



Contents:

1. 1. Introduction	4
Background, recommendations and methodology	5
How the state fails women	6
The Republic of Albania	8
Discrimination and violence against women.....	9
2. 2. A culture of violence	11
Violence in the family	11
The scale of domestic violence against women	11
Health and violence against women	13
Tradition, honour and shame.....	14
The Kanun of Lek Djukagjini	16
3. 3. Violence against women in the family	19
Defining violence against women	19
The lived experience of violence against women in the family in Albania	20
How it began	20
Forced and arranged marriages	20
Isolation and control.....	21
Psychological violence	21
Physical violence	22
“Hot arms, cold arms” - guns and knives	22
Rape.....	23
Staying in the marriage	23
The last resort	25
Leaving home, getting shelter	25
After the divorce.....	26
4. 4. The legal framework	27
International standards	27
Torture	28
Domestic law	29
Obstacles to justice	30
From police to prosecution: the forensic medical certificate	33
Taking a complaint to the court.....	34
Problems of evidence	35
5. 5. Proceedings in cases of domestic violence	37
Procedures	38
Sentencing	38
Murder, Manslaughter and other intentional injury (Articles 76, 85 and 88 of the CC)	39
Threat (Article 84 of the CC)	40

**amnesty
international**

International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom
Website: www.amnesty.org

Light injury (Article 89 CC) and other intentional harm (Article 90 CC)	41
Rape in marriage	42
Sentencing	42
Women who kill	43
Proceedings against women convicted of murder or manslaughter	44
6. 6. Civil remedies	49
The 2003 Family Code	50
The draft law, “On Measures against Violence in Family Relations”	51
7. 7. Challenging violence	54
Seeking shelter	56
Providing protection: changing the law	57
Shifting the shame; men taking the blame	60
8. 8. Conclusions and recommendations	61
Implementing international obligations.....	62
9.	

Albania

Violence against women in the family: "It's not her shame"



1. Introduction

One night from 7pm to 4am he was drinking and torturing me in various ways. He took the meat cleaver when I was lying on the settee, and held it against the front of my neck, just because I called my sister, and he said, "Why did you call your sister, you wanted to ask about your brother-in-law and not your sister". So he beat me very badly. I was horrified. I was pregnant just in my first months. He then took a shot of raki and sat in silence for five minutes. Then he took the cleaver, and with all the force of his upper hand pushed my head to one side and put the cleaver to my neck. I don't know how I didn't die from the shock. He was interrogating me trying to find out who I liked or if I had someone else. I didn't answer his questions as I was very afraid and didn't want to make any mistake as I knew it could end very badly. Then he took another shot and sat for another five minutes. Then he took the electrician's pincers and pulled at my new blouse trying to get at my breast and destroyed the blouse with the pincers; then he took my hair and cut it with a bread knife; then he tried to gouge my eyes out with his finger; then he put his fist in my mouth with as much pressure as he could. All the time while he tortured me, he would stop, take a shot of raki, and then start torturing me again. I passed out at about 4.30 am. (N).

I am carrying the past around inside me. No one can see my heart, how it is inside. (P).

As in other countries throughout the world, the human rights of thousands of Albanian women are violated on a daily basis. At least a third of all women in Albania are estimated to have experienced physical violence within their families. They are hit, beaten, raped, and in some cases even killed. Many more endure psychological violence, physical and economic control.

On 23 January 2006, a coalition of non-governmental organizations (NGOs), led by the Citizen's Advocacy Office and including the major women and children's NGOs, presented a draft law "On Measures against Violence in Family Relations" to the Albanian parliament by citizen's petition.

Twenty thousand Albanians had signed this petition presenting the draft law, indicating the concern of a significant sector of Albanian society about this continuing and widespread abuse of human rights, and their determination to call on the government to take action to prevent violence in the family and protect its victims.¹

¹ The draft law "On Measures against Violence in Family Relations" is described in more detail in section seven, below.

While acknowledging that the Albanian government should take action to address all forms of violence within the family, this report focuses on one aspect of family violence, the violence against women perpetrated by their husbands or other intimate partners, more commonly known as domestic violence.

In their 1996 report, *Domestic Violence in Albania*, Minnesota Advocates for Human Rights recommended that "the Albanian government should afford victims of domestic violence meaningful access to the criminal justice system".² Ten years later, despite an apparent increase in reports of domestic violence in the press and in the number and capacity of women's NGOs providing women with assistance and support, the increased documentation of domestic violence by Albanian and international NGOs and recommendations by UN treaty bodies, it appears that successive Albanian governments have continued to fail to provide women with any effective access to justice, or the right to protection from such violence.

Violence against women is an abuse of the human rights of women and girls including their rights to mental and physical integrity, to liberty and security of the person, to freedom of expression, the right to choice in marriage and the basic requirement of non-discrimination. Violence may lead to treatment amounting to torture or cruel, inhuman and degrading treatment and in extreme cases, may violate the right to life. Violence against women prevents the full enjoyment of rights and fundamental freedoms such as the rights to health and employment.

Husbands, former husbands and partners are responsible for most of these abuses, but other family members may take part in or support acts of violence, which may often be condoned by the wider community in which the woman lives. In Albania, as elsewhere, notions of

tradition may all too often serve as a pretext for acts of violence against women deemed to have infringed traditional codes of behaviour, and even those who conform to their allotted role of wife and mother. Such violence against women is widely tolerated, justified and excused by reference to tradition, or a specific Albanian "mentality", even at the highest levels of the government, police and judiciary.

Individual women and women's NGOs in Albania³ have, over the past decade, worked to expose the culture of violence in which many women live and which is often invisible to the outside world. They have established organizations, including help-lines and shelters, to counsel women suffering domestic violence and have helped women to escape violent men. They received little or no assistance from the national authorities.

Background, recommendations and methodology

This report is one of a series published as part of Amnesty International's Stop Violence against Women campaign, which was launched in March 2004.⁴ The global campaign highlights the failure of countries around the world to prevent, investigate and punish violence against women. Through the campaign, Amnesty International joins the women and men who have fought against this violence, some of whom have achieved dramatic changes in laws, policies and practices. Amnesty International seeks to show how the human rights approach can galvanize the state, the community and individual men and women everywhere to confront and overcome violence against women.

In this report, Amnesty International calls for women who have suffered violence to be able to enforce their rights to protection, reparation and redress. In recommendations to

² <http://www.mnadvocates.org/sites/608a3887-dd53-4796-8904-997a0131ca54/uploads/Albania.pdf>

³ Non-governmental organizations are known as non-profit organizations (NPOs) in Albania.

⁴ See Amnesty International, *It's in our hands – Stop violence against women*, March 2004 (AI Index: ACT 77/001/2004).

the government of the Republic of Albania, the report calls for a coordinated response to violence against women in the family, an integrated multi-agency approach that includes not only law enforcement and judicial authorities, but also health care and education professionals who may assist in the prevention of such violence. Where prevention fails, law enforcement officials and prosecutors should record and monitor reported incidents, act to protect victims of violence, and respond promptly and effectively to allegations of, or threats of, violence against women. Prosecutors and judiciary should ensure that perpetrators are brought to justice. Women should have prompt access to judicial mechanisms affording protection, and to appropriate health care and shelters providing physical protection, medical assistance and psychological support. In this context, the organization calls on the authorities to cooperate with women's and other NGOs to ensure, including through additional funding, their provision of appropriate support and assistance.

Recognizing the barriers that prevent women from seeking help from the authorities, and that legal measures must be accompanied by a grass-roots campaign that informs and educates women and men about the right of women to live free from violence, Amnesty International recommends that the Albanian government also embark on a public campaign to challenge discriminatory "traditional attitudes" which condone such violence and to transfer the "shame" from women who are abused to the men who abuse them.

This report is based on Amnesty International's own research, including the monitoring of documentation in criminal proceedings and reports in the Albanian media over a three-year period, as well as research by Albanian NGOs, professionals and academics. It draws on information provided to Amnesty International by Albanian NGOs, government officials, police and legal and medical professionals in interviews conducted during a

visit to Albania in October 2005, and in subsequent telephone interviews.⁵

The cases of individual women who have suffered violence, and who agreed to be interviewed by Amnesty International, are featured in the report. At their request, their names are represented by a letter, which bears no relation to their name.⁶ Amnesty International is acutely aware that many Albanian women who have suffered such violence are unable or unwilling to speak out for fear of the "dishonour" they may bring upon their families. Despite this, these women agreed to be interviewed by Amnesty International. Their courage deserves our recognition and the support of their government and the international community.

How the state fails women

Albania is bound by the Convention on the Elimination of Discrimination against Women (Women's Convention). States, like Albania, which fail to protect women's rights may be held accountable for violations of women's rights because they have failed to prevent violence, to ensure adequate penal sanctions and to provide redress. The state has a duty to protect women from violence committed not only by agents of the state but also by private individuals and groups. Under international human rights law, states must exercise due diligence to secure women's rights to equality, life, liberty and security, and freedom from discrimination, torture and cruel, inhuman and degrading treatment. They must have policies and plans to fulfil these rights, to protect people from abuses of these rights, and to provide redress and reparation to those whose rights have been violated.

⁵ All Amnesty International (AI) interviews cited in this report were conducted in October 2005, unless otherwise stated. The organization wishes to thank all those who assisted AI in this research.

⁶ Women convicted and sentenced in criminal proceedings, and whose names are a matter of public record, are represented for clarity by their initials.

In January 2003 the UN Committee for the Elimination of Discrimination against Women (CEDAW) in their Concluding Observations on Albania's combined initial and second periodic reports, and, in light of its General Recommendation 19, urged Albania to place a high priority on comprehensive measures to address violence against women in the family and in society, and to recognize that such violence, including domestic violence, constitutes a violation of the human rights of women under the Convention. It also called on Albania to adopt legislation on domestic violence and ensure that violence against women is prosecuted and punished with the required seriousness and speed. Women victims of violence should have immediate means of redress and protection, including protection orders and access to legal aid.

CEDAW also recommended that measures be taken to provide shelters for women victims of violence in sufficient numbers and to ensure that public officials, especially law enforcement officials, the judiciary, health-care providers and social workers, are fully sensitized to all forms of violence against women.

CEDAW further recommended that Albania systematically collect data on violence against women, including domestic violence, and undertake awareness-raising measures through the media and public education programmes to make such violence socially and morally unacceptable.

Finally, CEDAW noted its concerns about "the resurgence of discriminatory customary law (*kanun*) and traditional codes of conduct in some northern areas of the country", and urged Albania to "implement measures to eliminate the practice of customary law and traditional codes of conduct discriminating against women".⁷

⁷ CEDAW, Concluding Observations up to December 31, 2003, Albania, CEDAW, A/ 8/38 part I (2003), paras. 44-86; similar recommendations were made in 1999 by the UN Special Rapporteur on Violence against Women, E.CN.4/1999/68, para.189, Annex 1.

No action has yet been taken by the Albanian authorities to implement CEDAW's recommendations (see box), although the 2003 revised Family Code included provisions for the protection of women suffering from domestic violence, and measures to ensure equity or non-discrimination in cases of divorce with regard to property and the custody and support of children.

While noting the positive statements of intent by the present government,⁸ Amnesty International believes that previous Albanian governments have failed to show due diligence in the protection of women's human rights including in particular their responsibilities to prevent, investigate and punish violence against women. The organization is also concerned that further reforms, including the proposed new law on protection against family violence, may also be resisted by the police and the courts and other parts of the criminal justice system.

Throughout this report, Amnesty International notes that social attitudes and cultural values - not just of the wider public, state agents such as police, but also women themselves - encourage women to accept violence. This is not inevitable, nor does it mean that the state can abdicate from responsibility. Article 5 (a) of the Women's Convention requires states: "To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women". Albania is responsible for failing to

⁸ "The new Government is fully committed to bring to an end to the violence on women and young girls and their exploitation for prostitution and other purposes. Effective policies and measures to prevent domestic and family violence and crime against women will also be a high priority", *Government Program 2005-2009*, presented in the Albanian Parliament, 9 September 2005.

address such attitudes, which maintain women's continuing abuse.

Due to a strong sense of shame and lack of confidence in the police, women rarely call the police, and when exceptionally they do call, the police generally fail to recognize violence in the family as a criminal matter and frequently fail to investigate allegations of domestic violence. Moreover, prosecutors will generally only bring charges in cases of death or serious injury or threats with firearms or other weapons. Women are generally not encouraged to bring complaints against their attackers, and receive no effective protection from assaults or threats, including with firearms, by their husbands and relatives. Those responsible – except in cases of death or very serious injury – are not often brought to justice. There is a lack of consistency in the judiciary's approach and in at least one case known to Amnesty International courts have shown leniency towards perpetrators who kill women on grounds of "honour".

In focussing on domestic violence in Albania, Amnesty International does not suggest that violence against women is peculiar to Albania, nor that it is more widespread in Albania than elsewhere. Throughout the world, violence against women is seen as a normal part of the relationship between men and women, and justified on the grounds of jealousy, passion, honour and tradition, as Amnesty International has shown in other reports on this human rights problem, in the European context, in France, Russia, Spain, Sweden and Turkey.⁹ Amnesty International believes that none of these excuses, or indeed any other grounds, can ever justify violence against women. Human rights law and

standards emphasise that violence against women is an inexcusable abuse of human rights.

The Republic of Albania

*"We are all traumatized, even me, we are a country in trauma"*¹⁰

Albania has a population of around 3,300,000 persons, with a large diaspora community of around 1 million living in European Union (EU) member states, predominantly Italy and Greece. Albania is a member of the UN, and party to all the conventions relevant to this report. Albania is a member state of the Council of Europe and on 18 February 2006, formally signed a Stabilization and Association Agreement with the EU, part of the process of accession to the EU.

The current Albanian government, led by Prime Minister Sali Berisha, was returned to power in the July 2005 elections, and sworn into office on 11 September 2005; the Democratic Party, with 80 out of 140 parliamentary seats, leads the governing coalition.

Since the end of communist rule in 1992, Albania has continued to experience an extremely painful and sometimes violent transition from a totalitarian state to one based on democratic institutions, with a developing market economy. The immediate post-communist period saw major upheaval and a breakdown of authority; this was followed by a further traumatic periods in 1997, following the collapse of financial pyramid selling schemes, in which hundreds of thousands of Albanians lost their savings. Again, law and order broke down and mass protests and demonstrations against the government broke out across the country. During this period hundreds of thousands of small arms and light weapons (SALW) were looted from military and police depots. Despite successive weapons collections programmes, an estimated 200,000 SALW remain in circulation, and contribute to the high levels of gun crime,

⁹ See for example, *France: Violence against women: a matter for the State*, AI Index: EUR 21/001/2006; *Russian Federation: Nowhere to turn to: Violence against women in the family*, AI Index: EUR 46/056/2005; *Spain: More than words. Making protection and justice a reality for women who suffer gender based violence in the home*, AI Index: EUR 41/005/2005; *Turkey: Women confronting family violence*, EUR 44/013/2004; *AI Sweden: Men's Violence against Women in Intimate Relationships*, 19 April 2004.

¹⁰ AI interview with a Tirana lawyer, October 2005.

including in domestic and intimate partner violence.¹¹

Discrimination and violence against women

Discrimination against women and violence are closely interlinked. General Recommendation 19 of CEDAW states that gender-based violence is a form of discrimination which gravely affects women's enjoyment of their human rights. Although in Albanian law, and under the constitution, women are guaranteed equality with men, in reality Albanian women suffer massive discrimination on the basis of their gender.

According to the UN Development Programme (UNDP) Human Development Index, the country ranks 56 in the world, but when factors related to gender empowerment are taken into consideration, the country drops to a ranking of 72. The country is similarly ranked with respect to both women's economic activity, and representation in parliament.¹²

My husband said, "What good is she? She only gave me girls". (DK)

Discrimination against women starts at birth. According to the World Bank, there are no gender disparities in education in Albania, except in higher education, where the percentage of female undergraduates is slightly higher than for males. However, amongst the population who are illiterate, there are twice as many women as men, and in some rural areas where the secondary school enrolment rate is only 24.9 per cent, the drop-out rate is higher for girls than for boys.¹³

¹¹ By March 1997 protestors and others had looted approximately 1,200 military depots as well as police stores, putting into circulation an estimated 652,000 SALW as well as an estimated 1.5 billion rounds of ammunition, 3.5 million hand grenades, 3,600 tons of explosive devices and one million mines. The exact numbers remaining in circulation continue to be contested; see, *Turning the Page: Small Arms and Light Weapons in Albania*, Saferworld, December 2005, pp. 5-6.

¹² Women's official earned income is approximately 0.56 that of men, Human Development Indicators, *UNDP Human Development Report*, 2005, UNDP.

¹³ World Bank, (2003). *Poverty Assessment. Report No: 26213*. Europe and Central Asia Region, Human Development Sector

Despite the apparent lack of discrimination in education, women suffer economic discrimination, and are less likely to fulfil their potential in all areas of employment. Women's salaries are between 20 and 50 per cent of those of men, who own 92 per cent of all property and approximately 84 per cent of gross domestic product (GDP). Women's economic rights have, in a period of transition and generally high unemployment (currently standing at 14.3 per cent),¹⁴ been eroded to such an extent that apart from in urban centres, few women work outside the home, especially in the formal economy. Women seeking to leave violent men are rarely able to financially support or house themselves and their children. No state provision is available; in cases of divorce financial settlements – including for the children – are rarely enforced by the courts.

In some isolated rural areas, more than half of households have no access to running water, while only a third have access to a regular electricity supply.¹⁵ Migration of the rural population has often left those who remain without access to health centres, which have been closed, and many women face severe difficulties in accessing social insurance, unemployment benefits, sickness, retirement or old-age benefits.¹⁶

Women in the minority Romani and "Egyptiani"¹⁷ community live in conditions of extreme poverty and social and economic marginalization, conditions in which women are more likely to be at risk of domestic violence. The Albanian National Strategy for the Improvement of Living Conditions of the Roma

Unit. Washington, D.C.: World Bank, (2003), *Program Document for a Proposed Second Poverty Reduction Support Credit. Report No: 25889-AL*. Europe and Central Asia Region, Human Development Sector Unit. Washington, D.C.: World Bank

¹⁴ As of 30 September 2005, www.instat.gov.al/

¹⁵ CEDAW/C/ALB/1-2, p. 54.

¹⁶ *CEDAW Assessment Tool Report*, Women's Legal Rights Initiative, Tirana, July 2005, pp. 48-51.

¹⁷ The "Egyptiani" form a separate group distinguishing themselves from the Roma, although they are not recognized as such by the government.

Minority (2003–15) has, so far, failed to address these concerns.¹⁸

Women are under-represented in political life. In the 2005 elections, despite the promotion of female candidates on a cross-party women's list, only 10 women were elected out of 140 members of parliament; only one holds a senior ministerial position in the government, although Josefina Topalli, sponsor of the draft law against family violence, was nominated speaker of the parliament. Only 1 per cent of local government representatives elected in 2004 were women.

¹⁸ European Commission against Racism and Intolerance, *Third Report on Albania*, CoE CRI(2005)23, adopted 17 December 2004. The Roma strategy was adopted in 2003, Council of Ministers Decision No. 633, Official Bulletin, 18 September 2003.

2. A culture of violence

The internal repression during the communist era which saw the death, imprisonment and internal exile of hundreds of thousands of Albanians left a painful and unresolved legacy. The following years of political instability, which peaked in the crisis of 1997, have resulted in an absence of the effective rule of law in many parts of Albania, which successive governments have sought to address.

Following amnesties and weapons collections programmes, overall levels of gun-crime have reportedly declined over the past decade.¹⁹ The most recent government figures available indicated that in 1998, 87.6 per cent of fatalities (murder, manslaughter and suicide) involved a firearm; recent research suggests that incidence of reported murders has declined, although in 2005, a household survey found that some 6.1 per cent of families had experienced a firearms related crime in the past 12 months. The majority of murders committed with firearms are thought to take place within the family.²⁰

Amnesty International in previous reports has noted the widespread use of ill-treatment, sometimes amounting to torture, by law enforcement officers.²¹ This also forms part of a culture of violence within Albanian society which, exacerbated by poverty, marginalization, high levels of unemployment and alcoholism, has manifested itself in the family in the form of coercion, psychological, physical and emotional abuse.

Violence in the family

¹⁹ Albanian government figures for murders per 100,000 inhabitants show a marked decline between 1997 and 2001: 1997, 48.2 murders per 100,000 inhabitants; 1998, 17.9; 2001, 6.7, <http://www.instat.gov.al/>.

²⁰ Saferworld, *Turning the Page*, pp. 17, 24-25.

²¹ See most recently, *Albania: Obligations under the UN Convention against Torture – a gap between law and practice*, AI Index: EUR 11/001/2005, February 2005.

"Violence happens everywhere: at the police station, at home, at school – there is a cycle of violence in the whole society," Afërdita Proni, Director of the Human Rights in Democracy Centre (HRDC), told Amnesty International. "Most women do not usually report such violence to the police: they don't understand that it is a criminal act, and many of them are violent to their own children – they see it as a tool for education".

Research by the Qendra për Mbrojtjen e të Drejtave të Fëmijëve në Shqipëri (Children's Human Rights Centre of Albania, CRCA) found that child abuse is widespread, both within the family and even amongst their peers in school, with a strong correlation in families between the abuse of children and violence against women.²²

The scale of domestic violence against women

"They say that in Albania, one in three women are beaten by their husbands, in Shkodra, we say it's two and a half out of three", (Dalina, doctor working in Shkodra).

Statistical information about the extent of violence against women in Albania is relatively limited, and outside of the health sector, the Albanian authorities have made no concerted efforts to document its incidence. In Albania a series of small scale studies by NGOs and academics suggest that rates of violence against women are comparable, or perhaps higher than other states in the region.

²² AI interview with Altin Hazizaj, Director CRCA, 7 October 2005; see CRCA, *Albania, Alternative Report: For the situation of children's rights and the implementation of the Convention on the rights of the Child in Albania*, (Shqipëria, Raport Alternativ: Për situatën e të Drejtave të Fëmijës në Shqipëri), Tirana, December 2004. The report, prepared in advance of the consideration of Albania's initial report on its implementation of the Convention on the Rights of the Child by the Committee on the Rights of the Child, in January 2005, details violations of children's rights including: the ill-treatment of children in police-stations, in pre-trial detention centres and in prison; discrimination against Roma children and disabled children; the failure of the authorities to provide protection to those under their care in orphanages, and services for children suffering psychological, physical and sexual abuse within the family; the trafficking of children, child labour and street children.

Around the world, between 40 and 70 per cent of murdered women are killed by an intimate partner.²³ As in other countries with high levels of gun ownership, in Albania, the risk of death is also proportionately higher.²⁴

Amnesty International believes that the Albanian government's first measures towards eradicating violence against women in the family should include a comprehensive recording and statistical monitoring of its prevalence, no matter how intractable the problem seems.

"We receive over 50 or 60 calls a month", Elbasan NGO.

In 2004 the Counselling Centre for Women and Girls (based in Tirana, but with offices throughout Albania) reported receiving 6,670 calls over the previous three years. Acutely aware that the women who ring them represent the tip of the iceberg, since 1995 women's NGOs, as well as academics and health professionals in Albania, have attempted to map the scale of intimate partner violence. Their findings are, due to sample size, methodology and other factors, often contradictory, with figures for reported intimate partner violence ranging between 30 and 46 per cent,²⁵ but all indicate that such violence is widespread and affects to differing degrees, all sections of the female population.

