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**QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL
FREEDOMS IN ANY PART OF THE WORLD**

Situation of human rights in parts of South-Eastern Europe

**Report submitted by José Cutileiro, Special Representative of the Commission
on Human Rights to examine the situation of human rights in Bosnia and
Herzegovina and the Federal Republic of Yugoslavia, submitted in accordance with
Commission resolution 2002/13**

Executive summary

The present report is submitted by Mr. José Cutileiro, Special Representative of the Commission on Human Rights to examine the situation of human rights in Bosnia and Herzegovina and the Federal Republic of Yugoslavia. The report covers developments in the area of the Special Representative's mandate until the third week of December 2002 and is based on information gathered during Mr. Cutileiro's visits to the countries and by the field offices of the Office of the High Commissioner for Human Rights (OHCHR).

Bosnia and Herzegovina

The Special Representative congratulates the authorities of Bosnia and Herzegovina for the well-organized, free and fair elections held in October 2002, and the movement towards establishing a more unified form of government, through the creation of State ministries and a State court. He hopes, however, that the election of nationalist parties will not revive nationalist tendencies and exacerbate tensions.

The Special Representative notes that the majority of human rights concerns continue to be rooted in discrimination based on ethnicity, political affiliation, national origin, gender, or various intersections thereof. The Special Representative hopes that the new gender law, when implemented, will address some of the inequalities, but he urges much greater efforts to analyse the full ramifications of all forms of discrimination to ensure that positive steps are taken towards their removal.

The Special Representative stresses the need to bring to trial persons indicted by the International Criminal Tribunal for the Former Yugoslavia. He also encourages the State and Entities to comply with their legal obligation to take all necessary steps to assist the families of those who went missing or were victims of forced disappearance as a result of the conflict.

The recent increase in the implementation of the property laws and repossession of pre-war property demonstrates the State and Entities' growing acceptance of the rights of returnees, displaced persons and refugees. The Special Representative notes, however, that property repossession is but one necessary step and precondition to ensuring sustainable solutions to issues of displacement. He urges the State and the Entities to continue their work towards assuring a climate of security, which includes physical integrity and access to social and economic rights.

Federal Republic of Yugoslavia

The Special Representative concludes that the overall situation of human rights in the FRY continues to improve - albeit slowly and unevenly. A number of important legislative measures were adopted in 2002. He notes, however, that deep divisions remain within and between the various political parties in both Serbia and Montenegro and that this uncertainty continues to undermine the quality and pace of substantive reform of key institutions of importance to human rights - not least the judiciary, police and army, the media, and in the social and welfare sectors. Overall, the Special Representative remains concerned that legislative reforms to redefine the powers and organization of the police and to establish democratic

controls on the armed forces are moving too slowly. He reiterates comments made in his earlier reports about the ad hoc way in which legislation is drafted and promulgated; the lack of a coherent process that ensures transparency and allows adequate public scrutiny; and the difficulty for non-governmental organizations (NGOs) and international agencies to obtain and comment effectively on draft legislation.

Solid progress has been made in the southern Serbian municipalities of Presevo, Bujanovac and Medvedja since the negotiated end of armed conflict in May 2001. Since his last report, the Special Representative notes that respect for human rights in the region has generally been sustained and in some respects, consolidated. Local elections in the three municipalities in July 2002 resulted in a more balanced representation of the ethnic Albanian, Serb and Roma communities and was an important step towards the reintegration of all minorities in the region. A promised amnesty for ethnic Albanian former combatants was also implemented in July 2002. A number of challenges remain that have to be addressed both as part of confidence-building measures and overall efforts to combat impunity.

In Kosovo, the United Nations Interim Administration Mission in Kosovo (UNMIK) has made reasonable progress in improving the overall human rights situation. Internal oversight mechanisms have been put in place, human rights standards appear in the process to determine Kosovo's future status, and some progress has been achieved in improving the quality of the local judiciary, the prosecutor's office and police force. Nonetheless, in a climate of decreasing donor support, UNMIK, the international security force (KFOR) and local authorities face significant obstacles in their efforts to build a multi-ethnic and tolerant society in Kosovo. Ethnic-related violence and discrimination continues against the remaining minorities - albeit with lesser frequency - and the present climate of insecurity is not conducive for any large-scale return of persons displaced in the rest of FRY.

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Introduction

1. This is the second report submitted by José Cutileiro, Special Representative of the Commission on Human Rights to examine the situation of human rights in Bosnia and Herzegovina and the Federal Republic of Yugoslavia, who was appointed in June 2001, following the adoption of Commission resolution 2001/12. This report considers human rights developments in the countries of the Special Representative's mandate through November 2002.
2. The Special Representative would like to extend his appreciation to the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the field operations of the Office of the High Commissioner in the countries of his mandate for the support provided to him.

I. BOSNIA AND HERZEGOVINA

3. The Special Representative visited Bosnia and Herzegovina from 7 to 14 November 2002. During his visit, he travelled to Sarajevo, Mostar and Banja Luka. He met with the Presidency, other State institutions, Entity institutions and local authorities. He also met with senior representatives of international organizations and civil society, as well as with returnees to particular municipalities in the Federation and the Republika Srpska.

A. General

4. The Special Representative's mission followed national elections that took place on 5 October 2002. This election was the first Bosnian-organized election and was generally held to be free and fair, although less than 54 per cent of the voting population participated. Voter turnout indicated a clear rural-urban split, with more persons in rural areas voting. A lack of real representation impacted on participation in the election, with youth, women and those with higher education generally abstaining from the vote. Representatives of the three nationalist parties were elected to the tripartite Presidency, and made significant gains throughout Bosnia and Herzegovina. There are concerns that the gradual progress towards meeting human rights obligations will be slowed, if not reversed, if nationalism dominates the political agenda.
5. As measured against standards set by international human rights instruments to which Bosnia and Herzegovina is party, the current human rights situation in the country gives rise for concern. The nature of the violations reflects the altered circumstances within Bosnia and Herzegovina, the country now experiencing freedom from public violence but undergoing difficult economic and political transition.

B. Gender and non-discrimination

6. It is still the case that the majority of human rights concerns are rooted in some form of discrimination based on ethnicity, political affiliation, national origin, gender, or various intersections thereof. Difficulties experienced by the entire country due to economic hardship or the aftermath of the conflict impact more severely on vulnerable groups, for example minority returnees, Roma and female-headed households. The pervasive influence of political parties in

areas which should be free of any influence, such as employment and access to housing, is to be deplored and must be remedied. The Special Representative expresses his concern that the emphasis placed on conducting education in three languages instead of focusing on the need for a common curriculum exacerbates rather than attenuates ethnic division. **It is hoped by the Special Representative that the new gender law, when implemented, will address some of the inequalities, but he urges much greater efforts to analyse the full ramifications of all forms of discrimination to ensure that positive steps are taken towards their removal.**

C. War crimes and the issue of the missing and forced disappearances

7. While persons indicted by the International Criminal Tribunal for the Former Yugoslavia (ICTY) have been arrested, those responsible for the most egregious violations remain at large. **The Special Representative once again reminds the State and the Entities of their obligation to comply with ICTY and its orders, as reiterated by the Security Council in its resolution 1357 (2001).**

8. The Special Representative notes with concern that the number of domestic war crime prosecutions has remained minimal, with only one such case in the Republika Srpska and 31 in the Federation; there is general reluctance to prosecute alleged war criminals of their own national origin, particularly those of high rank. Absent a clear legal framework and the implementation thereof on the protection of witnesses, reluctance of witnesses to testify will continue to be the norm, particularly where witnesses belong to a minority group and must testify against a perpetrator belonging to the majority.

