a mechanism for repatriation, whether it means turning it over to the ICRC or by other means."

<sup>47</sup> However, Dr Anderson and other legal scholars are concerned that NATO's own interpretation of its obligation to release its POWs may harm not only the prospects for the Serbian government's swift return to Kosovo of Albanian prisoners, but also the likelihood of other parties' compliance in future conflicts. "The obligation regarding POWs is very, very strict," Dr Anderson insisted. "Certainly in its rhetoric, NATO adopted the very liberal view that it could take its own sweet time about returning POWs, in terms of the progress of its own investigation of who was a war criminal or not. This proprietary attitude is problematic; there has got to be a quick determination as to whether there is evidence of war crimes or not. You can't sit around for months deciding." Dr Anderson added that NATO's delay in releasing its POWs "is clearly

Moreover, the ICRC itself has defined the Kosovo conflict as both an international armed conflict and an internal one, and civilians detained in the course of an internal armed conflict are protected both under Common Article III of the Geneva Conventions and its subsequent expansion in Protocol II, to which the FRY is a party.<sup>48</sup> Therefore, even without explicit mention in the MTA of the obligation of the warring parties to *release* the prisoners, the ICRC would be well within its mandate, as is the rest of the international community, to advocate everything covered under Common Article III and Protocol II, which obliges "the authorities in power" to "endeavour to grant" their detainees "the broadest possible amnesty."<sup>49</sup> If the FRY and the Serbian government could be moved to comply with international law by respecting these provisions, at least the prisoners' lives would not be at risk while they remain in Serbian custody.

Beyond immediate concerns regarding the prisoners' release and physical well-being, the international community is obliged by international law to pursue investigations and, if deemed appropriate, indictments and prosecutions of those responsible for the commission of war crimes. It falls well within the ongoing jurisdiction of the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague to investigate these continuing violations of the law governing the customs of war and to prepare indictments of those responsible, including Milošević, the Serbian ministers and deputy ministers of justice and the interior, Yugoslav army and Serbian police commanders, arresting police and army officers, and prison directors and guards.<sup>50</sup> While it would be for the ICTY to determine the priority to be given to such investigations, given its immense other responsibilities, it should make clear its willingness to examine violations of well-established international humanitarian law. In this case, such violations appear not only to have been part and parcel of a state-sponsored blueprint for the ethnic cleansing of Kosovo, but to have continued well beyond the cessation of hostilities between warring parties.<sup>51</sup>

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raising hackles in much of the rest of the world -- the ultimate cost is that people don't think they have a stake in someone else's law."

<sup>48</sup> The FRY ratified Protocol II in 1979. Protocol II, which entered into force in 1978, spells out civilians' rights and protections while in detention, including rights to due process, medical attention, humane treatment, the detention of minors, and a prohibition against "the taking of civilian hostages," which, by accepting what are essentially ransom fees for their release, state actors have arguably done (legal analysis from internal memorandum by Kathy Ward, Coalition for International Justice).

<sup>49</sup> Article 6, No. 5, requires the detaining authorities to "endeavor to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of liberty for reasons relating to the armed conflict..." ICG interviews with Kathy Ward, Coalition for International Justice, 7 January 2000; and Paul Williams (see footnote 32 above), 11 January 2000.

<sup>50</sup> ICG interview with Paul Williams, cited above, 11 January 2000; analysis prepared by Kathy Ward, Coalition for International Justice.

<sup>51</sup> Ibid.

#### **IV. TREATMENT IN SERBIAN DETENTION: FIRST-HAND ACCOUNTS**

Beatings of Albanian prisoners are reported to be routine, as is depriving them of adequate nourishment.<sup>52</sup> One ex-prisoner described being starved and beaten during the brutal 33 days he and his brother and father spent in a Kosovo prison, simply for being related to a well-known KLA political figure.<sup>53</sup> Family members reported not being able to recognise their loved sons or husbands because of how thin, sickly and badly beaten they appeared.<sup>54</sup> Many prisoners, having been arrested in spring and mid-summer, wearing T-shirts and often, particularly for those arrested at home, no socks or shoes, are also unprepared for winter, much less in a dank, unheated Serbian prison cell.<sup>55</sup>

The Albanian prisoners, including old men and children, were transported into Serbia on journeys lasting up to twelve hours without being allowed to stop or drink.<sup>56</sup> In Serbia they have been detained in inhumanely close quarters with, among others, Serbs convicted of rape, murder, and armed robbery. The prison guards are reported to have, on occasion, enlisted these common Serbian

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<sup>52</sup> See Amnesty International report on conditions in Smrekovnica prison, 22 October 1999; International Helsinki Federation for Human Rights release, 10 July 1999, Vienna; a 29 June 1999 National Public Radio interview with a recently released prisoner reported being forced to sit on red-hot heaters, beaten with broken glass, and subjected to mock executions. *Kosovapress*, the media outlet of the former KLA reported on 6 January that the ICRC escorted home to Suva Reka the body of a 60-year-old dead prisoner. "The poor old man died from the Serb torture at the prison in Prokuple," the release said.

<sup>53</sup> Arianit Kurti, 21, also described the "hazing ritual" experienced by many prisoners who were forced to walk down a 100-meter corridor in the Lipljane prison, while more than 50 policemen and Serbian criminals posted at two-meter intervals beat them with rubber sticks.

<sup>54</sup> As examples, Miradie and Ali Aliu said they could not recognize their son Liburn when they visited him in late July; Sadbere Hashani said that she was only able to identify her husband, Enver Haqif Hashani, by his shirt and his glasses (ICG interviews, 10 November 1999).

<sup>55</sup> ICG interview with Ilirjana Gashi, wife of Halil Matoshi, prominent poet, journalist, and editor of the weekly magazine *Zeri*, who was abducted on 21 May 1999 by 20 Serbian police in front of his children as part of a major sweep of the Priština suburb of Ajvali. Four hundred men were taken that day, of whom 43 were arrested, the rest released, in what the Serbs described as a weapons search. Others detained in that same "sweep" were three members of the Korqa family, the son and two grandsons of octogenarian farmer and family patriarch Rexhem Korqa (ICG interview, 10 November 1999). One grandson, Rexhep Korqa, weighed 30 kilos when he was finally released from Sremske Mitrovica prison on 4 October. He now constantly feels cold, can't force himself to eat, and is too weak to work. "He has no idea why he was released or why he was arrested," his grandfather said. Mr Korqa's other grandson, who was only 16, was one of the 157 to be released the same day; his son, Nevlud Rustan Korqa, was a successful construction worker who had made enough money doing overseas contract work for a wealthy Kosovar Albanian builder to have bought himself a nice car, which apparently incensed the Serbs and was the ostensible reason for his arrest. The Serbs also stole 50,000 DM from Nevlud Korqa when they arrested him, his father added.

