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the right to development

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston*

Addendum

Preliminary note on the mission to Albania (15–23 February
2010)

* Late submission.

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1–2	3
II. Blood feuds	3–26	3
A. What is a blood feud?	5–7	3
B. The disputed extent of blood feuds.....	8–15	4
C. The causes of blood feuds	16–21	5
D. Government efforts to address blood feuds	22–26	6
III. Domestic violence.....	27–31	7
IV. Disappearances and killings after the Kosovo war	32–35	8
V. Gërdec	36	8
VI. Communist-era human rights abuses	37–38	8
VII. The criminal justice system.....	39–41	9
VIII. Interim conclusions and recommendations	42–50	9
A. Blood feuds.....	42–43	9
B. Domestic violence	44	10
C. Disappearances and killings after the Kosovo war	45	10
D. Gërdec	46	10
E. Communist-era abuses.....	47	11
F. Justice system and anti-corruption reforms	48–50	11

I. Introduction

1. I visited Albania from 15 to 23 February 2010. The cooperation I received at all levels from the Government of Albania during my nine-day trip to Tirana, the region of Shkodra and Fushë Krujë was exemplary. I also met with international officials, representatives of domestic and international civil society, academics, witnesses and a significant number of families involved in blood feuds. I am grateful to the United Nations officials who facilitated my mission and provided support.

2. In terms of both economic and social development and respect for human rights and the rule of law, Albania has achieved an enormous amount in a very short period of time. These impressive achievements will clearly serve it well as it proceeds on the path towards candidacy for European Union membership. During my mission, I focused particularly on blood feuds and domestic violence, as well as on issues of accountability in relation to other alleged killings.

II. Blood feuds

3. A major objective of my mission was to clarify the situation relating to blood feuds. Policies and programmes can only work if based on an accurate and well-rounded understanding of the problem. Unfortunately, the statistics on those killed and families isolated vary widely from one source to another. Various factors have combined to create considerable confusion and misunderstanding. They include terminological imprecision; sensationalist media coverage, especially by the international press; international donor fascination with an exotic remnant from a feudal era; civil society incentives to be overly inclusive in their counting; and Government hypersensitivity and an understandable concern to play down the issue.

4. In a nutshell, the numbers of blood feud killings in Albania has decreased steadily over the past five years, but the phenomenon has not been entirely eliminated. Moreover, its broader implications continue to have a corrosive effect on society. The most important problems are significant self-isolation by families fearing a revenge killing, and a continued belief in the legitimacy of the collective punishment of a wrongdoer's family members, even when they are completely innocent in the matter. By the same token, exaggeration of the magnitude of the problem can significantly hinder reform endeavours.

A. What is a blood feud?

5. A blood feud generally begins with an argument, usually between two men whose families are neighbours or friends. The argument may have any cause: an accident, a perceived insult, a property ownership disagreement, a conflict over access to electricity, water or fuel, and so on. 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 debt and the related loss of honour can only be satisfied by taking the life of a member of the killer's family.

6. The situation is governed by culturally understood rules, generally derived from the *kanun*, as codified by Lekë Dukagjini in the fifteenth century and updated in the first half of the twentieth century by Shtjefen Gjeçov. 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. The shared understanding is that the killer's family is implicated by his act, thus entitling the victim's family to take revenge against

them. Generally, it is not permitted to kill a family member in his own home or to kill women or children. Thus, when a killing occurs, the male members of the killer's family immediately "self-isolate" and do not leave 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* (an often limited or temporary reprieve from the threat of revenge). They often also feel that, in the absence of a *besa*, honour requires them to remain isolated, even where there has been no concrete threat.

7. 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, and is formalized in a reconciliation ceremony.

B. The disputed extent of blood feuds

8. 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. At the other extreme, according to Government statistics, such killings fell steadily from 45 in 1998 to one in 2009, while the number of isolated children ranges from 36 to 57 countrywide, of which 29 to 45 are in Shkodra. The variation depended on whether the sources were police, education or ministry officials. Families in isolation were estimated to be from 124 and 133 countrywide.

9. The figures used by civil society groups also vary widely. One organization with extensive field operations notes that there have been significant reductions over the last five years and that there are currently only a few blood feud killings per year. They estimate not more than 350 families and between 80 and 100 children to be in isolation nationally. However, another prominent organization estimates some 9,800 blood feud killings since 1991, dropping to a figure still in excess of 30 in 2009. By its calculations, there are 1,450 families and 800 children in isolation.

