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## مجلس حقوق الإنسان

الدورة السابعة عشرة

البند ٣ من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

### تقرير المقرر الخاص المعني بحالات الإعدام خارج القضاء أو بإجراءات موجزة أو تعسفاً، فيليب أليستون

إضافة

بعثة إلى ألبانيا\*

موجز

ركزت زيارة المقرر الخاص لألبانيا بالدرجة الأولى على حالات الإعدام خارج القضاء في سياق عمليات الأخذ بالثأر والعنف المتزلي.

وفي مجالي التنمية الاقتصادية والاجتماعية واحترام حقوق الإنسان وسيادة القانون، قطعت ألبانيا أشواطاً هائلة في فترة زمنية وجيزة جداً. فقد اتسمت الحقبة الشيوعية بأقصى درجات القمع والاضطهاد وبسجن آلاف الناس وقتلهم لأسباب سياسية وبالغزلة والركود الاقتصادي. واعتمدت ألبانيا، منذ انتقالها في عام ١٩٩١، إصلاحات ديمقراطية واقتصادية واجتماعية وقانونية شاملة. ويُفترض أن تخدم هذه الإنجازات الملفتة عملية ترشحها لعضوية الاتحاد الأوروبي. وفي الآن ذاته، ما زالت ألبانيا تواجه تحديات قوية، منها الفساد وضرورة تنفيذ برنامج إصلاحاتها الطموح بموارد محدودة وفي سياق أزمة سياسية بين الأحزاب الرئيسية. وتضاعف هذه التحديات أهمية التصدي بفعالية لمسائل العدالة والمساءلة.

\* يُعَمَّم موجز هذا التقرير بجميع اللغات الرسمية. أما التقرير نفسه، الوارد في مرفق الموجز، فيُعَمَّم باللغة التي قَدِّم بها فقط.

وتتمثل عمليات الأخذ بالثأر التي يتناولها هذا التقرير في قتل فرد من أفراد أسرة القتاتل مع سبق الإصرار والترصد انتقاماً للشرف المهدور. وقد سُجل انخفاض مطرد في حالات القتل هذه على مدى السنوات الخمس الماضية، لكن الظاهرة لم تُمحق بالكامل، ولا تزال تبعات الثأر الواسعة تنخر نسيج المجتمع. وتتمثل أهم المشاكل في انعزال الأسر الكبير خوفاً من القتل بدافع الثأر واستمرار القول بمشروعية توقيع العقاب الجماعي على أفراد أسرة الجاني، حتى وإن كانوا أبرياء تماماً مما حدث. غير أن من المهم أيضاً عدم تضخيم حدة المشكلة. وفي حين قامت الحكومة بخطوات مهمة في سبيل التصدي لظاهرة الأخذ بالثأر، فبالإمكان بذل المزيد من الجهود لضمان القيام بالبحوث المناسبة من أجل التصدي للأسباب الأصلية ولتعزيز جهود التنقيف وتركيزها على أهداف محددة بحيث يحجم الأفراد عن استعمال العنف ضد الأفراد وعن توقيع العقاب الجماعي على أسر الجناة كوسيلة لتسوية النزاعات.

وتحرى المقرر الخاص أيضاً مسألة العنف المتزلي الذي يستهدف النساء، وهي ظاهرة مستشرية في ألبانيا وأسفرت عن وفاة ضحايا. ورغم جهود الحكومة والمناخين الدوليين، ما زال يتعين على الحكومة بذل المزيد، بما يشمل تخصيص ما يلزم من الموارد المالية والموارد الأخرى لتمويل الملاجئ وإسداء المشورة وبرامج التنقيف.

وينبغي للحكومة أيضاً إعطاء الأولوية للمساءلة عن جرائم الماضي - ليس بالقول فحسب وإنما بالفعل أيضاً، على أن يشمل ذلك التعاون في مختلف التحقيقات المتعلقة بما يُدعى حدوثه من عمليات قتل في ألبانيا في أعقاب حرب كوسوفو، ومقاضاة جميع المسؤولين عن حالات الوفاة في غيردك، والقيام بحساب واف وشفاف لآلاف حالات الاختفاء والوفاة خلال الحقبة الشيوعية.

## Annex

### Report of the Special Rapporteur on the extrajudicial, summary or arbitrary executions, Philip Alston, on his mission to Albania (15-23 February 2010)

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## I. Introduction

1. I visited Albania from 15 to 23 February 2010 to investigate extrajudicial executions, primarily in relation to blood feuds and domestic violence. I also investigated issues of accountability relating to other alleged killings.

2. The cooperation provided to me by all levels of the Government of Albania was exemplary. I am also grateful for the cooperation extended by international and domestic civil society representatives, victims' family members, and witnesses. I deeply appreciate the support provided by the United Nations Resident Coordinator, the Human Rights Adviser and other members of the United Nations country team in Albania.

## II. Blood feuds

3. Despite their anachronistic nature, blood feuds are still a significant problem in Albania. Relevant policies and programmes can only work, however, if based on an accurate and well-rounded understanding of the problem. Unfortunately, the statistics on those killed, and families isolated as a result, vary wildly from one source to another. Factors that have combined to create confusion and misunderstanding include terminological imprecision; sensationalist media coverage, especially by the international press; international donor fascination with what appears to be an "exotic" remnant of the country's feudal history; civil society incentives to be overly inclusive in their counting; and Government sensitivity leading to a concern to downplay the issue.

### A. What is a blood feud?

4. Blood feuds generally arise out of an argument, usually between two men whose families are neighbours or friends. The argument could have any cause, including an accident, a perceived insult, a property ownership disagreement or a conflict over access to electricity, water or fuel.<sup>1</sup> The argument escalates into a physical fight, and one man kills the other. The victim's family then feels that it is "owed blood" by the killer's family. This blood debt carries a related loss of honour, which can only be satisfied by taking the life of a member of the killer's family. The situation is generally governed by culturally embedded rules, generally derived from the *kanun*, as codified by Lekë Dukagjinit in the fifteenth century and updated in the first half of the twentieth century by Shtjefën Gjeçov.<sup>2</sup>

<sup>1</sup> Feuds have often been over "seduction, abduction, runaway wives, or the refusal of a girl to marry the man she was betrothed to . . . and land disputes." Mentor Mustafa and Antonia Young, "Feud narratives: contemporary deployments of *kanun* in Shala Valley, northern Albania", *Anthropological Notebooks*, vol. 14, no. 2, Slovene Anthropological Society, 2008, p. 93.

<sup>2</sup> Despite the importance of these codification efforts, the *kanun* is largely a set of orally transmitted customary rules, the content of which differs from region to region and over time. See *ibid.*, p. 94 ("Ethnographic studies of blood feuds find that the *kanun* should be considered the 'ideal' version; but in reality, blood feuds are managed quite differently in different local contexts."). Under the traditional requirements of *kanun*, as soon as one person kills another, the murderer should inform the victim's family, so that there is no confusion regarding the identity of the perpetrator. *Kanun*, art. 164. After the initial killing, the *kanun* calls for a truce so that the murderer can attend the victim's funeral. *Kanun*, arts. 854-856. Local practices may differ, however, and based on accounts of blood feuds in the Shkodra region and Puka, in some localities the victim's family is understood to be permitted to take revenge on the murdered or any of his male family members encountered within the first 24 hours of the murder.

5. A great deal of definitional confusion has resulted from the fact that different actors tend to use different meanings of the terms “blood feud” and “blood feud killings”. The narrowest understanding of a blood feud (*gjakmarrja*), based on the above fact-pattern, is that it is a premeditated familial avenging of lost blood; that is, where the family of a murdered victim kills a member of the perpetrator’s family to restore the honour and blood lost as a result of the initial murder. One anthropologist thus refers to a blood feud as a “sanctioned killing that cleanses honour with blood to avenge a crime or infringement upon the honour of oneself or one’s family.”<sup>3</sup>

6. A less strict interpretation will classify any revenge killing (*hakmarrja*) between families as a blood feud regardless of any reference to the need to restore blood and honour or of guidance by any *kanun*-related considerations.<sup>4</sup> In still broader understandings – which are also sometimes referred to as *hakmarrja* – even a revenge killing without a familial dimension (for example, killings between gangs) could be counted as blood feud killings.