<sup>56</sup> *La Repubblica*, 27 June 1999; ICG interview, Shaban Hoxha, who confirmed that the prisoners on his bus were not allowed any water during their 500-kilometre trip from Lipljane to Sremske Mitrovica (ICG interview, 10 November 1999).



criminals in beating the Albanians.<sup>57</sup> On at least one occasion, village children were enlisted by prison guards to help beat prisoners, as well.<sup>58</sup>

One former prisoner explained that the allegations themselves of aiding or abetting terrorism predisposed the Serbian guards to abuse the Albanians. "These guards in Serbia have no idea what we did," explained engineer Shaban Hoxha, who was arrested by twenty Serbian police and four Serbs in civilian clothing at his home on 16 May 1999. "They only see the charge: terrorism." Mr Hoxha added that any connection a prisoner might have with the West, however remote, was another trigger for harsh treatment.<sup>59</sup>

Mr Hoxha, who was released with 53 others from Sremske Mitrovica prison on 4 October, described having been crowded with dozens of other men into small rooms, being given only two small pieces of bread each day, being deprived of water, being forced to sleep on hard floors without blankets or pillows, and being tortured with what he described as "all known methods."<sup>60</sup> He said conditions in Serbia were slightly better than those in Kosovo prisons,<sup>61</sup> of which he said, "There is no other word to explain what we went through except 'Hell.'"<sup>62</sup>

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<sup>57</sup> ICG interview, 29 October 1999, with former prisoner Arianit Kurti.

<sup>58</sup> A 78-year-old former prisoner reported having been beaten by a 10-year-old boy in the Mitrovica prison yard as Serbian police and prison guards stood by laughing and shouting, "More." The prisoner added that he had seen prison guards beat 13- to 17-year-old neighborhood children and order them to beat the prisoners. "You are in charge," the children were told. (ICG interview with prisoner's friend, 29 October 1999).

<sup>59</sup> When, for example, Mr Hoxha's brother Tomar told his interrogators that he was an English student, Mr Hoxha recalled, "I remember very clearly: he hit him very hard and said, 'You are learning our occupiers' language.'" (ICG interview, 10 November 1999; see footnote 21 above).

<sup>60</sup> Mr Hoxha said his back and his ribs still hurt from being beaten with rubber and wooden sticks, and his hands, feet, and genitals were subjected to electric shock. Mr Hoxha said his interrogators at the Sremske Mitrovica prison were actually Serbian state security police, known as MUP, from Priština. Mr Hoxha added, "There are people there from Glogovac, who have been there 13 months and never been charged, who have been beaten so badly they are mentally ill. That is why I'm saying it is so illogical for people to be kept there without any charges, just because they are Albanian." (ICG interview, 10 November 1999.) Another released prisoner, a 40-year-old man with a young family, returned home having been rendered impotent and mentally disturbed by the torture he received, according to his cousin who asked that their names not be used (ICG interview, 12 November 1999). Yet another prisoner, 44-year-old former energy plant worker, Enver Haqif Hashani, now in the Niš prison, had three ribs broken and was put in an electric chair, according to his wife, Sadbere Hashani, who was told this by a fellow prisoner who was subsequently released.

<sup>61</sup> Both in the Lipljane prison in Kosovo and in Sremske Mitrovica prison in Serbia proper, the Albanian prisoners were pressed into crowded rooms, Mr Hoxha reported, with 94 in one, 92 in another, and 70 in a third in Sremske Mitrovica, where he was transferred on 10 June 1999 along with 300 others. There the prisoners were given thin mattresses to sleep on, and in an improvement over Lipljane, they were given two slices of bread, with some jam and milk for breakfast and three pieces of bread for lunch. Still, the prisoners were not allowed to drink during the entire, 500-kilometre journey from Lipljane to Sremske Mitrovica, and about his interrogations in Serbia he remarked, "I can only say we were treated worse than animals."

<sup>62</sup> ICG interview, 10 November 1999, with former prisoner Shaban Hoxha. Another prisoner, Enver Haqif Hashani (see footnotes 54 and 60 above), told his wife Sadbere Hashani that he was well-acquainted with

In August Mr Hoxha and 39 others were confined in solitary cells, Mr Hoxha believes because they refused to admit to anything even under torture. After six weeks of solitary confinement and brutal interrogations, 10 of the 40 men confessed either to having been members of or having assisted the KLA; the remaining 30, including Mr Hoxha, were released.<sup>63</sup> Both of Mr Hoxha's brothers had already made false confessions, he said, because they kept fainting and couldn't withstand the physical abuse.<sup>64</sup>

Letters to prisoners are always opened and always delivered late, if at all, according to prisoners and family members. Mr Hoxha received one letter during his first four months in detention and said prisoners from Drenica had complained to him that they had not received one letter or package during their six months in detention there.<sup>65</sup> Letters from prisoners are also not only censored, but delayed and often not delivered, family members say.<sup>66</sup>

Packages, also, are routinely opened and looted by Serbian prison officials. Although family members and friends are reluctant to stop preparing well-stocked parcels complete with blankets, sweaters, medicines, chocolates, and cigarettes, they are aware that very few of these items ever reach the prisoner. For a time, family members recalled, it was possible to have packages sent from abroad to relatives in prison; more recently, all packages from outside the FRY have been refused. While in Kosovo, families were told they could only send packages weighing up to eight or ten kilos; now, according to the mother of one prisoner, "they accept all size packages, but they take them."<sup>67</sup>

## **V. PRISONERS' FAMILIES**

- The emotional and financial strain on thousands of extended Albanian families is one of the most serious costs of the prisoners' prolonged detention. Parents and wives haunt the offices of the ICRC and the Association of

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five prisoners who had committed suicide because "they couldn't take the torture." The impact of these prisoner suicides is predictably demoralising. "[Enver] told us he can still see their faces," Mrs. Hashani told ICG. "He can't get over that."

<sup>63</sup> "Even today, I don't know why they released me," Hoxha told ICG, insisting that neither he nor any of his friends among those who were released with him had paid any money for their release. "It was just luck and God."