10. My own carefully considered view is that the correct numbers are much closer to those provided by the Government, especially in relation to killings. The figures for isolation seem more likely to be an underestimation, but again, not by a large margin. This is not to say that the Government statistics are definitive. Their accuracy is qualified by inadequate data-gathering and recording techniques, and insufficient coordination. These problems were underscored by the inconsistency of various official figures provided to me. I am also not aware of any sustained Government effort to reconcile the competing statistics.

11. Four factors account for the discrepancies among the various figures: definitional differences; underreporting; limited coverage of issues; and incentives to overstate.

12. In terms of definitions, different actors tend to use different meanings of the term "blood feud" and of "blood feud killings". The narrowest ("traditional") understanding is that a blood feud killing 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. A less strict interpretation classifies any revenge killing 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. Both of these understandings are reflected in most police and court statistics, especially since it is difficult to prove any specific cultural motivation for a killing. In broader definitions, any premeditated murder motivated by any reason of revenge (*hakmarrja*) between families could be a blood feud killing (*gjakmarrja*). In still broader understandings, even a revenge killing without a familial dimension (e.g. killings between gangs) could be counted as blood

feud killings. Because both “blood feud” and “revenge” are included within the same section of the Criminal Code, some official statistics do not distinguish between the two. The broadest and most questionable definition would count any 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.

13. A second factor is underreporting. Killings in remote areas might not be systematically reported. Moreover, in some instances, the families might want to avoid all State involvement in order to pursue traditional remedies. In addition, statistics based on court judgements 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.

14. Thirdly, the coverage of Government programmes may 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, a combined focus on those killed and the number of self-isolated children will go only part of the way towards capturing the overall number of people whose lives are seriously affected by blood feuds.

15. A fourth factor is the existence of incentives for some groups to overstate the magnitude of the problem in order to get funding. 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. International donors do not help the situation when they provide funding for blood feud-related programmes without adequate scrutiny.

C. The causes of blood feuds

16. Commentators attribute the revival of the blood feud to various causes, including the post-communist era breakdown of the State, failings in the criminal justice system, unresolved property disputes and educational failings.

1. The criminal justice system

17. The blood feud phenomenon re-emerged at the end of the communist era and increased significantly with the 1997 breakdown in law and order. The absence of effective official responses to criminality encouraged the citizenry to revert to traditional mechanisms to obtain justice. Suggestions that the criminal justice system is still so inefficient and corrupt as to necessitate continuing resort to blood feuds to achieve justice appear, however, misplaced. While the justice system does suffer from serious weaknesses and considerable corruption, there is no evidence that a perceived law and order vacuum explains a continuing attachment to the practice of blood feuds.

18. 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 around the loss of blood and honour caused by the initial killing. Sentencing a killer to prison fails to go to the essence of their conception of justice, which requires restoration of the lost blood through either a revenge killing or a voluntary formal reconciliation between the families. The actions of the State vis-à-vis the perpetrator are thus irrelevant in the families’ evaluation of whether there has been a “just” response to the original killing.

19. On the other hand, the role of the State 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. 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. 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. 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.

2. Property

20. Property disputes, resulting in large part from the extensive, complex and ongoing land reform in Albania are widely acknowledged to be a major cause of blood feuds. This was amply confirmed by my investigations, yet neither the Government nor civil society has attempted to collect or analyse data on the issue.

3. Education

21. Low educational levels, especially in the areas most affected by blood feuds, are also an important contributing factor to the decision to respond to killings by employing traditional means rather than by using the justice system.

D. Government efforts to address blood feuds

22. 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), specialized police units have been created, a high-level coordination committee on blood feuds was established in 2005, and the “Second Chance” programme provides home schooling for isolated children. Much more, however, could and should be done.

23. Many interlocutors suggested that there is relatively little that the Government can do beyond its existing efforts to eliminate blood feuds and that community groups must do the rest themselves. I disagree. The Government has important additional work to do in research, community education and outreach.

24. In research terms, the deeper cultural underpinnings of the system require better understanding, which can be promoted through sustained interdisciplinary research. Such research would draw a more accurate picture of the challenges that need to be addressed.