7. The broadest and most questionable definition would count any initial killing because it may, at some point, lead the victim’s family to seek revenge against the perpetrator’s family. An equally questionable approach is to count among families characterized as self-isolated “due to blood feud” cases in which no killing had occurred and without any strong or formal element of self-isolation, but where a physical assault, a threat or some intense dispute had created a family or neighbourly feud.

## 1. Impact of blood feuds on families

8. Although it is primarily the alleged murderer who is targeted for a blood feud killing under *kanun*, local practices may differ so that potential targets also include other male relatives of the alleged murderer, including brothers, uncles, children and grandchildren. In northern Albania, as an example, families identify according to their *fisi i madh* (the clan or tribe, generally consisting of approximately 100 households, which may be spread over two or more villages) and their *fisi i vogël* (a smaller unit based on patrilineage, which usually encompasses five to ten households). It is the small *fis* that is relevant in the context of blood feuds and it is generally the nuclear family (*familja* or *shtëpia*, consisting of parents, their children, the father’s parents, any son’s wife and children) that “carries the burden of revenge”.<sup>5</sup> The basic shared understanding, however, is that the killer’s family is implicated by his act, thus entitling the victim’s family to take revenge against them.

9. Family members of those subjected to blood feuds, and mediators, emphasized that it is generally not permitted to kill a family member in his own home, or to kill women or children. Thus, for those families observing the traditions of blood feuds, when the initial killing occurs, the male members of the killer’s family immediately “self-isolate” by not leaving their home. This self-isolation is maintained even where there are no specific threats or assault attempts by the other family. The isolated family presumes that an attack is possible, unless the other family offers them a *besa* (a reprieve from the threat of revenge, which is often limited in scope or temporary in duration). Isolated families often also feel that, in the absence of a *besa*, honour requires them to remain isolated, even where there has been no concrete threat of vengeance.

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<sup>3</sup> Mustafa and Young, “Feud narratives”, p. 95.

<sup>4</sup> The term *gjakmarrja* is often used interchangeably with *hakmarrja*, a broader term that encompasses the concept of revenge or obtaining justice by taking back something justly owed, including, for example, a stolen object, or a revenge killing.

<sup>5</sup> Mustafa and Young, “Feud narratives”, p. 92. Traditionally it is considered a waste of one’s own blood to kill within the *fis*, although one study found that 28 per cent of intra-*fis* feuds in the northern Albanian Shala Valley. *Ibid.*, p. 100.

## 2. Resolution of blood feuds

10. The blood feud continues until the lost blood is avenged or until the family of the deceased man forgives the killer's family. When it occurs, forgiveness generally follows lengthy mediation. The *kanun* sets out the steps for mediation and conflict resolution, essentially requiring that the offending party repay the blood debt so that the honour of the victim's family is restored in the eyes of the community. The settlement may be in goods, such as livestock, or in money (although monetary payments are often not regarded as the most honourable means of settling a blood debt), and may also include the agreement of the offender's family to relocate from the area or community. Marriage between feuding families may also settle a feud.<sup>6</sup> I was informed by mediators that settlements often require the offending party to never again mention the killing, reflecting the traditional sense that it is inappropriate to discuss settlement terms. Reconciliation is generally formalized in a ceremony.

11. Mediation is usually performed by a male elder of stature in the community. The mediation process is seen as delicate and sensitive, involving overtures to family members directly affected by the blood feud, as well as other family members who may intercede, and may take years to resolve. One reconciliation ceremony that took place around the time of my visit involved a feud that had been resolved after approximately 50 years. A number of non-governmental organizations devoted to the reconciliation of blood feuds have also been established in recent years.<sup>7</sup> They perform reconciliations on a voluntary basis, receiving payment only for their expenses. Payment to mediators is not prohibited, however, and some interlocutors expressed concern that monetary incentives may be involved, with negative consequences.

12. Government officials may also play a helpful role. District officials and police in Shkodra detailed their own successful efforts in some cases to work with local religious leaders and mediators to ensure the security of families and children and to permit isolated children to return to school.

## B. Disputed extent of blood feuds

13. As noted above, there are deep discrepancies in the statistics concerning blood feuds and related killings. At one extreme, media reports have referred to hundreds of blood feud killings per year and thousands of children living in isolation.<sup>8</sup> At the other, according to Government statistics, such killings fell steadily from 45 in 1998 to just one in 2009, while

<sup>6</sup> Ibid., p. 103.

<sup>7</sup> These include the Albanian Foundation for Conflict Resolution and Reconciliation of Disputes, the Committee for Nationwide Reconciliation and the League of Peace Ministries, House of Justice and National Reconciliation.

<sup>8</sup> See for example Nicola Smith, "Blood feuds trap 1,200 Albanian youths at home", *Sunday Times*, 20 January 2008 (in which the author cites figures from non-governmental organizations reporting that "1,200 children are without schooling because of feuds", and that "since the end of the communist dictatorship in 1990, more than 20,000 families have been affected by blood feuds and 6,000 lives have been lost."); Richard Pine, "Albania's deadly tradition of blood feuds as pervasive as ever", *Irish Times*, 26 June 2009 (in which the author refers to unspecified "official figures" that, from 1998 to 2003, "put the number of feud-related deaths at 330; today it is approximately 10 per cent or less of all murders in the country. In one southern town, 28 deaths have been directly identified with a single blood-feud over a seven-year period"); and Bojan Pancevski and Nita Hoxha, "Thousands fear as blood feuds sweep Albania", *Daily Telegraph*, 3 June 2007 (in which the authors refer to "more than 20,000 [families] in the country who live under an ever-present death sentence because of ... blood feuds").

the number of isolated children ranges from 36 to 57 countrywide, of which 29 to 45 in Shkodra.<sup>9</sup> The variation in Government figures depended on whether the sources were police, education, or ministry officials.<sup>10</sup> The Government estimates that 124 to 133 families are in isolation countrywide.<sup>11</sup>

14. The figures used by civil society groups also vary widely. The Albanian Foundation for Conflict Resolution and Reconciliation of Disputes, an organization, with extensive field operations, told me that there had been significant reductions over the past five years and that there were currently only a few blood feud killings per year, with most cases taking place in Shkodra, Puke and the Malesise se Madhe districts. The organization estimated that not more than 350 families and 80 to 100 children were in isolation nationally. Another prominent organization, however, estimated some 9,800 blood feud killings since 1991, dropping to a figure still in excess of 30 in 2009.<sup>12</sup> By their calculations, there were 1,450 families and 800 children in isolation nationally.<sup>13</sup>

15. My own carefully considered view is that the correct numbers are at the lower end of the scale. Consistent with the view of the Government and the non-governmental organization with extensive field experience cited above, there are now few blood feud killings each year. The official figures for isolation seem more likely to be an underestimate, but not by a large margin. This is not to say that any one set of published estimates is definitive. Their accuracy is limited by inadequate data-gathering and recording techniques, and insufficient coordination. Even the official figures provided were inconsistent, and there seems to be no sustained effort to reconcile the discrepancies that result from definitional differences, underreporting, limited coverage of issues and incentives to exaggerate.

16. The largest discrepancy results from the use of differing definitions described above – from the narrow *gjakmarrja* revenge killing of a member of the perpetrator’s family to avenge honour, to the *hakmarrja* revenge killing that is unrelated to the restoration of honour. Both of these understandings – the narrow *gjakmarrja* and the broader *hakmarrja* – are reflected in most police and court statistics, especially since it is difficult to prove any specific cultural motivation for a particular killing. The greatest distortion is caused by counting as a “blood feud” any killing that might lead, at some point, to revenge.

