

Law and Our Rights

An Eyewitness Revelation

Kosovo — Under an Apartheid Regime

by Bianca Jagger

I don't understand why Mr Richard Holbrooke and his counterparts in Europe continue to see President Milosevic as the guarantor of peace and not as the "Butcher of the Balkans" who should be indicted and brought to justice for war crimes and crimes against humanity committed in Bosnia and for those now being committed in Kosovo.

I went to Kosovo on a fact-finding mission from July 14 to July 23 to investigate violations of international human rights and humanitarian law resulting from the escalation of military and paramilitary operations carried out by the Yugoslav government. I decided to go and see for myself what was happening to the population of ethnic Albanians who live in Kosovo. A BBC crew from Newsnight travelled with me to document my effort.

During my visit I met with President Dr Ibrahim Rugova; with US Envoy, Ambassador Chris Hill; Veton Surroi, Editor in chief of Koha Ditore; Kosovo Liberation Army (KLA) commanders, Shaban Shala and Commander Ferri; Albin Kurti, President of the student's union; Gasmend Pula of the Kosovo Helsinki Committee; Dr Pajazit Nuski, President of the council for the defense of human rights and freedom in Pristina; and with the Vice-President and members of the council in Mitrovica. I also met with members of Doctors Without Borders (Médecin Sans Frontières); Beatrice Weber, head of the Sub-Delegation of the International Committee of the Red Cross (ICRC); and the vice president of the Mother Theresa Charitable Health Organization.

The Kosovo province is in the heart of Europe, the size of Wales. Of the 2,000,000 inhabitants, ninety percent are ethnic Albanians who are known as Kosovars, and ten percent are Serbs and other minorities. In 1989 the Serbian government stripped Kosovo of its autonomy. Since then President Milosevic has institutionalized a regime of terror and apartheid against ethnic Albanians. Numerous discriminatory laws, programs, and decisions have been enacted, which have affected all levels of their lives: 32 discriminatory laws were passed and 470 specific unlawful decisions were made. The presidency, the government, and an assembly were suspended. Kosovars were eliminated from the banking system, police and courts. Education, administration, and health care systems were suspended. Kosovars were coerced into accepting a new constitution that returned authority to Serbia. All newspapers and television stations were closed down. Blatant violations of civil and human rights occurred throughout the region. To cope with these severe discriminatory measures the ethnic Albanians of Kosovo were forced to develop their own parallel structures of education, health care and economy.

Discrimination against ethnic Albanians is not new in

Serbia. An excerpt from a 1937 book called *The Expulsion of the Albanians* by Dr Vaso Cvetkovic makes the point very clearly. It must be enforced to the letter, so as to make staying intolerable for the Albanians. At the time when Germany can expel tens of thousands of Jews and Russia can shift millions of people from one part of the continent to another the shifting of a few hundred thousand Albanians will not lead to the outbreak of a world war. This was a prophetic statement indeed!

Fred Abrahams from the Human Rights Watch/Helsinki, testified before the US Congress in November 1987. Since the revocation of Kosovo's autonomy, the human rights abuse against the ethnic Albanians by the Serbian and Yugoslav government has been constant. The names of the victims changed, but the frequency and manner of the beatings, harassment, and political trials remain the same. It is status quo of repression. The brutality of the policy continues against the population. Random harassment and beatings is a daily reality for ethnic Albanians in Kosovo, especially those in the villages and smaller towns. No policemen are ever held accountable for their actions, even when the brutality results in the death of an innocent person.

This regime of apartheid forced ethnic Albanians to leave Kosovo. More than 200,000 people have fled the country since 1990 up until today for fear of persecution. The economy no longer functions. Albanian entrepreneurs pay three times as many taxes as Serbians and are discriminated against in every other way as well.

In the last four months the Yugoslav military and paramilitary forces have used, once again, Bosnia-like tactics to carry out ethnic cleansing and destruction of private property. From the 28th of February this year, the Serbian military and paramilitary forces shook the people of Kosovo. On that day the Serbian police forces killed 24 Albanians and a week later the Serbian forces attacked Prekaz and the Jashari family. 56 people were killed, 12 were women, 11 were children and 5 were elderly. This marked the beginning of a policy of aggression and terror against the civilian population; the end of which is impossible to predict, but easy to imagine.

