

TABLE OF CONTENTS

1.	The arrests and detentions.....	1
1.1	The unlawful arrest and detention of Ahmad H. Sa'id, Dr Abdul Raqiz and A.B. 1	
	Amnesty International's concerns.....	2
1.2	Unlawful detention of at least 25 persons, including minors	3
	Amnesty International's concern	4
1.3	The unlawful arrest and detention of Muhamed Zentagui, Redouane Guesmia and Ameer Sofiane	4
2.	Allegations of ill-treatment	5
2.1	Alleged Ill-treatment of Ahmad Sa'id.....	5
2.2	Further allegations of ill-treatment.....	7
	Amnesty International's concern	7
3.	Violation of Detention Rights	8
3.1	Failure to inform detainees of their detention rights.	8
3.2	Failure to promptly inform detainees of the reasons for their arrest.....	9
3.3	Denial of the right of access to counsel, and of the right to remain silent	11
	Amnesty International's concerns.....	12
3.4	Failure to bring the detainees before a judge to authorize their detention	13
	Amnesty International's concern	13
3.5	Denial of the right to inform relatives of their detention, and of the right to visits by relatives.....	14
3.6	The right of nationals to contact their embassy or representative of the competent international organization.....	15
4.	Conclusions and recommendations.....	16
	APPENDIX.....	18
	Lack of legal basis for KFOR arrests and detentions	18

FEDERAL REPUBLIC OF YUGOSLAVIA (Kosovo)

International officials flout international law

“Why did you put us in this forest of steel?” - Dr Abdul Raqiz

Amnesty International is seriously concerned at incidents of arbitrary arrest and unlawful detention in Kosovo by Kosovo Force (KFOR) personnel from the international military force in Kosovo in blatant contravention of domestic and international law and standards. The organization is further concerned at allegations of ill-treatment of detainees by KFOR personnel, as well as the denial of their rights while in detention. Amnesty International’s concerns are amplified by the fact that the UN Mission in Kosovo (UNMIK), which administers Kosovo under UN Security Council Resolution 1244/99, is charged with the protection and promotion of human rights and the rule of law in the province. On 6 June 2002 the organization sent an 18-page memorandum to KFOR detailing its concerns and urging a full and impartial investigation into the unlawful arrest and alleged ill-treatment by KFOR personnel of three men arrested in December 2001. On 9 August 2002, Lord Robertson, Secretary General of the North Atlantic Treaty Organization (NATO), replied to Amnesty International. In his letter, Lord Robertson wrote:

A ...I am quite clear that the existing legal framework allows KFOR, within its current mandate and, where appropriate, in coordination with competent civil authorities, to carry out detentions....So far as the specific allegations in respect of [names of the three men arrested] are concerned, the NATO military authorities have reviewed these cases. However, further action lies with the individual nations involved in the detention operation and at Camp Bondsteel [the United States KFOR base where the men were detained]. I have therefore brought your letter to the attention of these national authorities, requesting that they undertake whatever investigations they believe may be required as well as any follow-up action as appropriate.©

At the time of writing, Amnesty International had received no further reply. In July 2002 three more men were unlawfully arrested by KFOR and held in detention for between 43 and 51 days without being brought before a judicial body to authorize their detention.

1. The arrests and detentions

1.1 The unlawful arrest and detention of Ahmad H. Sa'id, Dr Abdul Raqiz and A.B¹.

Amnesty International’s concerns arise from Operation Wiseman, a “search and detention operation” carried out by Italian, Spanish and UK KFOR troops on Friday 14 December 2001 at the offices of two international non-governmental organizations: at the Djakovica office of the US-based Global Relief Foundation (GRF), and at both the Djakovica and Pristina offices of the UK-based WAQF Al-Birr Trust/Kosovo Orphans Family Fund (KOFF). According to a KFOR News Release dated 18 December 2001, during the operation “three men from the Global Relief

¹ Name withheld on request
AI Index: EUR 70/008/2002

Foundation were detained for questioning about suspected activities involving international terrorism”.

The operation in Djakovica, reportedly carried out by approximately 100 Italian and Spanish KFOR troops and a number of Special Police or *carabinieri* - accompanied by tanks and helicopters which surrounded the offices of the non-governmental organizations - resulted in the arrest of two Iraqi citizens, Ahmad H. Sa'id and Dr Abdul Raqiz at the GRF office, and of a Swedish citizen, A. B. , at the KOFF office. After arrest the three men were initially taken to the Italian KFOR head-quarters in Djakovica before their subsequent transfer by helicopter to the custody of US KFOR troops at the KFOR detention facility at US Camp Bondsteel (BDF), where they were detained until 21 January 2001 on the order of the Commander of KFOR (COMKFOR).

Amnesty International's concerns

Amnesty International believes that the arrests and subsequent detention of Ahmad Sa'id, Dr Abdul Raqiz and A. B. were unlawful in that they were not carried out in accordance with domestic law or international standards relating to arrest and detention. In the absence of applying legal procedures or standards to which KFOR must adhere during arrest and detention, such arrests are arbitrary under Article 9(1) of the ICCPR, which states that: “No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.” All countries supplying troops to KFOR are party to the ICCPR, also incorporated into applicable law in Kosovo, and as such are subject to these provisions.

Amnesty International believes that if there were reasonable grounds to suspect these men of belonging to a “terrorist” organization, then it would have been possible for them to have been arrested by UN Civilian Police (CIVPOL) under applicable domestic law. UNMIK Regulation 2001/12, *On the Prohibition of Terrorism and Related Offences*, makes provision for the arrest, detention and trial of persons reasonably suspected of committing or aiding and abetting terrorism. The Regulation provides for arresting those suspected of committing an act of terrorism (s.2); possessing credible information about the planning or commission of an act of terrorism (s.3.1); assisting a perpetrator or their accomplice with the provision of funds or material resources, obstructing the discovery or apprehension of such persons or rendering assistance to such persons (s.3.2). S. 4 also makes provision for those who provide, solicit, collect or conceal funds or other material with the intent, knowledge or reasonable grounds that they are to be used in whole or in part for the purposes of terrorism. In addition, s. 6 also makes provision for the application of the Regulation to acts committed outside of the territory of Kosovo, where the accused is a resident of Kosovo.²

Amnesty International considers that the detention of Ahmad Sa'id, Dr Abdul Raqiz and A. B. also violates Article 5 of the ECHR. This article permits detentions only on such grounds as specifically set out in Article 5(1)(a-f) and in accordance with a procedure prescribed by applicable law. The three men were not detained after conviction by a court; neither were they detained in order to be brought before a *competent court* on reasonable suspicion of having committed an offence. In fact they were never brought before a court during the 38 days during which they were deprived of their liberty. Their detention by COMKFOR, without charge and without judicial

² Those deprived of their liberty on suspicion of any of the acts set out in UNMIK Regulation 2001/12 are, under UNMIK Regulation 2001/28, provided with the same guarantees as other suspects, except that s.3.7 provides that the right to defence counsel may be delayed for up to 24 hours from the time of arrest where the arrested person is suspected of terrorism. In exceptional cases “the *prosecutor or the competent investigating judge* [our emphasis] may... determine that an additional delay of 24 hours is required by the exceptional needs of the investigation of the case”.

authorization, on the basis that these individuals were suspected of being engaged in activities prejudicial to the preservation of peace and public order, or against the security of the state, violates Article 5(1)(c) of the ECHR.³ If the men had been detained on reasonable suspicion of having committed an offence, as set out in Article 5(1)(c), according to the provisions of Article 5(3), Ahmad Sa'id, Dr Abdul Raqiz and A. B. should then have been promptly brought before a judge or *other officer authorized in law to exercise judicial power*. Amnesty International notes that UN SC resolution 1244/99 does not appear to invest COMKFOR with any judicial power, nor are COMKFOR's powers subject to judicial scrutiny. As noted in the attached appendix, Amnesty International believes that with the existence of a fully functioning international and domestic police force, the basis for such KFOR arrests no longer operates. Furthermore, the organization specifically considers arrests and detention by KFOR under COMKFOR detention directive 42 to be in contravention of international law and should cease forthwith (see appendix).