9. A related issue is the number of persons who were missing and/or victims of forced disappearances during or immediately after the conflict. The International Commission on Missing Persons estimates that there are approximately 30,000 missing persons throughout Bosnia and Herzegovina. The Republika Srpska Commission on Missing Persons stated that approximately 5,000 persons went missing during the war with approximately 1,500 subsequently identified. The Federation Commission on Missing Persons states that 27,731 persons went missing, approximately 17,000 of whom have been found with 10,000 identified. The Commissions themselves have stressed the need to discover the fate of the missing, not only to alleviate the suffering of their families, but also to achieve national reconciliation.

10. Families of the missing or disappeared have expressed deep frustration with the authorities' inaction to investigate and respond to questions regarding the fate of their missing relatives. There is obvious need for families to reach conclusion, which is also a precondition to accessing pensions, social welfare benefits and inheritance. The Special Representative is disturbed by the lack of coordination and cooperation between the different authorities responsible for this issue within and across Entity lines. **Along with the exhumation process, the Entity Ministries of Justice and Interior must immediately commence investigations into apparent criminal acts. The particular needs of the relatives of the missing/forced disappeared must also be addressed by the relevant State and Entity authorities.**

D. Displaced persons, refugees and returnees

11. The protracted issue of finding durable solutions for displaced persons, refugees and returnees remains a high priority for the country. At present, according to the Office of the United Nations High Commissioner for Refugees (UNHCR), there are around 388,000 displaced persons within the country and another 200,000 refugees outside Bosnia and Herzegovina. Following the 2002 re-registration, 6,056 refugees registered in Bosnia and Herzegovina, not including the Croatian Serb population.

12. The Special Representative welcomes the improvements in the implementation of the property laws; as of September 2002, the overall rate of repossession of pre-war property reached 62 per cent in the whole of Bosnia and Herzegovina. The Republika Srpska, which had been publicly reprimanded in September 2001 by the Organization for Security and Cooperation in Europe (OSCE) Mission to Bosnia and Herzegovina for non-implementation of property laws, had managed to reach a 60 per cent rate of implementation by the end of October 2002.¹ The Federation had a 56 per cent rate of implementation.² In both Entities, the rate of implementation is uneven, and ranges between 20 per cent to a full 100 per cent rate.

13. Whether a displaced person exercises the voluntary right of return or local integration, property repossession is but one necessary step and precondition to ensuring sustainable solutions to issues of displacement. Returnees will not remain in their place of domicile unless the climate of security, which includes physical integrity and access to social and economic rights, is assured. Officials from both Entities agree that the major obstacle to sustainable solutions is connected to the economy and unemployment. Whilst officials from both Entities claim that incidents of violence and intimidation no longer occur, UNHCR reports that in 2002, it received complaints regarding 70 incidents consisting of physical threats and violence against returnees, as well as group violence. UNHCR also received information about approximately 80 other incidents regarding damage to property, including houses, shops and cars, and an additional 70 incidents of damage to religious edifices and desecration of religious or memorial sites. In at least 90 of the incidents reported in 2002, explosive devices, handguns or knives were used by the perpetrators. These incidents caused injuries in at least 18 cases.³ **The Special Representative calls upon both Entities to ensure that all such incidents are investigated and prosecuted.**

14. In addressing issues of displacement, the Special Representative draws attention to the particular situation of Roma displaced persons whose numbers are impossible to estimate, as there are no available data. Lack of birth and identity documentation, discrimination, mistrust, prejudice and lack of awareness mean that many in the Roma community have not been able to register for "displaced persons" status. They are thereby deprived of special entitlements such as health care, education, accommodation, and reconstruction and humanitarian assistance. **The Special Representative urges Government at all levels to take all necessary steps to raise awareness amongst the Roma community on their right to documentation and to facilitate their access to their entitlements.**

E. Economic and social rights

15. There is considerable confusion as to the real unemployment figure in Bosnia and Herzegovina and consequent loss of revenue. The official figure of 28.1 per cent is reflective of the continuing dire economic situation.⁴ The pervasiveness of the grey economy militates against the enjoyment of proper labour rights and protections and leads to exploitative practices.

16. The pervasive discrimination in employment continues, often excused by claims of the deteriorating economic situation. For example, persons who should be rehired are told that the company is unable to do so, whilst those from the majority community are given priority in hiring. **The Special Representative calls on State and Entity authorities to enforce the comprehensive legal protections against discrimination in employment that already exist.**

17. With reference to the Poverty Reduction Strategy Paper, **the Special Representative reminds Government of the necessity of participation by civil society and that true development cannot be achieved without human rights as its foundation.** Improvements in the economy must take place in tandem with ensuring social protection, particularly in areas where no protections exist, such as welfare housing, the lack of which impacts on those who are already the most vulnerable in society. The Special Representative expresses grave concern about the increasing impoverishment of the old, whom the deterioration of the economy has left with decreasing protections.

18. The Special Representative also highlights concerns relating to the right to education. Several barriers to the full enjoyment of this right exist, particularly in terms of access to education for all children, including minorities, as well as integration of all groups into the education system. Current educational policies in relation to the existence of three languages, excessive out-of-pocket expenses and costs associated with enrolment militate against access to education. There is increasing evidence that girl children in particular are being kept at home by their parents. As referred to above, the existence of parallel structures in a single educational institution for children from different national origins, instead of integrated schools (the phenomenon of “two schools under one roof”), perpetuates divisions amongst children and harms national reconciliation.

19. **The Special Representative encourages full compliance with the obligations made by the State and Entity authorities under the November 2002 Implementation Plan of the Interim Education Agreement on Accommodation of the Specific Needs and Rights of Returnee Children, in order to counteract existing discrimination and provide full access to education.**

F. Trafficking in persons

20. Concerns surrounding all forms of irregular migration have increased in the last year. Bosnia and Herzegovina is a country of destination and transit for persons who have been trafficked. A coherent framework and system to deal with all forms of migration at the point of

entry has yet to be established, despite the State Border Service's assuming full border control during 2002, raising questions regarding protection of the rights of those who may be seeking asylum, are stateless, are abused or exploited smuggled migrants, victims of trafficking, or at risk of torture.

21. The Special Representative commends the progress in the Government's response to trafficking, as demonstrated by the National Plan of Action, but notes that the demand side of the market for the services of women forced into prostitution has not been adequately prioritized or addressed by either the Government or the international community.