17. Comparable problems result from differing interpretations of the effect or impact of blood feuds on family members. Some statistics count children who are “completely” isolated and unable to go to school as affected by blood feuds, while others include children who occasionally leave the house (including to go to school).<sup>14</sup>

18. A second factor is underreporting by affected families or officials. Killings in remote areas might not be systematically reported, and some families opt to pursue traditional remedies and avoid all State involvement. In addition, to the extent that statistics are based

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<sup>9</sup> See appendix II.

<sup>10</sup> According to figures provided to me by the police, in Shkodra district in 2009, there were 90 families (228 individuals) in isolation, with 45 children unable to attend school but receiving State-provided schooling through the Second Chance programme. According to the Ministry of Education, there were 41 children in the Second Chance programme, of whom 22 were boys and 19 girls.

<sup>11</sup> According to statistics provided by the national police, as at February 2010, there were 133 families in isolation, of whom 83 were in Shkodra district, 7 in Malesise se Madhe district, 13 in Lezha district, 8 in Kurbin district and 15 in Kukes district.

<sup>12</sup> Committee of Nationwide Reconciliation, Resolution of the Third Congress of the Reconciliation Missionaries, 30-31 March 2009.

<sup>13</sup> Ibid.

<sup>14</sup> European Union European Initiative for Democracy and Human Rights Programme for Albania, Assistance to Children in Blood Feud in Tropoje District, Final Narrative Report, March 2008.

on court judgements, they may be a poor indicator of blood feud killings because the perpetrator of a premeditated blood feud killing may be found guilty of a lesser charge, whether because of insufficient evidence, a family refusal to testify or corruption leading to a conviction for a lesser offence.

19. The coverage of Government programmes may also be incomplete. For example, Government figures on children in isolation are based on its Second Chance home-schooling programme, which goes only through ninth grade; older children are thus not covered. Similarly, focusing only on those killed and on self-isolated children will only partly capture the total of lives seriously affected by blood feuds.

20. A fourth factor is a tendency by some groups to overstate the magnitude of the problem to enhance their funding prospects. While various non-governmental organizations do extremely good work on these issues, many officials and independent observers expressed concern that a small number of groups deliberately exaggerate for fund-raising purposes. One group, for example, cited the figure of 300 police officers killed since 1991 in the line of duty. The historical accuracy of this figure cannot be confirmed, but it seems highly questionable, especially since police records over the past five years show just four killings of police in the line of duty. Some mediators told me that blood feud statistics should include all persons affected by any possible source of conflict that could be governed by *kanun*. Such a figure, however, would number in the tens of thousands and bear little or no relation to actual blood feuds. International donors do not help the situation when they provide funding for blood feud-related programmes without adequate scrutiny.

## C. Causes

21. Commentators attribute the revival of the blood feud to various causes.

### 1. Criminal and civil justice systems

22. The blood feud phenomenon re-emerged at the end of the communist era and increased significantly following the 1997 breakdown in law and order.<sup>15</sup> Many observers consider that the absence of effective governmental responses to criminality and the inability of the civilian justice system to provide effective dispute resolution have encouraged Albanian citizens to use *kanun*-based mechanisms to obtain justice.<sup>16</sup> Since 1998, the justice system has been almost entirely transformed from its non-adversarial communist-era structure to a more modern one with checks and balances, although in practice much remains to be done to implement those reforms, build capacity and train Government officials.<sup>17</sup>

23. Weaknesses that undermine citizens' trust in the legal system exist at all stages of the process and among all institutions. Historically, Albania had no experience with an adversarial justice system and the Government has not done enough to build the necessary

<sup>15</sup> In 1997, the Government of Albania collapsed following the failure of financial pyramid schemes in which a large share of the population had invested. The national armouries were looted and large numbers of people fled the country as a result of instability and economic hardship.

<sup>16</sup> Accounts of the blood feud phenomenon in the post-communist period almost uniformly identify as a cause individuals' recourse to an alternative justice system because the State justice system is, in reality and perception, subject to political pressure, inefficient and corrupt.

<sup>17</sup> Council of Europe, report by the Commissioner for Human Rights, Thomas Hammarberg, on his visit to Albania, 18 June 2008.

understanding of the system.<sup>18</sup> In addition, the judicial process lacks transparency: poorly reasoned decisions are issued by often inadequately trained judges, judgements are often not published or made easily available, and public access to judicial proceedings is limited by the inadequate size and availability of courtrooms. Enforcement mechanisms, including bailiffs' powers, are also lacking. Even reasoned and reasonable decisions may not result in effective remedies. This applies in both the criminal and civil contexts, especially in relation to property disputes.<sup>19</sup> Other major problems include the lack of reliable data on judicial processes and enforcement and the lack of meaningful institutional monitoring and evaluation mechanisms, both of which impede effective reform.

24. Although the Constitution guarantees separation of powers, it is widely acknowledged that there is improper political influence on the judiciary at all levels.<sup>20</sup> Constitutional rights are either not reflected in the Criminal or Civil Procedure Codes, or not implemented in practice because of a lack of resources, lack of infrastructure, inexperienced judges and counsel, and corruption. Interlocutors also raised concerns about the treatment of the constitutional immunity of ministers and judges in the Criminal Procedure Code. This immunity applies from the earliest stage of investigation, rather than at the point of charge or arrest. Thus, the target of what is often a sensitive investigation is informed as soon as an investigation is instigated, thus jeopardizing the chances of an effective investigation.

25. A number of interlocutors also raised concerns about the impact of corruption in the justice system on charges and sentencing for blood feud-related killings.<sup>21</sup> There is at least a widely held perception that bribing a judge may result in a lower sentence. Bribing a prosecutor was also seen as a means of reducing the potential charge from that for blood feuds, which carries a 20-year minimum sentence, to one that carries a lesser sentence. These concerns highlight the need for judicial probity to maintain the ability of the justice system to prosecute and punish killings effectively. They also underscore the necessity of anti-corruption and oversight measures.

26. Finally, there is continuing – and destabilizing – uncertainty around the composition of the Constitutional Court and the criteria and process for the appointment of judges to the Court. The Constitutional Court is a vital component in upholding the rule of law in Albania. The terms of two thirds of the judges expired in early 2010, and they were due to be replaced by the President, with the consent of the Assembly. In any such situation, a Government runs the risk of being seen to use the opportunity to significantly alter the composition of the court in its own favour. It is therefore important for the Government to demonstrate that the replacement process is governed by procedures that are, and can be seen to be, fair. It is desirable for the Government to commit itself, in all judicial appointments, to transparent procedures formulated to ensure a qualified and independent judiciary, and to reflect those procedures in legislation.

27. While the criminal justice system is thus significantly flawed, suggestions that it is so inefficient and corrupt as to necessitate continuing resort to blood feuds to achieve justice appear misplaced. There is no evidence that a perceived law and order vacuum explains a continuing attachment to the practice of blood feuds. While some cases, particularly older ones, remain unresolved, and some accused killers have gone into hiding or fled the country

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<sup>18</sup> American Bar Association Rule of Law Initiative, *Judicial Reform Index for Albania*, December 2008, p. 2.

<sup>19</sup> European Commission, *Albania 2008 Progress Report*, Commission Staff Working Document, SEC(2008) 2692 final, November 2008.

<sup>20</sup> Organization for Security and Cooperation in Europe (OSCE), *Analysis of the Criminal Justice System of Albania*, 2006; see also American Bar Association report, introduction.