Since February the numbers of military, paramilitary, and a special police units have continued to rise. It is believed that between fifty and sixty thousand armed soldiers are engaged in the last military offensive against the people of Kosovo.

Every day there are reports of more violent assaults and increased repressions against Kosovars. Hundreds of civilians, women, and children have been murdered, more than a million people are under siege in towns and villages throughout Kosovo.

Many villages throughout Kosovo have been attacked by Serb forces which have used missiles, helicopter gunships, rocket-propelled grenades, armored vehicles with machine guns, and mortar rounds. On the 25th of May, the Serb forces succeeded in creating a "buffer zone", empty of ethnic Albanians, which extends from the border region all the way to the village of Decan.

Since the new military and paramilitary offensive against Kosovo, food, medicine and other humanitarian assistance have been prevented from reaching the civilian population. Tens of thousands have fled Kosovo seeking refuge in Albania, Macedonia, Montenegro, and other places in Europe and Turkey. More than 200,000 people have become internally displaced.

The last of offensive by Serb forces started while I was in Kosovo. They describe their offensive as "free orahovec". What we have been seen has eliminated any doubts that President Milosevic has started a new phase against the population of Kosovo that is sadly reminiscent of the ethnic cleansing tactics used against the people of Bosnia.

The new policy of passive resistance and peaceful demonstration has come to an end.

I have been to Bosnia on many occasions during the war. In Srebrenica I witnessed the aftermath of the horrors of the worst massacre of European soil since the Holocaust. The stories of Kosovo are hauntingly familiar. The same perpetrators: different victims. President Slobodan Milosevic and his military and paramilitary forces are using the same brutal tactics against ethnic Albanians.

Judge Luise Arbour, chief prosecutor of the International War Crimes Tribunal for the Former Yugoslavia (ICTY) was quoted as saying: "Evidence strongly suggests that war crimes are being committed — including arbitrary and indiscriminate attacks against civilians and summary executions of detainees."

The Serb forces had the audacity to use two Dutch tanks, stolen from the UN Dutch battalion during the Srebrenica massacre, in March against the people of Prekaz. Ethnic cleansing

is happening all over again.

Policy makers of the Contact Group, the United States and European governments have failed to learn the lessons of Bosnia. It is all rhetoric and no action while innocent civilians are being massacred. They have outlined a scenario which does not reflect the realities and conditions the people of Kosovo are facing. I don't understand why Mr Richard Holbrooke and his counterparts in Europe continue to see President Milosevic as the guarantor of peace and not as the "Butcher of the Balkans" who should be indicted and brought to justice for war crimes and crimes against humanity committed in Bosnia and for those now being committed in Kosovo.

The war has intensified in Kosovo and civilians' lives and security are greatly in danger; their freedom of movement is severely limited. Villages along our route illustrated a Bosnia-like pattern of ethnic cleansing and destruction of civilian property.

Summary executions, torture and ill-treatment by police, death in police custody and unfair trials of political prisoners, total impunity for these and other violations of basic human rights in Kosovo must be counted as one of the main sources of frustration and anger which has convinced the majority of ethnic Albanians that there is no other alternative but to fight for independence. They have no doubt that the answer. People in Kosovo often said to me that if the international community had supported their struggle two years ago, even one year ago, maybe violence could have been averted. They believe the international community failed them like they failed the Bosnians.