22. **The Special Representative emphasizes the need for the cooperation of all agencies involved in combating trafficking.** There is an obvious and urgent need for all the archives of the STOP teams of the United Nations Mission in Bosnia and Herzegovina (UNMIBH) to be communicated to the Government so that a full evaluation can be conducted and all those engaged in law enforcement can utilize existing knowledge. **There needs to be rapid progress in effective prosecutions of those engaged in all crimes associated with trafficking.**

G. Conscientious objection

23. Whilst both Entities formally recognize the right to conscientious objection, the Special Representative is concerned that insufficient implementation of the laws and lack of information on the right to conscientious objection and the procedures for obtaining conscientious objector status have prevented the realization of this right. The lack of information about the right and the procedures have either discouraged applications (only four persons have applied for conscientious objector status in the Republika Srpska since May 2002), or led to denials of applications for non-compliance with procedures. The Federal Commission on Community Service met in late November 2002 after a hiatus of eight months, and approved 15 applications for community service. However, the Commission still has a backlog of approximately 500 cases, and faces difficulties in terms of lack of financial and technical support. In the Republika Srpska, no independent civilian commission exists to handle applications; instead, applications are dealt with by the Ministry of Defence, in contravention of international standards.

24. **The Special Representative urges the Entity Governments to take all steps to remedy the situation by ensuring that procedures for obtaining conscientious objector status are clear, accessible and efficient.**

II. FEDERAL REPUBLIC OF YUGOSLAVIA

25. The Special Representative undertook a visit to the Federal Republic of Yugoslavia (FRY) from 30 October to 7 November 2002. He met senior members of the Federal and Serbian authorities in Belgrade and of the Montenegrin authorities in Podgorica. In Kosovo, he met the Special Representative of the Secretary-General, the Commander of KFOR, senior officials of UNMIK and representatives of the provisional institutions of self-government. Throughout the visit, he met representatives of international organizations, including the OSCE and the United Nations, and members of civil society.

26. The Special Representative wishes to record his satisfaction with the high level of cooperation he enjoyed with all authorities and the frankness of discussions on the human rights situation throughout the FRY.

A. General observations

27. The Special Representative concludes that the overall situation of human rights in the FRY continues to improve - albeit in a slow and piecemeal way. He is pleased to note that the framework for a new constitutional charter was finally agreed in December, even though the functional arrangements still need to be implemented. He notes, however, that deep divisions remain within and between the various political parties in both Serbia and Montenegro and that this uncertainty continues to undermine the quality and pace of reform of key institutions of importance to human rights - not least the judiciary, police and army, the media, and in the social and welfare sectors.

28. During his visit, the Special Representative was aware that international focus had shifted to supporting development-based activities and that humanitarian assistance was being severely reduced, even though national institutions have not yet developed sufficient capacity to assume these responsibilities. Increased economic hardship is likely in the coming period, bringing the risk of social discontent and unrest. The Special Representative expects that all of these factors may have an adverse impact on the enjoyment of human rights in the country, particularly for vulnerable groups such as refugees, internally displaced persons (IDPs), Roma, aged and disabled persons - and within these groups, women and children. **He urges the responsible authorities to ensure that human rights are integrated fully into all reform policies, strategies and programmes - particularly those designed to alleviate poverty and to improve social conditions and human dignity for all vulnerable members of the community.**

29. A number of important legislative measures were adopted in 2002. These include, at the Federal level, the promulgation of a law protecting the rights of minorities, implementation of which has now begun, and a new Code of Criminal Procedure. These laws are, however, being implemented in Serbia only and the problem of non-recognition of federal legislation in Montenegro persists. The Serbian State security service was divorced from the Ministry of the Interior and recreated as an agency of the Parliament. The new Law on Local Self-government in Serbia allows for the creation of local ombudspersons, although it will not be fully implemented until after local elections in 2003.

30. Overall, the Special Representative remains concerned that legislative reforms to redefine the powers and organization of the police and to establish democratic controls on the armed forces are moving too slowly. He reiterates comments made in his earlier reports, about the ad hoc way in which legislation is drafted and promulgated; the lack of a coherent process that ensures transparency and allows adequate public scrutiny; and the difficulty for NGOs and international agencies to obtain and comment effectively on draft legislation.

31. In Kosovo, UNMIK has made reasonable progress in improving the overall human rights situation. Internal oversight mechanisms have been put in place, human rights standards appear in the process to determine Kosovo's future status, and some progress has been achieved to

improve the quality of the local judiciary, the prosecutor's office and police force. Nonetheless, in a climate of decreasing donor support, UNMIK, KFOR and local authorities face significant obstacles in their efforts to build a multi-ethnic and tolerant society in Kosovo. Ethnic-related violence and discrimination continue against the remaining minorities - albeit with lesser frequency - and the present climate of insecurity is not conducive to any large-scale return of persons displaced in the rest of FRY.

B. Specific issues

1. Impunity for human rights violations

32. The Special Representative is deeply concerned that impunity for serious human rights violations of the past and present remains a significant problem. The degree to which impunity exists can be seen as a litmus test of the quality of judicial, police and army reform. In some crucial areas - for example, investigating and prosecuting the perpetrators of violations of the laws of armed conflict and human rights during the Milosevic period - progress has been minimal. Moreover, serious human rights violations, such as torture or ill-treatment by police, continue to occur.⁵ Measures to investigate and prosecute these cases and to put in place effective preventive and oversight measures are not yet adequate.

33. The Special Representative is aware of complaints by the ICTY Prosecutor about the apparent failure of the FRY authorities to arrest indictees. He is also aware of the Yugoslav authorities' concerns about the lack of indictments relating to Serb victims of violations in Kosovo even though they have delivered documents to the Prosecutor relating to such victims. **He encourages full cooperation with ICTY and encourages the Prosecutor to ensure that, within the ICTY mandate, resources and policies, all serious crimes are investigated.**

34. The Special Representative stresses the importance of an effective national jurisdiction to deal with these kinds of cases. In view of the limited capacity of the ICTY, responsibility for prosecuting the majority of suspects must lie with national criminal justice systems. In the FRY, he notes that only a small number of investigations and criminal proceedings have been initiated into alleged violations of international humanitarian or human rights law during the conflicts in the former Yugoslavia. He has seen no evidence of any systematic and comprehensive commitment to review the evidence of allegations about conduct of police, army or paramilitary forces, their commanders or individuals who were supported by Serbia, Montenegro, the former Socialist Federal Republic of Yugoslavia or the FRY with a view to initiating criminal processes against the individuals responsible.

35. In addition, analysis of the few cases that have proceeded to date discloses a number of systemic shortcomings in the way that both accused and victims (and their families) are treated in the present criminal process. Some cases illustrating these problems are described below.

36. Nebojsa Ranisavljevic was convicted and sentenced in Bijelo Polje, Montenegro, in September 2002 for his involvement in the abduction and killing of around 20 Muslim/Bosniac and Croat train passengers near Strpci in Bosnia and Herzegovina in 1993. The defendant was kept in pre-trial detention for seven years. Proceedings of such length are inconsistent with the defendant's right to trial without undue delay and neither do they serve the broader interests of

justice nor the rights of the victims' families. The trial included claims that the defendant had been tortured during the investigation, but no investigations have been launched into these allegations. Evidence presented at the trial also indicated the involvement of others who have not yet been held accountable for their actions.