1.2 Unlawful detention of at least 25 persons, including minors

Amnesty International is also concerned about the detention by Italian, Spanish and UK KFOR personnel of a number of persons including minors at the KOFF and GRF offices in Djakovica, and at the KOFF offices in Pristina for a period of approximately eight hours. Amnesty International does not believe that this detention was lawful, as it was not for any of the reasons set out in applicable law or under Article 5 of the ECHR.

Staff at the KOFF office in Djakovica were detained by two armed KFOR personnel in a room in the adjoining house. They were not informed of the reason for their detention. Each person present was asked to give their name and address and following an interview with A. B., each of the other adults present were also separately interviewed about the organization and its work, and the length of their connection with the organization. According to A. B., all the persons present were then interviewed together by the Italian KFOR personnel. These interviews took place without individuals being advised of their rights to a lawyer, or where applicable, an interpreter.

According to a statement made by Lulita Doshlani - Secretary of Waqf/Al-Birr employed at the KOFF office in Pristina - at 1pm on 14 December 2001, approximately 30 UK KFOR troops arrived at the KOFF office. Lulita Doshlani was taken out of her office and detained with nine other individuals in a small locked room, guarded by two KFOR personnel. Those detained included the owner of the house in which the office was located, his wife and their five children aged between eight and 24 years of age; two students who were in Lulita Doshlani's office at the time KFOR arrived were also detained. They were held - by armed UK KFOR personnel - in an unheated, unfurnished room, and had to sit on the floor for several hours. Despite complaining of the cold they were only provided with blankets after several hours. Detainees were not given permission to visit the lavatory unescorted, and were not given any privacy when they did so. Those detained were also denied the facilities to pray and to break their fast in accordance with their religious beliefs. During her detention Lulita Doshlani, an Albanian, was questioned on three occasions by UK KFOR personnel, who were accompanied by an Albanian language interpreter.

At the GRF office in Djakovica, according to Ahmad Sa'id and Dr Abdul Raqiz, at least nine adults and several children were detained from 1pm to 5.30pm on 14 December 2001. Those detained included three GRF staff - an engineer, his assistant and the assistant doctor, as well as a woman employed as a cleaner by GRF. They also included five other adults, including an 80-year-old man, one male patient and his children, and three women and two or three children about 10 years of age, who had been brought to see the doctor. The old man was allowed to go home, but

³ See judgment of the European Court of Human Rights in *Lawless v. Ireland*, (1 July 1961), paras. 9, 12-14.

Ahmad Sa'id reported that the cleaner employed by GRF was also taken to the police station and kept there until 5.30pm.

Amnesty International's concern

Amnesty International considers that the detention of persons in both the KOFF and GRF offices in Pristina and Djakovica failed to abide by international standards. In particular, the organization is concerned that none of those detained were informed of the reasons for their detention or their rights under applicable law. The organization is also concerned that each individual was interviewed - however briefly - without being able to receive the assistance of a lawyer or - with the exception of Lulita Doshlani - the assistance of an interpreter.

The organization is also concerned that the detainees were kept in unsuitable conditions which failed to comply with Article 10 of the ICCPR which provides that, "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person".

Finally Amnesty International is particularly concerned at the detention of children at both the GRF and KOFF offices, in contravention of Article 37(b) of the International Convention on the Rights of the Child, which is applicable law in Kosovo,⁴ and which states that "no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time".

1.3 The unlawful arrest and detention of Muhamed Zentagui, Redouane Guesmia and Ameer Sofiane

According to information received by Amnesty International, Muhamed Zentagui, Redouane Guesmia and Ameer Sofiane are employees of the Al-Waqf Al-Islami Organization (WIO) which works together with the Saudi Joint Relief Committee in Kosovo. Muhamed Zentagui was arrested on 25 July 2002 along with two ethnic Albanian Kosovars, his driver Ilir Leka and translator Bekim Ramadani. Following these initial arrests, two other WIO employees, Redouane Guesmia and Ameer Sofiane, were arrested on 27 July 2002. Ilir Leka and Bekim Ramadani were subsequently released but the three WIO employees remained detained in the Kosovo Force (KFOR) detention facility at US Bondsteel (BDF) under the authority of COMKFOR. Muhamed Zentagui and Redouane Guesmia were finally released on 8 September 2002 after being detained for 45 and 43 days respectively. Ameer Sofiane was released on 16 September 2002 after being detained for 51 days. However, Amnesty International is informed that no charges had been brought against the three men, nor had they at any time been brought before a court to authorize their detention. Furthermore, while the men were allowed to be visited in BDF by their families and by fellow WIO employees, Amnesty International is informed that they were told by officials at BDF that they had no right to legal counsel until after the investigations had been completed. On release, their passports were withheld, and at the time of writing had still not been returned. Amnesty International is concerned that these detentions too were arbitrary and unlawful and in contravention of both domestic and international law and standards.

⁴ UNMIK Regulation 1999/24, s.1.3.

On 30 August 2002, Amnesty International wrote to the Commander of Kosovo Force (COMKFOR), General Marcel Valentin, to seek clarification of the legal basis on which Muhamed Zentagui, Redouane Guesmia and Ameer Sofiane were being detained at the KFOR detention facility at US Bondsteel. At the time of writing no reply had been received.

2. Allegations of ill-treatment

2.1 Alleged ill-treatment of Ahmad Sa'id

Ahmad Sa'id was arrested at the GRF offices in Djakovica at approximately 6.30pm on 14 December 2001. According to a statement made by him to Amnesty International, Ahmad Sa'id was handcuffed by Italian KFOR personnel and taken, under armed guard, by jeep to what he described as the Djakovica "KFOR Centre" by Italian KFOR personnel. Ahmad Sa'id stated that during the journey the driver of the vehicle indicated that he would hit Ahmad Sa'id as soon as they arrived at their destination. Other Italian KFOR soldiers in the vehicle apparently made derogatory remarks about Islam.