<sup>64</sup> One brother, Abdullah, "confessed" to being a professor of Albanian language and literature, while brother Tomar (see footnotes 21 and 59 above) "admitted" to being a student of English. Both said they had assisted the KLA.

<sup>65</sup> ICG interview, 10 November 1999.

<sup>66</sup> ICG interviews with former prisoners and prisoners' relatives, late October and early November 1999.

<sup>67</sup> ICG interview on 10 November 1999 with Fahrie Klinaku, mother of 33-year-old Avni Klinaku, who has been in prison since January 1997, having served two previous prison terms for pro-independence activism. Mrs. Klinaku said that Avni did not even receive half of what she had sent him, for instance, getting one pack of cigarettes when she had enclosed five.

Political Prisoners, hoping for news, and families feel compelled to entrust their scant savings to attorneys who promise, in return for a steep fee, to locate their loved ones.<sup>68</sup> Families must also find several hundred Deutschmarks for transportation and bribes every time they attempt to visit relatives in Serbian prison.<sup>69</sup>

- Simply getting into Serbia is no small challenge. One family reported having tried to take a bus for their September visit, only to have their bus driver beaten and to be turned back. In October, the same family crossed into Serbia on a tractor and moved discreetly along back roads from village to village, where they hoped to be taken for Albanians living in Serbia. That route, which is illegal, proved too treacherous, and in November this family hired a taxi, which was stopped three times en route to the Niš penitentiary. Each time the driver, who was Albanian and refused to take any money except to pay the anticipated bribes, was taken out of the car and beaten; at the journey's end he told the family he didn't dare drive them on any future visits.<sup>70</sup>
- Having succeeded in bribing one's way into Serbia proper, getting into the prison itself is the next hurdle. In principle, prisoners are allowed one family visit a month. However, on occasion families have made the hazardous journey to the detention site, only to be turned back by prison officials on the grounds that the families lacked "special permission" from the appropriate court. But families have no idea to which court they ought to appeal, or to whom to address their requests.<sup>71</sup>
- Even when families are granted access to their relative, visiting conditions are difficult. All prisoners with visitors are ushered into a large meeting room and forced to sit around a wide table, with the prisoners on one side, family members on the other. With as many as 30 people in the room, family members complained that not only could they not exchange any intimacies with their loved one, they could not even hear him or her.<sup>72</sup> Many prisoners have been forced to speak Serbian with their families and lawyers,<sup>73</sup> giving prison guards the ability to monitor their conversations.

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<sup>68</sup> Shaip Ramabaja, the father of prisoner Bashkim Shaip Ramabaja, whom he believes is either being detained in a military prison or in what he called "an illegal, private Serbian prison," said that so far he has paid money to four lawyers, with no result: "All of them lied," he told ICG in an interview (10 November 1999).

<sup>69</sup> The going rate in October-November 1999, according to prisoners' families, was roughly 100 DM per person, each way, for bribes for the series of Serbian checkpoint officials and police encountered along the way (ICG interviews with prisoners' families, late October – early November 1999).

<sup>70</sup> ICG interviews, Sadbere Hashani, wife of Niš prisoner Enver Haqif Hashani, and Fahrie Klinaku, mother of Niš prisoner Avni Klinaku, 10 November 1999.

<sup>71</sup> ICG interview, Pajazit Nushi, president, Council for the Defense of Human Rights and Freedoms, 1 November 1999.

<sup>72</sup> ICG interviews, Fahrie Klinaku, mother of prisoner Avni Klinaku, 10 November 1999.

<sup>73</sup> This has been true for Flora Brovina and others; however, those prisoners and families interviewed by ICG said they were allowed to speak Albanian in their visits.

- Most relatives of prisoners, however, are less interested in achieving incremental improvements in the prisoners' treatment while in detention than they are in agitating for their release.<sup>74</sup> They are frustrated at the minimal apparent progress achieved by the UNMIK commission and the perceived lack of responsiveness on the part of the ICRC.<sup>75</sup>
- The apparent lack of international engagement in what, to them, is an overriding concern makes these family members, at least in the short term, almost as fed up with the West as they are with the Serbs.<sup>76</sup> Many even suspect that the international community has not pressed Belgrade harder for the prisoners' release because the West is not serious about helping to topple Yugoslav President Slobodan Milošević and remains concerned about maintaining relatively smooth relations with the regime.<sup>77</sup> This suspicion, however misguided, can have damaging repercussions on the international community's attempt to build goodwill and to enlist Kosovars in rebuilding their homeland.

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<sup>74</sup> "For us it is not important what conditions they are in at the moment," an impatient father told ICG (interview with Halil Beka, father of prisoner Dylber Beka, 31, 10 November 1999). "All we ask is that they come home alive. That is all. Because we don't expect anything better from where they are."

<sup>75</sup> "Frankly I have lost all patience with the Red Cross," the wife of one prominent prisoner told ICG in an interview (10 November 1999).

<sup>76</sup> Idriz Gashi's story is one example of how profoundly frustrated a relative can become by both Belgrade and the international community. Mr Gashi has been to the ICRC 25 times, he says, to inquire as to the whereabouts of his son, Gazmend Idriz Gashi, whom he last visited seven months ago in Lipljane prison. Gazmend, who was arrested in December 1997 and was sentenced in November 1998 to a seven-and-a-half year term, was transferred into Serbia, other prisoners told his father, but his name does not appear on the Serbian ministry list. Mr Gashi hired an Albanian lawyer from the Humanitarian Law Center who was first told that Gazmend would be released in three days; at the end of three days, the lawyer was told that he would be released in another month, a promise that would be repeated 11 times. The lawyer appealed to the Serbian Supreme Court in Belgrade, and Mr Gashi was told that he could pay 1000 DM to have the case re-opened. Mr Gashi paid on 14 March 1999, the bombing ensued on 24 March, and there was no further communication from the court. Now Mr Gashi, an unemployed furniture factory worker who has nine other children to care for, is out of pocket the lawyers' fees and the 1000 DM, and he still has no idea where his son is detained or whether in fact Gazmend is still alive. His rage appeared directed almost equally at the Serbs, the Red Cross, and the NATO negotiators who did not condition the demilitarisation of the KLA on the prisoners' release. (ICG interview, 10 November 1999, with Ibriz Gashi).