37. The first war crimes trial relating to Kosovo in an FRY court was concluded in the Nis Military Court in October 2002 when two officers and two soldiers were sentenced to between three and seven years' imprisonment for killing two unidentified Kosovo Albanians in April 1999. A local NGO that monitored the proceedings alleged deficiencies in the proceedings, including a failure to exhaust the possibilities of identifying the victims and the application of the wrong articles of the Geneva Conventions which contributed to lenient sentences for the defendants.⁶ The Special Representative believes that trials in military courts should be the exception rather than the rule, and that in view of the seriousness of such crimes and the public interest surrounding them, they should be conducted with due transparency.

38. A trial of two Serbian police officers for alleged crimes in Kosovo which commenced in Prokuplje, Serbia, in late 2002 was characterized by alleged abuses of due process as well as allegations of threats against the prosecutor and presiding judge. Insufficient efforts were made to bring ethnic Albanian witnesses from Kosovo to testify. A new trial was ordered by the Serbian Supreme Court in November 2002, and is likely to take place in a Belgrade court.

39. The Special Representative is concerned that the criminal process in numerous other cases has hardly progressed. These include the mass graves described in the section below; the large volume of other evidence of serious human rights violations in Kosovo; the murder of editor Slavko Curuvija; and the disappearance of former Serbian President Ivan Stambolic in August 2000. Credible allegations exist of torture and ill-treatment of Bosniaks by police in the Sandzak region during the 1990s. Numerous activists of the Otpor opposition movement were reportedly beaten by police in the period 1998-2000, but few prosecutions and investigations into their cases have occurred.

40. The Special Representative welcomes measures being undertaken in the police, judicial and legislative reform programmes to strengthen national capacity to deal with such investigations and trials. In this regard, he draws the authorities' attention to the work being done in Bosnia and Herzegovina and the ICTY to improve the competencies of national courts - including the possible transfer of some ICTY indictees to national courts - some of which experiences may be of relevance and assistance to FRY authorities.

41. The Special Representative is aware of the initiative of the FRY President to establish a Federal Truth and Reconciliation Commission. While hoping that it will eventually contribute to the objectives referred to in its title, he notes that the Commission's first reports are still awaited.

2. Investigation of mass graves

42. The existence of mass graves in Serbia with corpses originating in Kosovo and the subsequent investigations illustrate many of the deficiencies in the applicable legislation and practice. In spring 2001, widespread publicity, including statements from Serbian officials, was given to the discovery of the graves. Exhumations were initiated in three sites under

court supervision by local experts with the assistance of international experts. By mid-November 2002, some 634 remains had been exhumed from the Batajnica police facility close to Belgrade. At least 78 remains were exhumed from two other sites in Serbia. Documents found on many of the bodies indicated that they originated in Kosovo and work is under way to identify bodies through the use of DNA matching. The evidence - as adduced in the trial of former President Milosevic at the ICTY - indicates that a large-scale, but clandestine, transfer of bodies from Kosovo to Serbia proper was organized by the authorities in March and April 1999.

43. Other evidence indicates that a small number of the victims may have been killed in Serbia proper. For example, three United States citizens of Kosovo Albanian parentage, reportedly former members of the Kosovo Liberation Army, were found with their hands tied and bullet wounds to the head in a grave at another police facility at Petrovo Selo near Kladovo. They were detained and imprisoned for 15 days in Kursumlija for illegal entry into the FRY after they had tried to help a group of Roma leave Kosovo in June 1999. They were then allegedly taken by State security officials of the Interior Ministry and shot at Petrovo Selo.

44. On-site investigations are still incomplete, however, the Special Representative considers that the evidence gathered from the sites and other sources already indicates, *prima facie*, that gross and systematic human rights violations occurred, including arbitrary detention, torture and/or ill-treatment, killing, and removal, desecration and clandestine disposal of the bodies of Kosovo Albanian civilians in 1999. He is deeply concerned that despite this *prima facie* evidence and the passing of nearly 18 months since the main public revelations, the criminal process has hardly begun. As a result of discussions with the various responsible authorities, the Special Representative is concerned that the delays in prosecuting those responsible appear to be due primarily to an absence of cooperation between the responsible authorities and a lack of will, rather than legal or forensic impediments to the procedure.

45. The Special Representative regards this investigation as a crucial indication of the country's commitment towards its international obligations and an important measure of the effectiveness of the criminal justice system. **He therefore calls upon all the relevant authorities to act more robustly to ensure the prompt and effective investigation and prosecution of persons responsible for criminal events surrounding the mass graves found in Serbia.**

3. Displaced persons

46. According to UNHCR, there are about 400,000 refugees and 230,000 IDPs living in the FRY.⁷ This number places an enormous financial and social burden on the authorities at a time when their national institutions themselves are seriously under-resourced and when the programmes and funding of international humanitarian actors are being dramatically reduced. **The Special Representative urges the national authorities and international agencies and donors to pay attention not only to the humanitarian but also the human rights dimensions of displacement - particularly in the implementation of sustainable solutions of return or local integration. All policies, strategies, programmes and funding support should have as their principal objective the enjoyment by all displaced persons of the full spectrum of civil, political, economic, social and cultural rights, in full conformity with the principle of non-discrimination.**

47. *On the situation of refugees*, the Special Representative welcomes progress being made to grant FRY citizenship to all refugees who elect to remain in FRY. However, he notes that the acquisition of citizenship does not lead, of itself, to full integration and the enjoyment of basic human rights and that such persons - particularly women and children - may continue to need care and protection even after the cessation of their formal refugee status. This situation raises human rights concerns that may require affirmative action in the context of the national PRSP being undertaken in Serbia and Montenegro.

48. The Special Representative welcomes progress made by the authorities since his last Report, to conclude bilateral arrangements with the Governments of Bosnia and Herzegovina and Croatia and to facilitate the voluntary return of refugees to their former homes. He also welcomes the fact that a reasonable number of refugees have elected to return to their homes.⁸ **He urges all States to pay greater attention to those human rights issues that are continued obstacles to return. In particular, he calls for closer cooperation between the FRY and Croatian authorities to resolve problems relating to pension and other acquired rights and housing rights - including effective national remedies for refugees whose tenancy rights were unlawfully and/or arbitrarily violated at the time of displacement. Such remedies should include accessible and justiciable rights of restitution or compensation in accordance with international human rights standards.**

49. *On the situation of IDPs*,⁹ the Special Representative expresses particular concern for the economic and social privations and legal ambiguity of IDPs who are unable or unwilling to exercise their right to return safely to Kosovo. IDPs suffer from high levels of unemployment and acute housing problems;¹⁰ many IDPs - particularly Roma - have difficulties obtaining personal documents such as identity cards, birth and citizenship certificates. IDPs are generally allowed only to register for temporary residence as their permanent residence is considered to remain in Kosovo - irrespective of the wishes of the IDP. Those in unofficial collective centres are often unable to obtain a "green card" which is a prerequisite to a number of welfare and social entitlements. **The Special Representative urges the authorities to review these requirements to ensure full compatibility with IDPs' right to freedom of movement.**

50. **He also urges donors and international humanitarian agencies to maintain effective programmes for the support and protection of IDPs**, notwithstanding the transition from humanitarian to development-based activities. Such programmes should be guided and informed by human rights principles and promote greater self-sufficiency and empowerment of IDP communities. All decisions about their return to Kosovo or integration locally should be based on their informed and genuine freedom of choice. **He therefore encourages recent initiatives by the national authorities, with the support of OCHA, OHCHR and UNHCR, to introduce the Guiding Principles on Internal Displacement as a legal framework within which IDP issues can be addressed in a principled yet practical way.**