In order to understand the Kosovars' faith in the effectiveness of non-violent methods, optimism about the prospect of independence and belief in the imminent and widespread support they will receive from the international community, one has to remember the international political climate in which these attitudes were born. In 1989 radical political change through non-violent means seemed eminently possible: the Berlin Wall fell; in Poland, the strictly non-violent movement around the trade union Solidarity enjoyed worldwide support and brought down the totalitarian Communist rule; a dissident writer Vaclav Havel became president of Czechoslovakia; previously devalued territories such as the Baltic states were recovering independence and even imposing their own language on their former master. At the time, the

idea that Kosovo, led by an intellectual who advocated non-violence, would become an independent republic did not sound so outlandish. (from, "Kosovo Spring")

The Contact Group is advocating the restitution of an autonomous province and they are ignoring Kosovo Albanians' claim for independence. They are pursuing a peace settlement between President Milosevic and political leaders in Pristina who no longer have the support of the people in Kosovo. Why should ethnic Albanians in Kosovo accept the restitution of an autonomous state when they are well aware that Milosevic can strip them of their right with total impunity, as he did in the past, and be rewarded by the international community?

I am among those who believe that the international community's recent effort in Kosovo has given a green light to President Milosevic to carry out his last offensive against the KLA and those in the rural areas who support them in order to bring to their knees the KLA, forcing them to sit at a negotiating table with President Milosevic.

During my visit, our freedom of movement was very limited and we were harassed at security check points. We were stopped by a special Serbian police unit in the vicinity of Donji Prekaz outside a military base which was used to be a hunting ammunition factory. We were forced at gunpoint inside the military base, we were told to get out of our armored vehicle; the men were pointing their machine guns at us. We were forcefully ordered to put our hands up and to turn around facing our vehicle. We were subjected to search and interrogation. They wanted to separate us from our Albanian translator. They demanded to see what we had filmed and it was only after a series of silent shots — filmed when I had a sore throat — that they let us go.

This treatment illustrates substantial risk Kosovo civilians run when attempting to travel inside Kosovo. Government security forces throughout Kosovo are prepared to maltreat individuals based solely on their ethnic identity.

As a result of the last offensive we are now seeing the largest exodus of civilians so far. It is estimated that between 150,000 and 200,000 ethnic Albanians are displaced in Kosovo. Empty towns and villages; women, children and the elderly running for their lives; homes gutted by fires; villages sacked and burned; thousands of people living in the open air who have no access to food and humanitarian aid since the

Serbian forces are impeding the access of convoys from reaching them.

We are beginning to see familiar images that remind me of what I saw in Bosnia. And while policy-makers from the international community and the contact group waste precious time, innocent civilians are being massacred.

What should the international community call for?

The community should demand that President Milosevic's government immediately cease military, paramilitary and security operations in Kosovo and withdraw the military and paramilitary special units to their barracks outside of Kosovo.

The community should demand that President Milosevic issue clear instructions to all members of the security forces carrying out law enforcement functions in Kosovo that deliberate and indiscriminate attacks on civilians, arbitrary arrests and expulsions and other human rights violations will not be tolerated under any circumstances and those responsible will be held accountable before the International War Crimes Tribunal for the Former Yugoslavia.

The community should demand that President Milosevic immediately allow unrestricted freedom of movement in Kosovo for international and local humanitarian organizations to deliver humanitarian aid and medical assistance.

The community should demand the immediate unrestricted deployment of international human rights monitors and investigators of the International War Crimes Tribunal for the Former Yugoslavia (ICTY) to investigate reports of violations of humanitarian law, allegations and crimes committed in conjunction with security operations in Kosovo.

The community should demand that the international community, the Security Council and NATO use the necessary force required to convince President Milosevic to stop his brutal aggression against the people of Kosovo.

The community should demand that the OSCE, European Union, Council of Europe and the United Nations High Commissioner for Human Rights formally collect information of violations of human rights and humanitarian law in order to preserve testimonies and evidence.

The writer is a renowned human rights activist and member of several international human rights organizations.

LAW WATCH

Western Xenophobia

by Adilur Rahman Khan

THE United Nations has finally decided to slap the Serbs on the wrist and ask them to call a cease-fire and end bloodshed in Kosovo on the plea of saving the predominantly Muslim Kosovites. The world community thought that fascism ended with the demise of Hitler - but they were wrong. The xenophobic "Islam Bashing" in the West has given rise to new Hitlers in Serbia and other parts of the western world, for example, in France, Germany and Britain.