<sup>77</sup> "The whole situation is so transparent," claims Shukrie Rexha of the Association of Political Prisoners (APP), (ICG interview, 29 October 1999). "This gives Milošević another issue -- the lives of these prisoners -- to negotiate for whatever else he wants in Kosovo. It is so absurd for us, when we see the civilian mission in Kosovo trying to work on free elections or reconstruction or other things, while nothing is being done regarding the Albanian prisoners."

## **VI. LEGAL ASSISTANCE, SHOW TRIALS, AND STATE-SANCTIONED "BUY-BACKS"**

One of the most difficult problems for Albanian prisoners in Serbia proper is that of obtaining qualified, uncorrupted counsel. Serbian judges routinely appoint defense attorneys who in fact work for the prosecution and reportedly hold private meetings with the judges on a regular basis.<sup>78</sup> A handful of intrepid Belgrade-based lawyers from the Humanitarian Law Center (HLC), the Yugoslav Lawyers Committee for Human Rights and other organisations have attempted to defend these clients and to monitor the prisoners' cases, at great risk to their personal safety. But the procedural and bureaucratic hurdles that the courts have continually put in their way have made effective representation almost impossible.<sup>79</sup>

Most Albanian lawyers from Kosovo with clients in Serbian prisons have understandably been reluctant to enter Serbia to assist their clients, for fear of harassment, arrest, or threats to their families.<sup>80</sup> Indeed, on 3 December well-known Albanian human rights attorney Teki Bokshi was abducted from his car by plain-clothes, irregular Serbian police on his way to Belgrade from visiting Albanian clients in Sremske Mitrovica detention centre.<sup>81</sup> Even the well-known Serbian human rights monitor Natasa Kandic, director of the Humanitarian Law

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<sup>78</sup> Humanitarian Law Center communiqué, 21 November 1999; ICG interviews with Natasa Kandic, HLC, late October-early November 1999.

<sup>79</sup> Both in Kosovo and now in Serbia, for example, it has not been unusual for the Serbian courts to prohibit defense counsel from meeting with their client or even from reading the state's charges against their client prior to trial. (ICG interviews with Kosovar defense attorneys Destan Rukiqi, 29 October 1999), Toma Gashi, 5 November 1999; numerous reports from Humanitarian Law Center and Yugoslav Lawyers Committee for Human Rights. Even when lawyers have been permitted to visit their clients, they must speak in Serbian language, presumably so their conversations are comprehensible to prison guards. For other examples, see footnote 87.

<sup>80</sup> ICG interviews with Tomi Gashi, who has 50 clients in Serbian prisons (5 November 1999), and Destan Rukiqi, who has three (29 October 1999). Some lawyers who signed a letter addressed to the International Criminal Tribunal in The Hague imploring the ICTY to be more active in producing indictments also had tremendous concerns for their personal safety, according to Mrs. Niqiba Kelmendi, former judge and human rights monitor, particularly after the murder of her husband, human rights attorney Bajram Kelmendi, whose name had been on a Serbian police hit list and who was murdered during the early days of the NATO air campaign. (Niqiba Kelmendi, speaking at a meeting with Justice Richard Goldstone, chair of the Kosovo Commission, 10 November 1999).

<sup>81</sup> Mr Bokshi, who works with the Humanitarian Law Center and had been instrumental in securing the release of 19 children in Serbian prisons, was released after 13 days in detention (Human Rights Watch release, 16 December 1999) once his family had paid 100,000 DM to five kidnapers. The ransom was negotiated by a Belgrade-based Serb attorney formerly from Priština.

In the course of his work on the children's cases, Mr Bokshi discovered two more Albanian boys detained in the Pozarevac Penitentiary whose release was promised by the prison judge once their birth certificates can be verified. Of Bokshi's arrest, HLC director Natasa Kandic said, "They're trying to get us to stop our work. Only our [HLC] lawyers have been coming to Serbia to defend prisoners from Kosovo." Indeed, on 9 December Mr Bokshi had been slated to defend 28 Kosovars held in Pozarevac who had been abducted from a civilian refugee convoy and had been expected to be released ([www.independent.co.uk/news/World](http://www.independent.co.uk/news/World), 8 December 1999, by Laura Rozen).

Center who had been urging HLC's Kosovar attorneys to be more attentive to their clients imprisoned in Serbia, has been regularly detained and interrogated by Serbian police when she crosses the Serbia-Kosovo provincial border.<sup>82</sup>

Accounts of some of the trials of Albanian prisoners would seem to confirm other independent reports that Serbia has meticulously substituted an Orwellian system of show trials for the rule of law.<sup>83</sup> The strictest sentences thus far have been handed down by the Prokuple District Court,<sup>84</sup> which has taken care to assign Albanian prisoners' cases to Serb defence counsel who proceeded to waive their clients' right to appeal their convictions. Judges in Prokuple conduct up to six trials each day, most of which last less than an hour, are conducted in Serbian language without professional interpreters, and during which the judges routinely ignore defendants' claims that their confessions were extracted involuntarily.

The trial of Dr Flora Brovina was probably the most widely covered by Western media.<sup>85</sup> It had all the hallmarks of a kangaroo court, with the judge hastily augmenting the charges against the admired 50-year-old Kosovar pediatrician after a key witness against her refused to testify, presumably so as to justify the court's imposing a longer maximum sentence.<sup>86</sup>

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<sup>82</sup> According to Natasa Kandic, Humanitarian Law Center. HLC documents, which Ms Kandic has obtained Serbian government permission to publish, have also been confiscated and examined during these sessions, which have lasted as long as five or six hours.

<sup>83</sup> Recent firings of judges is more evidence of the state's systematic attempt to quash any remnants of judicial independence. On 21 December 1999 the Serbian National Assembly, in clear violation of the Serbian constitution and overriding a December judgement by the Serbian Supreme Court, dismissed three judges, all prominent legal experts and critics of the regime. (Humanitarian Law Center communiqué, 21 November 1999. The three judges were Slobodan Vucetic, judge of the Constitutional Court in Serbia, Zoran Ivosevic, of the Serbian Supreme Court, and Bozo Prelevic, Fifth Municipal Court judge of Belgrade.) But in October 1999 the Supreme Court, itself hardly impervious to political pressure, saw fit to dismiss another esteemed judge, Milorad Marjanovic, who is an active member of the Serbian opposition in Leskovac, for "engag[ing] in activities incompatible with his judicial capacity" and for his "constant disparaging of the judiciary position and the system as a whole." Earlier in October yet another judge, Sasa Obradovic of the Municipal Court in Valjevo, submitted his resignation, stating in his letter that the "collapse of morale and basic social values and the subjugation of courts to exclusive [political] party interests led to the degradation of our judiciary, and the criminal courts, under degraded conditions of criminal and legal protection of life, freedom and property, lost a part of their inherent legitimacy." ("Report on the Increasing Repression in Serbia," Helsinki Committee, Belgrade, [www.helsinki.org.yu/novo/repressionE.htm](http://www.helsinki.org.yu/novo/repressionE.htm)).