<sup>21</sup> See also OSCE, *Analysis of the Criminal Justice System*, p. 174; and American Bar Association report.

and not been extradited, in most of the cases I examined, the killer had either surrendered or been quickly arrested, and was prosecuted and sentenced. Moreover, the reduction in recent years in the overall homicide rate has also brought with it a reduction in blood feuds, thus attesting to the impact of more effective policing, among other factors.

28. A much more salient problem is that many families involved in blood feuds do not see the State's criminal justice system as being capable of addressing their concerns, which centre on the loss of blood and honour caused by the initial killing. Sentencing a killer to a long prison term might be inadequate to satisfy some families' conception of justice, which requires restoration of the lost blood, either through a revenge killing or a voluntary formal reconciliation between the families. The actions of the State vis-à-vis the perpetrator are thus sometimes perceived to be irrelevant in the families' evaluation of whether there has been a "just" response.

29. On the other hand, the State's role in relation to the family in isolation varies. For many such families, it is limited at best. Some believe that, in practical terms, there is little the State could do to protect them. Others think the State should do little because matters of honour and respect must be resolved privately, rather than by the police. One such family indicated to me that, although they were deeply unhappy with the restraints and strictures of isolation under *kanun*, they felt obliged to remain in isolation in deference to the other family's respect for *kanun* rules. To this family, State intervention was beside the point. Moreover, many isolated families never receive a specific threat to which police could respond; they just believe that the lack of *besa* means they could be targeted at any time.

30. There are, however, cases in which the State could play a more active protection role for the isolated family. Offers to monitor are sometimes made, but it is not clear how seriously they are followed up. In one case in which I received evidence, the individual subject to threats and isolation sought protection from the local police and Government officials, but was told that, unless he could document and prove that he was under threat, he could receive no assistance. Internal relocation has occurred, but a more systematic programme could be developed. Threats could be tracked more effectively and prosecuted far more often than has been the case to date.

31. Each of these weaknesses, and the actions necessary for reform, have been exhaustively analysed and addressed by entities, including the European Assistance Mission to the Albanian Justice System, the Organization for Security and Cooperation in Europe, the Council of Europe, the United States Agency for International Development, and international civil society organizations, such as the American Bar Association.<sup>22</sup> The problem is not a lack of analysis or a dearth of recommendations. Rather, greater coordination among institutions and, above all, the exercise of political will and deployment of necessary resources to implement reforms are necessary.

## 2. Property disputes

32. Property disputes have been a major cause of conflicts, including contributing to blood feuds, in the post-communist era.<sup>23</sup> In one village in Shkodra district, for example, I was provided with evidence of six families who were in isolation as a result of blood feuds;

<sup>22</sup> Detailed reports from the European Assistance Mission are available from the website of the Ministry of Justice at [www.justice.gov.al](http://www.justice.gov.al).

<sup>23</sup> See for example United States Department of State Human Rights Report on Albania, 2006 ("Property disputes accounted for four-fifths of formally declared blood feuds, with the remainder pertaining to issues of honour or violations of the home (e.g., theft, trespassing, etc.)"). See also Mustafa and Young, "Feud narratives", pp. 90-100; and World Bank, Status of Land Reform and Real Property in Albania, Tirana, 2006, p. 17.

the underlying cause in four of these cases was property disputes. Expert interlocutors told me that, given the current state of property and land reform, property issues would continue to be a source of conflict for the foreseeable future. Yet, neither the Government nor civil society has attempted to collect or analyse data on the issue, including which of the many complex aspects of the country's post-communist property decollectivization and land reform process gives rise to blood feuds. Police statistics indicate that killings as a result of property disputes appear to be tracked separately from blood feud or revenge killings, although they may be related.<sup>24</sup>

(a) *Background*

33. That the property and land reform system has been at best confusing and at worst chaotic will come as little surprise, given the magnitude and complexity of the challenges. The source of conflicts and complexity extends back to the collectivization of land ownership starting in the 1940s, and a brief background is necessary to understand the likely reasons that property disputes continue to give rise to blood feuds.<sup>25</sup>

34. The post-Second World War communist regime abolished nearly all property rights. Beginning in 1945 with agricultural land, property was nationalized. By 1980, 76 per cent of agricultural land was cultivated by "agricultural production cooperatives", 21 per cent by State farms and 3 per cent by private owners.<sup>26</sup> In 1991, following the collapse of communism and in the face of an economic crisis, the new Government began a massive and speedy transition to a market economy through, in large part, the privatization of land and housing and its distribution to private parties and historical owners. Problems arise from the very beginning of this process.

35. First, the complexity of the legal structure of privatization and the enormity of the task led to confusion and a lack of uniformity. Each category of land and of ownership – agricultural fields (arable land), forests, pastures, housing properties with or without land plots, urban properties, commercial structures, and so on – has its own regime of law, with separately defined procedures for privatization, property registration and compensation. For certain kinds of land, there may also be restrictions on those seeking to obtain ownership or usage rights.<sup>27</sup> Thus, for example, privatization of agricultural land was governed by a law mandating that prior ownership of land was to have no impact on distribution, while the law on privatization of other immovable property mandated that it be returned to the former owners.<sup>28</sup> In 2004, a new legal framework for property restitution and compensation was established, but it too has been plagued with problems, including inconsistency in application and lack of resources and funding.<sup>29</sup> Second, parcels and property units were so

<sup>24</sup> There was confusion and apparent discrepancies between definitions and the explanations of national and district police specifically with regard to statistics relating to property motive-based killings or disputes. According to the national police, killings due to "property motive" were not related to blood feuds. According to the police in Shkodra district, however, the single greatest cause of blood feud killings was property disputes, but the statistics on these killings were not included in the numbers for blood feuds, but rather in the statistics for murders committed for "weak" motives, which were provided at a national level, but not at the Shkodra district level.

<sup>25</sup> Mustafa and Young, "Feud narratives", p. 90.

<sup>26</sup> Rachel Sabates-Wheeler and Myrtha Waite, *Albania Country Brief: Property Rights and Land Markets*, University of Wisconsin Land Tenure Center, July 2003, p. 5.

<sup>27</sup> World Bank, *Status of Land Reform*, p. 42.

<sup>28</sup> Law No. 7501 of 19 July 1991 (Law on Land); Law No. 7698 of 1993 (Property Restitution and Compensation to Former Owners); and Law No. 7699 of 1993 (Compensation in Value for the Former Owners of Agricultural Land). See also World Bank, *Status of Land Reform*, p. 41.

<sup>29</sup> Law N° 9235 of 2004 (Property Restitution and Compensation)(subsequently amended).

fragmented during collectivization that owners have often had to enter into multiple processes and transactions for approval to use their property even in a routine way. This has added to insecurity about property rights and generated an extralegal system of property transfer. Third, the Government agencies responsible for each step of the process and for the various kinds of property privatization regime often have overlapping and sometimes vague mandates, further leading to delays, confusion and high costs.

36. Progress lags on each of the three major reform prongs that would clarify and guarantee citizens' title to their property: registration, legalization, and restitution and compensation. Diverse problems at each level contribute to the insecurity of title for what is the principal asset or source of livelihood for most citizens. That insecurity is heightened in the view of many interlocutors by what is seen as the Government's constantly shifting strategy to address land and property ownership reform. Such heightened insecurity, combined with chronic delays in resolving disputes, enhances the likelihood of resort by some to alternative, private and violent means of dispute resolution, which may in turn give rise to blood feuds.

(b) *Causes and patterns of conflicts over property*

37. Although there has been no study of how, why and to what extent property disputes specifically give rise to blood feuds, my investigations and review of the available literature illustrate some of the likely causes and patterns for feuds arising out of the privatization of agricultural land, which are discussed as an example below. Much more detailed and specific study is, however, necessary in order to isolate the causes of different kinds of property-based feuds, and to enact the necessary targeted reforms and solutions.