The systematic mass rape of Muslim women in Bosnia as part of "ethnic cleansing" would have probably even made Hitler ashamed. The question of universality of human rights and humanity have come to a stand-still situation in relation to Bosnians and Kosovites. Cultural selectivism and the attitude of the dominant western forces towards Muslims have already raised concerns regarding the universal application of human rights. Prominent political analyst, Professor Samuel P. Huntington's theory on the "Clash of Civilisations" has become the principal state policy of many western states and Muslims are now regarded as the enemies - as were the communists during the Soviet era.

Delayed action of NATO in Bosnia and the inaction of the United Nations to save the Kosovites will only reassure the Huntingtonian position of the western powers. War against Iraq, missile attacks on Sudan and Afghanistan, installation and protection of dictatorship in Algeria have only sharpened the conflicts. Turkey, being partially a country of "Europe", will never be included in the European Union because of the religious identity of its people.

The delayed decision of the United Nations Security Council in respect of Kosovo has again expressed its reluctance to address the issue concerning Muslims. Since the Kosovites were mostly a community of Muslims, they have been given a negative treatment from the dominant western powers and the controllers of United Nations. International instruments of human rights have failed to protect the Kosovites as they failed to protect the Bosnians before. What message with the Kosovites then get from the fifty-years of the celebration of the Universal Declaration of Human Rights (UDHR). The Kosovites have been stripped off their rights to self-determination and self-defence as enunciated in the international instruments of human rights. They have been made a prey of the Serbs for their genocidal attacks. Once Kosovo was an autonomous region of former Yugoslavia.

But after the breaking down of the state of Yugoslavia and after formation of the new states in the region like Serbia, Croatia, Bosnia etc. Kosovites continued to reside as an autonomous region with in Serbia. But the fascist Government of Serbia has stripped them of their rights. The Kosovites have been forced to learn the Serbian language and to follow Serbian culture, despite the fact that they have a very rich language and culture of their own.

If the west does not change its behavioral pattern towards the Bosnians, Kosovites and altogether towards the Muslims, the world will definitely be put in a conflicting situation which will eventually destabilise the present balance of world power and will bring an upside down situation. It is not wise for the west to make a billion people their enemy by their arrogance, combined with misconception and ignorance. Does the west feel that the oppressed will let the present injustice continue for long?

The writer, an advocate of Bangladesh Supreme Court is an Executive Member of Odhikar, a coalition of human rights.

Landscape

The Rights of Gay People in Bangladesh

by Z. Mehmood

In Bangladesh, a law student reads about rape. Sections 375 and 376 of The Penal Code. But the next section, Section 377 is not mentioned by the professor, perhaps because of its no practical implication or that it never appears in question papers.

LAST week in Belgium, a young man from Rangpur Sadar asked political asylum. He did not ask protection of Belgium State because his political activities in Bangladesh but as a gay person, he could not live in a hostile society and under constant criminal threat.

He said, he always knew he was different. While a student of class X, when girls were main subject matter of chats of his friends, he felt no affinity. Girls never attracted me, he said. At the age of sixteen, I first fell in love. I was in love with my friend.

He went on, in the beginning, it was not very difficult. Nobody noticed our relationship. From seventeen onward, our love matured in physical relationship. He described the period as clam before a storm and said, our happy relationship tragically ended soon. We were exposed.

He said, the reactions were swift and brutal. The whole locality got involved, our education stopped, family rejected us and we overnight turned into social lepers. The mosque committee summoned me and my father, who already, after through physical assault, has rejected me. We fled to neighbouring district.

To survive, we started a small business, to supply household necessities, from Dhaka to various northern districts. We chose this mobile business to avoid exposure. But he said, in a country of millions of people, gay couple relationship is difficult to hide.

In a country fraught with numerous problems, where mundane matters of life are hard to resolve, where sex still a taboo, homosexuality is not even on the agenda.

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Under the chapter XVI of offences affecting human body and sub-chapter "Of unnatural Offences", the law says, "Whoever voluntarily has carnal intercourse against the order of nature with man, woman or animal, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Explanation—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section."