4. Missing persons

51. After more than three years, the unresolved situation of some 4,700 persons¹¹ missing during the period of conflict in Kosovo continues to be a source of much suffering and frustration for the families of the missing, of all ethnic origins. Progress in forensic work has been too slow in the past and there was insufficient cooperation between the authorities in

Kosovo and Serbia proper to solve the practical issues involved. Recently, steps have been taken to introduce more systematic forensic analysis of human remains in Serbia - with the help of DNA and other testing provided by the International Committee for Missing Persons - and in Kosovo, through the newly created Office of Missing Persons and Forensics within the UNMIK Department of Justice. **The Special Representative recognizes the importance of this issue both for the families of the missing and for the purposes of criminal investigations, and urges the authorities in both places to increase their efforts and improve cross-boundary collaboration to resolve these issues as soon as possible.**

5. Reporting to United Nations treaty bodies

52. In the past, the FRY has fallen behind in its reporting obligations under the six main United Nations human rights treaties to which it is party. However, the Special Representative is pleased to note that, in 2002, the Federal and republican authorities have demonstrated a real commitment to bring these obligations up to date, in particular with the technical support of OHCHR. **The Special Representative recommends that the authorities use the reporting process as an important mechanism to improve the country's institutions and human rights practices. With respect to Kosovo, he recommends that UNMIK publish regular reports that are analogous to those required of State parties under international human rights instruments.**

6. Trafficking in human beings

53. Because of its geographical position and recent history, FRY (including Kosovo) is a main transit route for trafficking in human beings and increasingly a place of origin or final destination. The Special Representative notes that since October 2000, national NGOs, government bodies and international organizations have made good progress in creating national and regional networks that address the many dimensions of trafficking. These aim to improve legal frameworks and law enforcement against the traffickers, improve protection (safe-houses and SOS lines) and support for victims, and raise public awareness on the problem. **The Special Representative notes that practical obstacles remain and suggests that, in addition to more vigorous policing measures, emphasis should be placed on the human rights of the victims including legislative reform to protect them and witnesses, and greater regional coordination.**¹²

54. In Kosovo, a Victim Assistance Coordinator has just been appointed. This was envisaged in UNMIK regulation 2001/4, although nearly two years have passed since its promulgation. **The Special Representative urges the responsible authorities, including Commanders of national KFOR contingents, to take vigorous action against the organizers of trafficking, but at the same time to ensure that the human rights of the victims are adequately protected through more effective witness protection and the creation of safe-houses.**

7. National human rights institutions

55. The Special Representative welcomes draft legislation to create ombudspersons' offices in both Serbia and Montenegro and stresses the importance that these institutions be fully independent, adequately resourced and empowered with the mandate prescribed by the

Principles relating to the status of national institutions for the promotion and protection of human rights (the "Paris Principles").¹³ The mandate of such institutions should be broad and encompass remedial functions, monitoring and reporting on human rights violations, advocacy and education of the population. **He urges the Governments in both Republics to make every effort to inform the public and civil society fully about the nature and purpose of the new institutions.**

56. In Kosovo, the Ombudsperson Institution (OI), as a body within the Provisional Institutions of Self-Government (PISG), is preparing for the gradual departure of its international staff. The Special Representative believes that the OI is an important institution for the promotion and protection of human rights in the future and calls on UNMIK to provide it with the necessary mandate, powers and resources to function effectively. **He urges UNMIK to improve its cooperation with OI and to respond to communications in a prompt and constructive way.**

C. Situation in Serbia (excluding Kosovo) and Montenegro

1. The death penalty

57. The Special Representative welcomes steps taken by the Serbian and Montenegrin parliaments since November 2001 to remove the death penalty from their respective criminal codes. The death penalty was abolished in the Federal Constitution and Criminal Code in 1992, but was still technically applicable to less serious crimes under the republican criminal codes. Death sentences were pronounced in this period, although no executions took place and the legal situation of more than 20 prisoners previously sentenced to death needs to be clarified. **He recommends that the death penalty be removed from the laws on the execution of criminal sanctions in both Republics and specifically proscribed in their respective constitutions.**

2. Police reform

58. In his previous report, the Special Representative noted that reform of the police remains a priority area for the protection of human rights throughout the FRY. He welcomes the engagement of the Serbian and Montenegrin Interior Ministries - with the support of OSCE and Council of Europe - to develop and implement a range of measures to achieve reform. He remains concerned, however, by the overall pace of police reform. For example, the new Serbian law on Internal Affairs, which will redefine police powers and disciplinary measures and introduce a code of ethics, has yet to be passed by parliament. Furthermore, no comprehensive programme for the reassessment of the suitability for police duties of serving officers is planned in conjunction with the retraining programmes in Serbia. Thus, many officers against whom serious allegations of human rights violations exist continue on active duty.

59. The Special Representative also notes that in Montenegro, the new Law on the Police that was drafted in consultation with international agencies has yet to be adopted. The absence of a revised Code of Criminal Procedure means also that the applicable legislation on police powers does not fully reflect international human rights standards in the areas of the powers of arrest, the rights of detainees in police custody and the use of force.

60. The Special Representative remains concerned about credible allegations of torture or ill-treatment by individual police officers. Since his last report, he is aware of new allegations that include: the severe beating of Murat Pepic in front of a crowd during the 2002 New Year celebrations in Tutin (Serbia); Milan Milanovic, beaten by police when they intervened at a party in Belgrade (Serbia); March 2002, Nenad Miljkovic, beaten in Leskovac police station (Serbia), including *falaka* with baseball bats; five young Muslim-Bosniak men, beaten by the police in a village near Berane (Montenegro), August 2002; Nenad Tasic fell into a coma during a beating by police in Vranje (Serbia), August 2002; Nikola Maljkovic, beaten by police in Belgrade on 27 October 2002 following his arrest as part of an investigation into the murder of a senior police officer; and two Roma juveniles beaten by police in Niksic police station (Montenegro) on 14 November 2002.

61. While there is no suggestion that the use of torture is condoned at a high level in the police, the frequency of allegations and the failure to prevent incidents or introduce effective remedies or supervisory mechanisms in general leads the Special Representative to conclude that systemic problems remain and need to be addressed. In particular, he observes that police disciplinary tribunals are not sufficiently transparent, do not serve as effective deterrents to police officers, and often do not provide adequate information and remedies to victims.

62. Criminal prosecutions for alleged torture or ill-treatment by police do not appear to be an effective remedy in all cases. Police or public prosecutors rarely initiate complaints of such crimes and it is generally left to the victims to do so. Victims are frequently ignorant of the procedures and are without the means to engage the assistance of lawyers. As a result, cases are either not pursued or are pursued only when the assistance of an NGO is available.

63. The Special Representative is concerned that when criminal complaints are submitted to prosecutors, there are often lengthy delays before any reply is received and that prosecutors are often reluctant to initiate criminal prosecutions. In contrast, the police, prosecutors and courts almost invariably act more promptly when pursuing charges against the alleged victims of ill-treatment or torture. In some cases the charges, or threat of charges, against the victim appear to have no basis and to be aimed at trying to justify the actions of the police or discouraging the victims from complaining.