<sup>84</sup> Humanitarian Law Center communiqué, 21 November 1999.

<sup>85</sup> Dr Brovina's case has been closely monitored by Human Rights Watch and the US Department of State, as well, and was recently described by the BBC (10 December 1999) as having "become a symbol for those trying to win the release of prisoners held in Serbia." On 21 January 2000 one of Dr Brovina's lawyers filed an appeal of the judgement against her with the District Court in Niš on the grounds of due process violations and "incorrect and incomplete determination of the facts." (HLC communiqué, 21 January 2000).

<sup>86</sup> The charge as read by the Niš court was "association for hostile activities related to terrorism, carried out during the state of war." (*Reuters*, 9 December 1999) Included in the evidence that convicted Dr Brovina was knitting wool donated by Oxfam that she had distributed to displaced Albanian women so they might make sweaters for family members (*The Independent* [London], 19 December 1999).

Twelve Albanians from Suva Reka and also tried in Prokuple were convicted of terrorism and sentenced to fourteen years on the basis, according to the UNHCHR, of fabricated evidence.<sup>87</sup> In another case against five Albanian students at Belgrade University on charges of terrorism and anti-state activities, suspicions were raised that the students' trial might not be fair when, at its outset in late November, the presiding judge informed defence counsel that they would be free to raise procedural issues in their "appeal against the judgement," implying that the panel of judges was sure to convict.<sup>88</sup>

A considerable amount of Serb lawyers' time and energy has gone into facilitating prisoners' release in exchange for cash. Over the last few months a number of Serb lawyers have engaged in such "buy back" schemes, often charging exorbitant rates.<sup>89</sup> Kosovars reported being hounded by Serbian lawyers to put up money in the hopes of learning where their loved ones are detained and effecting their release.<sup>90</sup>

There is also evidence of collusion between some of these lawyers and Serbian police, judges and prison officials in what amounts to the state-sanctioned ransoming of Albanian families. Serbian police have reportedly given lists of prisoners to Serb lawyers, who, flush with cash down-payments from prisoners' families, have then been in a position to bribe Serbian judges or the prison wardens themselves to gain approval for the prisoners' release.<sup>91</sup>

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<sup>87</sup> Some of the most egregious violations of Yugoslavia's criminal procedure code committed during this trial, according to defence counsel, were: prohibiting defendants from speaking with their lawyers until after the verdict; prohibiting the lawyers from seeing documents prepared by the prosecution in advance of the trial; prohibiting defendants from speaking in their mother tongue; assigning defence counsel who openly worked for the prosecution; refusing food or breaks to the accused during an 11-hour trial, and savage beatings of the accused by police (Yugoslav Lawyers Committee for Human Rights).

<sup>88</sup> Human Rights Watch release, 16 December 1999.

<sup>89</sup> Rates vary according to location and to the notoriety of the prisoner in question. In Decan, 20,000 DM was the going rate in mid-November,<sup>89</sup> whereas 13,000 DM was the price for those of the 54 whose families purchased their freedom on 4 October 1999, according to Shaip Ramabaja, father of prisoner Bashkiu Shaip Ramabaja, whose whereabouts are still unknown.

<sup>90</sup> ICG interview with Shukrie Rexha, APP president, Priština, 10 November 1999. According to Pajazit Nushi, president of the Council for the Defense of Human Rights and Freedoms, in several instances Serbian lawyers have told families they knew of prisoners' whereabouts and have taken the families' money in order to secure their release, only to have the missing persons turn up in mass graves.

<sup>91</sup> ICG interview, US State Department official, 16 November 1999.

Funds raised by the Kosovar diaspora have also been used to buy out at least some prisoners, according to sources both in Priština and abroad.<sup>92</sup> In addition, some Western officials believe that hundreds of prisoners may be held by non-state actors, including Kosovar Albanians, who are demanding ransoms as high as 50,000 DM. At a kind of "prisoners' market" north-east of Podujevo, near Kosovo's border with Serbia, Albanians have been induced to pay large sums to middle men who often have not fulfilled their part of the bargain by producing the prisoners.<sup>93</sup>

## **VII. INTERNATIONAL EFFORTS THUS FAR**

Attempts made to date by international actors both to secure the prisoners' release and to ameliorate the conditions of their detention have been relatively few and uncoordinated, considering the gravity of the issue and the number of lives at stake. This section provides a brief summary of actions taken by the lead governments and international agencies.

### **A. United Nations Mission in Kosovo (UNMIK)**

Within days of his arrival in Priština in July 1999, the UN Special Representative of the Secretary-General Bernard Kouchner, already keenly aware of the increasing frustration among Kosovars with regard to the prisoner issue and eager to demonstrate the international community's concern, created a special commission to deal exclusively with the questions involving the missing and the prisoners. This commission is chaired by UNHCHR Special Envoy Barbara Davis, and includes ten Kosovars and three observers from the international community.<sup>94</sup> Since October the UNMIK Sub-Commission on Prisoners and Detainees has met on a bi-weekly basis to share information and to take up prisoners' families' concerns. In addition, Dr Kouchner claims to have sent

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<sup>92</sup> Because neither Bujar Bukoshi, one of Kosovo's self-styled prime ministers who has raised millions in Swiss exile, nor Hashim Thaçi, former KLA commander and self-proclaimed prime minister who now holds a critical seat on the governing UN Transitional Administrative Council, nor any of the prisoners' families has wanted to sabotage future buy-backs or to be seen giving money to anyone connected with the Belgrade regime, all such arrangements have been made clandestinely.

<sup>93</sup> [www.independent.co.uk/news/World](http://www.independent.co.uk/news/World), 8 December 1999, by Laura Rozen.