(c) *Disputes over boundaries and property usage rights*

38. Law No. 7501, the original law on land privatization enacted in 1991, presupposed that there were clearly defined boundaries for properties and for villages. Years of collectivization, however, often blurred recollections, and recordkeeping has not always been uniform or accurate. Thus, conflicts may arise over the boundaries of land to be redistributed or the nature of historical agreements about the right to graze animals or log timber.

(d) *State corruption and inefficiency*

39. In a number of areas, the issuance of *Tapi* – land certificates that are the first step to establishing title under Law 7501 – lagged behind the allocation or occupation of land, leading to uncertainty and conflicts among villagers.<sup>30</sup> Often, the actions of local officials aggravate conflicts by mis-measuring land parcels, allocating land on the basis of corruption and favouritism, or failing to communicate their decisions efficiently and accurately to other relevant Government offices.<sup>31</sup>

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<sup>30</sup> Harold Lemel, "Rural Land Privatisation and Distribution in Albania: Evidence From the Field", *Europe-Asia Studies*, vol. 50, No. 1, 1998, p. 125; Azeta Cungu and Johan F.M. Swinnen, "Albania's Radical Agrarian Reform", Katholieke Universiteit Leuven, Policy Research Group, Department of Agricultural Economics, Working Paper No. 15, April 1998.

<sup>31</sup> Lemel, "Rural Land Privatisation", p. 125.

(e) *Dispute patterns based on pre-collectivization ownership and geography*

40. The patterns of property-related disputes vary according to geography and who owned the property at the time it was collectivized. In the southern part of Albania, for example – where there are comparatively fewer reported blood feuds – collectivized land originally belonged primarily to the owners of large estates who were killed or went into exile, and thus are less likely to dispute ownership again. The current occupants of the land thus have less strong familial attachment to it, and privatization and reallocation and restitution have resulted in relatively little conflict.<sup>32</sup> In contrast, land in the north-east, where there are comparatively more reported blood feuds, and in the central part was more widely and evenly distributed before collectivization.<sup>33</sup> Collectivization was also a more recent phenomenon in the north-east. As a result, in these areas, families and clans may want to reclaim their ancestral lands and conflict is far more likely.

41. Geography and internal migration also gave rise to conflict between relative “newcomers” and longer-term “locals”.<sup>34</sup> In addition, in instances in which individual families built houses on collectivized land, disputes arise when the land – but not the relatively new housing – is redistributed or reverts to hereditary owners.<sup>35</sup>

(f) *Kanun-related issues*

42. According to ethnographic studies and surveys, attachment to “ancestral land” and thus the desire to assert pre-collectivization rights is based not just on emotional ties but also on security concerns. Some feel that obtaining title to a “father’s land”, as recognized by the community under *kanun*-based precepts on ownership, is a stronger guarantee of rights vis-à-vis neighbours and the community than the “legal” guarantee of a relatively new central Government with a justice system that is seen as weak.<sup>36</sup> In parts of the mountainous north-east (for example, in Kukes), families and clans have reportedly ignored the restrictions of Law No. 7501 and have in fact redistributed land according to old boundaries and *kanun* principles, which have “exhaustive guidelines” on boundary recognition.<sup>37</sup> In these areas, disputes may arise over differences between property allocation under *kanun*, and that required under Law No. 7501. Conflicts may also arise for more traditional *kanun*-based reasons, such as familial disagreements over tradition-based inheritance rights.<sup>38</sup>

(g) *Shortcomings of the legal system*

43. The inefficiency and ineffectiveness of the justice system is the main barrier to the resolution of property disputes by courts instead of through illegal and extralegal measures.<sup>39</sup> The problems described above mean that judgements are long delayed, unregistered, unexecuted or ignored.<sup>40</sup> Both the Government and donors are taking steps to address the broader reforms needed in the Albanian justice system, but training and specific

<sup>32</sup> Ibid., p. 129. See also Clarissa de Waal, “Post-socialist Property Rights and Wrongs in Albania: An Ethnography of Agrarian Change”, *Conservation and Society*, vol. 2, no. 1, Cambridge, 2004.

<sup>33</sup> Lemel, “Rural Land Privatisation”, p. 130.

<sup>34</sup> Ibid., p. 128.

<sup>35</sup> de Waal, “Post-socialist Property Rights and Wrongs”, p. 27.

<sup>36</sup> Lemel, “Rural Land Privatisation”, p. 122.

<sup>37</sup> See de Waal, “Post-socialist Property Rights and Wrongs”, pp. 24-26; Lemel, “Rural Land Privatisation”, p. 124; and World Bank report, p. 42.

<sup>38</sup> de Waal, p. 27.

<sup>39</sup> World Bank, Status of Land Reform, pp. 17-18.

<sup>40</sup> Ibid., pp. 17-18.

reforms targeted at resolving land and property cases would significantly reduce the likelihood of resort to extralegal or traditional measures.<sup>41</sup>

#### **D. Socio-economic effects**

44. Isolation imposed by blood feuds has an impact not only on males, but also on women and children who are subject to home confinement. Such families are denied their rights not just to freedom of movement, but also to education, childhood development, social security, access to health care and to vote.

45. I requested statistics on the number of families and individuals who leave the country and seek asylum elsewhere as a result of blood feuds, but was told by the national police that this information did not exist because people generally do not provide information about the basis for their departure.

#### **E. Need to increase efforts to address blood feuds**

46. Important steps have been taken in the past five years to address blood feuds. The Criminal Code has been amended in important respects (minimum sentences and specific criminalization of blood feuds and blood feud killings),<sup>42</sup> and specialized police and prosecution units have been created to investigate blood feud killings and conflicts.<sup>43</sup> A high-level coordination committee on blood feuds was established by the Government in 2005, but it appears to have achieved little. The Second Chance programme of the Ministry of Education is an effective means of providing home schooling for isolated children. Based on my investigations in Shkodra district, the programme is staffed by clearly dedicated officials and teachers. But much more could and should be done.

47. Many interlocutors suggested the Government could do relatively little beyond its existing efforts to eliminate blood feuds and that community groups must do the rest themselves.<sup>44</sup> I disagree. I believe that the Government has important additional work to do in research, community education and outreach.

48. In research terms, the deeper cultural underpinnings of the system require better understanding, which can be promoted through sustained interdisciplinary research. Two examples illustrate some insights based on my research. First, it is important to recognize that there are significantly different levels of self-isolation. Some people are virtually confined full time, while others go out occasionally, and still others might leave the house quite often. All would consider themselves to be in isolation, however, because the families concerned have not yet reconciled. I also did not find significant evidence that women self-

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<sup>41</sup> Ibid., pp. 77-78.

<sup>42</sup> See Albanian Criminal Code, articles 78 (blood feud murder carries a sentence of 25 years to life) and 83(a) (serious threats of revenge or blood feud to a person or minor causing them to stay isolated results in a fine or up to three years of confinement).

<sup>43</sup> In Shkodra, for example, the police told me that, in 2004-2007, a specialized unit was established to focus on criminal activity related to blood feuds or arising out of a revenge motive. Personnel assigned to this section investigated alleged crimes for prosecution, and also monitored the security of families in isolation as a result of blood feuds. The police attributed the decline in blood feuds in Shkodra largely to these efforts, and stated that the special unit had been merged back into the regular police force.

<sup>44</sup> In Shkodra, for example, the police stated that they were often unable to protect families in isolation as a result of a blood feud because these families refused to make official complaints.

isolated for fear of being the subject of a revenge attack. A large number of girls did self-isolate, though this tended to be out of respect for the other family or fear that the girls would be assaulted or trafficked. In other words, more research will provide a more accurate picture of the challenges that need to be addressed.