3. Armed forces

64. The Special Representative observes that only limited progress has been made towards establishing effective democratic oversight of the armed forces. Judges and prosecutors in the military justice system in the FRY do not always meet the standards of impartiality and independence required by international human rights. **He encourages efforts to implement effective democratic control by the elected authorities over the armed forces.**

65. The Special Representative is also concerned about the lack of clear internal guidelines on the use of lethal force. For example, on 9 June 2002 an ethnic Albanian FRY citizen was shot dead by a Yugoslav soldier on the international border near Presevo. The man had allegedly crossed illegally and disobeyed the soldier's order to stop. The incident revealed that soldiers guarding borders operate under regulations that are incompatible with contemporary human rights standards on the proportionate use of potentially lethal or other forms of force.¹⁴ **He urges**

the authorities to amend the relevant regulations and orders to ensure that potentially lethal force is used only when absolutely necessary, that clear operational guidelines - including an oversight mechanism - are issued, and that these conform to international human rights standards.

4. Conscientious objection

66. The Special Representative notes that the issue of conscientious objection to military service was partially addressed by the Federal authorities in the Amnesty Act in 2001, whereby thousands of men who refused military service during the Kosovo and NATO conflicts were amnestied. The Law on the Yugoslav Army currently provides for unarmed service in the army or Ministry of Defence but does not provide conscientious objectors with any alternative civilian service. **He urges the authorities to amend the law to ensure it is compatible with the recommendations of the Commission on Human Rights on conscientious objection to military service.**¹⁵

5. Judicial reform

67. Progress has been made to strengthen the rule of law and the judicial institutions. Professional judicial training centres have been established in Serbia and Montenegro, judges' salaries have been raised, and there have been improvements in the physical conditions of courts and available technology. However many challenges remain: judges face high caseloads and there are unacceptable delays in dispensing justice in both criminal and civil trials; the level of awareness of human rights among the judiciary remains low and insufficient progress has been made to remove incompetent judges - including those appointed only for political reasons during the former Milosevic period.

68. In this reporting period, the Special Representative notes that the media have been used to undermine the independence of the judiciary. Press reports implying the guilt of suspects - often based on statements by the police or politicians - have been issued at the time of high-profile criminal arrests. These may have the effect of exerting inappropriate pressure on the independence of the judiciary. He is concerned that the judiciary tends to be most at risk from external pressure - which also includes threats against judges and prosecutors - in the context of trials for war crimes, political assassinations or related to organized crime.

69. The Special Representative welcomes a new law passed on 19 July 2002 to combat organized crime and which also covers crimes against humanity and violations of international humanitarian law.¹⁶ This law, which has yet to be implemented, will establish a special prosecutor, a special service within the Ministry of the Interior and special departments within the courts. It raises questions regarding cross-jurisdiction of the military and civilian courts and whether the possible length of detention is compatible with the FRY Code of Criminal Procedure and international human rights. The security of judges and prosecutors and witness protection will also pose practical challenges. **He recommends that bodies dealing with crimes against humanity and violations of international humanitarian law be separated from those dealing with "organized crime" and that special legal training be given to judges, prosecutors and police officers in these areas.**

6. Freedom of expression and the media

70. Progress is being made to ensure the right to freedom of expression and independence of the media in Serbia¹⁷ and in Montenegro.¹⁸ However, he remains concerned that the laws in both republics still provide criminal sanctions for defamation and that private prosecutions can still be brought. For example, in Montenegro in November 2002, as a result of a prosecution brought by the President in his private capacity, Vladislav Asanin was sentenced to one month's imprisonment (on appeal) for reprinting allegedly defamatory allegations.¹⁹ In Serbia, the Independent Association of Journalists (IAJS) claimed that by November 2002, more than 200 private prosecutions against journalists were pending in the courts, for defamation or causing mental suffering. IAJS asserts that poor salaries, coupled with expensive defence costs and the absence of legal aid, mean that journalists are increasingly practising self-censorship to avoid the risk of prosecution. **The Special Representative urges both governments to abolish criminal prosecutions, custodial sentences and criminal fines for defamation completely, and to replace them with civil law measures that allow appropriate awards of damages.**

71. There has also been insufficient progress in identifying and prosecuting the perpetrators of the deaths of editor Slavko Curuvija in Belgrade in 1999 and journalist Milan Pantic in Jagodina in 2001. These cases underscore his concern about the existence of impunity, as well as threatening the freedom of expression.

7. Protection of national minorities, including Roma

72. The situation of national minorities is of particular importance in the FRY. The Special Representative therefore welcomes the new Federal Law on the Protection of the Rights and Freedoms of National Minorities enacted in February 2002, and steps taken to establish national councils to represent the interests of minorities, including Roma. In this reporting period, bilateral agreements on the protection of the rights of national minorities have been signed with several neighbouring countries and the FRY has produced its first report under the European Framework Convention for the Protection of Minorities. He also commends the work of the Serbian Ministry of Education in reviewing school textbooks and materials to remove negative stereotypes of minorities, and in increasing the number of schools offering education in minority languages, including the Roma language.

73. The Special Representative observes, nonetheless, that more needs to be done to ensure greater respect for minority rights at the level of both republics and at the community level. In Montenegro, the Constitution does not recognize "national minorities" as such - only "national and ethnic groups" - and the Ministry for National and Ethnic Groups has not developed any strategy to advance the protection of minorities. This is compounded in that new federal laws have not been applied in Montenegro since the Montenegrin parliament voted on 8 July 2000 to dissociate itself from the policies of the former Milosevic Government. **He emphasizes the need for a comprehensive FRY response to protect minority rights and encourages closer cooperation between all authorities, particularly at and between the republic, municipal and community levels.**

74. He notes that Roma are a particularly marginalized and vulnerable minority in FRY and deserve special attention - especially Roma IDPs from Kosovo. During his visit, the Special Representative observed that many Roma live in appalling and unsanitary housing conditions and that Roma women and children are most at risk. The lack of employment alternatives and land mean that these settlements are frequently around garbage dumps with attendant health risks such as sewage and vermin. A significant number of Roma are involved in recycling, often in exploitative economic relationships. Many settlements illegally occupy parcels of land that are attractive for urban development and Roma face eviction to even more marginal and unsuitable accommodation.

75. The Special Representative therefore welcomes the development by the Federal Ministry of National and Ethnic Communities of a national strategy plan for Roma and hopes that effective mechanisms for the strategy's implementation are put in place. **In this regard, he urges the responsible authorities at the republic and municipal levels - particularly those associated with urban development and private corporate investment - to ensure that the human rights of Roma are fully respected.**

8. Economic and social rights

76. The prevailing social and economic situation throughout the country poses significant challenges to the protection of economic and social rights. These include the effects of economic restructuring and privatization programmes; the generally degraded and under-resourced institutions of health and social support; high levels of unemployment, low incomes and the depreciation of pensions for elderly and disabled persons. In this context, the number of genuinely poor people, particularly vulnerable and marginalized groups such as refugees, IDPs, elderly persons and the mentally or physically disabled, is likely to increase. **The Special Representative welcomes steps taken by the Serbian and Montenegrin Governments to address issues of poverty and social vulnerability through strategies such as the Poverty Reduction Strategy Plans (PRSPs)²⁰ and encourages them, together with international donor support, to maintain adequate levels of support for human rights-based programmes²¹ that alleviate poverty of all vulnerable groups.**

D. Particular situation in southern Serbia

77. Solid progress has been made in the southern Serbian municipalities of Presevo, Bujanovac and Medvedja since the negotiated end of armed conflict in May 2001. Since his last report, the Special Representative notes that respect for human rights in the region has generally been sustained and, in some respects, consolidated. Local elections in the three municipalities in July 2002 resulted in a more balanced representation of the ethnic Albanian, Serb and Roma communities and was an important step towards the reintegration of all minorities in the region. A promised amnesty for ethnic Albanian former combatants was also implemented in July 2002.