<sup>94</sup> The commission members are: Ljubinko Todorovic, from Gracanica; Dejan Boskovic, from the Serbian Center for Peace and Tolerance in Gnjilane; Kosovare Kelmendi, from the Humanitarian Law Center in Priština; Gani Koci, a former member of UNMIK's now-supplanted Kosovo Transitional Council; Bajram Krasniqi, a member of the self-styled, now-defunct, Thaçi-led Provisional Government of Kosovo; Dashkim Nersati, a Prizren lawyer; Rezhdi Nura, from Djakovica; Goribil Pavic, a lawyer from Gnjilane; Shukrie Rexha, president of the Association of Political Prisoners, and Rafki Tac, from Prizren. International observers include representatives of UNMIK (Bill O'Neil), the OSCE (Laura Bowman), and the ICRC (Vittoria Romano).



"hundreds of letters" to Belgrade regarding the prisoners' fate, which he says have gone unanswered.<sup>95</sup>

## **B. United States**

The US Department of State has been particularly outspoken regarding the trial of Dr Flora Brovina and has repeatedly urged Belgrade to account for, release and return all the Albanian prisoners currently detained in Serbia.<sup>96</sup> In addition, the State Department's Office of Democracy, Human Rights, and Labor has given \$350,000 to support UNHCHR efforts to secure the release of Albanian prisoners and to help provide answers to families as to their relatives' whereabouts.<sup>97</sup>

## **C. European Union**

EU representatives recently promised Kosovar protesters at EU headquarters in Brussels to take up the prisoner issue at the next meeting of EU foreign ministers on 24-25 January.<sup>98</sup> No concrete commitments were made, but EU officials have been in close consultation with the UNHCHR as to how they might contribute substantively to a collective, international effort to locate and identify all missing citizens of Kosovo.<sup>99</sup>

## **D. International Committee for the Red Cross (ICRC)**

Partly because the ICRC is the lead organisation both on identifying the missing and on gaining access to, and better treatment for, the prisoners in Serbia, the agency has come in for the most criticism by prisoners' families and advocates. Families complain that ICRC officials were very slow to obtain initial access to even a limited number of prisoners, and that, when ICRC officials finally did succeed in visiting their relatives in prison, the officials did not contact or report back to family members afterward and, according to the prisoners, conditions in the prisons did not really improve as a result of the agency visits.<sup>100</sup> Family and

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<sup>95</sup> However, other international agency officials complain that UNMIK has not sufficiently pressed Belgrade on the prisoners' behalf (ICG interviews, November 1999-January 2000).

<sup>96</sup> Most recently James Dobbins, US Special Advisor for Kosovo and Dayton Implementation, made a strong statement as he urged Belgrade to reconsider Dr Brovina's conviction, which he called "an example of the bankruptcy that faces the Serbian state and the rule of law in Serbia." (*Reuters*, 10 December 1999.)

<sup>97</sup> ICG interview with UNHCHR Special Envoy Barbara Davis and UNHCHR spokesmen in Priština, 16-17 November 1999; ICG interviews with three state department officials, late November - early December 1999.

<sup>98</sup> AFP, 5 January 1999.

<sup>99</sup> ICG interview, UNHCHR envoy Barbara Davis, 17 November 1999.

<sup>100</sup> ICG interview, 10 November 1999, with Miradie and Ali Aliu, regarding the condition of their son Liburn Aliu, currently detained in the Niš prison; ICG interview, 10 November, with Shaban Hoxha, former prisoner in Niš.

Association for Political Prisoners (APP) members are also frustrated that the turnover among internationals working for the ICRC in Kosovo has been so rapid that there has been little continuity, and they must start from scratch at every meeting in bringing the new arrivals up to speed on the issues.<sup>101</sup>

ICRC officials claim that the agency had already succeeded in visiting some 800 Albanian prisoners in Serbian facilities prior to the 24 March NATO intervention and that, within several weeks of the signing of the Kumanovo agreement, the ICRC went alone to Belgrade “to clarify the numbers and negotiate access” to what the Serbian Ministry of Justice finally acknowledged were 2095 persons in its custody, of whom 166 had been released on 25 June.<sup>102</sup> Within a month, the ICRC had negotiated access to “several dozen” detainees in military prisons, since which time the Committee has received no further knowledge about the dozens more Albanians who are believed to be detained there.<sup>103</sup> Now that 336 detainees have been released,<sup>104</sup> the ICRC is visiting some 1700 prisoners in Serbia.<sup>105</sup>

The ICRC has provided transport back to Kosovo for those released from Serbian prisons and agency officials are willing to consider whether or not it would be appropriate for the agency to assist prisoners' families and lawyers in visiting the prisons.<sup>106</sup> But family members and APP representatives want the ICRC to do far more in pressing Belgrade for the prisoners' release, for information regarding those in military detention, for access to those prisoners and for better access to, and medical attention for, all prisoners.

ICRC officials claim the organisation is unable to advocate the prisoners' release because its mandate is limited by the absence of any mention of the prisoner

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<sup>101</sup> ICG interviews with prisoners' families and APP officials, late October-early November 1999.

<sup>102</sup> ICG interview with Pierre Kraehenbuehl, Head of Operations, for Central and South-Eastern Europe, ICRC, 12 January 2000, in Washington. Mr Kraehenbuehl explained that while “every detainee visited by the ICRC has the possibility of writing a Red Cross message” to his or her family, the ICRC itself cannot report to family members on prisoners or prison conditions out of concern about “a backlash from authorities anywhere in the world” that might preclude the agency from fulfilling its visitation mandate.

<sup>103</sup> ICG interview with Pierre Kraehenbuehl (see above), 12 January 2000. Most information regarding the as-yet unidentified prisoners believed to be in military detention is based on anecdotal accounts reported by released prisoners relating to the transfer of relatives or former cellmates (see footnote 21 for examples). However, Mr Kraehenbuehl holds little hope that those whose whereabouts remain unknown will turn up either in military or in any Serbian prison facility. “At the moment, we do not believe that large numbers of the missing are in detention,” Mr Kraehenbuehl said, adding that he and his colleagues worry more about improving access to those already known to be detained. “Our main concern is that these people simply remain in a legal/political vacuum, and no one is interested in going to negotiate the terms of their release,” he told ICG.

<sup>104</sup> See footnote 9.

<sup>105</sup> ICG interview, Pierre Kraehenbuehl, 12 January 2000.