25. Community education is important, not only through schooling and training, but also through broader community outreach. The latter task includes not just educating citizens about the formal justice system but also confronting the lingering notions that collective punishment is acceptable. Such notions are utterly incompatible with the assumptions upon which Albanian society now operates, and the Government should place a greater educational emphasis on the human rights of all individuals. An additional reason for greater State involvement is to educate families who, lacking knowledge of *kanun*, might turn for advice only to those civil society interlocutors who rely excessively upon the norms of the code in what the interlocutors characterize as a blood feud. While the resulting perpetuation of the *kanun* mentality is not deliberate, it may be an unintended consequence of the approach sometimes adopted.

26. Finally, the Government could play a stronger role in outreach, especially in facilitating efforts to achieve family reconciliation, which thus far has been almost completely left to families themselves and civil society. 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.

III. Domestic violence

27. In its report on domestic violence in Albania of March 2009, the country's National Institute of Statistics reported that 31 per cent of women had experienced violence in the home. According to official figures, 15 women have been killed as a result of domestic violence in the last two years. These numbers are likely to be an undercount, owing to the limitations of Government statistics on the causes of deaths, underreporting by family members of "private" causes of violence and death, and the possibility of deaths occurring, especially in rural areas or informal settlements, without the State being notified.

28. The high levels of violence against women by family members, especially husbands, has received significant and much-needed attention in Albania in the past few years. The Government, with United Nations support, has taken a number of important steps, including designing the National Strategy on Gender Equality and Domestic Violence (2007–2010). With donor funding, many police, court and other officials have received domestic violence training. Special domestic violence police units have been established, and shelters have increasingly been supported. Education campaigns have been launched to begin to change the negative social attitudes leading to violence. In addition, civil society groups have been very active and extremely effective in their key role of mobilizing efforts by other societal actors.

29. These efforts have had a positive impact, including a dramatic increase in the number of women coming forward to report violence to police officials (from approximately 270 in 2007 to over 1,000 in 2009), in the number of protection orders, and in offenders prosecuted. Experts working in this area indicated that they have seen important changes across the board in officials' attitudes to domestic violence.

30. Domestic violence remains, however, a very large problem and much remains to be done, especially with respect to Government budgeting for its programmes. Most financing comes from donors. While Albania has 13 shelters for abused women and their children, only 4 receive Government funding. A new shelter in Tirana, refurbished by the United Nations Development Programme, has Government support but no clear agreed budget allocation. During my visit, I was assured by the Government that its funding for this shelter, as well as other programmes, would be forthcoming. Despite the Government's specific assurances, no progress has been made in the funding of the shelter since my visit, and this continues to be a matter of real concern. As a matter of high priority, the Government should follow through on its commitment to adequately fund the urgently needed shelter.

31. Gender violence experts reported to me that, while many police have shown an increased willingness to assist women, they have not always been provided with the knowledge, resources or institutional support to do so more effectively. In some cases, the matter is as simple as providing police with the referral details of shelters and psychosocial support. Media coverage of domestic violence issues has often been irresponsible and, in some cases, extremely harmful to the safety of women.

IV. Disappearances and killings after the Kosovo war

32. For a number of years, allegations have been made that a few hundred people were taken across the Kosovo-Albania border after June 1999 by the Kosovo Liberation Army (KLA). Allegedly, prisoners were held in KLA camps in Albania, some were tortured or killed, while others were victims of organ trafficking. Initial investigations were undertaken in 2004 by the Office of the Prosecutor of the International Criminal Tribunal for the former Yugoslavia.

33. Subsequent attempts to investigate have been made by various entities, including by the Council of Europe, the Serbian war crimes prosecutor, and the European Union Rule of Law Mission in Kosovo (EULEX). The Albanian authorities told me their strong belief that allegations are politically motivated and absolutely without any foundation. On this basis, none of the efforts to investigate have received meaningful cooperation from the Government of Albania. While various explanations were offered to me, they amounted in practice to a game of bureaucratic and diplomatic ping-pong in which the responsibility for not responding to requests for cooperation was moved from one office to the next, with each insisting that, if requested by the right authorities and under the proper conditions, they would not hesitate to cooperate. The bottom line appeared to be, however, that the issue is definitively stalled.

34. Following my visit, in March 2010, the Minister for Foreign Affairs stated that Albania was willing to cooperate fully and transparently with investigations into the allegations of abuse and killings. This commitment is a positive step, and I will continue to monitor its implementation.