The threat that hangs on the head of the gay couple in Bangladesh is the vague phrase in the law, "carnal intercourse against the order of nature". Also interesting to note is the fact that law has put same gender sex with sex with animal. It is difficult to understand the rationale to equate sex between two consenting adults of same gender with that of sex with animal. The law however has remained unchanged since its enactment in 1860.

The British, who gave this law to India, have changed their own law since. The Report of the Committee on Homosexual Offences and Prostitution, commonly known as "The Wolfenden Report", presented to Parliament by the Secretary of State for the Home Department in 1957, concluded that homosexuality that is, the condition of being sexually and emotionally oriented toward persons of the same sex, is a state of being. As such, it cannot constitutionally be considered a crime. In other words, laws against gay relationship are unconstitutional.

Recent scientific developments have confirmed how untenable the claim "against the order of nature" had been. It has been reported that scientists have isolated or are in the process of identifying the gene, controlling homosexual traits of a person. The discovery of the gene correspond with the statement of the gays, that their feelings and tendencies are as natural as heterosexuality.

The global norms have undergone radical transformations since a century and half back, when the Penal Code was first written. Thanks to advancement in science, which has offered the opportunity to understand more about homosexuality, that the law should now be changed accordingly. It is necessary to recognise that there is absolutely nothing unlawful in being gay or lesbian, in and of itself. The sooner the society appreciates, the better, then a gay person, like the young man of Rangpur, do not have to lead a secret life in the country or leave it, sad and frustrated, to an unknown land.

The writer is a researcher on gender and equality.

See No Evil, Speak No Evil, Hear No Evil

by Rahnuma Ahmed

But masculine ways of thinking, of seeing, of evaluating and assessing are so powerful that even those with sure conviction may falter when faced by a barrage of questions. What was she wearing? Why was she there? Was she unaccompanied? Should she have been there in the first place? How did she behave? Did she talk, did she smile, and did she lower her eyes? Does she talk to men? Does she go outdoors, and often? Does she have a good reputation? Is she married? Does she have children? Is she meek and humble or is she the protesting kind? Just as rape is never, ever justifiable whatever the circumstances, so also no woman ever invites rape. It is rapists who grab women, who assault women, who throw them down on the ground and rape them, all by the use of force. No screaming or kicking, no pleading or crying can stop them.

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Before the news of Jahangirnagar university campus rapes hit the national dailies, and more since then, I have been talking to faculty members, to teachers in administrative positions, to senior male colleagues about the issue of campus rape and our collective responsibility in ensuring a rape-free campus. Whenever the issue gets raised, invariably and within a matter of seconds, the conversation turns around to a discussion of the behavior of women students. Women students are to blame, they behave immodestly, they dress immodestly, they mix freely with boys, they stay outside the hall gates till late at night, they should be locked up by evening, if they are raped they are to be blamed — the voices go on and on. Senior faculty members, who have many years of teaching and administrative experience, who have taken leave from teaching positions to advise the government on important policy matters, who have worked as national consultants on research teams, who have headed in-

quiry teams, who have sat on high-level committees are all so immersed in masculine ideology that they fail to comprehend the basic fact that rape is a criminal offence. Why do male colleagues de-criminalise rape but not other crimes such as theft of property or murder? Is not de-criminalising rape akin to legitimising it?

Some Chhatra League student leaders assaulted me in broad daylight on the 23rd of August. This happened while I was taking photographs of their rally, which was held outside the JU Registry building. They encircled me, grabbed my camera, tore the strap away from my neck, smashed the camera and the film inside it to bits. They also abused me verbally. As an university employee I went by the university rules and lodged a formal complaint, naming my assailants and the student who I later learnt had orchestrated the assault. The university Discipline Board, a body consisting of all Provosts and Deans and the Proctor, headed by the Vice-Chancellor, enquired into the complaint. I was asked to be present at the Discipline Board proceedings and to bring witnesses who would give evidence on my behalf. At the hearing, I was asked to narrate the incident and was subjected to cross-examination — the whole interview lasted an hour and a quarter. Four persons (a colleague, a senior officer of the university, and two journalists) gave evidence on my behalf. Those accused were also asked to be present, to defend themselves against the charges. One among those accused presented three witnesses, the others didn't. All the ac-