Ahmad Sa'id alleges that when they arrived at the Italian KFOR base in Djakovica, he was taken out of the vehicle by force and that the woollen hat he was wearing was pulled over his eyes "in a violent way". He was pulled by his hand and by his hat, and at the same time was hit from all sides by people he believed to be Italian KFOR personnel. Unable to see where he was going, Ahmad Sa'id then fell onto a wooden ladder which was lying on the ground and was then pulled upright in such a way as to cause pain in his vertebrae - pain he alleged he still suffered from when interviewed by Amnesty International in early March 2002. He reported that he was continuously beaten by Italian KFOR personnel, as he was taken in to what he described as a very cold room where, he states, he was ordered to put his hands and forehead against a wall, and was then kicked on the ankles in order to make him stand with his legs apart. According to Ahmad Sa'id, bruising consistent with allegations that he was kicked was still visible when representatives from the Organization for Security and Cooperation in Europe (OSCE) visited him two weeks later.

Ahmad Sa'id stated that he was then forced to undress to his underwear - his eyes still covered by his hat - after which the beating continued; Ahmad Sa'id estimates that he was beaten for a total period of 15 to 20 minutes by between five and six Italian KFOR personnel. At one point he states that he was hit on the back of his head with such force that his forehead struck the wall. He also states that he was hit or kicked from behind on his genital area when standing with his legs apart, and his hands against the wall, and that when he fell down from the pain, he was ordered to stand up immediately. He said he attempted to remain silent, as he feared that they would increase the beating if he cried out again. He believed that Italian KFOR personnel were going to kill him.

Still dressed only in his underwear, Ahmad Sa'id was reportedly then left in this unheated room for half an hour, during which time he claims that he could hear KFOR personnel laughing at him. He was given no food to eat, although it was Ramadan, and he had yet to break his fast.⁵ After half an hour, a man entered the room and asked him if he was cold; Ahmad Sa'id claims that he was afraid to answer. The man ordered him to the side of the room, and then brought a chair for him to sit on. He also returned with Ahmad Sa'id's clothes and shoes and a heater. After five minutes, he was then handcuffed in metal cuffs and carried by his underarms to a vehicle, which then took him to what he described as a "KFOR airport" nearby.

⁵ On 14 December 2001, *Iftar* (breaking of the fast during Ramadan) should have taken place between 4pm and 5pm. Ahmad Sa'id estimates that he did not eat until approximately 11pm.

With his hat still over his eyes, Ahmad Sa'id reported that he was then pulled up into a helicopter. He reports being "very, very frightened". His face remained covered throughout the flight, and his hat was not removed from over his eyes until he had been taken out of the helicopter.

Ahmad Sa'id was then transferred to the custody of US personnel who immediately took the hat off his face in order to photograph him. He was then held outside - in snow and cold wind - for around half an hour, during which time Italian KFOR personnel removed the metal handcuffs, which were replaced by plastic cuffs by US personnel. Ahmad Sa'id claims that his wrists and hands hurt for more than two weeks following the handcuffing by Italian KFOR. After being kept outside for half an hour in very cold temperatures, Ahmad Sa'id was then taken into an office.⁶ By this time Ahmad Sa'id was very frightened that he would be treated in the same way by US personnel.

Ahmad Sa'id states that he was again required to place his hands against a wall while he was searched; he was then photographed and finger-printed, and asked to sign a document, which he referred to as "the laws of Bondsteel".⁷ He was then instructed to remove his clothes again in order to take a shower, and having been provided with an orange prisoner's uniform, was placed into a cell.

Ahmad Sa'id also reported that at US Camp Bondsteel (BDF) he was regularly woken up for interrogation at night after he had taken sleeping tablets,⁸ - he had been unable to sleep without medication as he was suffering from the stress of being held in isolation, and of not knowing what was going to happen to him.⁹ He stated, "I couldn't sleep without it [sleeping tablets] and they didn't let me sleep with it". He also alleges that he was woken at night at almost hourly intervals, apparently to "make sure we were present and to check on our safety".

Ahmad Sa'id was taken to the military hospital at BDF three times. On two occasions he received treatment for the pain in his back, which he alleges resulted from his ill-treatment, and which caused him problems in walking. On another occasion he was treated for his poor psychological condition. He also reported losing consciousness on one occasion, having been in such a state of anxiety that he had been unable to eat.

The organization understands that Ahmad Sa'id made a statement to US KFOR personnel at BDF, after being transferred into their custody, alleging ill-treatment by members of Italian KFOR during his arrest. He also reported that he was examined by medical staff at BDF.¹⁰ Amnesty International is not aware that any investigation has been initiated into these allegations.

⁶ The day-time temperature in Pristina on 14 December 2001 was between minus four and minus two degrees centigrade.

⁷ *Inter alia*, the document reportedly listed prohibitions against going on hunger-strike, talking to or contacting other detainees, insulting the guards, defecating or urinating in his cell. When exercising detainees were required to walk with their hands behind their backs and not to go within in one metre of the fence around their individual detention area.

⁸ Ahmad Sa'id reports that he was prescribed painkillers, sleeping tablets and anti-diarrhoea medicine by medical staff at BDF.

⁹ A. B. also reports being unable to sleep due to concerns about his family and his detention.

¹⁰ On release Ahmad Sa'id requested, but was not given, a copy of the statement he made to BDF medical and custodial staff alleging that he was subjected to ill-treatment by Italian KFOR personnel.

2.2 Further allegations of ill-treatment

Amnesty International is also concerned that, based on their statements, each of the three men was subjected to cruel, inhuman and degrading treatment. All three were blindfolded during the helicopter flight to BDF: Ahmad Sa'id and A. B. were "blindfolded" with their own hats, and a blue fabric bag was placed over Dr Abdul Raqiz' head. All three men describe being extremely frightened: A. B., for example, told Amnesty International that he was in fear of his life, as he thought that he might be thrown out of the helicopter.

Both Ahmad Sa'id and A. B. reported feelings of anxiety and insecurity about their own personal situation, and concern for their families, heightened by their isolation; both reported being unable to eat or get to sleep easily because of this, and that they received medical treatment for their anxiety. All three men reported being subjected to sleep deprivation, as a result of the constant checking on them by detention staff, and all three complained about being detained in isolation from other prisoners.

Amnesty International's concern

Amnesty International is seriously concerned about the allegations that Ahmad Sa'id was subjected to cruel, inhuman and degrading treatment during his arrest. Allegations which, if upheld, would violate his rights under Article 3 of the ECHR, Article 7 of the ICCPR, and the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, all of which are incorporated into applicable law in Kosovo under UNMIK Regulation 1999/24, and which all people exercising public duties have the obligation to uphold.¹¹

The prohibition against torture is absolute, and not subject to suspension: Article 2 (2) of the Convention against Torture provides that "no exceptional circumstances whatsoever, whether a state of war of a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture".

Principle 6 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that "No person under any form of detention shall be subjected to torture or to cruel inhuman or degrading treatment or punishment...", and includes, within this definition, "the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or his awareness of place and the passing of time".

The organization also notes that under Article 14 of the Convention against Torture, Ahmad Sa'id, Dr Abdul Raqiz and A. B. have "enforceable rights to fair and adequate compensation". The organization is urging COMKFOR to initiate a further investigation into allegations that Ahmad Sa'id, Dr Abdul Raqiz and A. B. were subject to further ill-treatment - specifically sleep deprivation - during their detention and interrogation at BDF (see 3.4 below).

¹¹ Section 3 of UNMIK Regulation 1999/24 states that "all persons undertaking public duties ... shall observe internationally recognized human rights standards, as reflected in particular in [*inter alia*] the UDHR, ECHR, ICCPR and CAT".