49. Community education is also important. Although more research is needed, it is clear that low educational levels, especially in the areas most affected by blood feuds, are an important contributing factor to the decision to revenge killings. The north-east, in which feuds are the most common, is the poorest region in Albania.<sup>45</sup> Community education requires schooling and training, as well as broader community outreach. This includes educating citizens about the justice system and confronting the notion that collective punishment is acceptable. Such notions are utterly incompatible with the assumptions upon which Albanian society now operates, and the Government should encourage a greater understanding of the individual foundations of rights. Greater State involvement is also necessary to educate families who, once a killing has occurred, might turn for advice to civil society interlocutors who unnecessarily invoke the *kanun*. The perpetuation of the *kanun* mentality might unintentionally result.

50. Indeed, a number of self-isolating families indicated that they may not have gone into isolation were it not for pressure from societal elders or mediators to follow *kanun*-based precepts. This was borne out by a recent study carried out by the Justice and Peace Commission of Albania and Caritas.<sup>46</sup> Some 75 per cent of adults surveyed in 12 different districts of Albania stated that they knew little or nothing about *kanun*, and 81 per cent “blamed” the *kanun* for being the main cause of blood feuds.<sup>47</sup> For 57 per cent of those surveyed, killings were better dealt with through law enforcement.<sup>48</sup>

51. Finally, the Government could play a stronger role in outreach, especially in facilitating efforts to achieve family reconciliation, which to date has been almost completely left to families themselves and civil society.<sup>49</sup> A number of interlocutors informed me that they had approached the Government for assistance to end their self-isolation through reconciliation, but the State did little in response. The Government should be aware that while traditional mediation services can assist, they also perpetuate a parallel structure for conflict resolution that may be to the detriment of the government’s goal of strengthening courts to achieve justice.

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<sup>45</sup> Economist Intelligence Unit, “Albania economy: Giant strides on poverty reduction”, 19 June 2009.

<sup>46</sup> Justice and Peace Commission of Albania & Caritas, *Blood Feud in Albania* (2009); see also Jana Arsovska and Philippe Verduyn, “Globalisation, Conduct Norms and ‘Culture Conflict’: Perceptions of Violence and Crime in an Ethnic Albanian Context”, *British Journal of Criminology*, vol. 48, no.2, pp. 226, 236.

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*

<sup>49</sup> In 2003, Albania passed a law on dispute resolution through mediation, which sets out who is eligible for blood feud mediation, who can work as a mediator and how the process works. The law provides that mediation is fully voluntary, and neither family should pay for it. The law also provides that the non-governmental organizations that conduct the mediation must be registered, the mediators must be especially trained, and the organizations must complete studies on the conflicts addressed.

### III. Domestic violence

52. Domestic violence is widespread and some deaths have resulted. Approximately one out of three Albanian women experience physical violence at home.<sup>50</sup> Violence is most often spousal abuse, although it has also resulted from attempts to restore “honour”. According to official figures, 15 women were killed as a result of domestic violence in 2008 and 2009.<sup>51</sup> In 2005, there were 21 homicides resulting from violence in the home, and 25 murder threats.<sup>52</sup> The number of women killed as a result of domestic violence is likely an undercount because of the limitations of Government statistics on the causes of deaths, families underreporting of “private” violence and death, and the possibility that deaths occur, especially in rural areas or informal settlements, without the State being notified.

53. Apart from some commendable civil society efforts and the recent report of the National Institute of Statistics (the first comprehensive national domestic violence survey), there have been few efforts at reliable recordkeeping on, or sociological and other analysis of, the high level of violence in the home and the deaths that result. The few studies that are specific to Albania highlight cultural factors, including a strong historic tradition of male dominance,<sup>53</sup> the fact that domestic violence has long been considered to be a “normal”, private part of family life, and that Albanian society has emphasized hierarchical family order and intergenerational control.<sup>54</sup> The *kanun* is also seen as contributing to a culture of disrespect for and violence against women because of its patriarchal approach (for example, referring to women as sacks or a burden) and because it specifically sanctions violence, including murder of a wife for violations of the husband’s “honour” or for adultery,<sup>55</sup> and beating for a disobedient wife.<sup>56</sup> Women who are unemployed, less educated and living in rural areas are also seen as more vulnerable to violence.<sup>57</sup>

54. High domestic violence levels have recently received much-needed attention. The Government, with United Nations support, has developed a national strategy on gender equality and domestic violence (2007-2010),<sup>58</sup> which appraises State institutions dealing with domestic violence. It exposes failures of capacity, effectiveness, training and recordkeeping on the part of public health and medical officials, the police and the judiciary. It proposes extensive reforms to enhance victim protection and the investigation and punishment of perpetrators, a judicial and police infrastructure to protect victims, enhanced Government/civil society cooperation to assist victims, specialized training for

<sup>50</sup> National Institute of Statistics Albania, *Domestic Violence in Albania: A National Population-Based Survey*, March 2009. The survey found that 50.6 per cent of surveyed women reported emotional abuse by a spouse or partner, 39.1 per cent had experienced psychological abuse and 12.7 per cent had experienced sexual violence.

<sup>51</sup> Data provided to the Special Rapporteur by the Ministry of Labour, Social Affairs and Equal Opportunities, dated February 2010.

<sup>52</sup> Ministry of Labour, Social Affairs and Equal Opportunities, *National Strategy on Gender Equality and Domestic Violence (2007-2010)*, available from <http://www.osce.org/albania/32827>.

<sup>53</sup> Albanian National Committee of Women and Family and UNICEF, *Mapping of Existing Information on Domestic Violence in Albania*, October 2000.

<sup>54</sup> National Institute of Statistics of Albania, *Domestic Violence in Albania: A National Population-Based Survey*, March 2009.

<sup>55</sup> *Kanun*, sect. 31.

<sup>56</sup> *Ibid.*, sects. 28 and 31.

<sup>57</sup> Gender Alliance for Development Center and the Ministry of Labour, Social Affairs and Equal Opportunities, “Domestic Violence: A Presentation of the Existing Situation in Albania”, October 2006, available from [www.mpcs.gov.al/dpshb/images/stories/files/studime-publikime-libra/6.1.5.\\_Study\\_Domestic\\_Violence\\_Albania\\_2006.pdf](http://www.mpcs.gov.al/dpshb/images/stories/files/studime-publikime-libra/6.1.5._Study_Domestic_Violence_Albania_2006.pdf).

<sup>58</sup> Available from [www.osce.org/albania/32827](http://www.osce.org/albania/32827).

public health, police and judicial officials, an information-sharing protocol and maintenance of reliable statistics.

55. The 2006 Law against Domestic Violence sets up a network of authorities for protection, rehabilitation and prevention, establishes victim support structures and enhances judicial protection measures for victims. Donors have funded training for police, court and other officials, special domestic violence police units have been established, and shelters have increasingly been supported. Education campaigns have been launched and civil society groups have played an active mobilizing role.

56. The above-mentioned efforts have led to dramatic increases in the number of women reporting violence to police officials (from 270 in 2007 to over 1,000 in 2009), of protection orders and of offenders prosecuted.<sup>59</sup> Experts have also noted encouraging changes in official attitudes to domestic violence.

57. Attitudes remain a major challenge, however, especially with regard to Government budgeting for programme initiatives. Most financing currently comes from donors. Of 13 shelters for abused women and children, only four receive Government funding. A new shelter in Tirana, refurbished by the United Nations Development Programme, has Government support but no clear agreed budget allocation. The Government assured me that adequate funding would be forthcoming. Additional shelters are also urgently needed.

58. Gender violence experts reported that, while many police were increasingly willing to assist women, they often lacked the knowledge, resources or institutional support to do so most effectively. In some cases, the matter was as simple as providing police with the referral details of shelters and psychosocial support. In other cases, especially in rural areas, additional training and specialist police units are required.