In 1995, Shoqata Refleksione (Refleksione Women's Association), in a survey distributed to men and women across Albania,

found that 46.3 per cent of rural women and 36.3 per cent of urban women reported intimate partner violence, and 28 per cent and 16.4 per cent respectively reported sexual violence (not necessarily by their partners). They also found higher reporting rates in women economically dependent on their husbands – 55.7 per cent of women who defined themselves as housewives and 52.7 per cent of unemployed women – as compared to 35.2 per cent of those employed outside the home.²⁶

In their 1996 study, Refleksione found that 39.4 per cent of participants had experienced physical abuse, while 24.5 per cent experienced emotional abuse; a further study in 2000 identified that between 8.6 per cent and 23.2 per cent had suffered sexual abuse.²⁷ Another 1996 study reported that some 46 per cent of women living in rural areas experienced physical abuse, in comparison to 36 per cent of their urban counterparts.²⁸

In a more qualitative survey, conducted in 1996 with 100 women who had experienced domestic violence, 20 women described abuse as a normal part of their lives. These women expressed a very low sense of self-esteem: "Many women felt capable of nothing, that they were on this earth in vain, and that they were ready to commit suicide". They felt trapped and without hope. They had seen violence in their mother's lives and it was now part of their own:

²³ WHO, *World Report on Violence and Health*, 2002, p. 118, http://www.who.int/violence_injury_prevention/violence/world_report/en/full_en.pdf

²⁴ Access to firearms reportedly increases a woman's chances of being killed by a partner five-fold: see Amnesty International, *The Impact of Guns on Women's Lives*, AI Index: ACT 30/001/2005, pp. 9-11. Analysis by the Tirana Women's Centre in 2001 of 207 media reports of domestic violence cases found that 62 per cent of reported cases involved the use of SALW; as the media tends more frequently to report domestic violence cases involving weapons, this figure probably over-represents their use, *Turning the Page*, pp. 24-25.

²⁵ But see below, p. 12, for lower figures.

²⁶ Mary P. Van Hook, Edlira Haxhiymeri and Eglantina Gjermeni, "Responding to gender violence in Albania: A partnership effort", *International Social Work* 43 (3): 351-363. This variation by employment was not found in a later survey, see Silva Bino, Mary Goldwin and Florina Serbanesku, *Violence against Women*, p. 7, n. 4.

²⁷ Miria, S, "Dhuna ndaj grave dhe tabutë psikosociale që e favorizojnë atë", (Violence against women and psychosocial taboo), *Botim i shoqatës Refleksione*, Tirana 1996; S. Miria et. al., *Survey on violence against women and trafficking in rural areas of Lezha District*, Refleksione, 2000, (in Albanian).

²⁸ Kaci B, *Violence against women – A national problem*, Tirana, 1996, (in Albanian). In Refleksione's 1996 survey, 64 per cent of women interviewed had experienced physical and psychological (spiritual) violence within their intimate partner relationships; 35 per cent of had also witnessed serious physical and psychological violence in their family of origin.

"They saw no other option to violence, only the struggle how to make it less painful."²⁹

While a third of women interviewed in 1996 attributed their husband's or partner's violence to external factors including alcohol, unemployment, stress or economic reasons, some 25 per cent of the women interviewed blamed themselves for not having things ready on time or not doing things the way their husband wanted. Many reported the need to control their behaviour in order to avoid the violence.

A qualitative survey published by UNICEF in 2002, and based on interviews with 55 women who had experienced domestic violence in Tirana, Shkodra and Berat, sampled to ensure a wide range of ages and social backgrounds, documented how for a woman marriage "all too frequently becomes a scene of personal humiliation, tension, threat and conflict, rather than an opportunity to fulfil their dreams".³⁰ The report describes domestic violence as "intimate terrorism": "The majority of women were physically abused by their partners many times. In fact, the informants often described an atmosphere of terror. One third of the women interviewed said that they had feared for their life at some point in their relationship. Intimate terrorism is motivated by a strong wish to exert control over one's partner."³¹

Health and violence against women

Violence against women is a serious threat to the health of women across the world.³² Women experiencing domestic violence risk being killed, they may be driven to suicide or injured; they may suffer depression, chronic pain,

psychosomatic disorders, reproductive health problems, unwanted pregnancies, miscarriages, sexually transmitted diseases, or other illness. The effects of violence can continue long after the abuse has stopped, and may be cumulative.

The *Albania Reproductive Health Survey 2002* conducted by the Ministry of Health, is perhaps the most comprehensive survey undertaken on this issue and includes data from male respondents. It was conducted according to WHO guidelines and is methodologically comparable to similar surveys conducted elsewhere in the region.³³ This survey, in which domestic violence was considered as a public health issue, found Albanian women reporting much lower levels of violence than in comparable states. Eight per cent of Albanian women, for example, reported having experienced physical violence as opposed to, for example, 29 per cent of women in Romania.

Analysis of this survey found that some 11.5 per cent of Albanian women between the ages of 15 and 44 had - as children - witnessed parental abuse, while 27.2 per cent had themselves been subjected to physical abuse as children, with rural women with lower education and socio economic status reporting higher levels in both categories. Strikingly, men with the same social profile reported having observed and experienced much higher levels of violence as children (47.4 per cent and 66.8 per cent, respectively), suggesting potential underreporting by women, or perhaps, gendered attitudes towards family violence.³⁴ Of those who reported intimate partner violence,³⁵ 30.4 per cent of women aged 15-44 reported verbal abuse (22.8

²⁹ Mary P. Van Hook, *et. al*, "Responding to gender violence in Albania"; Edlira Haxhiymeri, *Domestic Violence in Albania, Dissertation*, University of Tirana, 1996.

³⁰ Adriana Babani, *Domestic Violence against Women in Albania*, UNICEF, 2003, p. 9.

³¹ *Ibid*, p. 33.

³² World Health Organization (WHO), *Multi-country Study on Women's Health and Domestic violence against Women*, 2005, (http://www.who.int/violence_injury_prevention/violence/world_report/wrvh1/en/)

³³ Institute of Public Health, *Albania Reproductive Health Survey, 2002*, Ministry of Health, Albania and Division of Reproductive Health, Department of Health and Human Services, Atlanta, Georgia.

³⁴ Silva Bino, Mary Goldwin and Florina Serbanescu, "Violence against Women", Chapter 15, *Albania Reproductive Health Survey*, pp. 313-324. AI interview with Siva Bino, Director, Institute of Public Health.

³⁵ Defined as violence "occurring between current or former married partners or members of a consensual union with cohabitation", Bino, *Violence against women*, p. 315.

per cent in the past year); 8.2 per cent reported lifetime physical violence (4.5 per cent during the past year); and 2.9 per cent reported being forced to have unwanted sex (1.5 per cent in the past year).³⁶ Researchers found little difference according to residence or age, although younger women were more ready to report physical violence (10.6 per cent). Significantly, 31.2 per cent of previously married women reported that they had been subjected to violence, as opposed to 7.5 per cent of women who were still married or in a relationship, suggesting that the latter were likely to under-report.

Another survey conducted by health professionals presents a very different and more complex profile of abuse.³⁷ Researchers found that amongst women living in Tirana, some 37 per cent had experienced physical violence, with the greatest risk amongst women aged 25-34. The findings suggested that women's increased education placed them more at risk: women employed in white collar occupations, in relationships where the woman was the only partner employed and those who were more educated than their husbands, including those with tertiary education, were most at risk. The authors suggest that these findings appear to be "in keeping with theories ... that argue that violence is used to enforce gender hierarchies", perhaps reflecting men's changing role, where unemployment has diminished their traditional role as "protectors and providers". They observed that the traditional rural/urban divide, and the belief that women married to men raised in rural areas were at more risk of violence, identified in previous studies, had been eroded by 15 years of migration from country to town.

³⁶ In the same survey, 32.5 per cent of men reported verbally abusing their partner, 14.2 per cent having inflicted physical abuse and one per cent forcing unwanted sex.

³⁷ Genc Burazeri, Enver Roshi, Rachel Jewkes, Susan Jordan, Vesna Bjegović and Ulrich Laaser, "Factors Associated with spousal physical violence in Albania: cross sectional study", *British Medical Journal* 331, 23 July 2005, pp. 197-201; based on a sample of 1039 married women aged 25-65 living in Tirana.

Finally, research by forensic practitioners has documented not only the prevalence of intimate partner violence, but an increase over the past five years. Between 2001 and 2003, at the Department of Forensic Medicine in Tirana – where victims of any form of violence are required to undergo an examination so that their injuries may be documented and assessed as part of the prosecution process – medical professionals documented an increase in cases of intimate partner violence between 2001 and 2003. They had found that cases involving violence in the family made up 71 per cent of all assault cases they received, in which 68 per cent of the victims were women – most of them housewives between 20 and 40 years of age who had suffered domestic violence.³⁸ In a subsequent interview with Amnesty International in October 2005, staff at the Department of Forensic Medicine reported that the trend continued. Professor Sokrat Meksi, with 35 years experience as a forensic pathologist, suggested that domestic violence had increased since the end of the communist period. *"Even in the first few years of the democratic system, the problem was not so great, but it has grown over the past five or six years to be a real concern"*.

Tradition, honour and shame

One day he used handcuffs and tied me to the exhaust under the car and then he drove off. I was really ashamed; the priest saw me and could not believe his eyes. The opinion of the people in the village was killing me, I was ashamed to be seen like that. The priest went to his [the husband's] brother and sister and said they had to speak to him. The priest also came to visit my husband, and my husband said, "I know how to deal with my wife". I was so ashamed. (DK)

³⁸ Dr Shk. Arben Lloja and Dr Bledar Xhemali, "Krimi brenda Familjes, Vitin 2001-3", (Crime within the Family, 2001-3), *Revista e Mjekësisë Ligjore Shqiptare*, Nr 2, Vitin 2005, (*The Review of Albanian Legal Medicine*, No. 2, 2005), pp. 9-16. The majority of injuries suffered by women were to the face and head (73 per cent), of which grazes and scratches (35 per cent) and bruising (26 per cent), were most frequently observed.

In Albania, in traditional marriages, as in many other societies, the woman is given (*jep*) in marriage by her father, and is taken (*merr*) (sometimes literally) by her husband's family, with whom she will live. Her father's authority over her and his responsibility to protect her (and the family's "honour") are transferred to her husband. Marriages may be arranged, or sometimes forced, by her father or by her brothers.

*Women are brought up to accept that men are stronger and better than women; they see that the state favours men; positions of power are occupied by men, and this is reflected in everything – employment, socialization, networks.*³⁹

It is therefore not surprising that many women do not understand the concept of domestic violence as a criminal offence: "They have seen their mothers beaten, and they think it is normal to be beaten, or to be shouted at by the husband or brother or mother-in-law, and that it is their husband's right to beat them."⁴⁰

Thus the persistent under-reporting of intimate partner violence, noted in almost all surveys, indicates not merely a reluctance to report domestic violence to the authorities, but women's lack of awareness that it is something that they can or should report. Women are also reluctant even to raise the issue within their closest family. The *Albania Reproductive Health Survey* noted that 52.5 per cent of women who had suffered violence had never talked to anyone about it; this was highest amongst women living in rural communities, those between the ages of 25 and 44, those with low socio-economic status and those who had not completed their secondary education. Of those who had spoken to someone, 52 per cent had spoken to their mother, 37 per cent to a member of their husband's family, and 32.2 per cent to another relative; only ten per cent reported that they had spoken to the police, 8.5

per cent to a doctor and 2.8 per cent to a legal advisor.⁴¹ In interviews with abused women, Amnesty International found a similar profile, and noted that when women did eventually ask for help outside their family, it was almost always after several years, even decades, of violence.

I stayed married to him for 18 years because of the family, and because of the shame; it was the idea of the shame that kept me there all of that time. (P).

Women told Amnesty International how notions of honour (*nderi*) and shame (*turpi*) prevented them from telling even their closest relatives about the violence for fear that it would bring shame on the honour of their family. "Albanian women", as one interlocutor remarked, "have honour imposed on them".⁴² Although the woman may personally feel ashamed that she has "failed" in some way as a wife and mother, the fear she expresses is of the shame that her actions, or her failures, will bring on the whole of her family. Thus, despite the widespread acceptance among both men and women that violence in the family is "normal", at the same time, by her public disclosure (or by acting publicly), she is regarded as bringing shame on her family.

Such traditional attitudes exist elsewhere in the Balkans, but in Albania, particularly in the north of the country and among communities that have migrated from the north to the major urban areas over the past decade, notions of gender and gender relations are informed by cultural beliefs which draw on customary law, known as the *Kanun*. These continue to influence the construction of gender, and are used, and often abused, to justify the control of women's behaviour, including by ill-treatment, and – in extreme cases – the murder of women and girls believed to have transgressed notions of family honour.

³⁹ AI interview with Andrea Gurakuqi, Peace and Justice Centre, Shkodra.

⁴⁰ AI interview, Elbasan Women's Forum.

⁴¹ Bino, *Violence against women*, op.cit.

⁴² AI interview with social worker at Hapat e Lehtë NGO, Shkodra.

In September 2004 Gjin Martincanaj from Lekbibaj in Tropoja, then living on the outskirts of Tirana, was sentenced to seven years and four months' imprisonment for killing his 21-year old daughter Grosha Martincanaj. He shot her in February 2004 when she returned home after three days absence and refused to inform her parents of where and with whom she had been. Her family initially claimed that she had died a natural death, but when police came to the house after neighbours reported hearing gunshots, her father readily admitted to killing her. When her father was convicted of the murder of his daughter, her uncle reportedly stated, "There is no way out but the bullet to make up for the loss of honour. We are not distressed, she deserved such a thing. We are concerned about the father who is going to suffer imprisonment, all for her sake." Her sister reportedly stated to the press, "Our father did right to kill her, he did his duty as the parent of a girl who shamed her family". Immediately after the murder of Grosha was reported, five human rights and women's NGOs made a public appeal to the courts, "to enforce a fair penal policy" in the face of "people whose highest authority is not the law, but the *Kanun*".⁴³

The killing of Grosha Martincanaj by her father is what has been characterized as a "paradigmatic example of a crime of honour", which may be distinguished from other crimes of violence against women in that it is "an action that removes from the collectivity [the family] the stain of dishonour".⁴⁴ Such claims around crimes of "honour" are however, rare in Albania, and occur only in the context of "family honour",

⁴³ Joint Press Release, "A Crime of a highly-social dangerousness", Albanian Helsinki Committee, Independent Albanian Women's Forum, Women's Centre, Albanian Centre for Human Rights, 5 February 2004; interview with Gofile Martincanaj, *Gazeta Shiptare*, 5 February 2004.

⁴⁴ "The killing of a woman by her father or brother for engaging in, or being suspected on engaging in, sexual practices before or outside marriage", L. Abu Odeh, "Crimes of Honour and the Construction of Gender in Arab Societies", in M. Yamani, ed., *Feminism and Islam*, 1996, p. 141; Purna Sen, "Crimes of Honour: Value and meaning", p. 50, in Lynn Welchman and Sara Hossain, eds., *"Honour", Crimes, Paradigms and Violence against Women*, 2005.

and are rarely made, as far as Amnesty International is aware, by men who kill their wives.

The range of female behaviour considered to violate "honour" goes beyond adultery, premarital relationships, rape and falling in love with an "inappropriate" person.⁴⁵ Women may also be considered as "violating family honour" by exercising the right to choice in marriage or by trying to leave an unwanted marriage; and they may be controlled through forced marriage, being punished for leaving or trying to leave an unwanted marriage, being forced to stay in an unwanted relationship or being denied access to social and economic resources and property.⁴⁶ In Albania, these factors continue to put women at risk of domestic violence, and prevent them from seeking assistance.

The Kanun of Lek Dukagjini

*People do not use the Kanun as part of their daily life, but if a woman has an affair, or if she leaves her home and goes back to her own family, then they use the word Kanun without thinking so that they can justify punishing her.*⁴⁷

The ancient customary law set out in the Kanun of Lek Dukagjini (*Kanuni e Lekë Dukagjinit*) was first written down and codified in the early 20th century. The *Kanun* gave a man the right to beat and publicly humiliate his wife wives if she disobeyed him,⁴⁸ and provided that: *If a husband*

⁴⁵ EE/CN.4/1999/68, Integration Of The Human Rights Of Women And The Gender Perspective, Violence Against Women, Violence against women in the family, Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 1995/85, 10 March 1999, para 18. For concepts of "honour" in the Criminal Code, see Articles 101 to 103 CC, which provide for higher penalties in sentencing defendants accused of rape, where the victim subsequently commits suicide.

⁴⁶ Lynn Welchman and Sara Hossain, "Honour", rights and wrongs", in Welchman and Hossain, p.5.

⁴⁷ AI interview with Peace and Justice Centre, Shkodra.

⁴⁸ *Kanun of Lek Dukagjini*, eds. S. Gjocov and L. Fox, 1989, sections XXVIII and XXXI. If the wife does not "conduct herself properly toward her husband" the man may "cut a

*beats his wife, he incurs no guilt ... and her parents may not make any claims on him because of the beating. If a man beats his wife bloody, and she complains to her parents, the men must give an explanation.*⁴⁹

The *Kanun* also provided that, under certain conditions, a man may kill his wife with impunity (or leave her) for adultery and for betrayal of hospitality. For these acts of "infidelity" the husband was entitled to kill his wife without incurring a blood feud, since her parents had received the price of her blood, and given him a cartridge with which to shoot her as part of her dowry, and guaranteed her conduct on the day of her wedding.⁵⁰ Women were otherwise explicitly excluded from blood feuds.

Although observance of the laws of the *Kanun* was prohibited during the communist period, from the early 1990s there has been resurgence in the use of customary practices, including blood feuds and revenge killings, especially in the north of the country, though often in a form that has little in common with the rules of the *Kanun*. Although many tend to dismiss this as somehow characteristic of people from "the north", the resurgence may also be credibly explained as a response to the breakdown of the rule of law in the period of transition, combined with a lack of trust in the state's judicial system to guarantee justice, and as a response to political and social change, a reclaiming of traditions prohibited under communism.

In recent years the Albanian government has taken serious measures to address blood feuds through concerted action by the police and judicial authorities, and with NGOs established with the aim of the non-violent resolution of

blood feuds. Other NGOs, like the Shkodra Centre for Peace and Justice, have also been active in conflict resolution, and in programmes designed to inform both women and children of their rights, outside of those expressed in traditional codes. However, aspects of customary law continue to inform gender relations, and in this context, are used to justify domestic violence.

In 1999, the UN Special Rapporteur on violence against women (SRVAW) encouraged the government "to take steps to develop a systematic plan to address domestic violence and combat traditional beliefs, in particular those based on the "Kanun of Lek Dukagjini", that contribute to domestic violence".⁵¹ Four years later, CEDAW expressed similar concerns about "the resurgence of discriminatory customary law (kanun) and traditional codes of conduct in some northern areas of the country", and urged Albania to "implement measures to eliminate the practice of customary law and traditional codes of conduct discriminating against women".⁵²

[There were those] *the Kanun decreed unworthy of being avenged; the priests who did not fall within the scope of the rules of blood vengeance; and all the women of the High Plateau, who did not fall within their scope either. ... Oh, if only women as well were subject to the rules of the blood-letting.*⁵³

Amnesty International notes with concern not only that the use of the *Kanun* appears to be reviving, but is spreading beyond its traditional provisions, which exempted women from blood feuds. According to the prison authorities, in some cases, women who have killed their husbands and are currently serving sentences for murder, have been

ribbon from her belt or a lock of her hair" and leave her. The man was then expected to cut his wife's hair, strip her nude, expel her from the house in the presence of relatives and then drive her with a whip through the entire village, *Kanun* section XXXI.

⁴⁹ *Kanun*, section XXVIII.

⁵⁰ *Kanun*, section XXXI.

⁵¹ EE/CN.4/1999/68, Integration Of The Human Rights Of Women And The Gender Perspective, 10 March 1999, op.cit., para. 189. The Special Rapporteur also noted the absence of a law addressing domestic violence, "including marital rape", and of the provision of social services.

⁵² CEDAW, Albania, Concluding Observations, paras 68 and 69.

⁵³ Ismail Kadare, *Broken April*, 1982, p.144. Vintage: London (2004), translated from the Albanian.

threatened with revenge killings by their husband's family.⁵⁴

⁵⁴ AI interview with Director of Women's Prison 325.

3. Violence against women in the family

Defining violence against women

The UN Declaration on the Elimination of Violence against Women (DEVAW) defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”.⁵⁵ Recent interpretations of this definition also include “the withholding of economic necessities from the victim”.⁵⁶

According to CEDAW, gender-based violence against women is violence “directed against a woman because she is a woman or that affects women disproportionately”.⁵⁷ In its preamble, DEVAW describes violence against women as “a manifestation of historically unequal power relationships between men and women” and as one of the “crucial social mechanisms by which women are forced into a subordinate position compared with men”.

The World Health Organization has defined partner violence as any behaviour within an intimate relationship that causes physical, psychological or sexual harm, including:

- Acts of physical aggression, such as slapping, hitting, kicking and beating
- Psychological abuse – such as intimidation, constant belittling and humiliation
- Forced intercourse and other forms of sexual coercion

⁵⁵ General Assembly (GA) Res. 48/104, 48 U.N. GAOR Supp. (No. 49) at 217, U.N. Doc. A/48/49 (1993), para. 1.

⁵⁶ SRVAW, Report to the Commission on Human Rights, UN Doc. E/CN.4/2003/75, 6 January 2003, para.30.

⁵⁷ CEDAW, General Recommendation 19, Violence against women, (Eleventh session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 84 (1994), para. 6.

- Various controlling behaviours – such as isolating a person from their family and friends, monitoring their movements, and restricting their access to information or assistance.⁵⁸

While acknowledging the widespread prevalence of violence within the family in Albania, including child abuse, sexual abuse of minors and the abuse of elders within the family,⁵⁹ this report focuses specifically on intimate partner violence.⁶⁰ Intimate partner violence spans the spectrum from depriving women of economic necessities⁶¹ or limiting their freedom of movement through verbal and psychological violence, to beatings, sexual violence and killings. It may also include violence against the couple’s children as a means of inflicting psychological violence on the mother.

Violence is not confined to women from one particular section of society or a particular age group; indeed it is striking that for many women, violence is a constant feature of their married life, from the moment a woman marries until the end of her marriage, or her life.

⁵⁸ WHO, *World Report on Violence and Health*, Geneva, 2002; the definition is expanded in WHO, *Multi-country Study on Women’s Health and Domestic violence against Women*, 2005, p. 13, Table 2.1.

(http://www.who.int/violence_injury_prevention/violence/world_report/wrvh1/en/)

⁵⁹ CRCA, Albania, *Alternative Report, For the Situation of Children’s Rights and the Implementation of the Convention on the Rights of the Child in Albania (Shqipëria, Raport Alternativ, Për Situatën e të Drejtave të Fëmijës në Shqipëri), Qendra për Mbrojtjen e të Drejtave të Fëmijëve në Shqipëri*, 2004.

⁶⁰ Amnesty International uses the terms “domestic violence” and “intimate partner violence” to define violence against women in intimate relationships as any act or conduct by an individual that a woman considers to be, or to have been, intimately connected to her, regardless of sex, marital status or residence or, which results in death, physical, sexual or psychological harm or suffering to the woman. This definition extends to encompass individuals that women identify as their current or past “partners”.

⁶¹ *Economic abuse* includes acts such as the denial of funds, refusal to contribute financially, denial of food and basic needs, and controlling access to health care, employment, etc, UNICEF, *Innocenti Digest*, 2000.

The lived experience of violence against women in the family in Albania

The following section of the report is based on interviews conducted by Amnesty International with women who had, with the assistance of women's NGOs, escaped family violence. The majority of them were over 40, and had suffered violence for many years. Most women interviewed asked Amnesty International not to use their names or to make them recognizable in any way, and therefore extracts from their interviews have been organised into sections which illustrate the different stages of violence they experienced. As these women represent only a small minority of the women who have escaped violent marriages, this section also includes extracts from court decisions and media reports, where in many cases the woman remains within the marriage.

How it began

The beating started from the first day after we married. He was jealous all the time; we were looking at photographs of when I was single – there was a photograph of me with my first cousin – and he hit me because he was jealous. I was completely shocked – my father had never hit my mother. But I thought it would not happen again. (N).

It was OK for about a year, but then he started coming home with prostitutes and other women, and that was OK, I just didn't want him to beat me. He used to grab me by the hair and bang my head on the wall or the floor, or scratch my face until it bled. I couldn't go to the police, because he used to lock us inside the house when he went out, so we couldn't leave the house. (P.M.).

