

VIEW FROM THE HAGUE

TRIBUNAL INDICTMENT AGAINST THE KLA

In Serbia and Montenegro, people often accuse the Tribunal of only indicting Serbs. This is a baseless accusation. The Tribunal has indicted individuals who are Croats, Serbs, Bosnian Muslims and Kosovo Albanians, including high-level political, military and police officials. While certain indictments against high-level Serbian officials receive a great deal of publicity in Serbia, people are often surprised to learn that the Tribunal has issued an indictment against three former members of the Kosovo Liberation Army (KLA).

On 24 January 2003, the Tribunal issued a sealed indictment against three former KLA officials. Fatmir Limaj, Haradin Bala and Isak Musliu stand accused of imprisoning, torturing and murdering Serbian and Albanian civilians from Kosovo. The indictment alleges that KLA forces under Limaj's command seized at least thirty-five Serb and Albanian civilians from Kosovo and forcibly brought them to a prison camp called Lapusnik, located in the municipality of Glogovac. The indictment states that at the camp, KLA forces under Limaj's command, including Bala and Musliu, held the Serb and Albanian civilians in brutal and inhumane conditions, failing to give them adequate food or medical care. The indictment also states that they tortured, beat, and murdered a number those detainees. It further alleges that the three KLA members repeatedly interrogated the Albanian civilians about alleged "collaboration" with Serbs. The indictment states that their evidence of "collaboration" was based on interaction with Serb civilians that was not military in nature. All three accused are charged with directly participating in these crimes. As a KLA commander, Limaj is additionally charged with command responsibility; that is, for failing to prevent these crimes and for failing to punish the perpetrators.

It is important to note that the Tribunal is not the only court that is investigating crimes committed on the territory of Kosovo. The Tribunal shares jurisdiction for prosecuting war crimes committed in the former Yugoslavia since 1991 with local courts. This includes Kosovo's current judicial system, which is under United Nations administration. Kosovo's courts have tried a number of Kosovo Albanian and Serbian individuals accused of war crimes committed in Kosovo against both Kosovo Albanian and Serbian victims.

The United Nations Mission in Kosovo (UNMIK) takes the impartiality of its proceedings very seriously. In order to ensure that Serb accused get a fair trial, in February 2000 UNMIK began to appoint international judges and prosecutors in courts across Kosovo to try war crimes cases, and more generally all cases involving inter-ethnic violence. Since December 2000, all cases of war crimes have been held before trial chambers composed of a majority of international judges, and it is mostly international prosecutors who have prosecuted them. These trial chambers have overturned a great number of verdicts in which Serb individuals were found guilty of war crimes by Kosovo Albanian judges in the short period before UNMIK began appointing international judges.

These trial chambers have also not shrunk from finding Kosovo Albanian perpetrators guilty of war crimes committed against both Kosovo Albanian and Serb victims, including high-level KLA commanders. For instance, a Kosovo Court found KLA commanders Latif Gashi, aka "Lata" and Rrustem Mustafa, aka "Remi" guilty of unlawfully detaining, torturing and murdering Kosovo Albanian victims who they accused of collaborating with Serbs.

The KLA members Limaj, Bala and Musliu were promptly apprehended and transferred following their indictment by the ICTY. They are currently in the Tribunal's Detention Unit awaiting trial, which is set to start this year. All three have pleaded not guilty. Like all Tribunal indictees, they

are presumed innocent until proven guilty. They have the same rights to legal counsel and to defend themselves in court as all other accused before the Tribunal.

Serbs should not feel that the international community is only prepared to indict Serb perpetrators. In addition to the indictment against Limaj, Bala and Musliu, the Tribunal's Prosecutor has announced that further investigations against senior KLA officials are ongoing. Kosovo's judicial institutions under UNMIK administration continue to investigate and try Kosovo Albanian as well as Serb perpetrators suspected of committing war crimes.

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