<sup>106</sup> ICG interview, Pierre Kraehenbuehl, 12 January 2000. Mr Kraehenbuehl pointed out that, because of the real dangers for Albanians traveling anywhere in Serbia proper, virtually no Kosovar Albanians have dared to cross most of Serbia to visit those family members detained in the north, in Sremske Mitrovica prison. These prisoners have only been visited by the ICRC, according to Mr Kraehenbuehl.

issue in the Kumanovo agreement. "We will not ask for the release of the prisoners because Kosovo is still part of the FRY and the FRY has the right to detain people. No provision was made in the military-technical agreement with regard to that," explained Vittoria Romano, the ICRC protection coordinator in Priština.<sup>107</sup>

A number of international officials, taking a cue from the official ICRC position, have advised against strong advocacy on the prisoners' behalf for fear of alienating Belgrade and thereby further hampering ICRC's already limited access to the nearly 2000 prisoners it has succeeded in visiting thus far. But ICRC officials in Priština did not believe their access would be jeopardised by international advocacy on the prisoners' behalf and actually seemed to welcome such efforts.<sup>108</sup>

Moreover, ICRC's stated legal argument for not pressing the Belgrade regime does not take into account its own definition of the Kosovo conflict as both an international one and an internal armed conflict, under which, as argued above in Section III, civilians' rights in detention would be protected both by Common Article III of the Geneva Conventions and the later Protocol II to the Geneva Conventions.<sup>109</sup> Therefore, ICRC officials, and those of other international agencies, have every justification under international humanitarian law to actively advocate the prisoners' release, due process, proper medical attention, and humane treatment in detention.

To relieve the ICRC of the full burden of tracing missing persons, verification and family notification of those confirmed dead or in detention, negotiating access to prisoners, conducting regular prisoner visits, facilitating medical attention to prisoners, and providing escort to releasees, the International Commission for Missing Persons (ICMP), an independent agency that has proven effective in tracing people and identifying remains in post-war Bosnia, should be encouraged to work in Kosovo as well. The presence of the ICMP would enable the ICRC to concentrate its resources on matters relating directly to the prisoners and would strengthen the international appeal to Belgrade to release the names and whereabouts of all Albanian prisoners still in its custody.

## **E. United Nations High Commissioner for Human Rights (UNHCHR)**

UN SRSG Bernard Kouchner named the High Commissioner's Special Envoy to the FRY, Barbara Davis, to head the UNMIK Sub-Commission on Prisoners and Detainees. Ms Davis has been working on the prisoner issue since the summer of

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<sup>107</sup> ICG interview with Vittoria Romano, Priština, 4 November 1999.

<sup>108</sup> "Now, just because we can't do it, it doesn't mean other bodies can't do it," advised an ICRC official in Priština, "the UN or the United States government or whomever. We haven't heard very many who have asked that up 'til now. Maybe they are not very interested, really." (ICG interview, early November 1999).

<sup>109</sup> See Section III above.

1998, "trying to keep all parties apprised and to create a context in which ICRC could do its job," she said.<sup>110</sup>

Ms Davis says she has met only twice with the Federal Ministry of Justice in Belgrade, which, she says, "has been a cooperative part of this process. "Part of the work of the Commission is to build confidence assuredly and steadily on all sides, and I think we're making progress." However, Ms Davis said she hadn't "had a chance to touch base with the ICRC regarding those Albanians believed to be held in Serbian military prisons. "At least by law, [international agencies] should be permitted access to the places of military detention," she said, but added, "We've not put it to the ultimate test."<sup>111</sup>

In mid-November the UNMIK commission resolved to advocate the immediate release of those prisoners in four vulnerable groups: the sick (more than 50), the wounded (some 200), the children (25 boys, between the ages of thirteen and seventeen), and women (eleven).<sup>112</sup> "Let's see where we go with that, as a first gesture of good faith," Ms Davis said, pointing out that there had been some releases from Serbian prisons, and that the Ministry of Justice had promised the release of several hundred more.

But Ms Davis says she has felt somewhat hamstrung by the dearth of international support for her efforts. "When one has to operate in a climate in which international and local actors neglected to address this issue, it is quite an exercise to build a political consensus again for taking a brave position," she said. Ms Davis has been obliged to run the entire FRY program virtually alone and on a shoestring budget, making it difficult for her to travel all over the FRY taking testimonies from prisoners' families while attempting to monitor prisoners' trials<sup>113</sup> and to keep abreast of developments inside Kosovo.

The UNHCHR has been criticised for overestimating its ability to take charge of all of these matters, given the agency's limited capacity. Its insistence on asserting authority in these areas has discouraged and inhibited other relevant agencies and offices from taking more initiative, these critics claim.<sup>114</sup>

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<sup>110</sup> ICG interview with UNHCHR Special Envoy Barbara Davis, 17 November 1999.

<sup>111</sup> Nor, according to Ms Davis, has the UNHCHR attempted to visit some of the better known, politically explosive figures who are not on the Serbian government lists, such as former KLA political spokesman Albin Kurti.

<sup>112</sup> In June, one 20-year-old female prisoner gave birth to a baby boy at the Pozarevac prison (HLC communiqué, 10 October 1999).

<sup>113</sup> Ms Davis was one of only three international observers at the 11 November opening of Dr Flora Brovina's trial in Niš.

<sup>114</sup> ICG interviews with Kosovars, Western officials, ex-pats participating in the international mission in Kosovo, late-October - early December 1999.

Ms Davis admits that her office has been "stretched," and she is hopeful that, with the recent grant from the US Department of State<sup>115</sup> and possible funding from the European Union, it will finally be possible to establish a mechanism for identifying and locating the missing and dead, determining exactly how many persons remain in detention and developing strategies for securing their release.

## **VIII. CONCLUSION**

While Kosovar Albanians remain relieved and grateful to the international community for having freed them from Belgrade's stranglehold, it is clear that the ongoing detention in Serbia of thousands of Albanian prisoners continues to be an open wound and a central obstacle to peaceful co-existence between Kosovar Albanians and Serbs. "There can be no rebuilding of civilian life in Kosovo unless we have our prisoners released," declared Shukrie Rexha of the Association of Political Prisoners.<sup>116</sup>

Having finally succeeded at tremendous cost in ousting Serbian forces from Kosovo and depriving Milošević of any direct control over people's lives there, the international community must not allow progress in rebuilding the province or in preparing for its self-governing, democratic future to be jeopardised by this critical unresolved matter.

Under the authority accorded all UN member states by the Third and Fourth Geneva Conventions and Protocol II, the international community has every legal justification to press Belgrade for both the prisoners' fair and humane treatment and their timely release. The regrettable omission of this matter from the peace agreements that ended the Kosovo war, while making it necessary now to develop and agree upon the modalities for effecting the prisoners' release, should serve as no impediment to firm advocacy on an issue that, for so many, signifies that the war is not yet over.