Forced and arranged marriages

I didn't know my husband before our marriage which was arranged by my uncle. I was 27 years old, from Sh. and he was 25, from BC. We got engaged and from that moment onwards he was

jealous. He was always telling me, "Don't look here, don't look there" and he didn't even allow me to talk to my neighbours. I hoped that he would change with time. (D).

Article 16.1 (b) of the Women's Convention guarantees women the "same right freely to choose a spouse and to enter into marriage only with their free and full consent". Many women find themselves in marriages not of their own choosing. Some women interviewed by Amnesty International had been subjected to a forced marriage and others married by arrangement between their respective families, often at a young age, including in one case during the communist period, when marriages were sometimes arranged for political reasons.⁶²

My marriage was arranged under the communist system - the old feudal families were suffering - my father said I should marry [the man] because his family did not have a "bad biography"; we were a non-communist family so I was not allowed to go to university, we did not have the same rights or same jobs and, in some cases, were not even allowed to get married. That man was not for me, but I said OK, I'll change him..... (P).

Although recent changes introduced in the 2003 Family Code raised the legal age of marriage for women from 16 to 18, in compliance with Article 16 (2) of the Women's Convention, women's NGOs report anecdotal evidence, particularly from rural areas, that girls continue to marry at around 16 years of age, although such unlawful marriages are not declared to the civil registry.⁶³

In the following case, even the mother was not party to the marriage, which was arranged so that the daughter might be trafficked

⁶² The marriages of 19 out of the 55 women interviewed by Adriana Baban for UNICEF had been arranged by their father or by their brother, *Domestic Violence against Women in Albania*, UNICEF, 2003, p. 22.

⁶³ AI interview, Hapat e Lehtë, Shkodra; *CEDAW Assessment Tool Report*, p. 57

into forced prostitution:

My husband arranged my daughter's marriage without even consulting me. He thought I didn't understand, but I knew very well what was going on, as three girls from our family had already been trafficked. The wedding was organized at his sister's house in Elbasan, and not at home. I went there to pick up my daughter and went to the police to denounce my husband, and the police assisted us and brought my daughter back; but the new husband came with his family and took my girl away. Then he disappeared with my daughter: I went to meet her at his family's house and was told that they had gone abroad. She was only 14 years old. (M.N.).

Forced and early marriages not only constitute a breach of international standards and Albanian law, but may also place women at higher risk of violence from an older or unknown spouse. Child marriages by definition constitute forced marriages, as a child cannot be considered to have freely given their consent.⁶⁴

I was 17 when we met; he was 25; we met each other and fell in love, but my parents were against the marriage, so he took me away from my family. He was violent to me from the beginning. He always found some reason to beat me; he used to beat me, to kick me in the stomach, and use his belt. I used to leave the house when he was violent. (S).

Isolation and control

Many women find that their freedom of action and movement is severely limited by their husband. They may be prevented from leaving

⁶⁴ CEDAW has repeatedly noted that practices including forced and child marriages "may justify gender-based violence as a form of protection or control of women ... the underlying consequences [of which] help to maintain women in subordinate roles and contribute to their lower level of education, skills and work opportunities.", CEDAW General Recommendation 19, para 11. See also CEDAW General Recommendation 21 (Equality in Marriage and Family Relations), paras. 15-18.

the house alone, talking to neighbours or maintaining contact with their own family. Staff at the Tirana shelter told Amnesty International that many women come to them from isolated areas where they have never been allowed to work, thus creating a financial dependency, "They are totally controlled by their husbands".⁶⁵

After we got married he got worse, more and more jealous. He was so jealous and got angry when people said hello to me in the street, and when we got home he would beat me. He would not even let me talk to my family: when I stopped to talk to my mother in the street, he just carried on walking, and when we got home he would take a wooden stick and beat me. (D).

He did not allow me to leave the house. When we moved to K., a new neighbour came to welcome us. I was in the house with my husband and a [female] cousin and the neighbour, and when I walked them out of the house, just to the garden gate, he asked me why I had left the house. I said it was fine because I was with two women, but he still beat me. (N).

I used to work before I got married, but not after we got engaged; he never allowed me to work after that. (D).

Psychological violence

Although psychological violence is not considered an offence under the Albanian Criminal Code (CC) it is apparent from the handful of criminal cases discussed below, and from press reports and interviews that women suffering domestic violence are frequently subject to threats to their lives, and other psychological violence often linked to physical violence, increasing women's fear and their vulnerability.

It was mainly psychological violence. Every time I opened a discussion, he would be

⁶⁵ AI interview with Edlira Haxhiymeri, Director of the Tirana Shelter.

violent with words, or he would say nothing. He did nothing for the children, he never worked. He would wake me up at 5am, and tell me to make food. I had to look after him and the children, he had no responsibility for the family or money or anything. I worked outside the house as well, so I did everything - I even had to pick up a glass of water for him. He was never loving or kind or once complimented me... when I left he said, "Do what you want". (P).

He beat me so badly that I ended up in the psychiatric hospital with depression. Because he knew the director they put me into the ward for the seriously ill, and when I protested that I was not that ill, they injected me, and they kept me there for two weeks. The doctor would not believe me ... I asked a friend to help me get out [she cries]. I said "Please help me get out as soon as you can". (F).

When my daughter was one year old, he used to send me and the baby out of the house all night long. I used to sleep in the street and sometimes neighbours would take me in and give me shelter for the night. (E).

I never understood why he was angry. When I was awake, I thought perhaps I had made a noise, or left a spoon in the wrong place, but even when I was asleep he would come in and grab me out of bed by the leg, and threaten to kill me. He would ask me why I was still alive, and tell me that I should kill myself. (D.K.).

Physical violence

It [the violence] happened every single day: in the morning when he woke up to go to work, if he had something to do as he didn't have a stable job, or to gamble or drink. My children cried for food, but he didn't give me any money. (A).

He would hit me, he would slap me, and then when he used the telephone cable I was very scared because he was drunk and out of control; and I became really frightened. He would even beat me when he was sober. Once, he beat me

with his shoe – my hair was done up in a clip, and he beat me with his shoe, and he broke my head at the back [fractured skull], although at first I did not realise it was broken. The blood was running down my face and I realized that I needed to go to hospital. (N).

Every day... if I had bruises on one eye, he hit the other one, every day for three years so that you would not be able to recognize me, my face wasn't a human face. (D.K.).

Many women are too ashamed to seek help, and continue to hide the evidence of their ill-treatment from family, friends and most importantly, people outside the family.

At the beginning he used to leave bruises on my body, but after we moved in with my sister, he started not to leave any marks, as he was afraid we'd lose the help we were getting from my sister's family. When I went to the hospital and I was pregnant with my third child; my body was all covered in bruises. I didn't say a word to the doctor, even though she asked me, I said it was because of the pregnancy. (A).

"Hot arms, cold arms" - guns and knives

He came home and threatened to kill me with a pistol in front of the children, and the children protected me and came and stood in front of me and they said, "You have to kill us first". (F).

Press reports and decisions in criminal proceedings suggest that many women are subjected to repeated threats of violence and threats to their life, by partners wielding weapons such as knives, guns and other arms including in one case, a hand grenade.⁶⁶

Sometimes such violence ends in death. In five criminal cases where men were

⁶⁶ Nine (16 per cent) of the 55 women interviewed by Adriana Baban had been so threatened, UNICEF, 2003, p. 34; Jetmir Zhpella was convicted and sentenced to four months and 20 days imprisonment for threatening his wife with a grenade, Shkodra District court, Reg. 127, Dec. 13, 17 January 2005.

prosecuted for the murder or manslaughter of their wives, between March 2003 and November 2005 at Tirana, Shkodra and Vlora District Courts, all but one involved small arms – Kalashnikovs or pistols. These cases are described in more detail later in the report.

Rape

He kicked me, punched me, and knocked me unconscious, he used verbal abuse, he used all kinds of violence, and - I don't know how to say it - he wanted to have sex with me. (A).

Few women admit being raped by their husbands, partly because of the shame in making such an admission, but also because the concept of marital rape is not established, nor is it yet an offence in law. Indeed, even among some women's NGOs working with survivors of domestic violence, Amnesty International found a resistance to the introduction of such legislation.

However, research conducted by UNICEF found that 19 out of 55 women (35%) had been raped or otherwise sexually abused by their husbands:

Every time he physically abused me, he also forced me to have sexual intercourse. After he kicked and hit me and my body was all covered by blood, he would become sexually violent. Being both physically abused and forced to have sexual intercourse was very humiliating for me! I felt very humiliated. I often looked at myself in the mirror and asked myself what was wrong about me. Now, two weeks after leaving him, I feel better, I feel like a woman. While being with him, offended, abused, accused for no reason, I forgot I was a woman.

According to Adriana Baban, some women regard consenting to unwanted sexual intercourse as the quickest way to counteract the husband's anger and to avoid further violence. Women told her that from prior experiences they had learned not to resist and to do whatever their husband wanted, as suggested by F, a 37-year-old

divorced woman and mother of two: *"He would ask me to have sexual intercourse with him after he had beaten me in a terrible way. I was so scared that I allowed him to do everything he wanted. On other occasions, when he was drunk, he used to tell me that he had been with another woman."*⁶⁷

Staying in the marriage

Even when women have been subjected to serious violence, and have taken part in criminal proceedings against him, many stay with their husband. On 19 March 2003 Eliaz Berdica was convicted of the attempted intentional murder of his wife Fatmira Berdica with an unlawfully held pistol, and was sentenced to four years' imprisonment. On 28 December 2002, he had asked Fatmira Berdica for money to buy a gas cylinder; she was surprised, as the money was always kept by her husband. She replied that she had no money, and told him to look in the kitchen drawer where the money was kept. She went out to tie up the dog; when she returned found her husband pointing a pistol at her, and saying "Where will you go now?" She ran out to their car and hid behind it: he then shot at her twice, injuring her in the neck and right shoulder. In its decision, the court noted that Eliaz Berdica had repeatedly ill-treated his wife. It took into consideration the defendant's regrets and admission of guilt, his ill-health and the fact that Fatmira had subsequently deposited at the court a statement confirming that she and her husband had resumed normal relations.⁶⁸

Many of the women interviewed by Amnesty International had tried several times to leave their husbands before they finally left him.⁶⁹ Their reasons for returning to a violent marriage included economic hardship, a lack of

⁶⁷ Both quotations are taken from interviews by Adriana Baban, published in UNICEF, 2003, p. 34-5

⁶⁸ Shkodra District Court, Decision no 50, 19 March 2003.

⁶⁹ Adriana Baban found that "30 women out of the 55 still believed that they should sacrifice their individual needs to keep the family together and restore the relationship, while 19 of the women left their partners", UNICEF, 2003, p.9.

housing, the need for their children to have a father, family pressure - or just the hope that the man they loved would stop beating them.

S. was 17 when she married; from the first days of their marriage her husband beat her, kicked her in the stomach and whipped her with his belt. She was 42 when she finally left after 25 years of violence:

I had thought so many times about leaving, but now I have left him because enough is enough, because now my children are adults [her three children, aged 22, 20 and 18, were still living at home]... It is so difficult to have adult children at home and still to be beaten. My parents always told me to leave him, but I wanted to support my children. My sister told me, "You always have your slippers ready outside the door - trying to escape". (S).

My brother said that he could take me home with them [his family], but my husband promised to stop, and did not touch me for two weeks; instead he started to beat the children. There was no peace in my family. I wanted him to beat me and not the children. After two weeks he started to beat me again. I was too embarrassed to tell anyone again, and so I decided not to think about it, to forget it, to think of it as normal. (D.K.).

My sister came with food for the Bajram celebration, and saw the state I was in and called our uncle; she felt she had to tell the family. I told my sister everything and told her to call our uncle and tell my family everything. I wanted them to know why I wanted to leave, so I wasn't bringing shame to their door. My father came from Shkodra, and called my brothers from Italy, who said they would take me away immediately. My uncle worked for the police, and at 10pm he came with all the family, and they asked me to tell them everything - but I still loved him, so I couldn't speak.... Because of people's opinion and shame I couldn't really take a final decision. I went part of the way down the stairs [from their

flat], and then I turned round and went back to him. (N).

I found out about the women's centre and I used to go there for a couple of hours to escape the violence, and then [when the centre had decided that her life was at risk] the centre sent me to the shelter in Tirana with the children, for two weeks. I had called my brother, and he told me that my husband had come to him, and that he was crying, and my brother tried to convince me to go back. Then the same day I saw my brother-in-law in the street; he was looking for me. He tried to persuade me to go back home. He asked me to meet him the next day and have a cup of coffee. I went the next day, but instead of my brother-in-law my husband was there waiting for me; he was crying so I went back. I went back hoping for a better life. As soon as I went back home it all started again, and it got worse. (D).

F. had been married for several years before her husband became violent; it started when he was released from prison:

He came out destroyed and very violent. I wanted to separate from him because he was so violent to me, and I made up my mind to leave him once and for all. I went to the Municipal Council and explained to the woman working there that I wanted to get a divorce and that I needed a job and a place to live. They gave me a small flat [this was during the communist period] and for a month I lived in peace; but then he came, so I went to hide at my mother's house. But my two brothers forced me to go back to him - my younger brother said "If he tortures her, I'll kill him". So I went back and very shortly after I was pregnant again, but then he fell in love with this other woman... He was one of the biggest criminals but I loved him, and I wanted to help him. (F).

I went back hoping for a better life. As soon as I went back home it all started again, and it got really bad, he beat me in public, at home, shouted abuse at me. He became very weird and started to crawl around at home, I

thought someone had done some magic on him. He used to stay up all night, and I was scared that he would kill us at night; I don't know if he had a breakdown or what. I took him to the hospital, it took eight men to put him in the ambulance, and he was resisting violently. He came home at midnight and he was OK, but he started again in the morning, and that's why I called the police. The police talked to both of us, just as we are having this conversation now. They told him that if he touched me one more time they would come and take other measures. After a week he started again to be very violent ... and it was getting worse day by day. I called the police again and the police took him to the hospital. In the evening I went with my brother to visit him and he was coming out. I asked the doctor, "Why did you let him go?", and the doctor said "He's more than fine".

I knew then that my husband was doing this deliberately, and that he had lied to the doctor and said that his wife had gone out leaving him with the children. I was really angry and showed the doctor all of the bruises, and was not ashamed of telling him, and then I went to talk to the police. The doctor apologised, and said he would call me but he never rang again. What else could I do? Twice I denounced him to the police and twice at the hospital, how many times did I have to denounce him? (D).

The last resort

Reports from women's organizations suggest that an unknown number of women choose suicide as their only means of escaping domestic violence. This appears to be confirmed by press reports.

In April 2005, it was reported that Mersushe Toshi, from a village in the Librazhd district drowned herself after an argument with her husband, who suspected her of infidelity. According to press reports, neighbours told police that her husband had been constantly jealous and that Mersushe was subjected to repeated insults and violence. Her husband was arrested and charged with causing her suicide. He reportedly told the police that during their last

argument he had "slapped her face lightly twice".⁷⁰ In the same month, according to a spokesperson for the Tirana police, 22-year-old Mira Nikolli committed suicide after repeated telephone threats from her husband who was reportedly jealous of her.⁷¹ In January 2006, Shkoder police noticed 30-year-old Cani Tollozi who was about to throw herself off a bridge. When they intervened, she told them that she wanted to commit suicide because she could no longer live with her husband's violence. He was subsequently arrested and placed under investigation for causing his wife, by his violence, to attempt suicide.⁷²

Others women find themselves taking another way out. More than 20 women are currently serving sentences for killing their husbands, many of them after years of violence. The cases of some of these women are discussed below (see Section 5).

Leaving home,⁷³ getting shelter

My brother came immediately ... and talked to my husband for the last time, giving him the choice to behave or he was going to take me and the children away. My husband didn't respond at all, so my brother said that I should make a decision, that he wouldn't come here [to our

⁷⁰ *Panorama*, "Familiarët e 27-vjeçares: Ishte shumë xheloz dhe e rrihte", 18 April 2005; *Panorama*, "Bashkëshorti i arrestuar krijon albinë: E qellova lehtë", 19 April 2005.

⁷¹ *Korrieri*, "Kërcënohej nga burri, vetëvaret 22-vjeçarja", 27 April 2005.

⁷² *Korrieri*, "Dhuna e të shoqit e çon në vetëmbytje", 27 January 2006. See also section 5 below, p. 31.

⁷³ Amnesty International notes domestic violence as a factor in increasing women's risk of being trafficked. According to press reports, at the age of 17 Z.H. had been forced to marry a mentally disabled man who repeatedly ill-treated her. Two months later, she ran away and met a man whom she married, and with whom she moved to Greece. He subsequently beat her and forced her to work as a prostitute, and then sold her for 5,000 euros before returning to Albania. Z.H. was arrested and deported by the Greek police and subsequently filed a complaint against her husband in November 2004; in the meantime she gave birth, but abandoned her baby at a centre run by the International Office for Migration where she had been living; she was arrested for "abandoning a child" in February 2006, *Metropol*, "Z.H. 19 vjeçe shfrytëzohet në Greqi e pasi vjen shtatëzanë të fëmijën në rrugë", 12 February 2006.

house] anymore. So I went, and I left the children for a week and found somewhere to rent, and then called my oldest son and the children came. I never heard from him again. He sold it all, the house, everything, I get nothing for the children. My four-year-old boy asked his uncle for a gun to kill his father, and he still threatens to kill him. (D).

N. had moved with her husband to Kosovo; while he was away, she saw an advert on the local television station about a women's help-line:

I contacted the women's centre in G., who contacted the women's centre here in Tirana, and they paid for me to travel to the shelter. His parents called me from Germany and asked me not to leave him, and my husband called and threatened me if I left, and took the children. I told him that I was not scared anymore, that I would leave and that they were my children. (N).

A woman from the women's centre came to the neighbourhood with some educational and employment programmes for women. I didn't like the jobs that were offered, but then my aunt, who used to work as a cook at the women's centre, left the job and I took her place. Now I live at my parents with my three children, together with my sister, who is also divorced and has two children, and my brother. (A).

After the divorce

Some women never hear from their husbands or partners again. But in other cases, even when women have divorced their violent husband, the violence does not stop. A study of decisions taken by five district courts between 1990 and 1998 showed that in 35 per cent of criminal proceedings related to violence against women, the perpetrator was the woman's former husband.⁷⁴

⁷⁴ This may of course merely reflect women's increased agency in initiating such prosecutions after divorce. Albanian Association of Women Lawyers, *About Violence against*

On 13 July 2005 at Shkodra District Court, Haki Bajraktari, aged 40, was convicted of threatening and causing minor injury to his former wife Flutura [Flora] Bimi. After their divorce, the court had awarded Flora custody of the children, but the constant disputes continued. On 12 June 2005, while she was collecting the children from nursery and school he threatened her and hit her in the face, and was only stopped by the intervention of others present. He was sentenced to two months' imprisonment.⁷⁵

On 7 February 2006, Kastriot Makusti was convicted of the murder of his former wife, Ervenika, and her mother, Hurma Hyska. On 3 October 2005, in a state of depression, he had gone to his mother-in-law's house where his former wife was living, to ask her to come back to him; when she refused, he shot them both dead.⁷⁶ Two weeks later, on 21 February, Rifat Kurtaj was found guilty of the double murder of his ex-wife Frida and his daughter Mirela on 16 August 2005. Although it was a year after he had separated from Frida, they were still living in the same house. He shot his daughter from the window while the women were returning from the fields; he shot his wife on the doorstep. Rifat Kurtaj reportedly suspected that both women were having affairs, and claimed he had shot them "in hot blood". He told the court, "I repent of the crime I committed". He was sentenced to life imprisonment.⁷⁷

Women in Albania, Tirana, 2000, p. 83; courts studied included: Tirana, Durrës, Lezha, Korça and Fier.

⁷⁵ Shkodra District Court, Reg. no 298, Dec. no. 197; he was sentenced under Articles 84 and 89 of the CC; the forensic certificate dated 16 May 2005 stated that she was unable to work for more than nine days.

⁷⁶ *Metropol*, "I pandehuri: u pendova për vrasjet që kam bërë", 7 February 2006.

⁷⁷ *Gazeta Shqiptare*, "Ekzekutoi ish-bashkëshorten dhe vajzën, dënohet me burg përjetë", 21 February 2006.

4. The legal framework

International standards

Article 122, paragraph 1 of the Albanian Constitution provides that all international conventions ratified by Albania are part of the domestic legislation and take precedence over national laws; the constitution also provides for equality before the law and prohibits discrimination.⁷⁸ Thus in theory, Albanian women enjoy the same rights as men, but in practice, the failure to implement both international standards and domestic laws has resulted in widespread discrimination against women in almost all aspects of political, economic, social and cultural rights.

Albania is party to all the relevant major international conventions and regional human rights instruments, which include:

- The International Covenant on Civil and Political Rights (ICCPR);
- The International Covenant on Economic, Social and Cultural Rights (ICESCR);
- The Convention on the Elimination of All Forms of Discrimination against Women (Women's Convention); and its Optional Protocol;⁷⁹
- UN Convention on the Rights of the Child (CRC);
- The Convention against Torture and Other Cruel Inhuman and Degrading Treatment or Punishment;
- The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

⁷⁸ Article 178 of the Albanian Constitution states that "all are equal before the law", and that "no-one shall be unjustly discriminated for reason such as sex, race, religion, ethnicity".

⁷⁹ Albania acceded in 2003 to the Optional Protocol, which recognizes the competence of CEDAW to receive and consider communications submitted by individuals and groups of individuals.

Article 2 (b) of the Women's Convention requires states parties to "adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women". The CEDAW in their General Recommendation 19 subsequently expanded on this: "Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention."⁸⁰

The obligations of states under international law are not limited to ensuring that their agents do not commit violations; they are also required to take effective measures to prevent and punish such acts by individuals or groups. States therefore have a duty under international law to prevent, prohibit and punish violence against women, regardless of the perpetrator; the state also has a duty to provide redress, including compensation.⁸¹

The UN Declaration on the Elimination of Violence against Women (DEVAW) holds that states should, "exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the state or by private persons."⁸²

This is further expanded under the Committee's General Recommendation 19 which states, "Under general international law and specific human rights conventions, states may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of

⁸⁰ CEDAW, General Recommendation No 19, 1992, UN DOC A/47/38.

⁸¹ These obligations have recently been set out in detail in the CEDAW's decision in the case of *A.T. vs. Hungary*, CEDAW Communication no. 2/2003, UN Doc CEDAW/C/32/D/2/2003 (2005).

⁸² UN Declaration on the Elimination of Violence against Women, General Assembly Resolution 48/104 of 20 December 1993.

violence, and for providing compensation.”⁸³ The standard of “due diligence” holds that a state must fulfil its responsibilities to protect individuals from abuses of their rights by non-state actors; in this case, to protect women from abuses by their husbands or partners, or indeed their ex-husbands or ex-partners. Thus Albania, as a state party to the Women’s Convention, is obliged to prevent, prosecute and punish violence against women, otherwise it may be held responsible for the violation of their human rights.

The application of rights set out in international standards is further clarified and elaborated in, for example, UN General Assembly Resolution 52/86, Crime Prevention and criminal justice measures to eliminate violence against women: Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice (Model Strategies and Practical Measures).⁸⁴

Torture

The UN Special Rapporteur on violence against women (SRVAW) in her report to the UN Commission on Human Rights in 1996 drew comparisons between violence against women in the family and torture, including the use of violence as a means of control and punishment:

“It is argued that, like torture, domestic violence commonly involves some form of physical and/or psychological suffering; including death in some cases. Secondly, domestic violence, like torture is purposeful behaviour which is perpetrated intentionally. Men who beat women partners commonly exercise control over their impulses in other settings and their targets are often limited to their partners or children. Thirdly, domestic

violence is generally committed for specific purposes including punishment, intimidation and the diminution of the women’s personality. Lastly, like torture, domestic violence occurs with at least the tacit involvement of the State, if the state does not exercise due diligence and equal protection in preventing domestic abuse. This argument contends that, as such, domestic violence may be understood to constitute a form of torture.”