3. Violation of Detention Rights

Amnesty International believes that while depriving them of their liberty, KFOR failed to respect the rights of Ahmad Sa'id, Dr Abdul Raqiz and A. B. as detained persons under applicable domestic law and those international standards incorporated into applicable law in Kosovo under UNMIK Regulation 1999/24.

3.1 Failure to inform detainees of their detention rights.

Section 2.2 of UNMIK Regulation 2001/28 requires an arrested person to be informed,

“(a) orally of the rights set forth under Section 2.1 (b)-(f) immediately after arrest, and

(b) in writing of the rights set forth under the present regulation”.

Both the Italian KFOR personnel who were responsible for their arrest, and US KFOR personnel - into whose custody they were transferred - failed to inform Ahmad Sa'id, Dr Abdul Raqiz and A. B. of their rights - verbally or in writing - at the time of their arrest, or at any subsequent point in the 38 days during which they were deprived of their liberty, in contravention of both applicable law and international standards.¹²

The only document with which the three men were provided on being taken into custody apparently listed a number of rules which detainees were required to observe at BDF, and which reportedly stated that the punishment for violating any of these rules could include the denial of food.¹³

Instead, they were informed of their rights by representatives of the OSCE 14 days after their arrest, and by representatives of the International Committee of the Red Cross (ICRC) 32 days after their arrest, rather than by KFOR.

Section 2.1, UNMIK Regulation 2001/28, *On the Rights of Persons arrested by Law-Enforcement Authorities*, sets out the following rights of arrested persons: (a) to be informed about the reasons for the arrest in a language that he or she understands; (b) to remain silent and not to answer any questions, except to give information about his or her identity; (c) to be given the free assistance of an interpreter.....; (d) to receive the assistance of a defence counsel of his or her choice.....; (e) to notify or require the law enforcement authorities to notify a family member or other appropriate person about the arrest. Further, Section 2.1 (f) sets out the right of a detainee, “If she or he is a foreigner, to communicate orally or in writing with a liaison office, consular post, the

¹² Principle 13 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles) provides that at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, a detained person should be provided with information on, and an explanation of his/her rights, and how to avail himself/herself of such rights.

¹³ Amnesty International is concerned that this may violate Rule 32 (1) of the UN Standard Minimum Rules for the Treatment of Prisoners, which states that, “Punishment by [close confinement or] reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it”.

diplomatic mission of the state of which he or she is a national or with the representative of the competent international organization....”.

Article 9 of the ICCPR, applicable in Kosovo, provides that:

1. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

2. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.

3. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that a court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

4. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

3.2 Failure to promptly inform detainees of the reasons for their arrest

Ahmad Sa'id, Dr Abdul Raqiz and A. B. were not provided with any reasons for the deprivation of their liberty until six days after their initial detention.

No such reasons were provided to the three men during the search and detention operation when they were questioned. During the search of the KOFF offices, A. B. was questioned for some two hours, in the presence of a translator and another person, who A. B. believed to have been a US citizen. When A. B. asked the commanding officer present why KFOR troops had come to the KOFF offices, the KFOR officer replied that he did not know, and that the operation had been ordered from higher up in KFOR. When A. B. was arrested between 6pm and 6.30pm, he was not provided with any reasons for arrest or with the details of any charges against him. Neither were Ahmad Sa'id or Dr Abdul Raqiz provided with this information when they were arrested at approximately the same time.¹⁴

Neither were the three men provided with a reason for their arrest when they arrived at the detention facility in Djakovica or when they first arrived at BDF on the night of 14 December 2001.

On 16 December 2001, two days after his arrest, Ahmad Sa'id was shown a piece of paper, bearing a KFOR insignia on each top corner, which apparently set out the grounds for detention. Ahmad Sa'id was not permitted to retain this paper, but recalled that it bore words to the effect that he was a director of GRF, which had a strong link with extremists, with Iraq and with the attack on the *USS Cole*. Ahmad Sa'id was requested to sign the document and acknowledge its receipt. However, according to his statement, 15 minutes later another officer - who wore spectacles, and whom he knew as "Limo" - appeared, and told Ahmad Sa'id that the paper was a mistake, and the document was taken away.

A. B. also reported receiving a similar document on 16 December 2001, which he was also not allowed to retain. He recalled that the document stated that he worked for GRF, that he was involved in the attack in October 2000 on the United States aircraft carrier *USS Cole*, and that he had contact with Iraq. A. B. reported that a few hours after he had received this document, an officer returned and took it away, stating that there had been a mistake," and that I was not supposed to have that notice".

¹⁴ According to Ahmad Sa'id, KFOR proposed to arrest a Mazen Arnaout, but instead arrested Dr Abdul Raqiz, who worked for GRF as a doctor.

On 20 December 2001, six days after their arrest, each of the men was issued with another document, dated 16 December 2001, which stated the grounds for their detention in general terms: “COMKFOR considers you a danger to the safe and secure environment of Kosovo, and believes that if released, you would still pose a danger”. The document also stated that, “In a recent hearing¹⁵ it was determined that [...] still pose such a threat in Kosovo”. The document cited the authority of UNSCR [UN Security Council resolution] 1244[1999] under which the Commander of KFOR had mandated their detention be extended “for *another* 30 days” [emphasis added]. Amnesty International notes that Ahmad Sa’id, Dr Abdul Raqiz and A. B. had not received any document authorizing their detention for the preceding two days, 14 to 15 December.

After 30 days, on 16 January 2002, their detention was extended until 8 February 2002, on the grounds that: “Your suspected associations with international terrorist activities and organizations is the basis of his [COMKFOR’s] assessment”.¹⁶ This decision, again authorized by COMKFOR, stated that the men still constituted threats to the security of Kosovo and that they would continue to be threats if they were to be released.

Amnesty International does not believe that the reasons provided in these documents were sufficiently specific to enable Ahmad Sa’id, Dr Abdul Raqiz or A. B. to challenge the legality of their detention.

UNMIK Regulation 2001/28 Section 2.1 (a) requires that detainees should be informed about the reasons for their arrest in a language that she or he understands. Article 5 (2) of the ECHR and Article 9 (2) of the ICCPR provides that anyone who is arrested or detained must be informed immediately of the reasons why they are being deprived of their liberty. The reasons given for the detention must be specific, and must include a clear explanation of the legal and factual basis for both arrest and detention.¹⁷

A key purpose of the requirement to inform detainees about the reasons for their arrest and detention is to allow people deprived of their liberty to challenge the legality of their detention (see 3.4 below). Therefore the reasons given must be specific, and include a clear explanation of the legal and factual basis for the arrest or detention.

Amnesty International is concerned that the three men were not informed immediately - or even within 48 hours of arrest - of the reasons for their arrest. Further, neither the subsequently withdrawn document, nor the decision extending their detention dated 16 December 2001, provided Ahmad Sa’id, Dr Abdul Raqiz or A. B. with details of a recognizable offence on suspicion of which they had been arrested.

¹⁵ None of the men reported having received notice of any hearing, attending such a hearing, or being informed that counsel had been appointed to represent them at such a hearing.