59. More needs to be done by the Government to implement the provisions of the Domestic Violence Law. The Ministry of Justice needs to train lawyers to provide free legal representation of victims, and the Ministry of Health needs to assist health and medical officials to identify, record and provide services for victims. These burdens cannot be shouldered entirely by civil society. Finally, the media needs to be more responsible in its coverage of domestic violence.

#### **IV. Disappearances and killings after the Kosovo war**

60. For a number of years, allegations have been made that a few hundred people, reportedly including ethnic Albanians, Kosovars and Serbs, were abducted and taken across the Kosovo-Albania border after June 1999 by the Kosovo Liberation Army (KLA). Allegedly, these prisoners were held in KLA camps in Albania, some were tortured or killed, and some were victims of organ trafficking.

61. Initial investigations were undertaken in 2004 by the Office of the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia, although the cases were not then pursued. Subsequent investigations have been made by various other entities, including by the Council of Europe, the Serbian war crimes prosecutor and the European Union Rule of Law Mission in Kosovo (EULEX). For the most part, none of the various efforts to investigate have received meaningful cooperation from the Government of Albania.

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<sup>59</sup> For example, see Amnesty International, "Ending Domestic Violence in Albania: The Next Steps", March 2010.

62. The Albanian authorities insist that the allegations are politically motivated and entirely unfounded. While Government officials offered a variety of explanations for non-cooperation to me, these amounted in practice to a game of bureaucratic and diplomatic ping pong in which the responsibility for not responding to investigators' requests for cooperation was moved from one office to the next, each official insisting that, if requested by the right authorities and under the proper conditions, they would not hesitate to cooperate.

63. Shortly after my visit to Albania, the Minister for Foreign Affairs publicly stated that Albania was willing to cooperate fully and transparently with investigations into the allegations of abuse and killings. This commitment was a positive step, and I looked forward to seeing increased cooperation with EULEX and the Council of Europe. Unfortunately, this cooperation has not been forthcoming. In December 2010, the Council of Europe noted that the EULEX inquiries have been "hampered by a lack of co-operation on the part of Albanian authorities".<sup>60</sup>

64. Nevertheless, since my visit, there has been some progress in both the EULEX and Council of Europe investigations. In May 2010, EULEX arrested a former KLA commander suspected of torturing and mistreating prisoners at an illegal KLA detention facility in northern Albania. The Serbian war crimes prosecutor indicated that his office was also prosecuting the individual in two cases.<sup>61</sup> In December 2010, the Council of Europe investigations, led by Rapporteur Dick Marty, were made public. The Marty report documents "abuses widespread enough to constitute a pattern" committed by the KLA in Albania.<sup>62</sup> It identifies at least six KLA detention facilities in Albania operated during and after the conflict, and documents ill-treatment; beatings; secret detention; disappearances; and killings, including killing for the purposes of forced organ removal and organ trafficking (particularly of cadaver kidneys).

65. The Marty report documents severe abuses that must not be ignored. The perpetrators should be criminally investigated and prosecuted, and serious efforts made to investigate sites on Albanian territory that may contain further evidence and the bodies of victims. Unless the Government of Albania cooperates fully and meaningfully with EULEX and the other independent investigators into the reported abuse and killings by the KLA and other actors in Albanian territory, impunity will continue. In response to the present report, the Government indicated that it had invited "Mr. Marty to provide proof of the war crimes and organ trafficking described in his report and to turn them over to the relevant authorities." Reversing the onus of proof in this way is entirely incompatible with the function of human rights fact-finding and with the Government's own responsibility to investigate, prosecute and punish.

## V. Gërdec

66. On 15 March 2008, the explosion of obsolete munitions at an Albanian army base in Gërdec left 26 people dead, many hundreds injured or left homeless and property destroyed. Prosecutions of those responsible for the tragedy have lagged badly. The issue is heavily weighted with political implications that go beyond my mandate, but it is essential that the

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<sup>60</sup> See Council of Europe, Parliamentary Assembly, Committee on Legal Affairs and Human Rights, "Inhuman treatment of people and illicit trafficking in human organs in Kosovo", 12 December 2010, Explanatory Memorandum by Mr. Dick Marty, para. 19.

<sup>61</sup> Blic, "Serbian prosecutor discusses Kosovo Albanian war crimes case", BBC Monitoring, 11 May 2010.

<sup>62</sup> Council of Europe, "Inhuman treatment of people", para. 89.

Gërdec deaths be meaningfully investigated and effectively prosecuted. Where necessary, requests for the lifting of immunities must be made.

## VI. Communist-era abuses

67. Some 20 years after the fall of communism, Albania has still not dealt comprehensively with the killings and other human rights abuses committed during those years. Thousands were tortured, executed and disappeared by the State between 1946 and 1991. The Association of Former Political Prisoners estimates that 5,577 men and 450 women were executed under communist rule.<sup>63</sup> Mass graves continue to be discovered, including one containing 19 bodies the week before my visit, and another containing 80 bodies soon after. Nevertheless, the Association believes that about 4,000 victims of the communist regime are still missing.<sup>64</sup>

68. Victims' families are still unable to learn the truth, and the communist regime's abuses have not been accounted for, because Albania is one of the few former communist countries not to have opened the archives of communist-era security services. Instead, the measures taken are symbolic and politicized, and thus bound to fail. The small number of prosecutions in the 1990s are no substitute for the broader accounting required. A lustration law was introduced by the Government in December 2008,<sup>65</sup> but it drew heavy domestic and international criticism for being open to political misuse, including measures to remove or intimidate judges and prosecutors working on sensitive cases involving Government officials.<sup>66</sup> The Constitutional Court suspended the law in February 2009, annulled it in February 2010, and finally repealed it in March 2010.<sup>67</sup>

69. Until a full accounting is achieved, the Government will not have met its international legal obligations to investigate, prosecute and punish abuses. It may also leave the country hostage to its past when the rights violations of former officials are not openly acknowledged and resolved through judicial mechanisms. When violations are large scale and still politically charged, as is the case in Albania, justice may best be achieved through a national commission that could conduct an independent, systematic and sustained investigation of communist-era abuses. The Government has instead opted to establish an institute to study abuses during the communist era, and a task force to uncover mass graves

<sup>63</sup> "ICMP offers help with Albania's communist crimes", *Balkan Insight*, 31 March 2010, available from <http://www.balkaninsight.com/en/article/icmp-offers-help-with-albania-s-communist-crimes>.

<sup>64</sup> See Gjergj Erebara, "Investigation: son's search for father uncovers Albanian mass grave", 8 February 2010, available from <http://old.balkaninsight.com/en/main/news/25641/>; "Mass grave discovered in southwestern Albania", 23 April 2010, available from [www.setimes.com/cocoon/setimes/xhtml/en\\_GB/newsbriefs/setimes/newsbriefs/2010/04/23/nb-12](http://www.setimes.com/cocoon/setimes/xhtml/en_GB/newsbriefs/setimes/newsbriefs/2010/04/23/nb-12); and "Thousands of Albanian victims of communist regime still missing", 10 February 2010, available from [www.setimes.com/cocoon/setimes/xhtml/en\\_GB/features/setimes/newsbriefs/2010/02/10/nb-05](http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/newsbriefs/2010/02/10/nb-05).

<sup>65</sup> Law no. 10034 of 22 December 2008 on the Lustration of the Figure of High Functionaries of the Public Administration and Elected Officials.

<sup>66</sup> "Council of Europe, United States criticize Albania's controversial lustration law", 24 December 2008, available from [www.setimes.com/cocoon/setimes/xhtml/en\\_GB/features/setimes/newsbriefs/2008/12/24/nb-07](http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/newsbriefs/2008/12/24/nb-07); see also Human Rights Watch, submission to the Working Group on the Universal Periodic Review on Albania.