She went on to remark. “The UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment does not limit the definition of torture to acts by State Officials, but also includes acts performed ‘with the consent or acquiescence of a public officials or other persons acting in an official capacity’ (Article 1 (1)). All the elements of torture, as defined by that article, can therefore be present in domestic violence: it may cause ‘severe pain or suffering, whether physical or mental’, and may be ‘intentionally inflicted’ ‘for a purpose such as punishment’ or ‘for any reasons based on discrimination of any kind’.”⁸⁵

“He used to torture me, not just me, but my son - I call this torture”; “It was real torture for me to live like that”; “I was in hospital for a few months because of depression and the torture he used”; “If I came home without any money, he would torture me”.”⁸⁶

Many women interviewed by Amnesty International described the ongoing and repeated acts of physical and psychological violence they had experienced as “torture” (*torturë*); police officers used the same term.⁸⁷ Although the Convention against Torture and Other Cruel Inhuman and Degrading Treatment or Punishment does not directly prohibit torture by non-state actors (that is, by private individuals),

⁸³ CEDAW, General Recommendation No 19, 1992, UN DOC A/47/38.

⁸⁴ UN Doc. A/52/635, adopted without a vote, 12 December 1997; on a regional level, see Council of Europe (CoE) Committee of Ministers Recommendation Rec. (2002)5 on the protection of women against violence.

⁸⁵ Report of the UN Special Rapporteur on violence against women, February 1996, E/CN.4/1996/53.

⁸⁶ AI interviews with A., D., M.N. and P.

⁸⁷ “We have not had any cases of torture this year”, AI interview with Tirana police.

as the SRVAW has noted, the state may be held responsible for its failure to prevent such acts. This acknowledged nexus between domestic violence and torture indicates the level of priority that states should attach to preventing violence against women, and addressing it appropriately and effectively where it occurs.

Domestic law

As noted by CEDAW, the Albanian Criminal Code (CC) fails to either separately define or criminalize domestic violence, and no distinction is made between violent crimes (including rape) perpetrated by strangers and those by family members. Cases of domestic violence are instead prosecuted under the following provisions of the CC:

- Article 76, Murder committed intentionally is punishable by a term of 10 to 20 years' imprisonment;
- Article 78, Premeditated murder is punishable by a term of 15 to 25 years' imprisonment; when committed for revenge or blood-feud, it is punishable by 20 years' imprisonment or life imprisonment;
- Article 82, Murder committed intentionally in a sudden state of profound psychological shock caused by violence or serious offence on the part of the victim is punishable by up to eight years of imprisonment;
- Article 83, Murder committed while exceeding the limits of necessary defence is sentenced with up to seven years' imprisonment;
- Article 84 Threat, Serious threats to cause death or grave personal harm is punishable by a fine or up to one year's imprisonment;
- Article 85, Manslaughter is punishable by a fine or up to five years' imprisonment;
- Article 88, Serious intentional injury is punishable by three to 10 years'

imprisonment, or if it causes death, is punishable by five to 15 years of imprisonment;

- Article 89, Light intentional injury, which causes temporary incapacity to work of no longer than nine days is punishable by a fine or up to two years' imprisonment;
- Article 90, Other intentional harm. Assault, as well as any other violent act, is punishable by a fine. The same act, when it causes a temporary incapacity to work for up to nine days, is punishable by a fine or up to six months' imprisonment;
- Article 93, Interruption of pregnancy without the woman's consent is punishable by a fine or up to five years' imprisonment;
- Article 99, Causing suicide: causing a person to commit suicide or to attempt suicide as a result of systematic maltreatment or other systematic behaviour which seriously undermines the dignity [of the person], when the latter is materially dependent or dependent in any other way on the [perpetrator], is punishable by a fine or up to five years' imprisonment;
- Article 130, Coercion to divorce and coercion to begin or continue cohabitation is punishable by a fine or up to three months' imprisonment.

Article 102 prohibits non-consensual sexual intercourse between adults and is punished by three to 10 years' imprisonment, with provision for a higher sentence in aggravated circumstances, with a maximum sentence of 20 years' imprisonment, "when the act lead to the death or suicide of the victim". There is no explicit prohibition of marital rape, although articles relating to rape do not specifically exempt a husband from prosecution.

The Albanian Criminal Code makes a distinction between injuries which result in the victim sustaining a temporary incapacity to work

for more than nine days (Article 89) and injuries which causes a temporary incapacity to work for up to nine days (Article 90). In the latter case, and also for Article 102/1 (rape of an adult), victims are themselves required to file a complaint directly with the judge.

In prosecutions relating to domestic violence in which unlicensed weapons have been used to kill or injure, or have been used in threats to kill or injure, provisions in the law relating to the unlawful possession of weapons are also invoked.⁸⁸

Obstacles to justice

*Recognizing that women and girls children often do not report the violence that is perpetrated against them because they do not understand that they are victims of, rather than participants in the violence, states should...inform women of their legal rights and educate them specifically about domestic violence". "In traditional families women have to follow the rules, they have to be "good girls" and violence is part of that tradition. They do not see violence in the family as violence; they see it as normal."*⁸⁹

In their 2002 report to CEDAW, the Albanian government recognized that "domestic violence goes mainly unreported", and identified several contributory factors including, "Women's

distrust in the police forces and judicial system".⁹⁰

A member of Albania's delegation to the Human Rights Committee in October 2004 also observed that women in Albania are hindered in accessing the judiciary and legal services because they have grown up believing that they do not have the same rights as men.⁹¹ Until women are made aware that domestic violence is a criminal offence and are confident that they will be guaranteed their legal rights, it seems unlikely that there will be any real change in access to justice for women.

States should "empower the police to respond promptly to incidents of violence against women".⁹²

Few women seek help, even from their own family members; those who seek the assistance of NGOs do so only when they are unable to bear their situation any longer; few seek assistance from the authorities. NGOs told Amnesty International that few women considered ringing the police for assistance: only 15 per cent of women received at the Tirana shelter had ever called or been to the police, "Most women don't think they will do anything."⁹³

[When I rang, the police officer said] *I am the Chief of the Operational Sector, what do you need? I said "He beats me and treats me inhumanly; I just cannot go on like this any more. The chief said he was married with children and that he understood and that he would speak to police in my local zone. He said he would send*

⁸⁸ Article 278/2, Possessing, buying or selling weapons, bombs, mines or explosive materials without the authorization of state competent bodies, is punishable by a fine or up to seven years of imprisonment; Article 278/3, Possessing bullets of light military weapons without the authorization of state competent bodies, constitutes criminal contravention and is punishable by a fine or up to one year of imprisonment.

Article 279, Manufacturing, keeping, buying or selling weapons with blades, such as swords, bayonets, knives and other means prepared and intended specifically for assaulting people or for self-defence, without the authorization of state competent bodies, is punishable by a fine or up to five years of imprisonment.

⁸⁹ SRVAW report to the Commission on Human Rights, E/CN.4/1996/63, para. 142 (g); AI interview with NGO, Në Dobi të Gruas Shqiptare, Useful to Albanian Women.

⁹⁰ CEDAW/C/ALB/1-2. *Albania, Initial and second periodic report*, pp. 29; other factors included: "Women's perception that they are abused because they did something wrong; Lack of public awareness of the fact that domestic violence represents a crime and as such it should be condemned; Lack of specific police and health structures to deal with domestic violence; Lack of awareness of the judicial system on the extent of the phenomenon and how to deal with it; Lack of countrywide services for domestic violence cases."

⁹¹ Human Rights Committee, CCPR/C/SR.2228, 19 October 2004.

⁹² Model Strategies and Practical Measures, para. 8 (c).

⁹³ AI interview with Edlira Haxhiymeri.

*police. I waited. I did not wash the blood on my body for a week and they never came. One day I called three times and said, "Are you coming to deal with him or not?" They said "We will take care of it, we are coming from L.", but no one came. I had no idea what to do, who to tell. I don't know if the operational unit forgot or ... I had to explain again and no one came. The third time [they said], "Who can deal with that man, he's crazy". I called every hour, every hour and a half. The police said don't call us, don't you feel embarrassed?... and then he insulted me. I never again called the police.*⁹⁴

Indeed when women did call the police they found that the police rarely responded to their calls or took appropriate action. The perception within Albanian society that violence against women is normal or is a family issue, is equally held by members of the police force who, in general, fail to understand that such assaults on women are a criminal offence. This disregard by the police plays an important role in deterring women from reporting violence against them. Amnesty International also notes that of the ten women interviewed in October 2005, two had been married to police officers; two of the defendants in the 30 criminal decisions reviewed in this report were police officers. NGOs in Tirana and Elbasan also reported allegations of domestic violence by police officers, including the allegation that the former chief of Tirana police station no. 1 had murdered his wife, Erieta Avdyli.⁹⁵

*There are reports in this region that women say they have called the police and that we don't come – maybe they don't give the right address.*⁹⁶

⁹⁴ AI interview with D.K..

⁹⁵ Erieta Avdyli, a UNICEF employee, disappeared in April 2000; her body was found in May 2000. Her husband Dritan Avdyli was arrested on 14 May, charged, tried and acquitted of her murder; according to recent press reports, the investigation has been re-started. *Korrieri*, 2 December 2005.

⁹⁶ AI interview with Qani Balija, Deputy Director, Vlora Police.

NGOs working with survivors of domestic violence were also less than positive about the responses of law enforcement officers. Afërdita Proni, coordinator of the HRDC Paskuqan project, located in the marginalized suburbs of Tirana, told Amnesty International of a woman subjected to violence by both her husband and by his family. She had been to the police more than once, but they had refused to take her seriously, reportedly telling her that violence was a family problem, "They tell her that this is normal and that there is nothing wrong: they just made her feel bad, worse than before she went".⁹⁷

*If it is just words, we get their partners and get them to reconcile.*⁹⁸

Even if the police do take action, they may either attempt to reconcile the couple in a brief conversation, or detain the perpetrator at the police station overnight. Amnesty International believes that mediation between couples, either by the police, prosecutors or lawyers, is not an appropriate response to cases of intimate partner violence.

In monitoring police stations the HDRC found that where the police did take action, violent men were generally arrested and detained for up to 48 hours before being released without charge. They suggested that in some cases this might have been due to their wife's or partner's reluctance to undergo a forensic examination or go to the court to make a complaint.⁹⁹

*When a raped woman goes to the police they treat her as a prostitute – and this is one very good reason why women do not ring the police.*¹⁰⁰

Amnesty International also received allegations that the police may collude with the perpetrator. According to a Shkodra NGO, early

⁹⁷ AI telephone interview with Afërdita Proni, HRDC.

⁹⁸ AI interview, Tirana Serious Crimes police officer.

⁹⁹ AI telephone interview with Afërdita Proni, HRDC.

¹⁰⁰ AI interview with forensic pathologist.

in 2005 a woman had fled her husband and returned to her family in the village of Kiras after being beaten by her husband, for which act she was subsequently beaten by her own father. The NGO's community worker called the police, who then reportedly beat the woman for attacking her father, and subsequently denounced the woman on the local television station for assaulting her father.¹⁰¹

*When a woman calls, we notify the relevant police station, and they have to attend; of course they only have to attend the good calls; some of those women, they just waste our time".*¹⁰²

However, according to the Elbasan Counselling Coordination Centre (CCC), which had established good relationships with, and trained the police, the Elbasan police were more likely to attend calls and refer women to the CCC.¹⁰³

*"There are so many other problems, one police officer for 5,000 families". "It is the first duty of police to prevent crime." "Most cases are families who have moved to the area, they are not from this area; we do not register them as family cases." "The problem does not exist; we do not have information about this." "It is not the work of the police, these are not crimes".*¹⁰⁴

The Albanian police force is a department of the Ministry of the Interior (formerly the Ministry of Public Order), which currently has no structural provision, dedicated units or specialized staff to address domestic violence.¹⁰⁵ Officials within the Ministry of the

Interior, including senior police officers, interviewed by Amnesty International rarely considered domestic violence seriously, and often identified it as a private matter or a social problem, and as such the concern of other ministries. Indeed one official within the Ministry suggested that Amnesty International speak to the Ministry of Culture, while others were eager to refer Amnesty International to the Ministry of Labour and Social Affairs and the Committee for Equality.

Training in responses to domestic violence is reportedly included in the curriculum for police recruits trained at the Public Order Academy, and senior officers informed Amnesty International that they had received training, often in EU member states. However, most officers identified domestic violence as a social and economic problem, rather than a crime. Awareness of the proposed draft law on family violence was low, and its provisions, including the presence of dedicated police units at each police station, were generally seen as unnecessary, impractical, inappropriate or a matter for another ministry.¹⁰⁶

Although attitudinal problems within the police force are a major obstacle, procedural problems also contribute to the failure to recognize domestic violence as a crime, including a failure to log calls relating to domestic violence, (because of the absence of a specific criminal offence), and to disaggregate statistics. Even if the police respond to a call, they claim that they may not always have the powers to intervene:

Under the Criminal Code, for example – for [domestic] violence, we do not have a control mandate [search warrant to enter a property], so the women have to go to the judge. Sometimes we have entered without the control mandate – but we cannot just go on the word of the woman to

¹⁰¹ AI interview with staff at Hapat e Lehtë NGO, Shkodra.

¹⁰² AI interview with Qani Qerkesi, Head of Legal and Administration, Deputy Chief of Tirana Police.

¹⁰³ AI is unable to confirm this; however a spokesman for Elbasan police reported that they had received three complaints of domestic violence in the same week, *Gazeta Shqiptare*, 25 May 2005.

¹⁰⁴ AI interview with Serious Crime Police officers, Tirana, October 2005.

¹⁰⁵ According to the Ministry of the Interior, attempts are being made to recruit more women police officers.

¹⁰⁶ This attitude prevailed even in Vlora, where the police force includes an anti-trafficking unit, which works closely with a shelter for women and girls trafficked for the purposes of forced prostitution.

*prove a crime. Police must be given the authorization to enter the house. If we find them in flagrante [in the act] then we can deal with it.*¹⁰⁷

Amnesty International notes that Albania should ensure that "The police have, with judicial authorization where required by national law, adequate powers to enter premises and conduct arrests in cases of violence against women, including confiscation of weapons".¹⁰⁸

There are some signs of an improved police response. Ahmet Prençi, Director of Shkodra District police force told Amnesty International delegates that until 2003 the police "just hid" any evidence of domestic violence: if a threat was made, but the police failed to resolve the matter between the couple, the incident was left out of their reports. He expressed concern at the practice of sitting the partners down and attempting to reconcile them, stating that it should not be up to the police to make a decision in a case, but it should fall to the prosecutor to see if there was a case to answer.

Shkodra police – in all categories of crime – are now required to register even the smallest incident, send the victim for a forensic medical examination, take a statement and notify the prosecutor, including in cases of minor injury which would not as a matter of course be referred to the prosecutor (see below).

By October 2005, Shkodra police had reportedly recorded two cases of attempted murder, seven other cases of serious violence and five in which threats (including with weapons) were made by husbands against their wives. With

one exception, each case had been reported to the prosecutor, and arrests had been made.¹⁰⁹

Press reports, dated 27 January 2006, reported that two Shkodra police officers had found a woman about to throw herself off a bridge: "Weeping, she told them that she wanted to commit suicide because she couldn't bear her husband's ill-treatment any longer. She said that her husband beat her daily, for no reason. After they explained to the 28-year-old wife that the violence against her was a criminal offence, the police suggested to her that she should report her husband. When she did this, they arrested him." At the time of writing he was being investigated by the prosecutor, including on suspicion of inciting his wife, by his violence against her, to attempt suicide.¹¹⁰

From police to prosecution: the forensic medical certificate

*For the first 10 years I didn't go to the police, but in October, November and December 2004 I went to the police station again and again... But he was 60 years old, and the police told me, he's an old man, give him a chance. The police gave me a forensic slip and sent me to the hospital.... The doctor gave a medical certificate to the police, and the forensic doctor gave me the certificate. [AI: So why didn't you go to the prosecutor or a lawyer?] Because my father threatened me, he said, "Just keep quiet, just keep going".*¹¹¹

In order for the prosecutor to investigate an allegation of violence and bring a prosecution against the perpetrator, the victim has to be examined by a forensic doctor, located at the Forensic Institute in Tirana, and in hospitals and medical centres across Albania.¹¹²

¹⁰⁷ AI interview with a Serious Crimes Police officer, Tirana. The organization notes that the Serious Crimes Police are not mandated to deal with offences under any of the articles used in connection with cases of domestic violence, although they deal with family violence in the context of blood feuds.

¹⁰⁸ Model Strategies and Practical Measures, para. 7(a).

¹⁰⁹ AI interview with Ahmet Prençi.

¹¹⁰ *Gazeta Shqiptare*, "Rrihte bashkëshorten, arrestohet 47-vjeçari", 27 January, 2006; *Korrieri*, "Dhuna e të shoqit e çon në vetëmbytje", 27 January 2006.

¹¹¹ AI interview with MN.

¹¹² These are administered by the Ministry of Justice, rather than the Ministry of Health.

Amnesty International met with Professor Sokrat Meski and Dr Arben Lloji at the Tirana Forensic Institute, where around 70 per cent of their case load involves incidents of family violence, in which women make up 68 per cent of victims. In 2005 they reported seeing up to two domestic violence cases each day,¹¹³ including women from all areas of Tirana, and all sectors of society, although with a larger percentage from poorer communities.

Forensic pathologists are required to classify the injuries received, according to the severity of the injuries as categorized below.

Classification of injuries:

1. Bruises, open wounds, requiring no medical care;
2. Bruises with swelling (haematomas), bruising to the head, signs of concussion – sickness, vomiting etc;
3. Serious fractures, burns, serious scars;
4. Serious injuries, all injuries involving weapons, disabling or long-term injuries and death.

Forensic pathologists are required to establish and record – through a physical examination and by questioning the patient – how the injury occurred, including the nature of any weapons involved. Photographs are taken of the injuries, and in Tirana, they also record repeat cases. Reports of injuries in classes 3 and 4 are sent to the prosecutor; other reports are given to the victim, including in cases under Article 89 of the CC (light injury, resulting in less than nine days incapacity to work) and Article 102 of the CC (rape), where Article 284 of the Criminal Procedure Code (CPC) provides that such offences may be prosecuted only on the basis of a complaint filed by the victim.¹¹⁴

¹¹³ *Korrieri*, “Çdo ditë kemi dy raste dhune”, 11 August 2005.

¹¹⁴ Article 284/1. For the criminal offences provided by articles 89, 102 first paragraph, 105, 106, 130, 239, 240, 241, 243, 264, 275 and 318 of the Criminal Code, criminal proceedings may

Although most of the cases they receive are referred by the police, forensic pathologists may refer women attending the emergency department to the police, “because we can see what has happened to them”.

Taking a complaint to the court

*“Few women are prepared to bring such prosecutions. They are psychologically tired of dealing with the court, and with their problems, and they just don’t want to deal with it any more. They have to do all the work to get a divorce or prosecution: the burden lies entirely on the woman in such cases. She has to go to every state structure, there is no help for her in trying to prove such a case. The object of the draft law is to make it easier for her in this process, and to ensure a government response to the perpetrator.”*¹¹⁵

*It’s a problem of Albanian reality, women do not get access to justice.*¹¹⁶

Research conducted in 2000 suggested that a “considerable number” of complaints related to domestic violence were withdrawn, mostly under pressure from the perpetrator, his relatives, or because the victim feared further retribution.¹¹⁷

start only on the basis of a complaint brought by the injured person, who may withdraw the same at any stage of the proceedings.

2. The complaint is made by the injured person at [the office of] the prosecutor or the judicial police by means of a statement in which, personally or through a special representative, the desire is expressed that criminal proceedings be started in relation to a fact which is identified by law as a criminal offence.

¹¹⁵ AI interview with Besa Saraçi, Women’s Advocacy Centre, QAG; neither the QAG nor the Elbasan Advocates Studio, both of which provided women with free legal assistance in divorce cases, had represented women in criminal cases.

¹¹⁶ AI interview with several officers from the Serious Crimes Police, Tirana.

¹¹⁷ It has been estimated that 5 per cent of possible complaints reach the courts, Committee for Women and the Family and UNICEF, *Mapping of Existing Information on Domestic Violence in Albania*, October 2000, p.21; *Refleksione, Comparative Study*, p. 5.

Amnesty International notes that judicial systems should provide assistance and protection to victims and witnesses.¹¹⁸ Vjollca Meçaj has advocated that such in cases the "security measure" provided under Article 232 (c) CPC could be imposed. This bans a person from, or orders them to stay in, a certain place, pending trial. Because such measures are not applied, in proceedings at three district courts, she found that, *"consequently women victims were obliged to continue to live with the men who assaulted them, even though they had started criminal proceedings against them. Furthermore, this attitude of the courts was seen by the victims as indifference and a lack of commitment on the part of the judicial system with regard to the violence they suffered in the family, and as a result, was listed by them as one of the reasons which influenced them not to report the violence, or to retract the complaint they made."*¹¹⁹

According to Kujtim Luli, Head of the Study and Research Department, Office of the Prosecutor General, a prosecutor is required to deal with every criminal case irrespective of whether it is reported by the police or by the victim (or their lawyer). However, he acknowledged that although many cases related to domestic violence are reported to the prosecutor, few are prosecuted. "Some cases do not proceed because statements (particularly in cases of minor injury or threats) are retracted or because the victim was lying".¹²⁰

Complaints brought by a victim of crime may be retracted or withdrawn at any stage of the proceedings, sometimes after mediation or by mutual agreement. For example, at Tirana First Instance (District) Court on 10 March 2004, proceedings were stopped after a husband and

wife withdrew the cases they had brought against each other under Article 89 CC (Light injury), stating that they had "resumed normal relations".¹²¹

In another case before the Tirana courts, a woman with two children who was very traumatised by domestic violence had initiated divorce proceedings. She had also filed a criminal complaint with the prosecutor against her husband concerning his violence to her, which she had previously reported both to the police, and to a judge. Her lawyer told Amnesty International that after every court hearing she had become increasingly confident. Yet she had suddenly changed her mind and had retracted her complaint of domestic violence, requesting her lawyer to conclude matters as rapidly as possible relating to the divorce, saying: "He is the father of my children; I will just get a divorce and not declare any blame."¹²²

Problems of evidence

*The police and prosecutor should act quickly to administer justice, establish the evidence and the chain of evidence. They can prevent it [domestic violence] from being systematic, and should not let repetition occur.*¹²³

A Shkodra NGO informed Amnesty International about a woman who had come to them, her face freshly bruised after her husband had beaten her. She had been examined by a local

¹¹⁸ Article 6, UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UN Doc. A/RES/40/34, 29 November 1985.

¹¹⁹ "Domestic violence and violence against women", *Trajtesa Juridike dhe Sociale për Mbrojtjen nga Dhuna në Familje*, Tirana 2005, pp.18-19.

¹²⁰ Kujtim Luli acknowledged that prosecutors tended to focus mainly on "serious crimes involving arms, cases that are the extreme end of violence, highly dangerous".

¹²¹ Tirana First Instance Court, Case no. 419, 26 June 2003. Article 338 of the CPC provides that "In cases of criminal offences prosecutable on request of the injured accuser, the court summons the injured and the one subject to the request for trial proposing the solution of the case by consent. If the injured withdraws the request and the accused accepts this, the court dismisses the case. On the contrary, the court shall fix the date of the hearing and explain their right to be assisted by defence lawyers." Prosecutors reportedly receive training in conflict resolution, alternative dispute resolution and mediation in family issues.

¹²² AI interview, Besa Saraçi, QAG; Article 133 of the Family Code provides that "The court may assign fault, in the dissolution of the marriage, only when requested to by one or both spouses".