¹⁶ Although all three men understand and speak English, they each reported that they found this document difficult to understand, but they were never provided with an interpreter, and were never made aware of their right to an interpreter. The European Court for Human Rights has held that an arrested person must be given in “simple, non-technical language that he can understand, the essential legal and factual grounds for his arrest ...”. *Fox, Campbell and Hartley* (18/1989/178/234-236), 30 August 1990, paras. 40 -41.

¹⁷ See judgment of the European Court of Human Rights in the case of *Fox, Campbell and Hartley* (18/1989/178/234-236), (30 August 1990), paras, 40-41.

3.3 Denial of the right of access to counsel, and of the right to remain silent

Amnesty International also understands that Ahmad Sa'id, Dr Abdul Raqiz and A. B. were regularly interviewed during their detention, in the absence of any lawyers to advise and represent them. Amnesty International is concerned that this contravenes international standards which recognize the right of detainees to counsel, including during interrogation.¹⁸

On their arrival at BDF, Ahmad Sa'id, Dr Abdul Raqiz and A. B. were not advised by US KFOR of their right - under applicable domestic law - to access to counsel of their choice. Neither did KFOR advise them of this right when they were interrogated two days after their initial detention at BDF, nor before any of the subsequent and repeated interrogations.

Amnesty International is also concerned that the three men were interviewed without being notified of any other rights, including the right to remain silent. The organization understands that the three men were not informed of this right until 32 days after their detention, when they were informed of this right by representatives of the ICRC.

Interviews were carried out at various times of day, but usually in the evening, and were conducted by one individual, in the men's own cell rather than in an interview room. According to Dr Abdul Raqiz, he was separately interrogated by three men, whom he knew as "Chris", "Fig" and "Rick", although Ahmad Sa'id reported that none of these men questioning him wore identifying name-tapes on their clothing, unlike other military personnel at BDF. Amnesty International is concerned that all interrogations were reportedly conducted in the detainee's cell, where no other person was present, and that these interrogations did not appear to have been recorded.¹⁹

Ahmad Sa'id estimates that he was questioned on some 20 occasions, always without a lawyer present. Ahmad Sa'id reports that he was questioned about the GRF, its activities, its beneficiaries and relationships with other organizations, and about aspects of his faith. Subsequent interrogations repeatedly covered the same ground. The interviews took place in his cell, at different times, including early in the morning and late at night, often after Ahmad Sa'id had taken the sleeping tablets prescribed to him by medical staff at BDF, which rendered him tired and confused.

Amnesty International is concerned that Ahmad Sa'id was reportedly interrogated after he had taken sleeping tablets, and notes that the European Committee for the Prevention of Torture and other Cruel or Inhuman Treatment or Punishment has called for the need for clear guidelines in the conduct of police interviews with, *inter alia* "persons who are under the influence of drugs".²⁰

Approximately two weeks after their detention - the morning after they had been visited by representatives of the OSCE - each of the three men was woken up and questioned by an unidentified man wearing plain clothes, at or around 4am to 5am. This individual interviewed each of the detained men for a short period of time. According to A. B., this man spoke English with an accent, which was possibly European, and certainly not American.

¹⁸ Principles 1 and 7 of the Basic Principles on the Role of Lawyers; Principle 17(1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; see also Judgment of the European Court of Human Rights in the case of *Murray v United Kingdom*, (41/1994/488/570), (8 February 1996).

¹⁹ The UN Special Rapporteur for the CAT has recommended that each interrogation should be initiated with the identification of all persons present, A/56/156, para. 39(f). The Special Rapporteur has also recommended that "Evidence from non-recorded interrogations should be excluded from court proceedings", A/56/156, para. 39(f).

²⁰ CPT, 2nd General Report, para.39.

All three detained men also alleged to Amnesty International that at least one member of the United States Government's Federal Bureau of Investigation (FBI) was involved in both the initial search and detention operation, and in a subsequent interrogation at BDF.

On 16 January 2002, the date on which COMKFOR authorized the extension of the detention of the three men, Ahmad Sa'id, Dr Abdul Raqiz and A. B. were interviewed about their knowledge of a number of international organizations by a man who they each believed to be an FBI officer. They identified him as the same person who had accompanied KFOR troops when they were arrested on 14 December 2001. Ahmad Sa'id stated that during this interview, he was - for the first time - presented with a paper setting out his detention rights, including the right to remain silent and the right to a lawyer. A. B. reported that he was interviewed for around ten minutes, during which time the FBI officer reportedly told A. B. that as he was "green"²¹, he had nothing to worry about, and would be released as soon as possible. He also told A. B. that the decision to release him would be made by the FBI and the Criminal Investigation Agency (CIA), and not by COMKFOR. Although the men's detention was extended on the same day until 8 February 2002, A. B. believes that the FBI officer talked to KFOR, and that they were released - as a result of this intervention - five days later.

Amnesty International's concerns

Amnesty International is concerned that these arbitrary detentions, conducted outside of applicable law, may have been carried out at the request of the US Government, and that the decision to release the three men may also have been made by US Government officials.

Amnesty International is extremely concerned that none of the three detainees were promptly informed of their right of access to defence counsel and of their right to remain silent during interview, either at the time of their arrest, or whenever they were interviewed, in violation of UNMIK Regulation 2001/28, Section 2.1 (b) and (d), 2.2 and 2.3 respectively.²²

The organization is further concerned that KFOR made no attempt to provide the detainees with a lawyer once they had been informed of, and expressed a desire to exercise, this right. After 14 days in detention, the three men were visited by representatives of the OSCE, who informed them of their right to a lawyer. Following this meeting, A. B. asked for access to a lawyer, but reports that the officer to whom he made this request apparently asked him why he needed a lawyer and added, "Have you done anything bad?".

Section 2.1, UNMIK Regulation 2001/28, provides for a detained person to receive the assistance of a defence counsel of his or her choice within 24 hours of arrest, although under s.3.7 the right to defence counsel may be delayed for up to 24 hours from the time of arrest where the arrested person is suspected of terrorism; and that an additional delay of 24 hours in access to a lawyer, *in exceptional cases* [our emphasis] may be determined by a prosecutor or the competent

²¹ As in "green light" or "all clear".

²² S2.3 provides that "Whenever an arrested person is interviewed, he or she shall first be informed of the right to remain silent, as set forth in Section 2.1(b), and to receive the assistance of defence counsel, as set forth in section 2.1 (d)"; see also Principle 5 of the UN Basic Principles on the Role of Lawyers, which stipulates that detainees should be informed of their right to be assisted by a lawyer upon arrest or detention. Principle 17(1) of the UN Body of Principles requires detainees to be promptly informed of this right and be provided with reasonable facilities for exercising it. Principle 7 of the UN Basic Principles on the Role of Lawyers requires detainees to have prompt access to a lawyer, and in any event, no later than 48 hours after arrest.

investigating judge. Under applicable law, therefore it is anticipated that a maximum period of 48 hours may be allowed before a terrorist suspect is allowed to receive the assistance of defence counsel.

