



Human Rights Watch
UPR Submission

Albania
April 2009

Summary

This submission highlights two areas of concern which Human Rights Watch hopes to see reflected in the upcoming Universal Periodic Review of Albania – (1) the failure to investigate credible allegations of illegal detention and abuse of individuals abducted from Kosovo, and (2) inadequate protection against discrimination based on sexual orientation and gender identity.

Failure to Investigate Alleged Abuses in Albania Linked to Kosovo

The Albanian authorities have failed to investigate properly allegations that the Kosovo Liberation Army (KLA) abducted and transferred prisoners to Albania after the 1998-1999 Kosovo war. According to Carla del Ponte and BBC¹, the KLA maintained secret prisons in Albania and that some of the detainees were abused and killed. Approximately 400 persons, abducted after the end of the war in Kosovo remain missing. Most are Serbs.

The allegations first became public in 2008, when Carla Del Ponte, former chief prosecutor of the International Criminal Tribunal for the former Yugoslavia (ICTY), published her book, "The Hunt: War Criminals and Me."

Human Rights Watch wrote letters to Albanian Prime Minister Sali Berisha and Kosovo Prime Minister Hashim Thaci on April 4, 2008 to request that they open investigations into the credible allegations. As of this writing,

¹ BBC, "Horrors of KLA Prison Camps Revealed," April 10, 2009, <http://news.bbc.co.uk/2/hi/europe/7990984.stm>.

neither government has replied, nor have top officials in both places publicly rejected Del Ponte's claims as unsubstantiated and libelous.

The Serbian War Crimes Prosecutor Vladimir Vukcevic has launched an investigation. The Albanian authorities have rejected multiple requests from Vukcevic to travel to Albania to pursue his investigation.

In June 2008, the Parliamentary Assembly of the Council of Europe nominated Dick Marty as rapporteur to investigate the fate of missing Serbs allegedly transferred to northern Albania after June 1999.

In February 2009, HRW raised the issue in person with Albanian Prime Minister Sali Berisha, Deputy Prime Minister Gene Pollo, and other members of the government and National Assembly. Human Rights Watch received an offer to view the copy of the State Prosecutor's file to see what steps the prosecutor had taken in the past. Human Rights Watch formally requested to view the file on March 4, 2009, but, to date, the file has not been provided.

The United Nations Human Rights Committee has made clear in its general comment 31 that article 2 of the ICCPR imposes on states a positive obligation to ensure that those responsible for human rights obligations are brought to justice. The failure to do so can "in and of itself give rise to a separate breach of the Covenant."²

According to Del Ponte, the ICTY received information from "credible journalists" in 2003 that individuals in Kosovo had abducted and transported between 100 and 300 persons from Kosovo into northern Albania after June 12, 1999. The information was consistent with and corroborated the information that the tribunal had developed in house. Human Rights Watch viewed the information the ICTY obtained from the journalists and considers it credible: seven ethnic Albanians who served in the Kosovo Liberation Army, interviewed separately, gave details about participating in or witnessing the transfer of abducted Serbs and others prisoners from Kosovo into Albania after the war.

According to the journalists' information, the abducted individuals were held in warehouses and other buildings, including facilities in Kukës and Tropojë. According to some of the sources, in comparison to other captives, some of the younger, healthier detainees were fed, examined

² U.N. Human Rights Committee, General Comment No. 31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, U.N. Doc. CCPR/C/74/CRP.4/Rev.6 (2004), para 15.

by doctors, and never beaten. These abducted individuals – an unknown number – were allegedly transferred to a yellow house in or around the Albanian town of Burrel, where doctors extracted the captives' internal organs. These organs were then transported out of Albania. Most of the alleged victims were Serbs who went missing after the war. But others were women from Kosovo, Albania, Russia, and other Slavic countries.

According to the information obtained by the ICTY, the bodies of some of the abducted individuals were buried near the yellow house and a nearby graveyard about 20 kilometers south of Burrel. Investigators from the tribunal and the UN Mission in Kosovo (UNMIK), accompanied by an Albanian prosecutor, inspected the house in February 2004. The house had been painted white but, in a photo of the investigation site, a yellow strip was visible at the house's base.

According to Del Ponte, near the house investigators found medical equipment used in surgery. Using a chemical spray, the team found evidence of significant blood stains on the walls and floor of one room, except for a clear six-foot by two-foot rectangle on the floor. Two people present during the visit of the ICTY and UNMIK investigators to the house near Burrel have confirmed Del Ponte's account to Human Rights Watch. Human Rights Watch also obtained a copy of UNMIK's official report from the February 4-5, 2004 investigation, titled "Forensic Examination and Assessment in Albania," which largely corroborates Del Ponte's claims.