¹²³ AI interview with Kujtim Luli, Office of the Prosecutor General.

forensic doctor, but as the authorized photographer had not been present, she had her photograph taken by a street photographer. As a result the prosecutor had refused to accept the photograph as evidence (even though it was accompanied by a forensic medical certificate), and criminal proceedings were not started. A few months later, she returned to the NGO for assistance: her husband had again beaten her in the street, this time in front of police officers.¹²⁴

Even though the police may have observed bruises or other injuries and authorized the victim to be seen by the forensic doctor, further problems arise in prosecuting cases in which there are often no witnesses, or the only witness is a child. Following a pilot project with women on remand for murder at Prison 313, it has been advocated that to assist in bringing prosecutions evidence provided by social workers and psychologists should also be presented to the court in cases of domestic violence.¹²⁵

Ariana Fullani, Director of the Tirana Magistrates School, suggested from her experience in training judges and prosecutors, that in addition to problems of evidence, barriers to prosecution also lay in the mentality of the judges and prosecutors. Most did not even consider that psychological violence could be considered an offence, and viewed divorce as the only appropriate solution in such cases.¹²⁶

“Women who are subject to violence should be provided with access to just and effective remedies for the harm suffered.”¹²⁷

In none of the court decisions reviewed below were orders made for compensation to be awarded to the victim, although under the Civil

Code a person injured by a criminal offence has the right to file a suit with a civil court for compensation for material damages (including damage to property) and moral damages (including damage to health or to personal dignity). The CPC also provides for the right of the person injured by a criminal offence to file a civil suit within the criminal proceedings (Article 61 of CPC) or under Article 59, where as party to the proceedings (see below), she may request compensation. However she only has this right if she has suffered material damage. Amnesty International is not aware of any such cases brought in the context of domestic violence.¹²⁸

Women who have suffered domestic violence should be guaranteed access to reparations, including compensation, restitution, rehabilitation (including appropriate medical and social services sufficient to help them regain their life, and delivered with respect and dignity) satisfaction and guarantees of non-repetition.

¹²⁴ AI interview with staff at Hapat e Lehtë, Shkodra.

¹²⁵ AI interview with an official at the Ministry of Justice. In such cases evidence presented to the court by social workers and psychologists over the past three years has reportedly had a positive effect on decisions.

¹²⁶ AI interview, Ariana Fullani, Director, Tirana Magistrates School.

¹²⁷ Article 4 (d), DEVAW.

¹²⁸ See Henrik Ligori, “Theoretical and practical issues related to domestic violence”, *Trajtesa Juridike dhe Sociale për Mbrojtjen nga Dhuna në Familje*, Tirana 2005, UNICEF, pp. 65-76.

5. Proceedings in cases of domestic violence

In the absence of a law criminalizing domestic violence, the identification of proceedings before Albanian courts related to domestic violence is problematic. The absence of such a law and of any statistics relating to cases of domestic violence brought before Albanian courts also contributes to the failure of the Albanian authorities to recognize the full extent of violence against women in the family. As an initial step, the organization therefore recommends that the Ministry of Justice "monitor and issue annual reports on the incidence of violence against women, arrest and clearance rates, prosecution and case disposition of the offenders".¹²⁹

Amnesty International reviewed some 34 court decisions in cases relating to domestic violence which were prosecuted between March 2002 and November 2005 at three of Albania's 29 District Courts – Tirana, Shkodra and Vlora (with individual decisions from Berat, Korça and Lezha).¹³⁰ These decisions cannot be taken to represent the total number of such cases tried by these courts during this period, but other information available suggests that prosecutions related to domestic violence are relatively rare.

The decisions reviewed included indictments for murder (Article 76, CC, four cases) and manslaughter (Article 85, one case) in which the defendants were male, and seven indictments for murder in which the defendants were female. Other charges brought against male defendants included threat (Article 84, 11 cases); threat and light injury or other intentional harm (Articles 84 with Article 89 or 90, three cases); light injury (Article 89, three cases) and other intentional harm (Article 90, three cases). Other

charges were brought under Article 130 (coercion to cohabit). The numbers of cases should not be taken to reflect the relative frequency of prosecutions by these courts.¹³¹

In many cases where the defendant was charged with murder, injury or threat, the defendant committed these offences with unlicensed firearms or knives and was accordingly additionally charged under provisions of Article 278 (dealing with the possession of unlicensed firearms) or Article 279 (dealing with the possession of "cold" arms such as knives).¹³² These articles are also invoked in cases where women have used their husband's weapon to kill him. These cases reflect the widespread availability and possession of unlicensed arms, and their use in cases of domestic violence.

According to the Tirana Office of the Organization for Security and Cooperation in Europe (OSCE), decisions in cases related to domestic violence appeared to be no different from that in other criminal cases observed by the OSCE: standards of jurisprudence were generally low, insufficient information was presented to the court, evidence was not properly evaluated and there was a clear lack of understanding of domestic violence.¹³³

¹²⁹ Model Strategies and Practical Measures, 13(vi) (c).

¹³⁰ Amnesty International is grateful to the OSCE mission in Tirana, and the Director of Prison 325 for making decisions available; other decisions were retrieved from <http://gjykata.altirana.com/> which publishes online court decisions issued by Tirana and Shkodra courts. There are 29 district courts in Albania, six appeals courts, and a High Court.

¹³¹ In 2001, in a review of 113 criminal cases (brought under 20 articles of the CC likely to be used in cases of violence against women) brought before the Tirana District Court, Dashamir Kore found 65 cases of domestic violence; in 2002 of 137 similar criminal cases, 73 related to domestic violence. The most frequent indictments were for threat (Article 84: 2001, 21 cases; 2002, 14 cases) and Article 90 (Other intentional harm: 2001, 21 cases; 2002, 14 cases). There were three and seven cases respectively of murder (Article 76) and two indictments for premeditated murder (Article 78) in each year, Dashamir Kore, "An Analysis of Monitoring Findings of Judicial Decisions in Tirana, Shkodra and Vlora District Courts" (Analiza e të Dhënave të Monitorimit të Vendimeve të Gjykatave në Tiranë, Shkodër dhe Vlorë), *Trajtesa Juridike dhe Sociale për Mbrojtjen nga Dhuna në Familje*, Tirana 2005, pp. 183-4 (English summary), pp. 95-108.

¹³² Dashamir Kore (*op.cit.*), found that in 15 family violence cases in 2001, and in 16 in 2002, defendants were also charged with the unlicensed possession of firearms or weapons with blades.

¹³³ AI interview, OSCE, Tirana; for concerns about the Albanian judicial system, including corruption "encompassing

Another study observed: "Another general characteristic of civil and criminal decisions in the three courts is a lack of judicial analysis and reasoning. The courts failed to determine the causes or circumstances in which events occurred. These schematic decisions which do not examine thoroughly all elements of the case and do not offer sufficient information certainly are not helping in combating domestic violence."¹³⁴

Amnesty International emphasises that only exceptionally do courts hear or take into account evidence related to previous incidents of domestic violence, although a pattern of repeated ill-treatment is one of the most characteristic features of domestic violence.

Procedures

Accelerated trials

The majority of cases reviewed by Amnesty International were tried under the provisions of Articles 403 to 406 of the CPC. Under these provisions the defendant or his/her lawyer may request an accelerated trial. If the court consents, the case is judged exclusively on the basis of the evidence collected during the judicial investigation, and contained in the court dossier. The court does not examine the defendant or witnesses and no new evidence may be presented. Defendants who ask for an accelerated trial generally do so because they accept the charges against them, and under the provisions of Article 406 they benefit by a reduction of their sentence by a third. Trials conducted in this way save courts time and costs, but they depend on the diligence and professionalism of the prosecutor and lawyers acting for the defendant in ensuring that a thorough investigation is carried out, and that necessary evidence, including the testimony

all actors in the judicial system", and the lack of public confidence in the judiciary, see, OSCE Presence in Albania, *Fair Trial Development Project, Interim Report*, September 2004.

¹³⁴ Dashamir Kore, (*op.cit*)

of witnesses and where relevant, expert witnesses, is secured.

Sentencing

Aggravating and mitigating factors

Apart from factors such as age, level of education, income, family responsibilities and remorse, which Albanian courts are required to take into consideration when determining sentences, the law does not contain any provisions which specify as "aggravating circumstances" evidence related to domestic violence (including its repeated and often systematic nature, or its psychological or economic aspects).¹³⁵ However, Albanian law does contain certain provisions, which are potentially applicable to such cases, although these are rarely invoked.

Article 50 (g) of the CPC, provides that "When the offence is committed by taking advantage of family relation, friendship or hospitality", this may be considered as "aggravated circumstances", and taken into account by the court when determining the sentence. Article 50 (e) makes similar provisions for offences committed against children or against pregnant women. Nonetheless, these provisions are rarely if ever used in cases related to incidents of domestic violence.¹³⁶ However,

¹³⁵ Amnesty International notes, however, that these factors are considered in Article 99 of the CC, Causing suicide: "Causing a person to commit suicide or to attempt suicide as a result of systematic maltreatment or other systematic behaviour which seriously undermines the dignity [of the person], when the latter is materially dependent or dependent in any other way on the [perpetrator], is punishable by a fine or up to five years of imprisonment".

¹³⁶ Vjollca Meçaj, a Constitutional Court judge, has noted that the aggravating circumstances set out in Articles 50 (e) and (g) were not taken into account in decisions relating to domestic violence at Tirana, Shkodra or Vlora District courts in 2001 to 2002, "Domestic violence and violence against women", *Trajtesa Juridike dhe Sociale për Mbrojtjen nga Dhuna në Familje*, Tirana 2005, pp.14-15. However, Sandër Simoni, President of the Serious Crimes Court, has written that "the Serious Crimes Court has followed a rigorous sentencing policy with regard to this kind of crime [domestic violence]", and cites the example of a defendant sentenced to 18 years' imprisonment for the attempted premeditated murder of his wife, in which the court invoked Article 50 CC concerning aggravating

domestic violence is taken into account in some decisions when determining the sentence, when the relative prevalence of a crime in a particular place is taken as a factor in assessing "the degree of danger it represents to society".¹³⁷

Calculation and reduction of sentences

Under Article 55 of the CC, when a court convicts a defendant on two or more charges, the court first determines the sentence for each offence separately, and then combines these in a single sentence "unified" which may not exceed the total sum of the individual sentences. In most cases reviewed, if the defendant was charged on two counts, the second charge related to the unlawful possession of a weapon (Article 278/2 of the CC) and/or ammunition (Article 278/3 of the CC).

As mentioned above, defendants tried under Article 406 of the CC (accelerated trial procedure) benefit by the reduction by a third of their sentence. In the case of defendants convicted under accelerated trial of two or more charges, the "unified" sentence is reduced by a third. Except where otherwise specified, the sentences referred to below are the reduced sentences imposed after the application of Article 406. The case of Nazmi Frashni, which follows, illustrates the application of Articles 55 and 406.

Murder, Manslaughter and other intentional injury (Articles 76, 85 and 88 of the CC)

circumstances, Sander Simoni, "Judgment of criminal offences that are related to violence in the family", *Trajtesa Juridike dhe Sociale për Mbrojtjen nga Dhuna në Familje*, Tirana 2005, p. 77.

¹³⁷ See for example, "In defining the amount of sentence, the court considers the social threat of the author and the criminal offence, the spread of this crime in our country, the fact that the crime was committed in the family...", Shkodra District court, Reg. no. 10/373, Dec. no 65, 8 April 2003. But, see also Saranda District Court reg. No 27, Dec. no 20, 6 March 2003: "Regarding the level of danger that the defendant may present. The court thinks that she poses a high threat to society, since this threat is reflected in her actions". For this provision in the commentary to the CC, see Meçaj, *op.cit.* p. 12, footnote 5.

States should ensure that "Evidence of prior acts of violence... is considered during court proceedings" (Model Strategies and Practical Measures, 7 (f)).

According to the decision of Shkodra District Court, on 11 November 2004, 62-year-old Nazmi Frashni came home drunk, quarrelled with his wife, Lirie, and in front of their son, pulled a pistol from his pocket and shot her four times. On 2 February 2005, the court convicted him of murder (Article 76) and the possession of an unlawful weapon (Article 278/2) and sentenced him to 14 and five years' respectively on the two counts. Applying Article 55 CC, the court imposed a unified sentence of 15 years' imprisonment, which was reduced under the provisions of Article 406 CPC to 10 years' imprisonment. The court took into account in mitigation his age, the fact that he was drunk when he committed the crime and that he had subsequently showed remorse.¹³⁸

The decision does not indicate the nature of their argument, or the defendant's motive and makes no reference to any previous history of quarrels or any form of domestic violence. In this it is typical of most of the court decisions reviewed by Amnesty International, few of which explicitly mention previous incidents of domestic violence. Although verdicts may note that the couple have "frequently quarrelled" or had disagreements, these are not explained or shown to be relevant to the circumstances under which the offence took place.¹³⁹

On 8 April 2003 Saliko Muça, then aged 47, was accused of the attempted murder of his

¹³⁸ Shkodra District court, Reg no. 8/498, Decision no. 32, 2 February 2005.

¹³⁹ "It is stated that they had previous quarrels, but the decision does not mention of what kind. No mention of what they quarrelled about that night, who had started the quarrel. From the decision one can't understand a thing; one can't understand what was the intention of the defendant, what were his motives.", Dashmir Kore, "An Analysis of Monitoring Findings of Judicial Decisions in Tirana, Shkodra and Vlora District Courts", *op.cit.*

wife, Angelina. According to the court decision, on 4 May 2002 he had moved out of the family home back to his parents' house after the couple had had "arguments and disagreements". Angelina and her daughter had come round to have lunch to discuss their family problems, including the proposal that they should sell their house and move to Italy to live with their son. An argument developed during which Saliko Muça took a handgun from his belt and shot Angelina twice; she was severely injured and taken to hospital. He reportedly stated that he had only meant to wound or injure his wife; Angelina, however, stated that he had only been prevented from killing her by the intervention of his family – a claim his family denied. The court found no evidence of his intention to murder Angelina, and Saliko Muça was subsequently convicted under Article 88/1 (intentional serious injury), and Article 278/2. Although in determining the sentence, the court decided that the fact that the crime was committed in the family was relevant, it apparently did not consider this to be an aggravating circumstance, and Article 50 was not applied. Saliko Muça was sentenced to six years' imprisonment.¹⁴⁰

Hazir Isaj, a police officer of 20 years' standing, was convicted on 14 April 2003 of the manslaughter (Article 85), of his wife Drita Isaj. The court decision states that on 22 August 2002 Hazir Isaj had been helping his son with his homework, while Drita was peeling potatoes for their meal. When Hazir criticised his son for making a mistake in his homework, Drita had remonstrated with him and the boy started to cry. As the argument developed, she pointed the knife, with which she was peeling the potatoes, and allegedly threatened to stab him. He then pulled out his gun, and told her that unless she got out, he would kill her. Drita then grabbed the gun and pulled it to her chest saying, "Go on then kill me!". Hazir reportedly told her that he could not kill the mother of his children, but in the struggle the gun went off fatally wounding Drita. He

¹⁴⁰ Shkodra District Court, Reg. 10/373. Dec. no. 65, 8 April 2003.

threw the weapon down, held her in his arms and called for help. He pleaded guilty and was sentenced to two years and three months' imprisonment, reduced to 18 months.¹⁴¹

Threat (Article 84 of the CC)

Article 84 punishes "a credible threat to cause death or serious injury", with a fine or up to one year's imprisonment. In six cases reviewed, defendants were charged with both making a "threat", and with possession of an unlicensed weapon, under Article 278/2.

On 8 January 2004, Aurela Merxhushi filed a complaint against her husband, alleging that he had held a knife to her throat and threatened to cut off her head. According to the testimony of Aurela Merxhushi and her mother, her husband Nuri Merxhushi had been violent to her and other members of their family. He pleaded guilty, admitting that he had quarrelled with his wife, and that he might have used threatening words. This case, unusually, does refer to a previous history of domestic violence: the judge noted that "this threat was committed as a continuation of other [previous] acts of violence which he committed against her and other relatives." The judge concluded that "these actions made [the victim] believe that she would be killed or seriously wounded". Nuri Merxhushi was convicted under Article 84, but despite an apparent history of domestic violence, he was sentenced to two months' imprisonment, suspended for a period of 18 months.¹⁴²

While relatively few court decisions refer in any detail to previous threats of violence, they generally provide detailed evidence relating to the weapons used. The following decision unusually also refers to a previous history of both physical and psychological violence.

¹⁴¹ Shkodra District Court, Reg. No 126, Dec. no. 71, 15 April 2003.

¹⁴² Tirana First Instance Court, Reg. no.953, Dec. no. 615, 7 June 2004.

On 7 November 2005 Tirana District Court convicted Ramazan Karina of making threats to his wife Fiqirete Karina, and of the possession of unlicensed arms and ammunition. According to the court decision: "Their relations are deeply disturbed by the defendant's jealousy, his suspicions that his wife is unfaithful to him. Because of this there have been constant quarrels between them, which have often degenerated into physical and psychological violence on his part. On several occasions the defendant has threatened her with a firearm, an automatic M56, which is unlicensed. This happened again on 04.09.2005 when, in the presence of their children, he threatened Fiqirete Karina with this gun. The same day Fiqirete Karina lodged a complaint with the judicial police of Tirana Police Station no.3. Immediately afterwards the police searched the defendant's house and found the weapon as well as over 2000 bullets, all held without authorisation. The defendant was arrested and criminal proceedings were started against him." He was sentenced to one year's imprisonment for the possession of an unlicensed weapon, one month for possessing ammunition and three months for the threat to his wife. After unification and reduction, he was sentenced to eight months' imprisonment.¹⁴³

In this, and in other cases where defendants are similarly charged with both threat and the possession of an unlicensed weapon, they receive a higher sentence for the possession of a weapon, than they receive for the threat itself.¹⁴⁴

Late on 22 September 2004 Mimoza Rustemi filed a complaint with Tirana police stating that she had come home earlier that evening to find her husband, Lulzim Rustemi, drunk. According to Mimoza, when she and her children ran to her sister's house in order to avoid the escalating quarrel, her husband chased her with a knife and threatened to kill her. Later the same evening, as she was leaving her sister's

house to go to her mother's, her husband was waiting for her and again chased her with a knife, pleading with her to return home. When she refused he punched and kicked her. He was arrested and charged under Article 84. On 10 December 2004, Lulzim Rustemi was convicted and sentenced to three months and 24 days' imprisonment (the period he had already spent in pre-trial detention). The court decision noted that the couple had normalized their relations.¹⁴⁵

On 17 January 2006, Zef Shkjejana was convicted by Shkodra District Court of making threats, and of the unlicensed possession of arms and ammunition. His wife Alma Shkjejana had reported to Shkodra police station on 2 October 2005 that her husband had beaten her and threatened to shoot her dead. She also stated that her husband beat her repeatedly, and that he kept firearms in a garage owned by his mother; these weapons were found when police carried out a search. According to the decision, the court found Alma's testimony convincing, and sentenced her husband to 17 months' imprisonment for possession of unlicensed arms and ammunition and three months' imprisonment for threatening to kill her; the final sentence was 10 months' imprisonment.¹⁴⁶

In two other decisions, defendants were charged with Article 84, in conjunction with Article 275 CC, which prohibits malicious telephone calls.¹⁴⁷

Light injury (Article 89 CC) and other intentional harm (Article 90 CC)

¹⁴⁵ Tirana First Instance (District) Court, Act no.953, Dec. no. 615, 7 June 2004.

¹⁴⁶ Shkodra District Court, Dec. no. 7, 17 January 2006.

¹⁴⁷ Article 275 of the CC, Wrongful intentional use of telephone calls made to breach a third party's peace and quiet enjoyment constitutes criminal contravention and is punishable by a fine or up to one year of imprisonment. On 13 October 2004, Ilir Veliaj was convicted of threat and of making malicious telephone calls (Article 275), after threatening to kill his former wife; he received a final sentence of three months' imprisonment, Tirana First Instance District court, Act no. 666, Decision 929; on 3 June 2005, Zhan Leka was acquitted on a similar charge, Decision 754, Tirana First Instance Court.

¹⁴³ Tirana District Court, Act 1372, Dec. no. 1072, 7 November 2005

¹⁴⁴ Shkodra District Court, Reg. 340, Dec. 13, 24 November 2004.

*States should ensure that: "The primary responsibility for initiating prosecutions lies with the prosecution authorities and does not rest with the women subjected to violence".*¹⁴⁸

In both decisions involving Article 89 seen by Amnesty International, proceedings were stopped, in the first case, by the couple who had originally made complaints against each other, and in the second, at the request of the prosecutor and defence lawyer.¹⁴⁹ Amnesty International notes that few prosecutions appear to be brought under this Article, despite the high percentage of light injuries noted by forensic doctors.¹⁵⁰

Proceedings may only start under Article 90 if a complaint is made by the injured party, which, as already noted, acts a deterrent in bringing a prosecution, or may put pressure on the woman to drop the case.¹⁵¹ In three cases brought under Article 90 (classified as a misdemeanour) two defendants were each fined 50,000 leke (410 €), and a third, 60,000 leke (490 €).¹⁵² In the first case, Suzanna Tomini, (the injured accuser) complained that her husband, against whom she had started divorce proceedings, had kicked her during an argument. The court decision records that Ilirjan Tomini's guilt was proved by Suzanna's statement, that of her son and a forensic medical examination report, (no. 639 dated 25.06.2004), which recorded that she had sustained two injuries on

¹⁴⁸ Article 7 (b), Model Strategies and Practical Measures; CoE CoM Rec (2002) 5, Article 39, [states should] "make provisions to ensure that criminal proceedings can be initiated by the public prosecutor". AI notes that in some states, laws have been passed which fail to take the woman's view into account, and may potentially violate their rights.

¹⁴⁹ See above, p. 33; Shkodra District Court, Dec. no. 329, 22 November 2005.

¹⁵⁰ See p. 12, note 38.

¹⁵¹ Under Article 59/1 (CPC), the complaint is made before the court by the injured accuser: The person who is injured by criminal offences provided under articles 90, 91, 92, 112/1, 119, 120, 121, 122, 125, 127, 148, 149 and 254 of the Criminal Code has the right to submit a request to the court and to participate in the trial as a party to prove the accusation and to ask for compensation of the damage.

¹⁵² Tirana First Instance Court: Dec. 905, 7 October 2004; also Dec. 387, 16 April 2004; Dec. 818, 10 September 2004.

her right arm and at her waist, "and by the fact that they have divorced".

Rape in marriage

States should "penalise sexual violence and rape between spouses, regular or occasional partners and cohabitants" (Council of Europe Rec. (2002) 5, 35.1).

Charges of rape defined under Article 102/1 (non-consensual sexual intercourse with adult women), are rarely, if ever, brought by married women. Criminal proceedings on this charge may start only on the basis of a complaint brought by the injured person.¹⁵³

Given the obstacles to justice already described, including strong notions of shame, conceptual barriers to the identification of rape in marriage and the fact that in only 14 proceedings brought before Albanian courts in 2004 were defendants convicted under Article 102/1, it is not surprising to find that such charges are not brought by married women.¹⁵⁴ However, in August 2004 the press reported that the former partner of a police officer had brought a complaint against him for rape. However, he was eventually charged and convicted under Article 130 CC, (coercion to cohabit). He was sentenced to 40 days' imprisonment.¹⁵⁵

Sentencing

Amnesty International has no position on sentencing (except in the case of the death penalty, which the organization unconditionally opposes) provided that sentences imposed are within sentencing guidelines and are commensurate with the severity of the crime.

¹⁵³ This is not the case under Article 102/2, where rape results in serious consequences to the health of the victim, or in cases involving the rape of minors (Articles 100 and 101); *Buletini Statistikor 2004*, Ministria e Drejtësisë, (Bulletin of Statistics, Ministry of Justice), Tirana, 2005, p.34.

¹⁵⁴ *Buletini Statistikor 2004*, Ministria e Drejtësisë, Tirana, 2005, p.34.