Amnesty International is concerned that each of the detained men was repeatedly interviewed in the absence of a lawyer, in violation of Section 3 of UNMIK Regulation 2001/28.²³

Furthermore, none of the men were advised of their right to remain silent during interview, as set out in Section 2.1, UNMIK Regulation 2001/28, until they were visited after 32 days in detention by representatives from the ICRC, who advised them of their rights including the right to remain silent without a lawyer or a translator present. By this time, the men had been interrogated on almost every day of the preceding month.

3.4 Failure to bring the detainees before a judge to authorize their detention

At no point in the 38 days during which Ahmad Sa'id, Dr Abdul Raqiz and A. B. were deprived of their liberty were they brought before a court or was their detention authorized by a judge or supervised by a court, in contravention of applicable law and both Article 5 of the ECHR and Article 9 (4) of the ICCPR which guarantee detainees the right to take proceedings by which the lawfulness of their detention can be decided by a court, and their release ordered if the detention is not lawful. The Human Rights Committee has stated that this right is not subject to derogation at any time, even during armed conflict.²⁴

The three men were not informed of their right to challenge the lawfulness of their detention before a court, nor were they provided with a lawyer so that they might be assisted with such a challenge. Without access to counsel, the three men were effectively denied access to the right of *habeas corpus*. Instead, the three men were informed, in the document - dated 16 December 2001 - which outlined the reasons for their detention, of the possibility that they could appeal against their detention. Under the heading *Notice of Appeal* the document stated that the detainees might appeal the decision by "submitting matters to the BDF Commander", and that such an appeal would be considered when the "Board" reviewed their detention status within the next 30 days.

Ahmad Sa'id reported that he made an appeal against detention in the form of a letter to COMKFOR, but received no reply. He also wrote to the OSCE and to the ICRC. A. B. also reportedly submitted a written appeal to COMKFOR.

Amnesty International's concern

Amnesty International is not only concerned those decisions to deprive Ahmad Sa'id, Dr Abdul Raqiz and A. B. of their liberty - and to release them - were made by COMKFOR, rather than on the order of a court, as required by applicable law and international standards, but that COMKFOR may have been acting on the instructions of the FBI. Given the reported statement of an FBI agent to A. B. that the decision to release him would be made by the FBI or the CIA, rather than by COMKFOR, Amnesty International is concerned that the US government authorities may have

²³ See also Article 6 (c) of the ECHR, and judgments of the European Court of Human Rights, which recognize that the right to a fair trial requires access to a lawyer during all stages of any proceedings against them, including detention, as for example, the Judgment of the European Court of Human Rights in the case of *Murray v United Kingdom*, (41/1994/488/570), (8 February 1996).

²⁴ Human Rights Committee, General Comment 29.

participated in, or influenced, COMKFOR's actions, which were themselves outside of the rule of applicable law and international standards.²⁵

Amnesty International considers that a letter of appeal to COMKFOR does not satisfy the right of a person deprived of their liberty to challenge the legality of their detention, as required by both applicable law and international standards. Applicable law in Kosovo provides that determinations of detention should be made by an investigating magistrate, and reviews of appeals against detention status should be made by a panel of judges.²⁶ It makes no provision for the review of detention by any other body. Neither does UN SC Resolution 1244/99 make any provision for COMKFOR to substitute his judgment for that of a court in order to authorize or supervise detention. Articles 9(4) of the ICCPR and 5(4) of the ECHR require that challenges to the legality of detention be brought before and determined *by a court*.²⁷

Amnesty International considers that the detention of the three men, without charge for an unspecified period of time and without judicial authorization contravened both Articles 5(1) and 5(4) of the ECHR. In its judgment in the case of *Jecius v. Lithuania* the European Court of Human Rights concluded that the "...practice of keeping a person in detention without a specific legal basis ... whereby a person may be deprived of his liberty for an unspecified period of time without judicial authorization, is incompatible with the principles of legal certainty and the protection from arbitrariness, which are common threads throughout the Convention and the rule of law".²⁸

3.5 Denial of the right to inform relatives of their detention, and of the right to visits by relatives.

At around 5.30pm on 14 December 2001, following his interview and the search of the KOFF offices, A. B. rang his wife to tell her that he had been delayed, but that he would be home in half an hour. At 6.30pm he was arrested by Italian KFOR personnel, but was not allowed to telephone his wife to inform her of his arrest or his whereabouts until six days after his arrest.²⁹

Dr Abdul Raqiz was also not allowed to telephone his wife for six days following his arrest, and when finally allowed to make this call, he was not allowed to explain that he had been detained or where he was held. Instead he was instructed to tell his wife that he was "with American KFOR".

²⁵ In addition, Amnesty International notes: the document presented to each of the three men on 16 December 2001, and later withdrawn, reportedly stated that each of the three men was suspected of involvement in the attack on the *USS Cole*; the reported presence of an FBI officer at the original search and detention operation; and reports that the same man subsequently interviewed each of the three detainees at BDF.

²⁶ See especially Articles 192, 196 (3) and 199 of the Yugoslav Law on Criminal Procedure, *Službeni list* 4, 14 Jan 1977, enacted by SFRY Assembly 24 December 1976.

²⁷ See also, Section E, Article 95 of the UN Standard Minimum Rules on the Treatment of Prisoners which makes specific provision for those deprived of their liberty without charge to be afforded the same protection as other detainees, without prejudice to the provisions of Article 9 of the ICCPR.

²⁸ See Judgment of the European Court of Human Rights in the case of *Jecius v. Lithuania* (Application no. 34578/97), (31 July 2000), paragraph 62.

²⁹ According to A. B., in the intervening period, his wife had been to every international office, police station and jail in Djakovica, searching for him, but was unable to gain any information about his whereabouts. She told their young children that their father was away on a business trip.

Ahmad Sa'id similarly reported that he was not allowed to telephone his brother until six days after his detention.

Under Section 2.1 of UNMIK Regulation 2001/28, detainees are entitled to have a family member or other appropriate person notified of his or her arrest. Further, under the UN Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment³⁰ the men had the right to inform their families, or have them informed, "promptly after arrest and after each transfer from one place of detention to another" (Principle 16.1). No such provision was made at any place of detention - either at the KFOR base in Djakovica, or at BDF.

UN Rule 92 of the Standard Minimum Rules for the Treatment of Prisoners states: "Any untried prisoner should be allowed to inform his family immediately of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interest of the administration of justice and of the security and good order of the institution." Further, Principle 15 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that, "communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days".

Ahmad Sa'id, Dr Abdul Raqiz and A. B. report that they had been informed by BDF personnel that visits from family members were not allowed until they had been in detention for 30 days.³¹ Consequently, Ahmad Sa'id and Dr Abdul Raqiz did not receive visits from their families until after 30 days, following a visit by representatives of the ICRC, after which their close relatives were allowed to visit. A. B.'s wife was allowed to visit him on 12 January 2002, after a representative from the Swedish Embassy in Skopje had visited him on 11 January 2002.

3.6 The right of nationals to contact their embassy or representative of the competent international organization.

Section 2.1 (f) of UNMIK Regulation 2001/28 sets out the rights of foreign detainees: "... to communicate orally or in writing with a liaison office, consular post, the diplomatic mission of the State of which he or she is a national or with the representative of the competent international organization.....". None of the three men, all of whom are foreign nationals, was notified by KFOR of his right to communicate with representatives of his government.