<sup>67</sup> "Albania High Court annuls lustration law", 2 February 2010, available from <http://old.balkaninsight.com/en/main/news/25406/>. See also Decision No. 9, 23 March 2010, Albanian Constitutional Court, available from [www.gjk.gov.al/](http://www.gjk.gov.al/).

from that period of history.<sup>68</sup> The Prime Minister assured me that the institute would have full access to secret service and all other Government files from that time. Without full access to communist-era records, these efforts will not satisfy family members' need to know what happened to their loved ones, and will not achieve accountability for thousands of dead and disappeared Albanian citizens.

## VII. Conclusions and recommendations

### A. Blood feuds

70. While blood feud killings will soon be largely a thing of the past, a belief in the practice of vindicating honour and blood outside the regular legal system remains well entrenched in certain parts of the society. Its elimination will require additional measures to those taken to date. The Government's understandable desire to see blood feuds as a purely historical artefact should not blind it to the need to consider taking measures such as:

(a) Establishing the secretariat long envisaged but not created for the coordination committee on blood feuds. As a matter of priority, the Government should, through the National Institute of Statistics, conduct a statistical survey and analysis, using uniform and meaningful definitions of the blood feud phenomenon and its prevalence and manifestation in Albanian society;

(b) Encouraging sustained interdisciplinary research on the issue of blood feuds, including its root causes and means of ending both killings and self-isolation, a task perhaps best entrusted to a new national institute of criminology;

(c) Consulting leading scholars and religious leaders to determine how best the Government might (i) conduct outreach to end self-isolation of families in blood feuds, (ii) facilitate more effective forms of reconciliation by community leaders of stature, and (iii) ensure mediators have no potential conflict of interest of any kind in the issue;

(d) Ensuring that educational curricula at all levels include an emphasis on individual human rights and specifically rebut the collective punishment message sent by the relevant parts of the *kanun*.

71. International donors should be more discerning in their funding programmes, and should be as concerned about broader issues of violence and problematic traditions of collective punishment as they are about the "exotic" notion of blood feud killings.

### B. Domestic violence

72. The Government should follow through on its assurances to fund programmes and shelters. Domestic violence programmes will need to be long-term to erode the

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<sup>68</sup> Law No. 10, 242 of 25 February 2010 on the Institute for Studies of Crimes and Consequences of Communism in Albania; Decision No. 133 of 24 February 2010 on the Creation of a Task Force That Will Seek to Find and Identify the People Executed by the Communist Regime.

deep-seated patriarchal views facilitating violence and to increase victims' access to justice.

73. The media should be more responsible in its coverage of domestic violence issues.

### **C. Disappearances and killings after the Kosovo war**

74. The Government of Albania should cooperate fully with EULEX and other independent investigations into abuses by the KLA on Albanian territory, including by providing access to Albanian territory for the purposes of evidence-gathering and excavation and by responding to EULEX requests for judicial assistance.

### **D. Gërdec**

75. The Prosecutor-General should ensure that the events leading to the Gërdec explosion are fully investigated, that all responsible parties prosecuted, and where necessary, requests for the lifting of immunities are made.

### **E. Communist-era abuses**

76. The Government should establish a national commission to conduct an independent, systematic and sustained investigation of communist-era abuses. In the interim, it should give the proposed institute for the study of communist-era abuses comprehensive access to all sources of information about that era and enable it to make effective use of its power to refer specific cases to the Prosecutor.

### **F. Justice system and anti-corruption reforms**

77. The Government should adopt, through legislation, criteria and procedures to ensure the professionalism, independence and integrity of judges, especially in relation to the Constitutional Court and the Supreme Court.

78. The Government should amend the Criminal Procedure Code to enable the Prosecutor's Office to commence investigations of high officials, including ministers and judges, without first having to have their immunity lifted. Immunity need only be lifted once the Prosecutor has sufficient evidence to warrant charges.

79. The Government should develop the capacity and expertise of statisticians and analysts at the National Institute of Statistics and in the relevant ministries to collect, analyse and report on criminal justice-related data in accordance with internationally accepted standards.

## Appendix I

### Programme of the mission

I visited Albania at the invitation of the Government from 15 to 23 February 2010. I travelled to Tirana, the region of Shkodra, and Fushë Krujë.

I met with the President, the Prime Minister and Deputy Prime Minister, as well as senior officials at the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of the Interior, the Ministry of Education and Sciences and the Ministry of Labour, Social Affairs and Equal Opportunities. I also met with the Chief Prosecutor and members of the General Prosecutor's Office, representatives of the Commission to Assess the Witness Programme and Collaborators of Justice, the Judicial Enforcement Service, the Internal Audit Service, the Director-General of the State Police, the directors and members of the Directorate of Witness and Special Persons Protection, the Directorate against Serious Crimes, the Directorate against Organized Crime, the Directorate of Criminal Information and Analysis and the Financial Crime Directorate. In addition, I met with representatives of the Property Restitution and Compensation Agency, the Central Office of Immoveable Property Registration and the Directorate of Land Administration and Protection. I held discussions with representatives of the Constitutional Court, the Supreme Court, the Court of Serious Crimes and the High Council of Justice, as well as the People's Advocate and the Commissioners of the People's Advocate, the Deputy Speaker of Parliament and representatives of the Parliamentary Commissions on Legal Affairs, Public Administration and Human Rights, and Labour, Social Affairs and Health. Officials with whom I met in Shkodra include the Mayor, the Prefect, the District Director of Police, the Director of Investigation of Serious Crimes and Organized Crime, the Director of Economic and Financial Crime, the Director of Forensic Police and Criminal Information and Analysis Sector, the Chairperson of the Investigative Unit for Combating Economic Crime and Corruption, the District Attorney, and members of the Shkodra District Court and the Education Directorate.

I also met with international officials and members of the diplomatic community, representatives of domestic and international civil society, and academics. I am grateful for the cooperation extended by witnesses to human rights abuses and the significant number of families involved in blood feuds with whom I met.

Before visiting Albania, I was able to analyse in detail the available reports prepared on the relevant human rights issues in Albania, including Government data and publications, reports by intergovernmental organizations, and reports by international, national and local civil society organizations.

I am indebted to the United Nations Resident Coordinator and the Human Rights Adviser to the United Nations in Albania for facilitating my mission, and to the representatives from many United Nations and other intergovernmental institutions and agencies who provided information on the issues I addressed during the course of my mission.

## Appendix II

### Police statistics

According to the national police, the statistics for murder between 2005 and 2009, including blood feuds and revenge killings (for a discussion of the distinction between the two, see discussion in main text below) are as shown in the table below.

<i>Murder</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2005-2009</i>
<b>Total</b>	<b>131</b>	<b>87</b>	<b>103</b>	<b>88</b>	<b>82</b>	<b>491</b>
For blood feud motives	6	4	0	5	1	16
For revenge	9	5	8	1	1	24
For property motives	5	4	5	2	6	22
For “weak” motives	71	48	62	58	53	292
For other reasons	20	25	23	6	11	85

In the past five years, 16 individuals have been arrested and prosecuted for blood feud killings, receiving sentences of 15 to 25 years imprisonment. The number of other cases resulting in prosecutions and sentences were not provided to me broken down by motive. In addition, 195 of 1982 murders committed from 1998 to 2004 were blood feud-related – but these statistics do not distinguish blood feud and revenge killings, and could include both categories.

According to the police in Shkodra, the number of killings committed with a revenge motive in the Shkodra region between 2005 and 2009 are as shown below.

<i>Murder</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>Total</i>
<b>Total</b>	<b>15</b>	<b>10</b>	<b>12</b>	<b>20</b>	<b>7</b>	<b>64</b>
For revenge motives	2	3	0	3	0	8
Percentage for vengeance compared with the total number of murders	13%	30%	0%	15%	0%	12.5%

As at June 2010, criminal responsibility had been found in six of the alleged revenge killing cases, resulting in sentences of 15 to 20 years in prison. I was not provided information about the number of perpetrators concerned.