¹⁵⁵ Tirana First Instance Court, Reg no 169, Dec. no, 45, 24 January 2005.

Sentencing for acts of family violence has been subject to both private and public challenge in Albania. In November 2005, the family of Aurora Llapushi protested to both the judicial authorities and the People's Advocate (Ombudsperson) at the sentence of three years' and four months' imprisonment imposed on their daughter's husband, which they considered far too light. A court had convicted him for stabbing Aurora in the throat, leaving her critically wounded.¹⁵⁶ He had been arrested under Article 88, for the serious intentional injury of his wife, which carries a sentence of between three and ten years' imprisonment

Particular concern has been expressed by human rights and women's NGOs on the sentences meted out in two cases of "honour" killings of daughters by their fathers, including the 11-year prison sentence (reduced to seven years and four months') imposed on Gjin Marticanaj, after his conviction under Article 82 for killing his daughter.¹⁵⁷ Diana Çuli, Director of the National Council of Albanian Women, in condemning the sentence, reportedly stated, "There is no justification for taking a person's life; when the murder is committed for a motive that is completely absurd in the times in which we live, it is even more serious."¹⁵⁸

The National Council of Albanian Women also protested at the low sentence imposed on Ruzdhi Qinami, convicted on 29 September 2003 under Article 82 ("Murder committed in a sudden state of profound psychological shock caused by violence or serious offence on the part of the victim") for the murder of his 16-year old daughter Fiqirete. The court sentenced him to two years' imprisonment

for her murder and six months for the possession of unlicensed arms; the sentences had been unified and reduced to 16 months' imprisonment. According to the court decision, he had killed his daughter after seeing her return home at 5am in a car; believing that she was having an affair while her fiancé was abroad, "he began to behave uncontrollably", and pushed her into the bedroom where an vicious argument ensued, "Fiqirete's behaviour was such that a psychological effect acted on Ruzdhi Qinami, directly influencing his psyche, blocking his intellectual powers and weakening his self-control; as a result he fired the pistol four times at his daughter, causing her immediate death."¹⁵⁹

His sentence under Article 82 was subsequently increased by the Court of Appeal to three years and four months' imprisonment, but as he had already served the 16 months' sentence imposed by the first instance court and been released, the court ruled that the remaining 24 months of the sentence would be suspended for a period of five years.¹⁶⁰ Amnesty International was informed that a majority of judges and prosecutors had apparently supported this decision, with on the grounds that, "He is a father and has many children, he has to look after the other children".¹⁶¹

Women who kill

*I miss my children, but at least I get up in the morning and I know that no one will beat me. I am not afraid anymore that a new day starts and the sun can warm me again.*¹⁶²

"That domestic violence is a major issue in Albania is indirectly confirmed by the statistics of women's participation in crime.

¹⁵⁶ *Korrieri*, "Me 3 vjet burg, familja kërkon ndëshkim", 17 November 2005; *Metropol*, "Plagos gruan me thikë nga xhelozia, prangoset pas urdhrit të prokurorit", 26 August 2005; the outcome of the appeal is not known.

¹⁵⁷ See Section 2, above.

¹⁵⁸ *Gazeta Shqiptare*, "Drejtuesja e Forumit të Pavarur të Gruas Shqiptare: Ja përse jam kundër", 22 September 2004. In a letter to President Moisiu and the Minister of Justice, the National Council of Albanian Women described the court's reasoning as illegal and immoral, *Korrieri*, 16 October 2003.

¹⁵⁹ Similar defences based on a "loss of control", a "fit of fury", provocation or passion occur in jurisdictions throughout the world, and "overwhelmingly benefit males committing violence against females", Welchman and Hossain, *op. cit.*, pp. 10-13.

¹⁶⁰ Dec. no. 811, 29 September 2003, Tirana First Instance Court; Dec. no. 875, 24 December 2004, Tirana Appeal Court.

¹⁶¹ AI interview, Ariana Fullani, Director, Tirana Magistrates School.

¹⁶² AI interview with D.K.

Women are less involved in crime than men, but out of 28 women convicted and jailed in the only female prison of Albania in 1999, 23 were convicted for murder and the victim is normally the partner or the ex-partner, or a male member of the family".¹⁶³

In a 2004 study of 12 women serving sentences after being convicted and sentenced for killing their husbands, Marsela Dauti found that were predominantly from rural and northern communities. Most had received little education – 68 per cent had completed primary school, and 21 per cent not even that. Most were over 35 years of age, and had been married young, often by arrangement between their families.¹⁶⁴

Each woman had been kept in almost total isolation by her husband, who often denied them access to family and friends; in one case, her husband had refused to take her to hospital when she was giving birth. They were also geographically isolated from accessing social and other welfare services. Their husband's violence had started almost immediately after marriage, and occurred on a regular basis, often linked to his habitual drunkenness. The level of violence often escalated, resulting in serious injuries, and included regular threats to kill the woman or her children. Attempts to flee the marriage had been unsuccessful, with some women reported being sent back to their husbands by their parents. Most of the women claimed to have killed their husbands while he was attacking them or the children, rather than in a premeditated attack.¹⁶⁵ However, according to press reports, other women plan to murder their husbands.¹⁶⁶

¹⁶³ CEDAW/C/ALB/1-2. *Albania, Initial and second periodic report*, pp. 29-30.

¹⁶⁴ In 2001, half of the 36 women imprisoned had been convicted of killing their husband, spouse or ex-spouse; a slight majority originated from the north; four were Roma, Instituti Politikave të Zbatuara për Gjinine, *Profile të grave të dënuara* (Profiles of convicted women), 2001.

¹⁶⁵ Marsela Dauti, *In the Name of Survival: Battered Women who Kill. The Case of Albania*, M.A Thesis, Central European University, Department of Gender Studies, Budapest 2004, pp.19-23.

¹⁶⁶ Vera Qevani from Tirana killed her partner Gezim Bajrami with rat poison in November 2004. She was arrested and

Proceedings against women convicted of murder or manslaughter

Amnesty International reviewed seven court decisions in cases in which eight women were convicted for killing or attempting to kill their husband (or in one case, their father); the organization also interviewed five of these women at Women's Prison 325 in Tirana.

Few of the women interviewed were able to provide any coherent account of their trial. None of them had the financial means to hire a lawyer of their own choosing, and were therefore represented by a lawyer appointed *ex officio* (by the prosecutor).¹⁶⁷ With one exception, in which the woman did not enter a guilty plea, they were tried in accelerated proceedings under Articles 403 to 406 of the CPC, in hearings that provided no opportunity for the defendant to make any statement beyond that which they had provided earlier in the investigation process. Court decisions in these cases rarely refer to the testimony of any witnesses; Amnesty International was informed that this was because women in these circumstances tend to be abandoned by their families and community. It is also possible that prosecutors and defence lawyers did not take steps to secure this evidence.¹⁶⁸ Despite the fact that four out of the five women gave Amnesty International detailed accounts of being subjected to domestic violence by their partners over a period of many years, few of the court decisions refer to any history of domestic violence, or take this into account.

charged in April 2005, after her husband's relatives asked for an investigation. In proceedings she alleged that he drank and constantly beat her and their two children, aged 6 and 9. They had been living together in her flat for 15 years, and although she had tried to get him to leave the flat, he would not go. At the end of June 2005 Tirana District Court sentenced her to eight years' imprisonment, *Gazeta Shiptare*, "Pastruesja pranon para hetuesve vrasjen e bashkëshortit pasi pinte shpesh dhe grindeshin", 21 April 2005; *Koha Jonë*, "Helmoi Burrin, Dënohet 8 Vite Burg", 1 July 2005.

¹⁶⁷ For the passivity of prosecutors, see OSCE, *Fair Trial Development Project*, pp. 25-6.

¹⁶⁸ See also Marsela Dauti, *op.cit.*, p.53.

D.K. was convicted on 11 October 2004 for the murder of her husband under Article 76, and the illegal possession of a weapon, and initially sentenced to 12 years' imprisonment (reduced to eight years). According to the decision, her lawyer had asked for the charge to be changed to Article 82 (Murder committed in a sudden state of profound psychological shock caused by violence or serious offence on the part of the victim), but had failed to present any evidence to support this. The decision stated that "the defendant did not commit the offence when she was attacked, but some time later when she took the weapon, left the house, hid in the toilet outside, waited for the moment when the victim did not have a weapon to hand, and shot at him from behind". However, the decision notes that the "court takes into account as a mitigating circumstance that the defendant committed the crime in deep psychological distress [state of profound shock] caused by the violence and other unjust actions perpetrated by the victim". On appeal, on 19 November 2004 (Decision 32), the charge was changed to Article 82, and DK was sentenced instead to eight years' imprisonment, reduced to five years and four months under Article 406.

According to the court decision: "During their marriage from 1996 and onwards, the defendant and the victim had disagreements because of jealousy and because of the defendant's bad relations with the victim's parents".¹⁶⁹ According to D.K., she had been beaten almost every day of her marriage, starting when she was 22 years old, and her second child was six months old. Her husband had acquired weapons, including pistols and a Kalashnikov with a bayonet, when he started working as a police officer. "He started to threaten me with the bayonet, or with a knife. I don't know why he was always angry; he was big and arrogant, and had a police car and felt that he could do anything".

¹⁶⁹ Lezha District Court, Act no. 9, 14.04.2004; Dec. no. 72, 07.06.2004.

According to D.K. her husband's violence continued almost every day; twice her sister-in-law and his brother had intervened and asked her to come and live with them. Twice her husband had promised her that he would never ill-treat her again, promises which he did not keep. Even when he had an affair with another woman, she had stayed with him. In despair, and even though her husband was a police officer, she had called the police, but they never came. Her account of the murder follows:

"For two days, nothing happened, and then he started again; [his] brother told me again to make up my mind whether to stay or come and live with them. They said they would not deal with him anymore. But I did not want to leave the children, and he had threatened to kill my family if I left him – he even said he would burn the graves of my family and told me, "You will only leave when you are dead". His brother said, "You have two hours to decide". I didn't know what to do. I could not make that decision – if I die, I die. I did not want my family to be killed, I accepted that it would be me. I asked him to leave my family alone and said to him, Do what you do".

"That night after I met his brother, my husband started to beat me and punch me in the face and body; I was covered in blood and lost consciousness. He took the Kalashnikov and put it to my head, while the children were in the next room. He grabbed the bedcover and used it to strangle me for a few minutes, and then released it and then strangled me again; I felt huge pressure on my eyes, like they were bulging out. His sister came in with her husband and opened the door, and he threatened to kill them so they ran away. While he was speaking to them, I told the children to run to his brother's house, but they went and came back.

[Later that night] I was in bed; there was a curtain separating the bedroom from the living room, and he was behind it. I tried to hide and ran past him into the next room and took a gun from the closet and ran out to the outside toilet. I

knew how to put the bullet in, and I had seen in a movie how to release the security catch. He was screaming at me to come out. He had a pistol behind his back, and I came out, and I killed him. I don't know how many times I shot, but I shot him until the bullets had run out, and still I thought he was not dead. I went and found something to cover his body, and then at the end he said, "I'm sorry". I fell apart, completely, and I took the pistol and a handful of bullets to kill myself: he had never said sorry before. His cousin took the gun away from me and told me to run, but I didn't know where the children were, and...I can't remember, I just ran and ran and ran and I saw a car and asked them to take me to the police station.... The police warned me to be careful as everybody else was his friend, the prosecutor, the police officers. The pistol [which he had been holding] disappeared; in court no-one mentioned the pistol, and they said in court that it was never found".

Some verdicts, often less than two pages long in their entirety, merely hint at a history of domestic violence: E.B., for example, was convicted of murder under Article 76, and sentenced to 18 years' imprisonment in proceedings before Berat District Court in June 2005. E.B. was separated from her husband, and had filed for divorce, but her husband had repeatedly failed to come to the court for the divorce hearing. On the morning of 1 February 2005, she met her husband, and asked him why he had not come to court. An argument ensued, and E.B. stabbed her husband in the back with a kitchen knife. According to the court decision, "The reason for this killing was family quarrels. According to the defendant the victim would not come to the court for the divorce proceedings". Neither E.B. nor her lawyer pleaded mitigating circumstances. E.B. had stated to the court: "I don't regret what I did"....¹⁷⁰ With few exceptions, in interviews with Amnesty International and in court decisions, these women showed no remorse for their crime.¹⁷¹

¹⁷⁰ Berat District Court, Register no 101, Date 10.05.2005;

¹⁷¹ See also Marsela Dauti, *op. cit.*

On 11 March 2004, M.N. was convicted of murder under Article 76. M.N. told Amnesty International that she had killed her husband because she believed that he had trafficked her daughter into forced prostitution.¹⁷² The court decision notes that the couple continuously quarrelled about the fact that their daughter had been trafficked.¹⁷³ Her lawyer, who presented the mitigating circumstances in the defendant's favour, asked that the charge be changed to Article 82. According to a report (no. 171, dated 22 December 2003) submitted to the court, M.N. exhibited the symptoms of a neurotic, depressive disorder but although these were taken into account in mitigation, the charge was not changed, and she was sentenced to 11 years' imprisonment.¹⁷⁴

On 11 October 2004, Afërdita Lilaj, who was married with four children, was convicted of murder under Article 76, and of the illegal possession of a weapon, after killing her husband Kudret Lilaj, a Vlora police officer. According to the court decision, the murder occurred on 30 December 2003 after a quarrel broke out between the couple when Kudret Lilaj ordered his wife to discharge their son from hospital, even though the child had apparently not yet received any treatment. Kudret Lilaj had pushed the other children out into the garden and proceeded to subject his wife to two hours of beating. While Kudret Lilaj was momentarily distracted, Afërdita Lilaj picked herself up from the floor, took his Kalashnikov and fired seven times, killing him. She subsequently went with the

¹⁷² See extract from AI interview with M.N., above, p.19. When AI interviewed M.N., she was clearly depressed and told AI that she had received hospital treatment for depression after her daughter had been trafficked; she also told AI that her husband had repeatedly beaten her, including during their quarrels about her daughter.

¹⁷³ "In their married life they had quarrels which intensified after their daughter left the family and went to Italy, and became engaged to GV from Elbasan. After their daughter left, the couple kept accusing each other for having caused their daughter, who was exploited as a prostitute in Italy, to leave [the family]", verdict, as above.

¹⁷⁴ Korça District Court, Reg. no. 89, Dec. no. 86, 11 March 2004.

children to her sister-in-law's house. According to two witnesses - Kreshnik Lila, Kudret's son, and his sister Sefte Moliko, Kudret Lilaj had been repeatedly violent to his wife and to their children: "the violence committed by the victim against the defendant had become a ritual, and was repeated time after time".

In this case too, her lawyer called for the charge against her to be changed to Article 82, but although the court again took into account as a mitigating factor her remorse and the fact that "she committed the crime in deep psychological shock caused by the violence and other unjust acts perpetrated by the victim", she was still convicted of murder under Article 76. The verdict also noted that, "It should be emphasised that in this case none of the aggravating circumstances [provided under] Article 50 were present". She was sentenced to six years and eight months' imprisonment.¹⁷⁵

Amnesty International has only seen one court decision, in which a female defendant, L.L., was tried, convicted and sentenced under Article 82. As many elements of the case are similar to those in other cases reviewed, it seems likely that this was due to the actions of the prosecutor or her lawyer, who ensured that the court examined medical evidence related to previous abuse, including a miscarriage in 2002 "caused by physical damages inflicted by the spouse".¹⁷⁶ Her marriage had been arranged and her husband had – according to the verdict – beaten her throughout the marriage. When L.L. killed her husband in June 2003, she was pregnant again. On that day he came home and beat her "brutally" for being pregnant. He then took a gun, threatened to kill her, ordered her to undress and threw her on the bed. She grabbed the gun and shot him dead. L.L. was sentenced to four years' imprisonment for murder and – under Article

278/2 – a year for possession of her husband's gun, reduced to four years and six months. The court ruled that her child, born in prison, would stay with her for "conditions are far better than the defendant would be able to arrange for her child outside".¹⁷⁷

Amnesty International notes that in cases where a firearm was used to kill, women are sentenced under Article 278/2 of the CC, which criminalises the possession rather than use of a firearm. Although under Article 55 CPC, this sentence is generally "unified", and may make little difference to the overall sentence, the organization considers that women should not be prosecuted for the unlawful possession of a weapon held illegally by another person.

He came home, and he beat me because I had killed a chicken without his permission. He was beating me and he threatened me with a shovel. He was drunk and we were fighting and then he fell over because he was drunk, and I took the shovel and killed him. (P.M.).

According to the court decision, and based on the evidence of E.M, a minor daughter, P.M. and her daughter S.M. had conspired to kill Murat Manjani, attacking him with a shovel and an axe while he was asleep. According to P.M., her daughter S.M. had not been present at the time of the killing, although the organization notes that the alibi S.M. presented to Amnesty International, and their account of the events following the murder was different to that presented in the court records. On 13 September 2004, they were both convicted of the murder of Murat Manjani. Both women declared to the court that "the victim had previously been constantly violent towards them", and the defence lawyer requested that the qualification of the offence be changed to "murder committed while exceeding the limits of necessary self-defence" under Article 83. P.M. was convicted

¹⁷⁵ Before the sentences were unified, she was sentenced to 10 years for murder and three years for illegal possession of a weapon, Vloja District Court, Dec. no. 260, 11 October 2004.

¹⁷⁶ In 2001, she was diagnosed with "frontal sinusitis", an infection of the skull cavity within the forehead, where there is an increased likelihood of infection following trauma.

¹⁷⁷ Shkodra District Court, Reg no. 428; Dec. no. 307, 24 December 2003.

and sentenced to 20 years' imprisonment, and her daughter to 18 years, later reduced to nine years' imprisonment because she was a minor when the offence was committed. S.M. had lodged an appeal against her sentence with the Tirana Appeal Court on 20 January 2005. When Amnesty International spoke to S.M. she did not know when the appeal would take place.

Amnesty International notes that in at least three of the cases of female defendants reviewed, there may have been grounds for changing the charge to self-defence (Article 83). In practice, this charge is rarely brought. From the decisions available to Amnesty International it is not clear whether this is because of a lack of supporting evidence, or because the defendant lacked the services of a diligent lawyer during the investigation. In three cases reviewed defence lawyers had asked that the charge be changed to Article 82 (Murder committed while in a profound state of psychological shock). In the case of D.K., the charge was changed on appeal; otherwise such applications were rejected, even though, for example, in sentencing Afërdita Lilaj, the court considered as mitigating circumstances that she had killed her husband in a state of deep psychological shock caused by the "violence and other unjust actions" perpetrated by the victim.

6. Civil remedies

According to lawyers working with women escaping violent marriages, rather than take out criminal prosecutions against their spouses for violence, women instead initiate civil proceedings for divorce.¹⁷⁸

Besa Saraçi of the Women's Advocacy Centre (Qendra Avokatore per Grate, QAG) told Amnesty International that although domestic violence is a major factor in the majority of divorce cases in which the QAG represents women, they choose not to raise this in proceedings. Their reasons included the shame that a public disclosure would bring on their family or the difficulty in proving their case where potential witnesses were either indifferent to domestic violence, or reluctant to testify for fear of retribution from the perpetrator. In 511 divorce cases brought before the Tirana First Instance Court in 2000, domestic violence was cited as a cause in only 39 cases, and figures for 2001 to 2004 are comparable.¹⁷⁹

Despite observing an improvement in the quality of decisions made between 2000 and 2004 at Tirana First Instance court, including acceptance of requests for, and reasons for, divorce Besa Saraçi told Amnesty International, "Women feel they will not get access to justice in the courts; she feels that the law has nothing for her, and that it will not provide her with access to property, to social care and her other needs. Although Article 62 of the Family Code favours women in that it provides for removal of the perpetrator of violence from the home, it is not applied; and it is also problematic in that there is often nowhere for the perpetrator to go, especially as economic standards are low and there is no structure within local government to assist."¹⁸⁰

¹⁷⁸ In civil cases at Tirana District Court in 2001, of 402 civil cases concerning divorce or withdrawal of parental rights, 42 decisions referred to domestic violence; in 2002, of 524 such cases, 30 referred to domestic violence, Dashamir Kore, *op.cit.*

¹⁷⁹ Besa Saraçi, *Prezantimi i Problemeve të Gykimit në Çështjet Familjare me Elemente të dhunës në Familje*, Tirana, 2005.

¹⁸⁰ AI interview with Besa Saraçi.

In Shkodra, staff at the Hapat e Lehtë counselling and advice centre, told Amnesty International that judges refuse to recognize domestic violence as a factor in divorce cases, and that, consequently, in an almost self-fulfilling prophecy, domestic violence appears not to exist. They also noted that many women in their area found the costs of a divorce prohibitive – reportedly 10,000 leke (around €80).

At Elbasan Counselling Centre, staff alleged that the president of the court tended to delay divorce cases or obstruct admissible evidence. Under Article 155 of the Family Code,¹⁸¹ statements by psychologists in support of custody applications are admissible; however, as women have to pay €50 for a psychologist's report, the centre's own psychologist had provided free statements, which the judge was not willing to accept.

F. told Amnesty International that she felt she had been denied justice by the court. Her former husband had been awarded custody of their youngest child, despite all the work that she had done in preparing documentation, and despite the fact that he had never once attended the proceedings.

He knew the court, he never went but they gave him the child, and they said that if I paid 5,000 leke, I would not have to pay any alimony. He used my health saying that I was mentally ill and aggressive and not able to care for my son. He knew the law very well and I didn't. My son wanted to see me, but his father said. "If you go and live with your mum, I will never see you again". When I went to the appeal court, the judge told me: "With you he'll just eat

¹⁸¹ Article 155, Family Code. Before the court enters a temporary or permanent custody decision, rights of visitation, and assignment of parental responsibility to one of the ex-spouses, the court must obtain the recommendation of a psychologist or a social worker who, before giving an opinion, should investigate the material and moral situation of the family, their living conditions and the most appropriate place for the child to live. *Family Code of Albania*, Women's Legal Rights Initiative, January 2004.

*bread, with him [her husband], he'll have bread and bananas." There is no justice for women - that's it, no justice.*¹⁸²

The 2003 Family Code

The Family Code, adopted on 8 May 2003, entered into force on 21 December 2003. Adapted from a law drafted by women's NGOs, it replaced all previous legislation relating to the family and marriage and provided new forms of legal protection for women. In particular, Article 62, *Measures against violence*, provides that, "A spouse, who is subjected to violence, has the right to request that the court order as an urgent measure the removal of the spouse who perpetrated violence, from the marital residence".

As yet this article of the law is scarcely ever invoked, since the necessary supporting legislation is lacking. The aim of the draft law, "On measures against violence in family relations", is – in part – to make provision for such measures to be implemented.¹⁸³

The need to address domestic violence was, however, recognized in provisions in the Family Code relating to divorce, including Article 132, *Dissolution of marriage based on the request of one spouse*, which provides that: "Either spouse can request the dissolution of marriage when, due to continuous quarrels, maltreatment, severe insults [AI emphasis], adultery, incurable mental illness, lengthy penal punishment of the spouse or due to any other cause constituting repeated violations of marital obligations, a joint life becomes impossible and the marriage has lost its purpose for one or for both of the spouses."

Other changes with particular relevance to domestic violence are set out in Article 7,

which equalizes the age at marriage for both men and women at 18 years of age; Article 8 which conditions the legality of a marriage on "the free consent" of the future partners; and further articles which render early and non-consensual marriages null and void.¹⁸⁴ These articles in theory assist in combating forced or arranged marriages, in which girls may be married as young as 14 years of age. Only where there are "strong reasons", (usually pregnancy), may a local court permit a girl to marry under the age of 18.¹⁸⁵

The law also introduced significant changes with regard to property, enabling parties to specify in the marriage contract which partner will hold title to the property, and specific provisions for compensation, alimony and maintenance of the children, which may – at least in theory – assist women's economic survival outside marriage. Articles 147-152 provide for maintenance or compensation. The court may, for example, require, as in Article 147, "one of the ex-spouses to compensate the other for the inequality in lifestyle created by the property division as part of the dissolution of the marriage, separate and apart from the obligation for alimony".