78. A number of challenges remain. Ethnic Albanians displaced from the region to Kosovo have not returned in any numbers, largely because of unfavourable economic conditions. Allegations of torture, ill-treatment and disappearance by police during and in the months following the conflict have not been resolved nor have allegations of unlawful detention and torture against ethnic Albanian insurgents. Incidents of violence by extremist members of the

Albanian community - apparently aimed at moderate ethnic Albanians - were frequent in mid-2002, but more sporadic in the latter part of the year. **The Special Representative encourages the FRY and Serbian Governments to address these issues both as part of confidence-building measures and overall efforts to combat impunity.**

E. Situation in Kosovo

1. General situation

79. Overall, the security situation in Kosovo seems to be improving. Local elections in October 2002 were generally peaceful, with the exception of the deplorable murders of the Suhareke/Suva Reka municipal assembly president and two other members of his Democratic League of Kosovo party. Reported incidents of political or inter-ethnic violence were reduced in 2002 compared with the year before. However, the level of violence remains unacceptably high, particularly ethnically or politically based violence. The Special Representative condemns the numerous incidents which occurred since his last report, which included: the bombing of five Serbian houses in Klokot in July 2002; a mob attack on elderly Serbs and UNMIK police in Pec/Peja in October 2002; attacks on UNMIK police by Serbs in Mitrovica in April and in Decani by Albanians in August; the murder of lawyer Ibush Hoti in Pec/Peja and the destruction of two more Serbian Orthodox churches in November 2002.

80. The Special Representative welcomes progress in establishing the Provisional Institutions of Self-Government (PISG) in early 2002 and the inclusion of members of the Serbian community in key positions. He regrets the low rate of participation of Serbian voters in the October 2002 local elections, resulting in their underrepresentation in the municipal assemblies. He is also concerned that the new Kosovo Assembly has acted several times beyond its mandate under the Kosovo Constitutional Framework and the limits of Security Council resolution 1244 (1999). These actions are ultra vires and undermine efforts to gain the confidence and participation of its Serbian members.

81. The situation in the city of Mitrovica in northern Kosovo remains problematic and tensions continue between the ethnic communities. The Special Representative is encouraged, however, that since mid-2002, there has been greater cooperation between the UNMIK and Serbian authorities to dismantle the "parallel" administrative, judicial and police structures which have existed in northern Kosovo and other enclaves since June 1999. Local Kosovo Police Service (KPS) officers are now being deployed in the north, which was previously policed exclusively by international UNMIK police officers. The Special Representative hopes that with the cooperation and broad-based commitment of all parties, that all citizens will be able to move more freely and safely to and within the area.

82. More specifically in the area of human rights, he welcomes the emphasis given to human rights goals and benchmarks set out in the strategy of the Special Representative of the Secretary-General for determining the future status of Kosovo. **The Special Representative is convinced that these goals²² are essential if Kosovo is to mature into a pluralist, tolerant and democratic society in the future and he urges all parties to pledge their commitment to their full realization.**

83. He also welcomes the establishment in June 2002 of a two-tier human rights mechanism within UNMIK that consists of a Human Rights Oversight Committee and an Inter-Pillar Working Group on Human Rights. These bodies are intended to address systemic problems affecting human rights protection in Kosovo, review draft legislation to ensure conformity with international human rights standards, investigate individual cases of importance that have not been resolved elsewhere and respond to comments of UNMIK's human rights record from other organizations. **He encourages the authorities to give adequate resources and greater prominence to these human rights bodies to ensure that their work benefits the whole UNMIK structure.**

2. Rule of law

84. The Special Representative observes that despite progress in this important area, considerable problems remain in ensuring respect for the rule of law in Kosovo. Overall, the pace of reform continues to be slow and uneven. Regulations are still not in place to provide for habeas corpus or to update comprehensively the Criminal Codes, Code of Criminal Procedure and applicable law relating to juvenile justice. Relevant human rights standards have not yet been fully implemented within the criminal justice system and UNMIK regulations are not promptly translated and distributed in Albanian and Serbian. This contributes to the uncertainty over the applicable law in Kosovo.

85. Problems of ethnic and political bias, local interference and intimidation continue to undermine progress in Kosovo's courts. The system must rely heavily on international judges and prosecutors in serious cases, for example, cases involving perpetrators and victims of different ethnicities, organized crime, trafficking or ethnic-related crimes. Problems persist in recruiting suitable staff, including local or international judges and interpreters. Courts dealing with minor offences appear particularly susceptible to bias and international judges do not handle such cases.

86. Some trials are proceeding for war crimes committed in the 1998-1999 period of conflict. The Special Representative notes that problems in the administration of justice are exacerbated in cases involving war crimes or serious ethnic or politically motivated crimes. Of the 12 war crimes verdicts issued under UNMIK jurisdiction, 8 have been reversed by the Supreme Court. The UNMIK Police War Crimes Investigative Unit has a backlog of over 100 cases and scant resources are available for investigators or witness protection schemes (including safe houses). **The Special Representative is convinced that effective prosecutions of accused persons from all ethnic groups are required if impunity and perceptions of bias are to be eliminated from the judicial system and he urges the international community to support and adequately fund these efforts.**

87. Maintenance of law and order in Kosovo continues to rely on a combination of KFOR soldiers, international UNMIK police officers and local KPS officers. The Special Representative recognizes the difficult conditions prevailing in Kosovo and the achievements - particularly the creation of the KPS - but he remains concerned about allegations of ill-treatment and other illegal acts by KFOR soldiers or UNMIK agents. On one occasion, UNMIK officers are reported to have left the Kosovo jurisdiction when accused of human rights violations.²³ In this context, he notes the existence of immunity for soldiers or international UNMIK staff²⁴

(comparable to that given to diplomatic personnel). **Although immunity has been waived for UNMIK officials in the past, the Special Representative recommends that immunity for UNMIK and KFOR personnel should be granted sparingly and judiciously, not least because of the poor example it sets for local institutions and communities.**

3. Extrajudicial detention

88. The Special Representative repeats his earlier concerns about the executive powers of the Special Representative of the Secretary-General and the extrajudicial procedures of KFOR to detain persons without adequate judicial controls. Although he recognizes that these powers were invoked with lesser frequency than in 2001 and was reassured by the current KFOR Commander's general policy of avoiding the use of such powers, he is concerned that such measures of extrajudicial detention are incompatible with human rights standards. Given improvements in the security of Kosovo and in the quality of domestic judicial bodies, neither Security Council resolution 1244 (1999) nor the "open-ended" executive power of detention of the Special Representative of the Secretary-General would of itself, be sufficient legal justification for detentions. **He reiterates his earlier recommendations that should such detention be necessary to meet the security exigencies of any given situation, then proper legal derogations should be entered into.**²⁵