An ICTY spokesperson confirmed on April 16, 2008 that ICTY and UNMIK investigators had looked into the allegations and visited the house near Burrel, but asserted that they "could not substantiate the allegations and had no further basis on which to proceed in relation to [the tribunal's] jurisdiction."

On April 9, 2009, BBC radio and television released an in-depth investigative report that corroborated many of the allegations first raised in Carla Del Ponte's book. Additional findings about KLA detention camps in Kosovo and Albania were published by the Balkan Investigative Reporting Network (BIRN). According to the reports, based largely on interviews with former KLA members, the KLA maintained a detention facility in the Albanian town of Kukes, and at least 18 captives were killed there, including Albanians and Serbs from Kosovo. The reports were unable to provide conclusive evidence of organ trafficking.

Lustration Law

Human Rights Watch is also troubled by the so-called "lustration law," passed by the Albanian National Assembly on December 22, 2008. The law "on the lustration of the figure of high functionaries of the public administration and elected officials," bans from government employment those who worked during the communist-era (1944-1990) in the secret police, the judiciary or prosecutors offices.

The law establishes an authority to examine the past of all government officials, including the president, members of parliament, judges extending up to Supreme Court and Constitutional Court, general prosecutors, mayors and diplomats.

The law's adoption was opposed by the Albanian judges' association, the European Union and the Council of Europe. Of particular concern are the broad categories of officials who may be affected, including those currently holding office, as well as the fairness and due process of the proceedings and the severity of the foreseen sanctions. Human Rights Watch is concerned about the law's compatibility with the right to a fair hearing as laid down in article 14 of the ICCPR.

Only Parliamentarians from the ruling Democratic Party voted in favor of the law. Opposition parties are concerned that the ruling party might use the law to remove individuals from office for political purposes, including judges and prosecutors investigating high-profile corruption allegations against top government officials that have arisen in Albania over the past year.

On January 30, 2009, members of the opposition Socialist Party filed a complaint with the Constitutional Court, requesting the law's suspension. The judges' association and the Albanian Helsinki Committee lodged similar complaints, arguing that the law is inconsistent with at least 18 articles of the constitution.

On February 16, the Constitutional Court decided to suspend the implementation of the law pending its decision on the submitted complaints. It also decided to send the law to the Council of Europe Venice Commission for an *amicus curiae* opinion.

LGBT rights

Recent reports documenting human rights violations based on sexual orientation and gender identity in Albania have been published by the European Commission, the Council of Europe's Commissioner for Human

Rights and The International Lesbian and Gay Association Europe (ILGA).³ Albania currently lacks an anti-discrimination law.

In February 2009, Human Rights Watch organized a roundtable discussion in Tirana with 10 Albanian human rights organizations about the situation of lesbians, gays, bisexuals and transgender people in Albania. These groups identified as the top priority the need for a broad anti-discrimination law including sexual orientation and gender identity as grounds for protection. The Commission, Council of Europe and ILGA reports highlight such legislation as a necessary element in fighting homophobia. Human Rights Watch emphasized the need for such legislation during meetings with the prime minister, members of the government and members of parliament. Their response was that they would look into the matter, but no concrete promises were made. Letters sent by Human Rights Watch after the meetings were not answered.

Human Rights Watch hopes to see the upcoming Universal Periodic Review of Albania reflect the following recommendations directed to the Albanian authorities:

- Conduct a prompt and independent investigation into allegations that the KLA illegally detained Albanians, Serbs and Roma from Kosovo in detention facilities in Albania, where the captives were beaten, tortured, and in some cases killed; Cooperate with ongoing investigations into the same allegations by the Council of Europe and Serbian War Crimes Prosecutor. Prosecute anyone in Albanian found to be complicit in such crimes, including those who gave the orders.
- Introduce to parliament a comprehensive, all-inclusive anti-discrimination law, including protection against discrimination on the grounds of sexual orientation and gender identity.

³ European Commission, "Albania 2008 Progress Report", November 2008

http://ec.europa.eu/enlargement/pdf/press_corner/key-

[documents/reports_nov_2008/albania_progress_report_en.pdf](http://ec.europa.eu/enlargement/pdf/press_corner/key-documents/reports_nov_2008/albania_progress_report_en.pdf); Thomas Hammarberg, Council of Europe Human Rights Commissioner, "Report on Albania Country Visit, June 2008,"

<http://www.coealb.org/index.php?faq=content/detail&kat=news&id=398&mnu=0&PHPSESSID=c9fa903c37531a161b799a97f61af93e>; ILGA Europe, "Submission to the Parliamentary Assembly Monitoring Committee Rapporteurs on the Situation of LGBT People in Albania," February 2009.