The Code also addresses women's housing after divorce, providing protection for both divorced women and their children: Article 153 provides the spouse awarded custody of the

¹⁸² AI interview with F., Shkodra.

¹⁸³ NGOs informed AI that they were aware of two other cases in which women had succeeded in legally removing their husband from their family property; in another case, the husband had lodged a counter-claim, which was subsequently withdrawn, Tirana District Court, Reg. 36, 15 April 2005.

¹⁸⁴ Article 7 - *Age for marriage*, Marriage can be concluded between a man and a woman who are 18 years or older. The court in the location where the marriage is to be concluded may, for sufficient reasons, allow marriage prior to this age. [These reasons are not specified, but are taken to include, for example, pregnancy, where marriage may be allowed.] Article 8 - *The consent of the spouses*, Marriage is concluded in front of the civil registration office clerk, upon the free consent of the future spouses; such marriages may be rendered null and void by Articles 39 and 33 respectively. Article 20 only allows parents to oppose a marriage, for a limited number of reasons provided by law, see footnote 185.

¹⁸⁵ Marriages may only be prohibited if bigamous, in cases of consanguinity or between parents or guardians and children in their care, Articles 9-14, Family Code; for AI's concerns on Article 12 which prohibits marriage by persons with mental illness or learning disabilities, see *Albania: Disability and the right to marry*, AI Index: EUR 11/005/2004, 11 November 2004.

children (almost always the mother) the right to use the family residence until the children come of age, even if she does not own it.¹⁸⁶ However, according to Besa Saraçi, women are more likely to return to their parental home, and although they retain the right to claim the property up to six months after divorce, they are reluctant to go through the court procedure, and subsequently lose that right.

Provisions for awarding custody to one parent, and granting rights of access or visitation to the other are set out in Articles 154 to 161, which state that the views of a minor child and a report by social workers or psychologists should be taken into account. Provisions for the maintenance of children, amplifying – but not improving upon – previous legislation, are set out in Articles 192 to 214. Article 199 (Obligation between spouses) in particular also provides, “A spouse, who is incapable of working and without sufficient means to live, has the right to request alimony from the other spouse. A request for alimony should be made in the petition for the dissolution of the marriage. This request may also be submitted within 6 months from the date the decision for the dissolution of marriage becomes final, if the conditions for the incapacity to work or insufficiency of means to live existed during the marriage”.¹⁸⁷ Further provisions recognize that this support should be made available regardless of “fault”.

In Article 163 the Code also recognizes and defines “cohabitation” for the first time: “a man and woman living as a couple, characterized by stability, continuity and a joint life”. Although

¹⁸⁶ Article 153. The right to use the family residence: If the family residence is owned by one ex-spouse and the other spouse does not have another appropriate residence in their usual place of abode, the court may allow the use of the residence by the non-owner ex-spouse only when: a) that spouse has custody of the children, until they reach the age of maturity;

¹⁸⁷ Enforcement mechanisms remain problematic, including because of a lack of implementation by bailiff’s offices, but also because of high rates of unemployment and the resulting poverty of many defendants, see Agata Nasti, “Maintenance according to the Family Code”, (Detyrimi për ushqim sipas Kodit të ri të Familjes), *Qendra Avokatore për Gratë, Revista nr. 14, 2004*, pp. 69-79, (in Albanian, pp. 15-25).

the Code fails to apply to cohabitants any of the provisions applicable to spouses and relating to property, inheritance or pension rights, Article 164 provides cohabitants with the possibility of drawing up a legal contract to determine these. According to lawyers, this provision had by 2004 already proved useful in disputes relating to the termination of such a relationship.¹⁸⁸

The draft law, “On Measures against Violence in Family Relations”

In October 2004, a coalition of NGOs, led by the Citizen’s Advocacy Office and including the major women’s and children’s NGOs, met to draft a law on family violence, with the aim of providing supporting legislation to implement the provisions of Article 62 of the Family Code, enabling the removal of a spouse responsible for perpetrating violence from the marital home. Following consultations, including a Round Table in January 2005, and a process which involved several revisions, in November 2005, as part of the international “16 days against violence against women”, the final draft was published with the supporting signature of Josefina Topalli, the current speaker of the Albanian parliament. The coalition of NGOs also began their campaign to collect the signatures of some 20,000 citizens so that the law might be presented to the parliament, and it was subsequently submitted to the Parliamentary Legislative Commission in January 2006.

The draft law, “On Measures against Violence in Family Relations”, envisages the provision of an integrated response by government agencies, including police, medical practitioners and social workers, to cases of family violence, which as currently envisaged would include a wide range of acts of violence against women, children, elderly and disabled dependants. The proposed law also sets out a civil process by which a protection order,

¹⁸⁸ Sonila Omari, “Property Effects in Case of Marriage Annulment”, (Efektet Pasurore të Martesës së Pavlefshme), *Qendra Avokatore për Gratë, Revista nr. 13, 2004*, pp. 87-100, (in Albanian, pp. 29-42).

implementing Article 62 of the Family Code, may be provided.

The draft law aims, as set out in Article 1, to both prevent and reduce domestic violence, and to guarantee legal protection "to members of the family who are subjects of domestic violence, in particular to children, the elderly and the disabled." In so doing, it goes far beyond the original aim of implementing the provisions of Article 62, which applied specifically to spouses and, regrettably, no longer includes "women" as a "particular" subject of domestic violence.¹⁸⁹

The objectives of the draft law are: to establish a coordinated network of institutions to protect, support and rehabilitate victims; to guide the work of such structures; to strengthen the judiciary in taking protection measures against violence in the family, and to "ensure quick affordable and simple services to the victims of violence in the family provided by the court and other law enforcement agencies in compliance with the law."

Amnesty International welcomes the substance of the draft law, and in particular the creation of a body to coordinate responses envisaged to provide protection and redress to victims of domestic violence, and involving the police (Ministry of Interior) and medical professionals (Ministry of Health), and the establishment by municipal authorities of structures within social services departments to address domestic violence. The organization particularly welcomes provisions in Article 8 for the establishment of anti-violence units at police stations, and the training of police officers, as well as provisions of Article 11.3 which instructs police authorities to record their findings in the event of a reported incident, and to start investigations.

Amnesty International also has a number of concerns relating to the draft law. One is that

¹⁸⁹ In earlier versions of the draft law, women were specifically mentioned in Article 1.

the definition of family violence in Article 3 is both too broad in its scope, and at the same time too narrow in its definitions.¹⁹⁰ Article 3.2 limits the definition of a perpetrator to persons who are or used to be in family relationships, without defining the latter term. It is therefore not clear whether the law applies to cohabitants, as defined under Article 163 of the Family Code; it may also exclude persons in short term relationships, engaged couples or those in "imagined" relationships, which may give rise to stalking and other forms of violence.¹⁹¹

Further, although the broad scope of Article 2.3(b) recognizes many types of violence which may give rise to protection orders, it is inconsistent with regard to the acts or omissions included: for example, it excludes psychological violence, while including economic violence. The draft also includes acts which may more adequately be addressed under criminal proceedings – for example, the trafficking of children – and acts which have not yet been incorporated into the Criminal Code, for example, marital rape.

¹⁹⁰ Article 3.2. "Domestic Violence" is considered: (a) Any act of violence committed between persons who are or used to be in family relationship, (b) Acts or omissions considered to fall under *domestic violence* include (but are not limited to): murder, threat, torture, wounding, termination of pregnancy, denial of help, causing of suicide, abduction, trafficking, violation of domicile, forcing to and exploiting of prostitution, insult, defamation, limitation of the freedom of expression, of movement or assembly, despise, violation of private life, rape, other obscene acts, threat for abandonment, denial of living means, illegal taking of the child, direct physical, psychological, sexual and economic abuse of children and putting them in dangerous situations on in ones where children witness violence against other members of the family, coercion for cohabitation or termination of marriage, damage to property or economic well-being, limitation of freedom to administer their income or prohibition to hold monetary means.

¹⁹¹ In February 2006, the family of MK told the press that they had been subject to continued harassment by her former partner, EG, from whom she had separated a year previously, but had found it impossible to call for the police and ask for help. On 25 February, he came to the house and attacked MK, and members of her family, threatening to kill everyone in the house unless MK agreed to marry him. Eventually the police were called, and EG was arrested for intentional harm, threats and coercion to cohabit, "Një vit pas divorcit, kërkon të rimartohej", *Metropol; Ngjarja ka ndodhur në një fshat të Kolonjës, Shekulli*, 26 February 2006.

Amnesty International is also concerned that the draft law may also be too broad in its ambition to address violence against women, children, the elderly and disabled persons within the provisions of one law. International standards have yet to be developed with respect to elder abuse, while the standards of protection, and remedies afforded, under the Convention on the Rights of the Child differ in their scope and application from those required by the Women's Convention, and demand a much higher degree of protection than currently expressed in the draft law.¹⁹²

While Amnesty International welcomes measures which seek to improve the rights of the child in Albania, where the absence of mechanisms to protect the rights of children has been drawn to the attention of the UN Committee on the Rights of the Child,¹⁹³ the organization suggests that it may be more appropriate to devote separate chapters of this draft law to specific procedures and mechanisms, as well as the roles and responsibilities of institutions, with regard to women, children, the elderly and disabled persons.¹⁹⁴

With regard to measures for protection orders, Amnesty International welcomes, in particular, Article 16 (3), which provides for legal aid to be awarded to women seeking such an order. However, the organization is concerned about the provisions of Article 16 (4), which envisage that costs will be borne by the victim if the application for a civil injunction fails. Given women's lack of financial independence, the risks women already face in bringing men to court and the current lack of faith in the law expressed by many women who have sought its assistance, these provisions may be a serious deterrent to women unable to bear these costs

from seeking a protection order. The organization urges that there should be a provision for further legal aid in such cases.

Although the draft law is concerned with civil protection orders, it envisages that breaches of protection orders will be prosecuted as a criminal offence. Amnesty International remains concerned that unless explicit procedures are in place to ensure such prosecutions, in conformity with the Criminal Code, the law will not be respected. This is particularly important where prevention of violence against women needs to be prioritized. The organization would therefore urge that the inter-relationship between the civil and criminal law (currently mentioned in an appendix to the draft) is made more explicit, and that provisions for fair trial protections, when the matter moves from being a civil to a criminal matter, be clarified.

Finally Amnesty International stresses that such protection orders should not be seen as a substitute for criminal prosecutions in cases where protection orders are violated and there is evidence or reasonable suspicion that criminal offences including threats, assaults or other forms of domestic violence have been committed.

Amnesty International urges that the draft law – and the Criminal Code – should be amended to ensure the criminalization, prosecution and punishment of domestic violence.

¹⁹² In this context, Amnesty International notes the absence of family and juvenile courts within the Albanian judicial system.

¹⁹³ CRC/C/15/Add.249, Committee On The Rights Of The Child, Thirty-Eighth Session, Consideration Of Reports Submitted By States Parties Under Article 44 of the Convention, Concluding observations: Albania, 31/03/2005.

¹⁹⁴ The absence of reference to children in foster care is of concern, see Article 224, Family Code.

7. Challenging violence

Women's organizations in Albania have, since 1996, worked to challenge violence against women, including through awareness-raising programmes, the training of state officials (including the police) and in documenting domestic violence. They have also established a network of telephone help-lines, counselling centres, shelters and the provision of free legal assistance and access to employment. Most organizations are dependent on donor funding, and subject to changing donor priorities: the future of two such organizations, one an experienced and effective counselling centre, the other a free legal advice centre, is under threat at the time of writing

In 2003, CEDAW welcomed the collaboration between government agencies and NGOs working on domestic violence, but noted that the government often passed on its own responsibilities for protecting and fulfilling women's human rights to both local and international NGOs. CEDAW called on Albania to strengthen its support for such organizations, but to ensure that its obligations under the convention were integrated into the government's responsibilities and not carried out by NGOs alone.¹⁹⁵ In this context, Amnesty International notes that Article 4 (p) of DEVAW calls on states to "facilitate and enhance the work of the women's movement and NGOs, and cooperate with them at national, local and regional levels".

I have never called the police, because a woman is more sensitive than a man. I called the women's centre many times and they were very helpful to me. Also, they used to call me back so I didn't have to spend money on the phone. But I never found the courage to go to the police. (A).

The majority of NGOs providing services and support to women collaborate within the Network against Gender Violence and Trafficking, (Rrjeti Kundër Dhunës Gjimore dhe

Trafikimit), established in 2001.¹⁹⁶ Many of these groups developed out of the Tirana Women's Centre (Qendra e Gruas), which now predominantly works on prevention and on co-ordinating the network.¹⁹⁷

The first women's centre was set up in Tirana in 1994 by the Refleksione Women's Association (Shoqata Refleksione), which was subsequently instrumental in establishing several now independent NGOs including the first Counselling Centre for Women and Girls in 1996 (CCWG, Qendra e Këshillimit për Gra e Vajza), now Qendrat e Këshillimit në Tiranë, Berat, Shkodër e Pogradec, with branches in Shkodra (1999), Pogradec (1999) and Berat (2001).¹⁹⁸

Although the approach of each counselling centre differs depending on the local context, all generally provide an initial telephone counselling service, with the possibility of further face to face counselling, and if necessary, referral to a shelter or to a lawyer. In Tirana, free legal advice is provided by the Women's Advocacy Centre (now the Association of Women Lawyers, Shoqata e Grave Juriste,) established in 1997, which offers advice and representation in cases of divorce, property and the custody of children; in Elbasan, the Advocates Studio provides free legal support;¹⁹⁹ other NGOs rely on the services of sympathetic lawyers.

Between 2001 and 2002 the CCWG received calls from some 4,670 women and girls. Eighty per cent related to domestic violence (in

¹⁹⁵ CEDAW, Concluding Remarks, para. 80.

¹⁹⁶ Other relevant women's NGOs include Forumi i Pavarur i Gruas, Women's Independent Forum; The Albanian Centre for Population and Development (previously, Planifikimi Familjar, Family Planning). The Këshilli Kombëtar i Gruas Shqiptare, (National Council of Albanian Women) comprises some 38 networks and coalitions of women's groups and organizations.

¹⁹⁷ For problems faced and strategies used by women's NGOs between 1996 and 2000, including the massive disruption caused by the 1997 crisis (and its effects on women), see Hook, *et. al.*, "Responding to gender violence in Albania", pp. 351-363.

¹⁹⁸ Also instrumental in establishing the Tirana Shelter, and a project for abused children.

¹⁹⁹ AI interview with Shpresa Banja and Vilma Tafani, Elbasan Women's Forum.

60 per cent of such cases, the abuser was a spouse or partner)²⁰⁰, and some 1,086 received subsequent face-to-face counselling, 80 to 90 per cent related to domestic violence.²⁰¹ From 2002 to 2004 the CCWG reported receiving calls from 6,670 women, with some 1,586 clients receiving face-to-face counselling. Based on statistics for 2001-2002, the majority of women were between 15 and 45 years of age, predominantly from urban centres (although over the period outreach work in rural areas increased the numbers of calls from rural women fourfold). Calls received generally showed that women often experienced multiple forms of abuse, often from multiple abusers (the spouse and his parents) and problems deriving from such abuse included mental health issues, financial problems, legal questions relating to property and custody of children.²⁰²

There are no structures, no institutions, you have to do it on your own, there's no protection. I could not have done it without the shelter and the telephone line. Thank god for the shelter that gave me help, and the hope to start my life again. (P).

In Tirana, the NGO Useful to Albanian Women (Në Dobi të Gruas Shqiptare) has developed their work on domestic violence since 1997-8 based around a women's club, by providing telephone and face-to-face counselling and referring women to the shelter, QAG and appropriate agencies.²⁰³ Co-operating with and complementing other women's NGOs, they work with a wider target group, and provide counselling and referrals on a whole range of

issues, including the provision of employment to a target group of poor women.

*Women are in a trap, and they enter a trap, they are never winners - there is never housing, no pensions, nothing, nothing from their families; it is hard for women from villages.*²⁰⁴

Outside Tirana, in addition to the centres established by CCWG, other NGOs have established counselling centres and help-lines in Shkodra (Refleksione, Hapat e Lehtë, Grua për Grua), in Elbasan and Lezha. Groups assisting women also exist in Vlora (attached to the Family Planning Centre)²⁰⁵ and Durrës.

In Elbasan, an industrial town in the mountains south of Tirana, the Women's Forum includes the Coordinating Centre for Counselling (CCC), which has operated for six years. Open from 8 am to 7 pm, 11 counsellors provide counselling and referral to services, with the assistance of psychologists, a doctor, social worker and a lawyer.²⁰⁶ Each month the CCC receives calls from 50 to 60 women and provides around 30 to 40 face-to-face counselling sessions and mediation meetings between women and their abusive partners. An increasing percentage of women attend in person following a rise in telephone costs. The CCC reaches women through a free advertisement broadcast eight times a day, a donation from the local community TV station. Several other counselling lines also reported that television was the most effective way of reaching women and such broadcasts always resulted in an increase in calls.²⁰⁷

*States parties should ensure that services for victims of violence are accessible to rural women and that where necessary special services are provided to isolated communities.*²⁰⁸

²⁰⁰ Thirty per cent of calls related to abuse by other family members – father, step-fathers, brothers or mothers, while the remaining 10 per cent related to abuse by strangers, co-workers or friends.

²⁰¹ Figures represent the number of women and girls, rather than calls received, as many women received repeat telephone counselling.

²⁰² CCWG, *Three Years with Information (Tre Vjet informacion, 1999-2002)*, Tirana 2002, see especially pp. 20-25.

²⁰³ AI interview with Fabiola Laço-Egro, Sevim Arbana and Senata, Useful to Albanian Women.

²⁰⁴ AI interview with Senata, Useful to Albanian Women.

²⁰⁵ Currently working on a multi-agency project with Vlora municipal authorities.

²⁰⁶ Funded by Kvinna t Kvinna.

²⁰⁷ This had developed from a TV-phone in programme on violence in the family, organised in conjunction with the Albanian Centre for Population and Development.

²⁰⁸ Para. 24 (o), CEDAW General Recommendation 19.

Many centres have focussed on reaching out to isolated and rural women, many of whom face high levels of violence, but do not receive television broadcasts or have access to a telephone. Such programmes rarely focus directly on domestic violence but, often in conjunction with health professionals, provide information on health issues – including reproductive rights – unemployment or other problems faced by women, and help create the space for women to report domestic violence.²⁰⁹

Since 2003, for example, the Elbasan Women's Forum has worked with women in villages, with a voluntary coordinator working in each commune, running meetings on various issues or visiting individual women, many of whom are prohibited by their husbands from coming into the city. Some men had initially accused the organization of teaching their wives to divorce them, and despite attempts to reassure their husbands, some women continue to face problems in attending such meetings. The Albanian Centre for Population and Development together with Grua për Grua (Women for Women) in Malësia e Madhe is currently training social workers in health centres to counsel women and raise awareness. Another project, established in the Tirana suburbs of Paskuqan and Babrroi, works with migrant communities from northern Albania. It provides social assistance, psychological and health services to women and children, and will also provide legal advice – including assisting divorced women to enforce their right to child support ordered by the courts.

Seeking shelter

*The [CEDAW] Committee recommends that measures be taken to provide shelters for women victims of violence in sufficient numbers.....*²¹⁰

²⁰⁹ AI interview with Elona Gjebrea, Albanian Centre for Population and Development. The Berat CCWG centre was opened specifically to focus on rural women, and as in Pogradec, they have organised meetings in schools and health centres, and trained health professionals and teachers in recognising and addressing domestic violence.

²¹⁰ Albania, CEDAW, A/ 8/38 part I (2003), para. 73.

*"It was paradise coming to the shelter, it was the solution. In G. it was like a prison..., the shelter was another world completely. For me and my children the shelter was the best solution and I don't know what I would have I done without it."*²¹¹

There are two shelters in Albania for women fleeing family violence, one in the capital Tirana and a second in Elbasan. The Strehëza për viktimat e dhunës në familje (Tirana Shelter for Victims of Family Violence (Shelter) was established in 1998, as an offshoot of the CCWG, with which it works in close collaboration.²¹² It employs seven full time workers – a medical doctor, a psychologist, three social workers and two educators – who provide 24-hour cover, with the majority of staff working evening and night shifts. A co-ordinator and part-time financial worker and administrator provide management and support. The shelter has 10 adult beds, as well as two emergency beds elsewhere, with additional capacity for up to five children.

"We only get the desperate cases."

Women are referred to the shelter from all parts of Albania through the network of help lines; most women previously contacted help-lines or have attended counselling centres many times. Between 90 and 100 women are supported by the shelter each year, staying – except in exceptional circumstances – for a maximum of six months, although some women arrive and leave the following day. Given that demand exceeds capacity, admissions are based on strict criteria, including the physical or psychological danger or other risk to the woman. These women have little or no support from their own family or friends, and no means of supporting themselves. Both the Tirana and Elbasan shelters described

²¹¹ AI interview; N was so traumatized that she spent a year, rather than six months at the shelter.

²¹² Although the shelter's funding, from a Dutch NGO, was secure in October 2005, EH observed that the cuts in funding for the Counselling Centre and the QAG, had resulted in fewer referrals.

clients who had been ejected or fled from their own homes and had been sleeping in the streets.

Then I was pregnant again with my second daughter and he started putting me out on the street, and sometimes the neighbours would take me in with the children and sometimes I stayed out all night till the next morning, when he said I could come back. (A).

They admit pregnant women – at least one baby has been born in the shelter – and those with babies and young children, many of whom repeat the abusive patterns they have seen in their fathers. Women with drink or drug problems are not admitted, and those with mental health problems may rather be referred to hospital.

Women are encouraged to go out to work, take children to school (the shelter helps place children in local schools) and visit relatives and friends. The shelter helps them to find appropriate work, and as all services provided by the shelter are free, women are able to save their income in order to rent a room or flat when they leave. The majority of women they receive are not professionally trained, and although the shelter has received teachers, doctors and lawyers, these women are usually able to find other sources of long-term support and shelter, building on family and other networks.

In the evenings women receive counselling and medical care, and take part in group work. During their stay they receive counselling, the services of a lawyer, assistance in renting a room and with getting children into a school; they are referred to a doctor and are then able to live independently – if they do not go back to their husbands.

As well as enabling women to gain the psychological and financial resources to live independently of their husbands, the shelter may agree to negotiate with a woman's husband, parents-in-law or with her own family of origin; they may also bring both parties together for reconciliation. Of women supported by the

shelter, around 50 per cent go back to their husbands – although some 50 per cent of these women return to the shelter for a second time within two or three months; few are accepted more than twice.

The shelter receives no funding from the authorities: the previous government had declined to provide support citing other priorities and the needs of other vulnerable groups.

The Elbasan Shelter,²¹³ established in 2001, has capacity for six women and their children (up to a maximum of 15 persons), and is staffed 24 hours a day by a coordinator and six specialists.²¹⁴ As in Tirana, entry is based on criteria of extreme vulnerability, and involves an often lengthy assessment procedure. Similarly women are able to stay for around six months and are able to work and put aside money to rent somewhere when they leave.

Far more women are in need of shelter than resources can provide. One woman had arrived at the Counselling Centre a week prior to Amnesty International's visit, having left her family after threats from her husband. She had come to the centre each day and was believed to be living in her car, but had still not been able to enter the shelter. Another woman from Librazhd had slept for two weeks in a corridor of Elbasan hospital while she was waiting for refuge.

Providing protection: changing the law

Since 29 October 2004, 10 NGOs comprising the Citizen's Advocacy Office, the Children's Human Rights Centre of Albania (CRCA), Women's Advocacy Centre, Counselling Centre for Women and Girls, Gender Alliance for Development, Refleksione, Women's Shelter, Legal Clinic for Minors, Useful to Albanian Women and the Centre for Family Planning have

²¹³ In the absence of its coordinator, AI delegates were unable to visit the shelter; information is based on an interview with Shpresa Banja, Elbasan Women's Forum.