Before the end of 2001, Mrs Mir sent a fax to the Swedish Ambassador in Skopje, Macedonia, on behalf of her husband, a Swedish citizen. When Embassy staff returned after the Christmas and New Year holiday, Minister Counsellor Jöran Bjällerstedt visited A. B. on 11 January 2002, and on 18 January, following the extension of A. B.'s detention on 16 January 2002. After this second visit, A. B. was not interrogated further.

Ahmad Sa'id, Dr Abdul Raqiz and A. B. were finally released by COMKFOR on 21 January 2002. No explanation was provided to Ahmad Sa'id, Dr Abdul Raqiz and A. B. of the reasons for their arrest, any charges on which they had been held, or any explanation of the reasons for their release, such that enquiries into the alleged offences were no longer in progress. On their

³⁰ Adopted by the UN General Assembly on 9 December 1998.

³¹ Amnesty International is not aware of any applicable law, including the FRY Law on the Execution of Penal Sanctions, which limits family visits to those who have been detained for a period of 30 days; Rule 37 of the UN Standard Minimum Rules which requires prisoners to be allowed to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.

release they were provided with a document certifying that they had been detained at BDF from 14 December 2001 until 21 January 2002.

Amnesty International notes that as a condition of their release, they were also required to sign another document - entitled "Pledge. Certificate of Release" - and required to state that "as a condition of my release not to rejoin or join any group that uses violence or intimidation to achieve its goal". Amnesty International is concerned that this document is not valid under applicable law, and may violate the presumption of innocence.

4. Conclusions and recommendations

4.1 Amnesty International considers that COMKFOR failed to respect the rights of Ahmad Sa'id, Dr Abdul Raqiz and A. B. under both applicable law and Article 5(1) of the ECHR and Article 9(1) of the ICCPR which are incorporated into applicable law, guaranteeing that a person may only be deprived of their liberty in accordance with a procedure described by law.

Amnesty International therefore urges KFOR to cease the practice of conducting arrests and detentions which are not in accordance with procedures set out in applicable law, and which do not fall within any of the permissible grounds set out in Article 5(1) of the ECHR. If KFOR makes any arrests in the future, the organization calls on COMKFOR to ensure that all such arrests and subsequent detentions are carried out for the reasons specifically set out in Article 5(1) of the ECHR, and in accordance with procedures prescribed by applicable law. Amnesty International also recommends that any such arrests be carried out in conjunction with CIVPOL, recognized as "competent officials whose powers [are] subjected to recourse to a judicial or other authority".

4.2 The organization also considers that COMKFOR failed to respect the rights of the three men while they were deprived of their liberty. In particular, KFOR failed to immediately inform them of the reasons for their arrest in a language that they understood, and failed to notify them of their rights, including their right to access to counsel and right to silence during questioning. The three men were not provided with access to counsel during the period of their detention, even during interrogation. The men were not brought before an investigating magistrate and did not have access to a court to challenge the legality of their detention.³²

4.3 Further, the manner in which all three men were treated failed to meet international standards, including Article 10 of the ICCPR. In addition, Ahmad Sa'id was reportedly subjected to ill-treatment in violation of Article 7 of the ICCPR and Article 3 of the ECHR.

The organization reminds COMKFOR of his duty under the Convention against Torture - applicable in Kosovo, and to which Italy is a party - to ensure the initiation, without delay, of a thorough, independent and impartial investigation into Ahmad Sa'id's allegations, and to ensure that any Italian KFOR personnel reasonably suspected of participation in his ill-treatment are brought to justice.

Amnesty International notes the immunity granted to KFOR personnel under UNMIK Regulation 2000/47, but reminds COMKFOR that under Section 6.2 of the Regulation, a request to waive immunity may be granted after consideration by the respective commander of the national element of such personnel. Amnesty International therefore requests that COMKFOR recommends

³² OSCE recently reported that KFOR had announced its intention to provide detainees with a form setting out the rights of persons deprived of their liberty, but noted that, "the form had not yet been introduced in practice", *Kosovo: Review of the Criminal Justice System, September 2001-February 2002*, OSCE Mission in Kosovo, Department of Human Rights and Rule of Law.

that the Commander of Italian KFOR grant such a waiver, in order that those responsible for the alleged ill-treatment of Ahmad Sa'id may be brought to justice, and that Ahmad Sa'id may be awarded appropriate reparation, including compensation.

4.4 The organization also concludes that Ahmad Sa'id, Dr Abdul Raqiz and A. B. were arbitrarily detained from 14 December 2001 until 21 January 2002, during which time Amnesty International considers that all three men were subjected to ill-treatment.

Accordingly, the three men may be entitled to appropriate compensation, in accordance with Article 5(5) of the ECHR and Article 9(5) of the ICCPR, which guarantee an enforceable right to compensation for any person who has been the victim of an unlawful arrest or detention. Also, in accordance with Article 2(3) of the ICCPR and Article 13 of the ECHR any person whose rights - under these treaties - have been violated has the right to redress to a competent authority for an effective and enforceable remedy in respect of their ill-treatment, both during arrest and while in detention.

Accordingly, Amnesty International calls on COMKFOR to ensure the initiation of an impartial and effective investigation into these allegations, and that Ahmad Sa'id, Dr Abdul Raqiz and A. B. are afforded their rights to reparation.

4.5 Amnesty International similarly calls on COMKFOR to similarly investigate the arrest and detention of Muhamed Zentagui, Redouane Guesmia and Ameer Sofiane, and afford them appropriate compensation for being arbitrarily detained.

Finally, Amnesty International urges COMKFOR to ensure that, in the future, all KFOR personnel guarantee those persons deprived of their liberty the rights provided to detainees in applicable law and international standards, and respect the rights of detainees not to be subjected to torture and ill-treatment, as guaranteed under applicable and international law.

APPENDIX

Lack of legal basis for KFOR arrests and detentions

Amnesty International understands from previous correspondence with both KFOR and the Special Representative of the UN Secretary General (SPSG) that KFOR derive their power of arrest from UN SC resolution 1244/99, which at para. 9(d) charges the international security presence in Kosovo with responsibility for “ensuring public safety and order until the international civilian presence can take responsibility for this task”. Amnesty International believes that, given the progress made by UNMIK in establishing the rule of law in Kosovo over the past two years - and in particular, the existence of a fully-functioning international (UN CIVPOL) and domestic (KPS) police service - this justification is no longer applicable. In that period, Kosovo has seen the development of a comprehensive body of applicable law and UNMIK Regulations with regard to arrest and detention and the establishment of a functioning judicial system.

The organization understands that Memoranda of Understanding have been signed between KFOR and the CIVPOL, within each of the KFOR Multi-National Brigade Boundaries, under which investigative primacy, including the power of arrest and detention, has been transferred from KFOR to CIVPOL in each of the KFOR Multi-National Brigade areas. Given the transfer of power to the civilian presence, Amnesty International believes that KFOR’s mandate to ensure public safety and order under UN SC resolution 1244/99 para.9 (d) no longer obtains, and that such arrests by KFOR are therefore *ultra vires* of this power.

In addition, Amnesty International considers that any detentions carried out on the basis of UN SC resolution 1244/99 which fail to guarantee detainees’ rights set out under applicable law and in international standards are unlawful.