cused students flatly denied the charges of assault. Regular newspaper readers know by now the university authorities' verdict: three of the five accused have been acquitted, of the remaining two, Mr Mehedi Hossain Tito has received a two-year expulsion alongwith a 5,000 taka fine and the other, Jasimuddin Manik has received a one-year expulsion. The other three have been issued letters of warning.

The Discipline Board, by its very constitution, is a body which tries cases of breach of discipline and misconduct by students. It also looks into complaints against students for the adoption of unfair means at university examinations and formulates rules and regulations for disciplining students. The outcome of my complaint of assault raises questions regarding the effectiveness of the Discipline Board. The outcome cannot but be considered prejudicial to the interests of maintaining discipline, protecting the personal safety of teachers, and that of the university teaching community as a whole.

A central concern of the disciplinary regulations of the university is student misconduct and breach of disciplinary norms. Teachers who occupy positions of authority within the university such as Proctor, Provost, House Tutor, Assistant House Tutor, and of course very obviously the Vice-Chancellor, enjoy proctorial powers ranging from mildly rebuking a student for misconduct — issuing a letter of warning, imposing a small fine — to imposing more stricter penalties such as, stiffer fines, debarring a student

from sitting for the exams, and expulsion. Expulsion may be for a small period such as six months, or it may be for one or two years or it may even be lifelong. Teachers who are not in positions of authority, general teachers, like myself also enjoy proctorial powers. One of the university rules states that for a teaching-related misconduct a teacher may levy a fifteen taka fine, or she may cancel the student's classroom attendance; in case of tutorial or practical classes, it may be attendance for that day and in the case of general classes, it may be attendance for three days. The rules also state that the teacher's decision is final, and she has to report the matter to the Head of Department, who will in turn report the matter to the Provost concerned.

A serious perusal of the disciplinary rules, the Statutes and the Act, reveals two central assumptions: one, general teachers who do not occupy positions of authority (as stated above or as members of Senate, Syndicate, Finance Committee, Academic Council) are, individually or collectively, responsible for the university's pursuit of providing instruction, or of providing and maintaining an academic atmosphere in which knowledge can be advanced and disseminated. It is envisaged that each teacher has a role in contributing towards maintaining an academic environment, which will encourage learning and the instilling of community values. Second, it is envisaged that teachers, individually or collectively, will not misuse their powers over a student; nowhere is there even a hint of the pos-

sibility that a teacher who brings a complaint towards any particular student may do so out of sheer malice.

The mode of enquiry adopted in my case by the Discipline Board, its methods of evaluating evidence and arriving at the truth clearly raises questions regarding its effectiveness. Not only did the burden of proof fall on me; I was made to feel embarrassed at having lodged a complaint. My naming the assailers, my narration of the whole incident, my ability to identify the assailers physically if necessary, my description of which of the assailers was located where, of who did what, who obstructed my path, who pulled at the camera, who tore it away from my neck — nothing was weighty enough. As a result, the outcome has, in effect, protected and even emboldened those elements, which are believed to be responsible for campus indiscipline. Some of these students have been expelled before, some are alleged to be extortionists, some are alleged to be rapists.

It could have been different. The university authorities could not only have taken disciplinary action against those accused, they could also have initiated legal proceedings since the action — assault on person and property — is a criminal offence. Or, since I maintained that I had been assaulted by more than one student, they could have taken steps to find out who the other assailers were. After all, the Jahangirnagar University Act, 1973 empowers the university to supervise and control the discipline of the students. Surely that is also the University's duty? Further, in view of the nearly month-long student protests regarding campus rape, the university authorities could have shown some concern about recovering the university's lost image, about gaining the teaching, student and residential community's confidence, and most of all the public's confidence, in its sincerity.

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