²¹⁴ The shelter is funded by the Italian government through CIFA, an Italian NGO.

worked together to draft a law against family violence.²¹⁵ While identifying the draft law as a catalyst for change, they also recognized the problems that may accompany its introduction.

Many NGOs believe that the draft law, if enforced, would force the police and courts to recognize and act in cases of domestic violence, particularly if women's NGOs campaign to actively inform women about their rights under the new law, encourage them to assert these rights and assist women in realizing their rights in the courts. Some NGOs stressed the need for a nationwide information campaign in parallel with the introduction of the new law, but at the same time were concerned that, in areas where women's NGOs did not exist, without their assistance women might continue to be reluctant to seek assistance directly from the authorities, or begin proceedings without their help.

NGOs were also clear that their role in training professionals in health and social services, in the police and judiciary would be essential to the implementation of the law. Others were more cautious, and citing the failure of successive governments to implement previous progressive legislation (including provisions of the Family Code) expressed the need for a policy to accompany and direct the implementation process. Concerns were also expressed about the "chain of obstacles" that had denied women access to justice and in particular, called for measures to address the corruption and absence of professionalism in the judicial system.

Domestic violence can only be reduced through parallel processes in the economy, and in women's self-confidence, empowerment and self-esteem.²¹⁶

Changes in legislation will not in themselves guarantee women's rights. In enabling women to live free of violence, other fundamental rights including the rights to an

adequate standard of living, including adequate housing, to the highest attainable standard of health and to education must be guaranteed. Women's NGOs have been at the forefront in recognizing the interrelatedness and interdependence of women's rights, and the measures that must be taken if women are to be protected from violence in the home.

The UN Special Rapporteur on the Right to Housing has noted that "domestic violence can greatly increase women's vulnerability to homelessness, especially where there is a lack of protection by law enforcement officials or by the legal system itself". He went on to stress that the "assumptions about a women's need to "leave" a violent household – as opposed to the need to remove a violent partner – must be addressed as they undermine women's enjoyment of the right to adequate housing". Further, he emphasized, in countries, [like Albania], where a lack of security of tenure is coupled with a lack of employment opportunities, this precariousness may lead many women to stay in abusive and dangerous situations."²¹⁷

I have no job, no employment. The [women's] centre helped me with court for free to get my child registered. I get basics - oil, bread, salt, and clothes - from another charity, and the children go to school, where they get more free help. I've been five months now on my own. (D).

With high overall rates of unemployment and discrimination against women in employment, women's economic survival outside marriage, given the lack of financial support available from their former partners, must also be guaranteed, and with it the ability to secure housing for themselves and their children. In 2003 the Ministry of Employment launched a national strategy on employment which in theory provides assistance to women seeking employment, and to employers willing to employ

²¹⁵ Albania: NGOs Establish the Alliance Against Domestic Violence, Newsletter 243, Information and Research Centre for Children's Rights in Albania -IRCCRA, 1 November 2004.

²¹⁶ AI interview with Useful to Albanian Women.

²¹⁷ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, E/CN.4/2005/48, para 48.

women. Groups including Roma, "Egyptiani" and other marginalized women are specifically targeted. However, Refleksione, which now provides a specific service to women seeking employment – focussing in particular on women escaping domestic violence – has been involved in monitoring the new government strategy, and was sceptical about its implementation and noted its failure to reach out to women in the designated target groups.²¹⁸

In assisting abused women to find employment, Refleksione provides them with appropriate training, maintains contact with a database of employers, and in cases of domestic violence, vets the workplace to ensure that the woman will not suffer sexual harassment and negotiates salaries, training and child-care arrangements on their behalf.

In a survey conducted by the NGO Hapat e Lehtë in three neighbourhoods in Shkodra, where many families who had migrated from rural areas live, women clearly identified that in addition to addressing violence in the family, including violence towards their children, they needed access to employment. Many, living in illegally built properties, are unable to register with the authorities, and are consequently denied access to health care, or have no medical insurance; their children are not registered for school, or have to walk two hours a day to the nearest school that will take them.

We deal with the Kanun in every single project with women. In our culture a woman's body is a taboo; even to go to a gynaecologist is part of the shame. They always ask for a woman doctor, and then only in the last resort. The taboo is even between women, so they cannot talk to each other about their sexual experiences or their bodies or their family, and they cannot talk

²¹⁸ AI interview with Monika Asllani, Executive Director, Refleksione. For positive reports on the employment of Roma women, see, "Objektivat kryesore të strategjisë janë arsimimi, formimi profesional, punësimi dhe kujdesi shëndetësor për Romët, strategji për kujdesin e strehimin," *Shekulli*, 1 February 2006.

*to a stranger, especially about domestic violence. By the time they ring us, the situation is very serious.*²¹⁹

Women in these communities are regularly married young, and give birth from as young as 14 years of age. Hapat e Lehtë, in conjunction with an Italian NGO, runs an information campaign on reproductive health and rights issues and provides women with ante- and post-natal care in order to combat the high infant mortality and maternal death rate.²²⁰ Unable to access health services, many women suffer illness in pregnancy, complications in home births and resulting infections. Those who attend hospital find their rights are not respected, including to privacy or to be accompanied in labour. Although the health service is provided free of charge to those with social insurance, high levels of corruption and low salaries result in demands for further payment by health professionals for even the most basic services. Women can only obtain abortions after making payments to staff for the legally necessary documentation.²²¹

²¹⁹ AI interview with social worker, Hapat e Lehtë, Shkodra,

²²⁰ Average infant mortality rates between 1995 to 2002 were reported at 26.2 per 1,000 live births; 19 per cent of women reported that they had received no ante-natal care; of those who had received such care, 24 per cent reported complications in pregnancy, *Albania Reproductive Health Survey*, op. cit.. According to government figures, maternal mortality rates have significantly decreased from 37.7 deaths per 1000 live births in 1990 to 22.6 deaths per 1000 live births in 2000, but remains higher in rural areas, especially in the northeast region of the country where the indicator is 5 to 6 times higher than the national average, *Albania National Report on Progress Towards Achieving the Millennium Development Goals*, 2004: <http://www.undp.org.al/?elib,659>

²²¹ AI notes the intention of the present government to provide a "high quality and honest health service with guaranteed access for all", and including a "frontal war on corruption... [increasing] the miserable salaries of this sector" and the intention to devote special attention to mother and children, *Government Program 2005-2009*, presented in the Albanian Parliament, 9 September 2005. Under the 1995 Law on the Interruption of Pregnancy, abortions may be provided for social, psychological and economic reasons within the first 12 weeks of pregnancy, in cases of sexual assault at up to 22 weeks, and at any time to save the life of the mother, *Albanian Reproductive Survey*, op.cit.

Women are rarely able to seek assistance in cases of domestic violence from medical professionals or social workers, who are often indifferent to signs of domestic violence, or have not been trained to identify domestic violence as a health issue. The social worker at Hapat e Lehtë was not aware of a single case in which a health professional at the hospital had referred women with physical signs of domestic violence to the NGO. Women who do present doctors with evidence of domestic violence are often taken there by a family member, and may be pressured to attend, or sent to, the psychiatric hospital; Hapat e Lehtë suggested that although many women are sent against their will, others use the psychiatric hospital as a shelter from violence.

Shifting the shame; men taking the blame

*There needs to be a change in the law, in thinking, in mentality and in women themselves. Progress and freedom does not come from silence, women are losing their children, and their lives. Women currently lose their lives and their children.*²²²

The majority of NGOs focus on the provision of services and advocacy for women, but others have sought to raise awareness amongst men, train and educate (predominantly male) professionals, including in the police force, and in centres where security is not an issue, invite men into counselling processes. All articulated the need for a change in “mentality” and the need to challenge “tradition”. The NGO, Useful to Albanian Women clearly articulated the need to involve men in such a process, and raised the question: “Can we involve violent men, can they be a part of this?”, noting that a project working with former abusers has recently started, while the proposed draft law envisages establishing of rehabilitation programmes for violent men. To date, Albanian women have taken responsibility for challenging domestic violence and providing support and assistance to women. Albanian men – in government, in

ministries, in the police force, courts, hospitals and health centres, in the community and at home – now have to take responsibility for shifting the burden of shame from the women who are abused, to the men whose shame is their continued participation and complicity in the violation of the rights of Albanian women.

²²² AI interview with Useful to Albanian Women.

8. Conclusions and recommendations

According to the Special Rapporteur on Violence against Women (SRVAW), its causes and consequences:

"States must promote and protect the human rights of women and exercise due diligence:

(a) To prevent, investigate and punish acts of all forms of VAW [violence against women] whether in the home, the workplace, the community or society, in custody or in situations of armed conflict;

(b) To take all measures to empower women and strengthen their economic independence and to protect and promote the full enjoyment of all rights and fundamental freedoms;

(c) To condemn VAW and not invoke custom, tradition or practices in the name of religion or culture to avoid their obligations to eliminate such violence;

(d) To intensify efforts to develop and/or utilize legislative, educational, social and other measures aimed at the prevention of violence, including the dissemination of information, legal literacy campaigns and the training of legal, judicial and health personnel;" ²²³

In making recommendations to the Albanian government, Amnesty International is acutely aware of the complex social, economic and cultural factors that place women at risk of violence. As the SRVAW's remarks suggest, the introduction and implementation of legislative reforms to prosecute and punish perpetrators is but one of the changes needed to protect women, prevent violence and provide women with access to justice and redress.

Albania's obligations to show due diligence require the adoption of a whole range

of measures including practical policies and mechanisms to protect women's rights, and to ensure that both women and men are aware of these rights, and that women may have the freedom to exercise them.

The recommendations which Amnesty International makes, while in the main directed at the Ministry of the Interior and the Ministry of Justice, recognize the part that other Ministries have to play in providing an integrated and holistic approach to ensuring that women are guaranteed their right to live free from violence in the home. Thus the organization directs further recommendations towards the Ministry of Health, and other appropriate bodies. For such recommendations to be implemented, Amnesty International also recognizes that public officials, especially law enforcement officials, the judiciary, health-care providers and social workers, must be fully sensitized to all forms of violence against women, and provide women with services that recognize the gravity and seriousness of the problem.

Amnesty International echoes and amplifies the recommendations made by CEDAW in 2003, and in particular urges the government to ensure that such reforms are developed and introduced in collaboration with NGOs experienced in combating domestic violence. ²²⁴

Amnesty International also stresses the need for the government to foster and promote as a matter of priority a radical change in Albanian society's attitude to domestic violence. The organization recognizes that without a commitment to informing women of their rights and a public education programme to make such violence socially and morally unacceptable, it is unlikely that changes in the law will have an impact on the lives of more than a handful of women.

²²³ Radhika Coomaraswamy, Special Rapporteur on violence against women, *Report to the Commission on Human Rights*, UN Doc. E/CN.4/2003/75, 6 January 2003, para. 85.

²²⁴ Albania, CEDAW, A/ 8/38 part I (2003), paras. 44-86.

Amnesty International also recognizes the scale of this violation of women's rights. Conservative estimates derived from survey data suggest that at least a third of Albanian women may at some time in their lives experience domestic violence. Amnesty International is aware that ending violence on such a massive scale cannot be easily achieved, but urges the Albanian government to immediately draw up a plan of action on a series of immediate and short-term concerted measures to implement the provisions of the new law on family violence, and then to address the more wide-ranging measures recommended in this report.

Mindful of the resolution passed by the European Parliament on 2 February 2006 on combating violence against women,²²⁵ and of the conclusion of a Stabilization and Association Agreement between Albania and the EU on 18 February 2006, Amnesty International also calls on the EU to direct resources, including funding and personnel, to assist the Albanian authorities in establishing immediate, but ultimately sustainable, measures to address this serious violation of women's human rights.

Amnesty International also notes that the Council of Europe will conduct a campaign in 2006 to combat domestic violence against women throughout its 46 member states, which includes Albania.²²⁶

Implementing international obligations

Recognising that Albania has both signed and ratified all relevant international standards, Amnesty International urges the Albanian Government to implement their obligations, including through:

- Ensuring full and prompt implementation of CEDAW's Concluding Recommendations, made in 2003;

²²⁵ European Parliament resolution on the current situation in combating violence against women and any future action, ((2004/2220(INI)), adopted 2 February 2006.

²²⁶ CoE Recommendation 1681 (2004), Campaign to combat domestic violence against women in Europe, 8 October 2004.

- Informing the public about the Optional Protocol to the Women's Convention to which Albania acceded on 23 June 2003, which enables individual women and groups to petition CEDAW directly about violations of their rights under the Convention;
- Complying with reporting requirements to relevant UN treaty bodies, ensuring that they include data disaggregated by gender;
- Issuing a standing open invitation to the UN Special Rapporteur on violence against women, and facilitating access to all government facilities, institutions and officials.

End impunity for violence against women in the family:

- Improve reporting and prosecution rates of all forms of violence against women, including by:
 - compiling reliable and accurate statistics on reports, investigations and prosecutions of violence against women in the family;
 - conducting a detailed investigation into the obstacles and shortcomings of the legal system;
- Ensure that women's complaints of violence by husbands, cohabitantes or other intimate partners, be promptly, impartially and thoroughly investigated, and that where there is sufficient admissible evidence, suspects are prosecuted in a fair trial;
- Ensure the eradication of sentence reductions for individuals accused of "crimes of so-called 'honour'" on the grounds of "custom", "honour", "tradition" or "severe or undue provocation";
- Enforce laws that treat violence against women in the family as seriously as assaults in other contexts, allowing evidence of previous assaults to be admitted in proceedings.

In the field of legislation, Amnesty International urges the Albanian government to:

- **Criminalize violence against women** in the family (intimate partner violence), including psychological abuse, beating, rape, including marital rape, sexual assault and other gender-based violence, to provide adequate protection to all women, respect their integrity and dignity, and provide for appropriate punishment and redress;
- Undertake a comprehensive review of all legislation and criminal law procedures and modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women in family matters or which permit such discrimination to persist, and introducing and implementing new legislation where necessary with the aim of ensuring equality for women;
- This review should also encompass relevant polices and services, with the aim that laws and procedures enable women victims of violence to access a prompt and effective remedy, including compensation, medical and social care, and effective prevention of further abuses;
- Review and simplify the evidence gathering process, so that photographs and other evidence may be put before the court expeditiously and without undue complexity;
- Amend Article 284, so that in all complaints related to domestic violence, the burden to initiate a prosecution does not lie with the victim.

Implement provisions of the 2003 Family Code that:

- Guarantee women the right to freely choose a spouse and enter into marriage only with their full and free consent;
- Prohibit the marriage of minors;

- Guarantee women, in cases of divorce, a fair process in seeking their rights to alimony, property, child support and custody of their children.

Amnesty International also urges the Albanian government to adopt and implement the draft law on measures against violence in the family.

In implementing the civil remedies outlined in the draft law, including protection orders, Amnesty International urges the authorities to:

- Ensure that an effective coordinating body is established at the highest level of each relevant Ministry;
- Provide training to the police, government officials, lawyers and judges with training in guidelines on the issuing, monitoring and follow-up of protection orders envisaged in the draft law;
- Ensure that women who are subjected to violence are provided with legal aid so that they may seek just and effective remedies; and that they are not charged with the costs of proceedings should their application fail;
- Ensure that articles providing for the creation and enforcement of protection orders restraining violent men from entering the family home are fully implemented, including through the enforcement of penalties and criminal sanctions;
- Prioritize the safety of women and children victims of violence in the court procedures so that women should be able to petition for separation from an abusive intimate partner and women fleeing domestic violence should be granted custody of their children;
- In the longer term, to introduce into the court system, provisions for special family and juvenile courts.

In establishing the coordinated national network envisaged in the draft law, the authorities must:

- Initiate guidelines at the national, municipal and local level for an integrated approach to violence against women in the family and community;
- Cooperate with and publicly support the work of women's NGOs on violence in the family and community, using their insight and experience in planning and implementing joint projects for the prevention of violence against women in the family and the protection of victims;
- Allocate government funding, or actively seek donor funding, to establish municipal shelters to protect women from violence where no non-profit shelters exist;
- Promote research, collect data and compile statistics on violence against women in the family and community, and ensure that the information is made publicly available.

Amnesty International also calls on the Ministry of the Interior and Ministry of Justice to ensure that:

- All reports of domestic violence are recorded, including the action taken by police in connection with such reports;
- They protect victims, witnesses and others at risk during such investigations and prosecutions from intimidation and reprisals, providing access to shelters where they can be protected from abuse;
- They draw up, implement and monitor standard guidelines and procedures to cover all stages of criminal investigations, prosecutions and sentencing of acts of violence against women, and evaluate the criminal justice system according to those standards;
- They implement training schemes for police officers, lawyers, and judges; and in conjunction with the Ministry of Health and university faculties for doctors, nurses, medical students and

forensic scientists, so that victims of violence against women are treated with sensitivity throughout the legal process, and evidence of violence against women is properly collected, presented and considered;

- In particular, the police, government officials, lawyers and judges should receive training on the following:
 - Protecting women from violence in the family;
 - Responding to and investigating reports of family violence;
 - Prosecuting and sentencing in such cases;
 - Protecting women complainants and witnesses at risk of reprisals and intimidation during investigations and prosecutions;
 - Ensuring that women who are subjected to violence are not re-victimized because of gender-insensitive law enforcement practices;
 - Sentencing guidelines, to ensure that perpetrators are given sentences commensurate with the crime;
 - Implementing the law in a way that ensures equality in practice between men and women;
 - Citing domestic and international legislation that protects women's rights in their rulings and verdicts.
- Enable, support and promote the recruitment and training of women lawyers, judges and police officers to mainstream a gender perspective throughout the criminal justice system;
- Allow victims to be examined by female forensic practitioners (whenever possible);
- Ensure that police officers are subject to the investigative and prosecutorial authority of independent civilian bodies and that members of police and security forces and government officials who fail to carry out their legal duty to protect women and prevent violence when clearly required to do so, are brought to justice.

In particular, Amnesty International calls on the Ministry of Justice to ensure that:

- In all cases involving allegations of beating or other forms of violence by a husband, cohabitee, divorced or former partner, thorough investigations are conducted to establish whether there is previous evidence of domestic violence;
- In all criminal cases involving domestic violence, including those tried under Articles 403 to 406 (accelerated procedure) measures should be taken (including if necessary through the amendment of provisions concerning the assignment of experts, Article 179 CPC), to ensure that evidence may be provided by relevant experts, including social workers, psychologists, medical professionals, experts on violence against women in the family, and women's NGOs working with victims of violence. Such evidence should include, but not be limited to: evidence of the previous incidence of domestic violence; and evidence relating to the physical or psychological effects of this violence.
- Such evidence should be taken into consideration by courts when determining guilt and in imposing sentences;

Finally, in investigations and prosecutions in cases where women are accused of the murder or manslaughter of a spouse or partner, and where a history of domestic violence is suspected, all relevant evidence relating to the relationship between the deceased person and the defendant is put before the court, including expert evidence as cited above;

Such evidence should be taken into account by the court, either so it may be decided whether an issue of self-defence arises, or so that it may be taken into account in mitigation of sentence.

Recognizing the high level of gun crime, including murders in the family, and acknowledging the efforts made by the authorities in conjunction with international organizations to collect arms, Amnesty International recommends that:

- Women's NGOs, health and other professionals working in the field of family violence should be consulted on the design and implementation of programmes for the effective collection and destruction of surplus and unlawful small arms and light weapons;
- Licences for weapons should only be issued by government authorities in accordance with strict criteria that exclude the granting of licences to those with a history of violence in the home or community, and which take into account the declared reasons for requesting a licence, the context in which the application is made, and the likelihood of misuse;
- The police should be authorised, in any investigations related to the reported use of weapons in domestic violence, including in any threats to life, to confiscate any weapons, irrespective of whether they are lawfully held, or whether a conviction arises from the allegation;
- Law enforcement officers should be trained to better understand the role they may play in preventing violence in the family through the application and enforcement of laws prohibiting the possession of arms and ammunition;
- The Ministry of the Interior should promote and publicize UN human rights standards for law enforcement officers, including the Code of Conduct for Law Enforcement Officers and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principles), and incorporate these standards into law and practice;
- Law enforcement officers should be prohibited from taking their weapons

home in accordance with Article 11 of the UN Basic Principles which advocates the provision of guidelines which specify the circumstances under which a police officer is authorized to carry arms, and the type of arms and ammunition permitted; they also require law enforcement bodies to regulate the control, storage and issuing of firearms, including through procedures to ensure that police officers are accountable for both firearms and ammunition used;

- Any law enforcement officer suspected of any offence related to the threat or use of arms should be immediately suspended, and if convicted, should be dismissed from the police force.

To the Ministry of Health, in conjunction with the Institute of Public Health:

- Provide training to all medical students and practitioners, including nurses and midwives, on responding to violence, including through a recognition of the role of health professionals in preventing violence against women and in investigating and preserving evidence of violence against women and violence in the family;
- In particular, to train existing or new community health workers, especially those working in isolated rural areas, on responding to, investigating and preserving evidence of violence against women and violence in the family, building on the model used in the development of the existing immunization programme;
- To collaborate fully with the Ministry of Employment and Social Welfare in the provision of services, ensuring appropriate referral mechanisms are in place;
- Ensure that all emergency departments, mental health institutions and family planning centres are linked to appropriate welfare, NGOs and judicial services,

encouraging a multi-disciplinary approach as envisaged in the draft law;

- Ensure that within the government's programme to provide a "high quality and honest health service" adequate funding is provided to medical practices and hospitals for treatment of victims of violence in the family, and in addressing corruption in the health services, ensure that medical professionals receive salaries that do not render them dependent on payments by patients;
- Ensure that victims of violence in the family have the right to choose free of charge women doctors and other medical staff at medical practices or hospital of their choice;
- Collaborate with women's NGOs to implement national programmes on the elimination of violence against women, to provide free assistance to survivors of violence;
- Disseminate information, and ensure sufficient points of access for women to report violence, including hotlines covering all regions staffed by sufficiently trained personnel, brochures and posters disseminated at hospitals, primary health care centres, family planning clinics and other appropriate venues;

To ensure women are provided with information on their rights, the government should:

- In conjunction with the Ministry of the Interior, Ministry of Justice, Ministry of Health and Ministry of Labour and Social Welfare, coordinated by the Committee for Gender Equality, launch a major public information campaign on the right of women to live free from violence;
- Ensure that the authorities, in conjunction with women's and other NGOs, make information available to women on their rights, in a range of print

and other media, including television and other popular media;

- Instruct the Ministry of Telecommunications to provide toll-free telephone lines to counselling centres run by women's NGOs, and provide public telephones in isolated rural areas.

With high rates of unemployment and difficulties in accessing services and health care, it is likely that Romani and "Egyptiani" women will fail to benefit from measures taken by the government to address domestic violence unless positive measures are taken to ensure inclusion of this community.

To challenge societal and cultural tolerance of violence against women in the family, the government must:

- Refrain from invoking any custom, tradition or religious consideration to avoid its obligations to eliminate violence against women, and publicly declare at every opportunity its intention to prevent, investigate and punish all forms of violence against women;
- Call on the municipal authorities, community leaders and religious bodies to promote respect for women's human rights, and to denounce and desist from any action that encourages or tolerates violence against women;
- Fund and implement outreach and educational campaigns to address the underlying social and cultural attitudes that discriminate against women and that facilitate and perpetuate violence against them;
- Ensure that any programmes to change attitudes emphasizes that domestic violence is a criminal offence and a widespread social problem, rather than a private family problem that only affects a few individuals;

- In particular, these campaigns should: promote zero tolerance of violence against women, remove the stigma from women victims of violence, and encourage victims to seek redress. The campaigns should include community leaders, municipal politicians, the media and civil society, and can take place in schools, adult education facilities, citizens' fora, workplaces, through web pages, open lectures and debates.

Amnesty International recommends to the media that they:

- Take effective measures to ensure that all media respect and promote respect for women, providing information on the issue of violence against women, and the options for the victims, in an accessible manner.