Furthermore, Amnesty International is concerned that COMKFOR Detention Directive 42 allows COMKFOR and section level KFOR commanders of Multi-National Battalions (MNBs) to authorize detentions which are outside of the rule of law and violate international human rights which, under UN SC 1244/99, KFOR is charged to protect and promote. Specifically it allows COMKFOR to authorize detentions for long periods without judicial authorization or any recourse to judicial review. On the contrary, section 2 (e) of this directive states: “I [COMKFOR] will continue to use the authority to detain but only in cases where it is absolutely necessary. It must be noted that this authority to detain is a *military* decision, not a *judicial* one.” [Emphasis added]

The directive lays special emphasis on the exceptional circumstances for such detentions. Article 3 (d) states: “COMKFOR authority to detain will only be used as a last resort when civil authorities are unable to take action addressing the threat to KFOR or the safe and secure environment in Kosovo.” While section 4 (a) dealing with standards states: “Persons may be detained under the authority of COMKFOR only if they constitute a threat to KFOR or a safe and secure environment in Kosovo and civilian authorities are unable or unwilling to take responsibility for the matter.” Furthermore the directive in section 5 (a) (2) (3) and (7) underline the importance of engaging the civil police at every opportunity. Section 5 (a) (2) states: “Once the situation is stabilised and safe, and after any questioning required by the circumstances, the on-scene commander will *immediately* [emphasis added] relinquish authority over the restrained person and the crime scene to civilian police authorities.” Section 5 (3) states: “If a civilian police authority is not present, the on-scene commander will make every effort to summon civilian police authority to the scene. Every effort should be made to transfer the restrained person to civil authorities at the location where the person was restrained. However, the restrained person may be moved for reasons of the safety of the restrained person or the restraining unit.” Despite these instructions, the directive

then goes on to detail the procedures for KFOR detention. Section 5 (b) allows MNB commanders to detain people for up to 72 hours on their own authority even without recourse to COMKFOR approval which is needed for detention after this initial 72-hour period.

This raises a number of concerns, especially as OSCE reported, as per information received by OSCE from KFOR, that an average of 10 persons per month were held under the authority of MNB Commanders' authority.³³ As the OSCE states:

“[T]he existence of this authority indicates that KFOR, rather than trying to gradually restrain its detention practice with the aim of abandoning it altogether, is actually developing it. KFOR's authority to detain people outside of judicial process has always been presented as an extraordinary solution and as a last resort, and consequently, it has been perceived as being an authority resting solely with COMKFOR. The fact that COMKFOR was the sole level of command having the authority to order such detention did provide certain guarantees that such measures were undertaken only after due consideration in extreme cases. Extending this authority to the regional commanders, even if only for 72 hours detentions, and allowing this authority to be unchecked and unreported to COMKFOR, raises concerns about KFOR's attempt to acquire even more law enforcement functions. The KFOR LEGAD [legal department] has admitted that this practice is viewed as corresponding to the 72 hour police custody. Several concerns arise from this policy. Under the domestic law, and under international human rights law, brief detentions ordered by law enforcement agencies are governed by strict guarantees regarding the rights of detainees. There are limited circumstances under which a person can be held by law enforcement agencies: they include, for example, detention for the purpose of establishing a person's identity, and detention to prevent the risk of flight or the risk of destroying relevant evidence. Furthermore, persons held in police custody have a well-defined set of rights, both under the domestic law in Kosovo and under international human rights law. OSCE has concerns that these rights, especially the rights to defence counsel and the right to remain silent, are not effectively observed during these 72 hours KFOR detentions. These detainees are interrogated by KFOR without any of the above-mentioned guarantees. Another concern is that some individuals are detained under the 72 hour provisions only for the purpose of intelligence gathering.”³⁴

This last point highlights an apparent contradiction within Directive 42. Point 5 (b) (2) states “MNB Commanders are authorised to detain for up to 72 hours to gather intelligence or evidence on the detainees to determine whether the MNB Commander should release or recommend COMKFOR detention.” Apart from the complete lack of reference to the supposed requirement to hand detainees over to civilian police authorities, this strongly implies MNB Commanders can detain people merely for the purposes of intelligence gathering, a practice explicitly forbidden by point 4 (b) which states: “The fact that a person may have information of intelligence value by itself is not a basis for detention.”

Detention by COMKFOR can initially be for up to 30 days but can be extended by COMKFOR. As highlighted above, under point 2 (e), COMKFOR's authority to detain is military not judicial. In fact Directive 42 gives COMKFOR powers to, if he so wish, arbitrarily detain people without any recourse. There is no mention of judicial oversight or possibility of detainees challenging the legality of their detention. On the contrary point 5 (c) (8) states: “Once COMKFOR

³³ *Ibid* p 51 footnote 92.

³⁴ *Ibid* pp 50-51.

has detained a person, no one may release that person during the ordered detention period without the written approval of COMKFOR.” COMKFOR is assisted by a Detention Review Panel whose members are designated by COMKFOR and which is chaired by KFOR LEGAD. This panel reviews all detention requests and makes recommendations to COMKFOR (point 5 (c) (3)). KFOR LEGAD also carries out its own recommendations independent of the panel recommendation (point 5 (c) (4)). But these are recommendations. Authority rests with COMKFOR who operates above legal scrutiny. Point 7 (k) in the section dealing with ‘Rules for detention and treatment of detainees’ states: “Detainees may submit petitions regarding their detention.” However, these petitions can only be submitted to KFOR, not to a judicial body.

Amnesty International also notes the concerns expressed by the UN Special Representative of the Commission on Human Rights, Jose Cutileiro, that arrests and detentions by KFOR under COMKFOR detention directive 42 (9 October 2001), “may be incompatible with basic human rights principles”; the Special Representative has also questioned the need for KFOR detention practices on the basis that the grounds on which KFOR may arrest under directive 42 are “adequately covered by existing legislation”.³⁵

Similar concerns were expressed by the OSCE which recommended that “KFOR should stop its detention practice and officially renounce its authority in this area”.³⁶

Amnesty International believes that persons detained solely under this directive are victims of arbitrary detention in clear contravention of Article 5 of the European Convention in that they have not been deprived of their liberty in accordance with procedures prescribed by applicable law. Both the European Court and the Inter-American Commission on Human Rights have ruled that the right to be brought in front of a judicial body for review of detention applies in any emergency situation and even during armed conflicts.³⁷

³⁵ E/CN.4/2002/41, 8 January 2002, pp. 23-4.

³⁶ OSCE Mission in Kosovo, Kosovo: Review of the Criminal Justice System, September 2001 - February 2002, p 51

³⁷ See *Brannigan and McBride vs. the UK*, ECHR, 26 May 1993, where the Court stated that a period of seven days before bringing a detainee before a court was legitimate in an emergency situation, given that in Northern Ireland all detainees had the right to habeas corpus, while in *Aksoy v. Turkey*, ECHR, 18 December 1996, the Court considered 14 days was too long even in a region suffering armed conflict, especially as there was no right of habeas corpus. In the decision of 29 September 1999 by the Inter-American Commission on Human Rights regarding *Coard et al. V. United States*, the Commission stated that two weeks was too long for the army to detain persons, even though the US army was engaged in an armed conflict.