

FEDERAL REPUBLIC OF YUGOSLAVIA (KOSOVO):

Amnesty International's recommendations for the protection of human rights in post-conflict peace building and reconstruction in Kosovo

Peace agreement

Consensus on a set of principles for a peace agreement concerning Kosovo was reached on 3 June 1999 between the President of the Federal Republic of Yugoslavia (FRY) and a joint delegation of the European Union and the Russian Federation. These principles, subsequently approved by the Serbian Parliament, fail to address the protection of human rights and international humanitarian law. Amnesty International urges the parties concerned to incorporate the following recommendations into the formal peace agreement:

General observations

- Effective and long term protection of human rights of all the people of Kosovo, whether ethnic Albanian, ethnic Serb, or any other ethnicity should be placed at the centre of the agreement. Such protection should apply whether they are in the FRY or have sought asylum abroad;
- The agreement should provide the strongest guarantees for the effective protection of human rights and international humanitarian law, fully consistent with international -- including European -- standards¹;
- The Security Council should take the lead in supporting the effective implementation of the agreement with due attention to its human rights guarantees;
- The agreement should ensure that human rights implementation and verification by civilian bodies and military forces, whether national or international, are coordinated by a single official with full authority to take prompt and effective action;
- The agreement should provide that prompt, independent and impartial investigations are conducted into violations of human rights and international humanitarian law committed by any party during the conflict and subsequently

¹ The relevant international standards are listed in Parts II and III of Kosovo - Essential Safeguards for an Agreement, February 1999 (AI Index: EUR 70/08/99).

and that alleged perpetrators are brought to justice in trials which meet international standards for fair trial;

- The agreement should ensure that there are no amnesties for those responsible for violations of human rights or international humanitarian law, including war crimes and crimes against humanity. No measures should be taken which would in effect provide those responsible for such crimes with impunity;
- All parties to the peace agreement should search for, arrest and bring to justice any person responsible for war crimes or crimes against humanity committed in Kosovo or elsewhere in the FRY;
- The agreement should provide that all security forces and law enforcement personnel shall strictly comply with the highest standards of international human rights and international humanitarian law on law enforcement and criminal justice;
- The implementation of the peace agreement and the peace-keeping operation should be developed in close cooperation with representatives of the local population and national and international human rights groups.

Mandate and composition of the peace-keeping forces

Military and civilian aspects of the international peace-keeping operation should take into account the following²:

- International peace-keeping forces, however composed, should have the mandate and capacity to protect persons belonging to all ethnic communities in Kosovo effectively from violations of human rights and to monitor and report on such violations;
- The agreement should be in line with the new Department of Peacekeeping Operations guidelines on the minimum age for peacekeepers. They should be at least 18 years old, and should preferably be 21 years old;
- All peace-keeping personnel should be fully trained in international human rights and criminal justice standards and their duty to adhere to them at all times;

² See also: Amnesty International's 15-point Program for Implementing Human Rights in International Peace-keeping Operations (AI Index: IOR 40/01/94).

- A mechanism should be established with powers to investigate allegations of human rights violations by peace-keeping personnel. States contributing troops to the peace-keeping operation should promptly conduct independent and impartial investigations into reports of violations of human rights and humanitarian law by their nationals and bring to justice those responsible. Those suspected of such violations should be suspended from duty pending the outcome of investigations.

Human rights monitoring

Effective human rights monitoring should be an essential part of the peace-keeping operation and should incorporate the following recommendations:

- The international human rights monitoring component in a UN peace-keeping operation should be assured of a high level of independence and autonomy from the political considerations of the operation and from any ongoing political relations between the UN and the parties;
- International human rights monitors, as well as regional and national human rights monitors, should have full and unhindered access to all parts of Kosovo. These should include adequate numbers of staff of the Office of the High Commissioner for Human Rights, who should be provided with access to judicial and penal institutions in order to effectively investigate and monitor human rights throughout Kosovo. Full access should also be provided to the UN Commission on Human Rights' Special Rapporteur on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia and the UN Commission's thematic Special Rapporteurs;
- Reporting on human rights violations and abuses should include past as well as continuing instances;
- Particular attention should be paid to ensuring that there is an effective mechanism or capacity with adequate financial and forensic resources to clarify the fate or whereabouts of all persons who have 'disappeared' or have gone missing and that the relatives are promptly informed. All parties should cooperate with international organizations and bodies (in particular the International Committee of the Red Cross and the UN Working Group on Enforced or Involuntary Disappearances) working on the issue;
- Monitoring of police operations by properly trained and selected international police monitors to verify compliance with international human rights standards should be a vital component of the agreement. International monitors, whether

from a regional body such as the OSCE or from the UN, should draw upon the experience of UN Civilian Police in the region and base their monitoring work on international standards, including international policing standards as well as local laws in so far as they meet these standards. They should have powers to intervene with the authorities to ensure that human rights violations are prevented and kept to an absolute minimum;

- Frequent and comprehensive reports of the findings of international human rights monitors should be made public, should be made available to all UN expert bodies dealing with human rights including treaty monitoring bodies, and should include an assessment of the degree to which the recommendations made to the authorities for the protection of human rights have been implemented.

Cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY)

- Investigators from the ICTY should have access to Kosovo as soon as the first members of the peace-keeping operation enter the country;
- Investigators from the ICTY should have full access to all parts of the FRY;
- All peace-keeping personnel should act in accordance with the advice of the investigators to protect witnesses and material evidence, such as grave sites;
- All parties to the peace-agreement should cooperate fully and promptly with requests by the ICTY for assistance, including the provision of evidence related to investigations of personnel by all parties to the conflict.

Protection of refugees and internally displaced persons

The protection of refugees and other displaced persons is of vital importance and the agreement should provide for the following:

- A mechanism should promptly be established to undertake an independent and impartial assessment of the human rights situation in Kosovo, to determine when the return of refugees can be promoted. Refugees have a right to international protection until the human rights situation in Kosovo has undergone a fundamental and durable improvement; mere cessation of the hostilities is not sufficient. The international community should continue to afford protection to

refugees, and continue its efforts to share the responsibility of hosting refugees until such time as they choose to return;

- All returns of refugees and internally displaced persons should be strictly voluntary. Adequate information should be provided to all these persons regarding the human rights situation in their area of origin, so that they can make an informed decision regarding return. Information should also be provided regarding other security matters, including the danger of land mines, booby-traps or other unexploded munitions, and the availability of housing and other necessary infrastructure;
- Any program for the return of refugees and internally displaced persons should be based on international human rights standards, including standards of refugee protection and the protection of internally displaced persons;
- Refugees should not be compelled to return without a meaningful opportunity to have an individual assessment of any claim they may wish to submit for asylum;
- For those refugees who have had their identity documents confiscated or destroyed upon leaving Kosovo, documentation issued to them by international agencies should serve as identity documentation after return, pending the reissuing of identity documents by the relevant authorities. Police or military personnel controlling the borders should permit entry on the basis of such identity documents;
- There should be adequate compensation of refugees and displaced persons who have had their homes and property damaged. A commission should be established to settle disputes about ownership.

Post-conflict peace building and reconstruction

The causes of the humanitarian and human rights crisis in Kosovo should be explicitly recognized and addressed if lasting peace is to be established. The basis for the reconstruction and rehabilitation of Kosovo and other parts of the FRY should be the centrality of human rights. This requires, *inter alia*, the re-establishment of the rule of law, an active role for civil society institutions including a fully independent judiciary and a free press. The following recommendations should be taken into account:

- Strong legal and other guarantees should be provided for an independent judiciary;

- Technical assistance and adequate funding should be provided for the reconstruction and strengthening of the criminal justice system in Kosovo and throughout the FRY, in particular:
 - Judges, prosecutors, law enforcement personnel and other relevant authorities should be made to observe and be trained to apply important human rights standards concerning law enforcement and criminal justice. These texts and relevant human rights case law should be translated into the languages spoken in the FRY³;
 - Laws throughout the FRY should be revised to meet international human rights standards, notably those dealing with arrest and detention and the use of permissible force;
 - Recruitment of new police forces should be representative of the various communities in Kosovo and new recruits should be screened to ensure that those with criminal records and those indicted by the ICTY are excluded from service;
 - All security forces and law enforcement personnel should be trained in and comply with international human rights and humanitarian law standards;
 - International monitors should monitor police operations and they should be included in police internal investigative bodies inquiring into responses by police officers to alleged human rights violations.

In order to create a culture of accountability with respect to human rights and particularly with respect to the human rights of people belonging to minorities, reconstruction and development programs should encourage participation of the population. Protection of human rights (in particular the right to freedom of association and to freedom of expression) is essential to ensure that people participate in and benefit from the reconstruction and development process. This requires a solid and long-term commitment. In particular:

³ Particularly relevant are: the International Covenant on Civil and Political Rights (notably Articles 9 and 14), the UN Code for Law Enforcement Officials (and the Commentary thereto); the UN Basic Principles on the use of Force and Firearms by Law Enforcement Officials, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the UN Basic Principles on the Independence of the Judiciary, the UN Guidelines on the Role of Prosecutors and the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

- Financial, material, technical and other support should be provided to human rights and civil society institutions including the independent media;
- A National Human Rights Commission or an Ombudsman-type institution should be created with adequate funding to be able to function effectively;
- Funding should be provided for education programs promoting non-discrimination and human rights in schools and among the general public;
- Organizations should be supported which provide long-term care and support for the victims of violations of human rights and humanitarian law throughout the FRY.