4. The situation of minorities and returnees

89. In view of the generalized climate of intimidation, violence and insecurity that prevails for ethnic Serbs and other ethnic minorities, together with the lack of sufficient financial and reconstruction aid for potential returnees, few displaced persons are able or willing to return to their homes from Serbia proper or Montenegro. According to UNHCR statistics²⁶ as at 31 October 2002, 1,977 internally and externally displaced non-Albanians returned to Kosovo in 2002. Between 2000 and 2002, 5,281 non-Albanians returned to Kosovo and between 2000 and March 2002, 10,000 newly displaced non-Albanians had registered with the Serbian authorities. These figures indicate a substantial net outflow in this period. **The Special Representative urges UNMIK, KFOR, members of the PISG and leaders of the Albanian community to increase efforts to protect not only the physical safety and freedom of movement of those who choose to return to Kosovo, but also their enjoyment of economic and social rights such as adequate housing (reconstruction), non-discriminatory access to public services, education, utilities, the labour market and effective equality before the law.**

90. In this context, he notes that the reported reduction in levels of violence against non-Albanians may indicate, inter alia, the high degree to which physical separation now exists between ethnic communities. Freedom of movement for ethnic minorities remains very limited. He is aware also that victims tend not to report to the UNMIK police minor incidents of discrimination, intimidation or harassment, and that official reports of crimes may not be a reliable measure of the state of inter-ethnic relations in Kosovo. Many minority communities currently lack confidence in the ability of UNMIK police and the KPS to safeguard their human rights. **The Special Representative urges UNMIK to undertake an in-depth empirical analysis of the present and potential for human rights abuses against all minorities.**

5. Property issues

91. There is a direct link between housing and property issues and the situation for ethnic minorities displaced within and outside Kosovo. Applicable housing laws are not well understood and the situation is confused by the involvement of a number of institutions in Kosovo working on these issues, including UNMIK municipal administrators, the courts and the Housing and Property Directorate (HPD). This situation needs to be rationalized and better public information be made available both in Kosovo and with affected IDPs in the rest of FRY. The deadline for lodging claims with the HPD, due to have expired on 1 December 2002, has now been extended to 1 June 2003. **The Special Representative welcomes this development and urges the authorities in Kosovo and in Serbia to strengthen their cooperation and information-sharing on housing and property issues as a crucial part of solutions for the IDPs. He also stresses the important role that NGOs can play to facilitate cross-boundary collaboration on these issues.**

6. Human rights of mentally disabled persons

92. The Special Representative is aware of reports that serious abuses occurred in facilities housing mentally disabled persons under the control of UNMIK and the PISG.²⁷ He is satisfied that these reports raise important human rights issues that need to be addressed by the responsible authorities as a matter of priority. In any reform programmes, the human rights of the disabled should be the primary consideration.

Notes

¹ This figure is provided by the Republika Srpska Ministry of Displaced Persons and Refugees. UNHCR figures indicate that as of the end of September 2002, the Republika Srpska had a 56 per cent implementation rate.

² UNHCR, September 2002.

³ UNHCR press release, International Human Rights Day, 10 December 2002.

⁴ The Living Standards Measurement Survey (LSMS) considers those working in the so-called grey economy as employed, and computes the rate of unemployment in Bosnia and Herzegovina at 16.1 per cent. According to the UNDP Bosnia and Herzegovina Human Development Report 2002, the number of persons estimated to be working in the grey economy is 320,000. The estimated loss to public revenues from such persons, who do not make any public contributions, is 250 million Bosnian marks. The Bosnia and Herzegovina Human Development Report 2002 has different figures for unemployment depending on the sectors of persons included. The figures range from 22.2 per cent (taking into account the grey economy) to 32.9 per cent (including workers on "waiting lists") to 43.6 per cent (including workers on "waiting lists" and those whose salaries have been in arrears for at least two months).

⁵ The Special Representative has received a number of reports of police ill-treatment and torture since his last report; see the section on police reform.

⁶ Humanitarian Law Centre, *War Crimes Trial in Nis*, October 2002.

⁷ According to UNHCR/Serbian Government sources, there were 392,655 refugees and 224,304 IDPs residing in FRY(outside Kosovo), comprising 377,731 refugees and 197,645 IDPs registered in Serbia and 14,924 refugees and 26,659 IDPs registered in Montenegro.

⁸ Unofficial numbers provided by UNHCR-Belgrade indicate that 22,000 refugees from Bosnia and Herzegovina and 18,000 refugees from Croatia have elected to “deregister” their refugee status.

⁹ For observations on conditions for IDPs in Kosovo, see the section on Kosovo.

¹⁰ According to a study by the International Council of Voluntary Agencies/Norwegian Refugee Council of March 2002, 52 per cent of IDPs are unemployed and 7 per cent have their own housing.

¹¹ Various lists and figures exist. For example, the International Committee of the Red Cross reports a lower figure because its methodology is based upon reports from close relatives only.

¹² See OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (HR/PUB/02/3), Geneva and New York, 2002.

¹³ General Assembly resolution 48/134 of 20 December 1993.

¹⁴ Border Service Regulation issued by the Federal Secretariat for Defence, April 1976.

¹⁵ See e.g. Commission on Human Rights resolution 1995/83.

¹⁶ Law on the Organization and Jurisdiction of the State Organs in the Combat of Organized Crime.

¹⁷ The Broadcasting Act was adopted in the Serbian parliament on 18 July 2002. The Act includes positive provisions to abandon practices of censorship and incorporates the main international standards and prohibition of discrimination.

¹⁸ In June 2002 Montenegro removed the possibility in law of ex officio prosecution for the defamation of public officials.

¹⁹ See Special Representative’s previous report (E/CN.4/2002/41).

²⁰ National strategies are being developed also for Roma, and refugees and IDPs.

²¹ OHCHR, Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies, September 2002. Available online, in English, at www.unhchr.ch/pdf/povertyfinal/pdf.

²² UNMIK press statement of May 2002, “Standards before status”, lists, inter alia, the following human rights goals: functioning democratic institutions; rule of law (police/judiciary); freedom of movement; returns and integration; property rights.

²³ An Austrian UNMIK police officer, whose immunity had been waived following allegations that he and three KPS officers had ill-treated a detainee, was reportedly detained while under investigation, but was assisted to leave Kosovo by fellow officers in February 2002. He was subsequently indicted by an international prosecutor, but remained abroad. Amnesty International, *Concerns in Europe January-June 2002*, EUR 01/07/2002, September 2002.

²⁴ UNMIK regulation 2000/47.

²⁵ In accordance with article 4 of the International Covenant on Civil and Political Rights.

²⁶ Being: Serbs (853); Roma (317); Ashkali Egyptian (635); Bosnian (117); Gorani (55): UNHCR *Activities in Kosovo*, HIWG/02/2, 1 June 2002, note 1 on page 3.

²⁷ “Not on the Agenda: Human Rights of People with Mental Disabilities in Kosovo”, report of Mental Health Rights International, 7 August 2002.