35. In May 2010, after my mission, the European Union Rule of Law Mission in Kosovo arrested a former KLA commander suspected of torturing and mistreating prisoners at an illegal KLA detention facility in northern Albania. The arrest by EULEX is a very important step forward in ending impunity. It also underscores further the need for the Government of Albania to cooperate fully and meaningfully with EULEX and the other independent investigators into all allegations of abuse and killings by the KLA or other actors in Albanian territory.

V. Gërdec

36. The prosecution of those responsible for the lives lost, injuries suffered and property destroyed by the explosion at Gërdec in March 2008 is clearly an issue of major significance. It is also an issue that is heavily weighted with political implications into which I do not wish to enter. My concern is whether the Gërdec deaths have been meaningfully investigated and are being effectively prosecuted. All necessary efforts should be made by the Office of the Prosecutor General to ensure that justice is both done and seen to be done and that, where necessary, requests for the lifting of immunities are made.

VI. Communist-era human rights abuses

37. Twenty years after the fall of communism, Albania has not dealt comprehensively with the killings and other human rights abuses committed during those years. It is widely acknowledged that thousands of Albanians were tortured, executed and made to disappear by the State, but many victims' families are unable to learn their loved ones' fate, and the details of the regime's abuses have not been accounted for. This is in large part because Albania is one of the few former Iron Curtain countries not to have opened the archives of its communist-era security services. The small number of prosecutions undertaken in the

1990s for a specific set of crimes against humanity is no substitute for the broader accounting required.

38. 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 be best achieved through a national commission that could conduct an independent, systematic and sustained investigation of communist-era abuses. The Government has instead recently opted to establish an institute to study abuses during the communist era, and a task force to uncover mass graves from that period of history. I was assured by the Prime Minister that the institute will have full access to secret service and all other Government files from that time.

VII. The criminal justice system

39. A number of interlocutors raised concerns about the impact of corruption in the justice system on charges and sentencing for blood feud-related killings. There is at least the perception — widely held — 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 carried 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.

40. Interlocutors also raised concerns about the treatment of the constitutional immunity of ministers and judges in the Criminal Procedure Code. According to the Code, the immunity attaches from the earliest stage of investigation, rather than at the point of charge or arrest. This inhibits the ability of the Prosecutor's Office to undertake sensitive investigations.

A. Constitutional Court

41. The Constitutional Court is a vital component in upholding the rule of law in Albania. Two thirds of the judges are due to be replaced by the President in the near future, with the consent of the Assembly, when their terms expire. 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 both, 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.

VIII. Interim conclusions and recommendations

A. Blood feuds

42. **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 so far. These include:

(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, perhaps entrusted to a new national institute of criminology;

(c) Consulting the leading scholars and the leaders of the relevant religious groups in order 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 contrary message sent by the relevant part of the *kanun*.

43. 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

44. The Government has made significant progress in designing and implementing strategies to address high levels of domestic violence. It is important that the Government follow through on assurances that programmes and shelters will be allocated Government funding. Programme will need to continue to be supported and developed through the long term, to erode the deep-seated patriarchal views leading to violence, and to increase access to justice for victims. The media should be more responsible in its coverage of domestic violence issues.

C. Disappearances and killings after the Kosovo war

45. Given the strength of the belief, at the highest levels, that allegations of hundreds of people killed in Albania after June 1999 are unfounded, it would be in the Government's best interest to facilitate an independent and objective investigation by one or other of the international entities currently focused on the issue.

D. Gërdec

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

E. Communist-era abuses

47. The Government should consider establishing a national commission to conduct an independent, systematic and sustained investigation of communist-era abuses. In the interim, the Government should ensure that the proposed institute for the study of communist-era abuses is given comprehensive access to every available source of information about that era and is able to make effective use of its power to refer specific cases to the Prosecutor General for consideration.

F. Justice system and anti-corruption reforms

48. The Government should legislate criteria and procedures to ensure the high professionalism, independence and integrity of judges, especially in relation to the Constitutional Court and the Supreme Court.

49. 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. The question of lifting immunity need only be addressed in the event that the Prosecutor has enough evidence to bring charges.

50. The Government should develop the capacity and expertise of its 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, to ensure the ability of all actors to make sound policy decisions.