Nor can the international community afford to take its time. The patience of the prisoners' families has been stretched to breaking point.<sup>117</sup> They are being told

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<sup>115</sup> The \$350,000 grant from the office of the Assistant Secretary of State for Democracy, Human Rights, and Labor, mentioned above.

<sup>116</sup> ICG interview, 29 October 1999. As the father of one prisoner put it, "Thanks to the international community, the occupier is no longer here – but we are not free. As long as we have all these prisoners in Serbia, as long as we have all these armed Serbs here, there is no way we can live with them. (ICG interview with Shaip Ramabaja, 10 November 1999).

<sup>117</sup> One former prisoner put it graphically: "These people were kidnapped. There is no other way of saying that. They were taken in big groups, during and after the bombing, and they are just sitting there. Doesn't anybody have any way of doing something about it? If so, they should help now." (ICG interview with former prisoner Shaban Hoxha, 10 November 1999.) As described by Association of Political Prisoners president, Shukrie Rexha, "The pressure on the families is increasing every day. We are trying to keep it under control. This is not possible for much longer. We had hopes in the UNMIK Commission, but we have been so disappointed." (ICG interview, 10 November 1999).

by international actors that everything possible is being done, that all information will of course be passed on, that they should think positively and get on with their lives. In fact, the lead international agencies have neither leaned hard on Belgrade nor been particularly active or responsive to families' concerns. Many families still have no information regarding their loved ones' whereabouts, families' savings are exhausted, and resentment can only grow against the West and the entire international mission in Kosovo for suggesting that it is time to move on.

ICG strongly urges the international community to undertake and to follow through on the measures outlined below.

## **IX. RECOMMENDATIONS**

### **A. Representations Generally**

- 1) All states and international organisations who are in contact with the Government of Yugoslavia should take every available opportunity to press the Belgrade authorities for:
  - a) a full accounting of the names and whereabouts of all Albanian prisoners still held in any and all Serbian detention facilities;
  - b) the immediate release of those Albanian prisoners in Serbian custody arrested in the course of the Kosovo conflict and not yet charged with any crime;
  - c) the immediate release of, and suspension of charges against, those Albanian prisoners detained during the Kosovo conflict who have been charged with terrorist or treasonous acts relating to the war;
  - d) the immediate release of, and amnesty for, those Albanian prisoners detained during the Kosovo conflict who have since been convicted and sentenced by courts in Serbia proper;
  - e) the transfer from Serbia into Kosovo, and from Serbian custody into KFOR custody, of all Albanian prisoners who were convicted and sentenced in Kosovo prior to the NATO bombing for other than common crimes;
  - f) the provision of full documentation on the alleged crimes of all Albanian prisoners so that information on prisoners who may genuinely be suspected of war crimes and crimes against humanity may be turned over to the appropriate authorities;

- g) pending their release, the humane treatment of all Albanian prisoners in accordance with international humanitarian law;
- h) access to all Albanian prisoners by international humanitarian organisations, family members and competent legal representatives of the prisoners' own choosing; and
- i) for those prisoners awaiting trial, timely notification of the charges against them, sufficient time and information for their chosen counsel to prepare a proper defence, and trial-monitoring by accredited international observers to insure that said trials uphold international standards of fairness.

**B. United Nations Mission in Kosovo (UNMIK)**

- 2) UNMIK should be the primary organisation within Kosovo for ensuring systematic and co-ordinated international action on the prisoners issue along the lines recommended in this report.
- 3) The UNMIK Sub-Commission on Prisoners and Detainees should use the financial assistance already committed by Western governments to attempt, with the help of the International Committee for the Red Cross (ICRC), the International Criminal Tribunal for the former Yugoslavia (ICTY), and other appropriate international agencies, to establish the whereabouts and identification of the missing and "disappeared," through an exhaustive program of interviews, exhumations and the search for, and thorough examination of, available documents.

**C. Kosovo Force (KFOR)**

- 4) KFOR commanders should take particular advantage of their regular military-to-military contacts with Yugoslav commanders to make the representations identified in recommendation (1).
- 5) KFOR should create a mechanism inside Kosovo for the detention of those Albanian prisoners transferred into KFOR custody.
- 6) KFOR should provide escort to lawyers and families wishing to visit their clients and family members at least as far as the demilitarised zone separating Kosovo from Serbia. (From there, the ICRC should assist).
- 7) KFOR should take advantage of military-to-military contacts with the Kosovo Protection Corps and any former KLA redoubts to obtain information as to the number and whereabouts of missing or detained Serbs, Turks, and Roma, and to facilitate a prisoner exchange.

**D. Other international agencies**

- 8) The United Nations High Commissioner for Human Rights (UNHCHR) should initiate, in collaboration with other international and local lawyers' and human rights organisations, monitoring of the trials of all Albanian prisoners.
- 9) The ICRC and UNHCHR should:
  - a) meet with former KLA leaders and press for access to the missing or detained Serbs and members of other minorities; and
  - b) meet with Serb leaders in Kosovo to investigate claims that Albanian civilians are being held illegally at a number of "secret" Serb detention centres maintained inside the province.
- 10) The ICTY should state its willingness to investigate, in the context of the Albanian prisoners, violations of the law of the customs of war.
- 11) The International Commission on Missing Persons should take up the issue of the prisoners and missing persons and should be encouraged to work in collaboration with the ICRC to gather any and all information possible.

**E. European Union and United States**

- 12) The EU should take the primary political responsibility for ensuring that all issues involving Albanian prisoners and missing persons are systematically addressed, and that the agencies dealing with these issues within Kosovo are properly resourced.
- 13) EU members, in consultation with the US and other members of the UN Security Council, should draft and introduce a UN Security Council resolution calling for the immediate release from Serbian custody of all Albanian prisoners detained in the course of the Kosovo conflict.
- 14) EU members and the US should initiate action, in consultation with other UN member states, to make it clear that the ultimate lifting of sanctions against Yugoslavia, as well as Serbia's participation in the Stability Pact for South Eastern Europe, must be conditioned on the resolution of all outstanding issues concerning Albanian prisoners.
- 15) The EU should take particular steps to encourage leaders of the Serbian opposition and Orthodox Church to speak out on the prisoner issue as a matter of fundamental human rights and respect for international law.