

**REFUGEE WOMEN AND
DOMESTIC VIOLENCE:

COUNTRY STUDIES**

A report by

Refugee Women's Resource Project

Asylum Aid

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Research aims and objectives

Caseworkers and Legal Practitioners working with Asylum Aid's Refugee Women's Resource Project (RWRP) have identified a need for access to reliable and detailed information on how to represent women who flee domestic violence in countries of origin and claim asylum in the U.K. Such information includes the social and political context within which domestic violence takes place in their countries of origin, the protection that is available to women experiencing domestic violence, and the reality of women accessing such protection. RWRP decided that this should form the basis of an on-going research project, and identified 15 countries upon which to focus (see below). This 2001 publication includes 5 of these countries: Albania, Bosnia-Herzegovina, China, Iran and Pakistan.

The overall aims of this research are:

1. To enable practitioners representing women asylum seekers fleeing domestic violence to realistically assess the strengths of pursuing a claim for protection under the 1951 Convention relating to the Status of Refugees or the 1998 Human Rights Act.
2. To enable Home Office decision makers and the Immigration Appellate Authority to recognize domestic violence as grounds for seeking and being granted international protection
3. To raise awareness amongst practitioners and all those involved in the asylum process of the significance of domestic violence as an issue for refugee women.

We hope to achieve these aims by referring to information that is readily available, and by drawing attention to other sources of evidence that may be used in domestic violence cases.

It follows that our objectives are to assist practitioners working with women refugees to:

- Identify the prevalence of domestic violence in given countries.
- Access information on state legislation and procedures available for the protection of women experiencing domestic violence in their countries of origin.
- Gain evidence and an understanding of the nature of any discrepancies that exist between official provision and the reality of accessing and securing protection via that provision i.e. the immediate and ensuing consequences of seeking protection.

- Identify where it might be appropriate to argue that women fleeing domestic violence should be allowed to stay in the United Kingdom on compassionate or Human Rights grounds as enshrined in the European Convention on Human Rights / the 1998 Human Rights Act.

Given the above objectives of the research, it follows that each country report is structured to include the following sections:

1. **Introduction:** A recent political and historical introduction for each country which reflects some of the more pertinent contemporary human rights issues and provides a context for the interpretation of the social, political and legal position of women.
2. **Domestic violence:** Examination of research indicating the prevalence of domestic violence in each country.
3. **Domestic violence and the law:** This identifies relevant legislation, procedures and sources of support available for the protection of women experiencing domestic violence. Such procedures include access to the criminal justice system, to medical-legal services for the provision of forensic evidence, and to both statutory and voluntary sector refuge or support services.
4. **The reality of seeking protection:** Evidence on the reality of women accessing such available protection and the consequences of doing so.
5. **The situation for separated or divorced women:** This provides information and evidence to enable practitioners to assess whether a woman forced to return might face serious harm and a lack of state protection i.e. “persecution”, and / or violations of her Human Rights as guaranteed under the European Convention on Human Rights.
6. **Case law:** To identify precedents that domestic violence cases for women from these countries have been successfully argued both in the UK and elsewhere

Each country report includes an Appendix containing the latest Home Office report on Women from their Country and Information Policy Unit *Country Assessments*.

Selection of countries

As stated above, this publication focuses upon 5 countries out of 15 originally chosen.

The criteria for the selection of countries included the following:

Relevance to the UK context – countries from which most asylum seekers claiming in the United Kingdom originate, based on Home Office statistics from 1998 – 2000.

Client Relevance – countries that were particularly represented by Asylum Aid's female clients, in particular those for whom domestic violence had been raised as an issue.

Non-bias – countries chosen should not be biased towards certain geographical areas, countries with the same predominant religions, or political regimes.

This publication includes the following countries:

Albania
Bosnia-Herzegovina
China
Iran
Pakistan

Future countries we aim to study are:

Afghanistan
Algeria
Colombia
Democratic Republic of Congo
Ecuador
Iraq
Lithuania
Romania
Somalia
Turkey

Guidance to using this research

It should be noted that this research is purely of a secondary nature. We have attempted to answer our research questions by compiling information from a range of the most relevant and recognized sources.

It is important to note that secondary research necessarily relies on other sources' operational research definitions and scope. In many cases, particular reference is not made to the differential experiences of individual women or different groups of women. As such, generalisations are often made that might fail to reflect variations in experiences and understandings of domestic violence, and in access to protection.

It is essential that practitioners consider each woman's individual circumstances and attempt to recognise how these may shape her experiences. For instance, women from particular ethnic minorities or women with disabilities might face discrimination in their search for protection.

We are publishing this research in loose-leaf format that will enable additional pages to be inserted. For these reasons, we have used a somewhat unconventional footnoting system: we use *op. cit.* to refer to immediately preceding references rather than the usual *ibid.*

For ease of reference, we have highlighted in bold type, sections of reports which we think draw attention to some of the more pertinent issues.

Domestic violence: definitions and terminology

We have identified the subject of this research as ‘domestic violence’. However, whilst the term is widely recognized, its interpretation varies enormously. For instance, many definitions and understandings might not recognize psychological or emotional abuse; others may disregard the extended family as perpetrators. It is therefore necessary to be explicit about *our* understanding of what is meant by “domestic violence”, and to discuss some of the difficulties that arise when carrying out secondary research into this subject, and in making comparative interpretations. More importantly, it is essential to recognize how different meanings are interpreted into societal and individual understandings that frequently serve to perpetuate domestic violence by denying women’s experiences of abuse as valid.

Cross cultural perspectives

Although international studies have recognized the prevalence of domestic violence throughout the world, it is essential to recognize the huge diversity of meanings, interpretations and understandings given to particular acts, expressions or dynamics within relationships (both interpersonal and that between individual and society).¹

Since our fundamental concern lies in how domestic violence may be interpreted as a human rights abuse within determination procedures in the UK, either under the 1951 Convention or the European Convention on Human Rights, our definition aims to reflect those prevailing within the UK. This does not mean that we are adopting a universal definition; rather we hope that our research both incorporates and acknowledges the diversity of women’s experiences in different contexts rather than excludes them, and ensures that they may be made relevant to determination procedures in Britain.

A definition of ‘domestic violence’

Since this research is concerned with how available legislation and procedures might *fail* to offer protection to women, we aim to highlight how legislative definitions and / or social understandings of domestic violence may deny the validity of women’s experiences and needs for protection. This may be by failing to recognise *any* form of domestic violence, or by omitting particular behaviours or relationships within which it occurs i.e. so that some women might face exclusion from any protection that *is* available. It is thus essential for us to identify a clear definition of what we understand by ‘domestic violence’ in order to interpret legal definitions and legislative provisions on a consistent basis. So that we do not discriminate by excluding any woman’s experiences, and are thus able to fully recognize how these

¹ See Levinson, D (1989) *Family Violence in Cross-Cultural Perspective*, Newbury Park, Sage Publications Ltd.; also Dobash, R. E. & Dobash R. P. (1998) *Rethinking Violence Against Women*, London, Sage Publications. See also the following United Nations report: Coomaraswamy, Radhika (1999) *Violence against women in the family: Report of the Special Rapporteur on violence against women, its causes and consequences*, E/CN.4/1999/68, Geneva, Switzerland, Office of the United Nations High Commissioner for Human Rights

experiences might represent grounds for claiming asylum or protection on human rights grounds, this definition should be broad. This should also enable advisors to identify where they might need to look to other legislation that might be available to protect women against domestic violence, for instance child protection legislation.

There are three issues surrounding the definition that need to be clarified:

1. The definition of 'violence'
2. The nature of the relationship between 'perpetrator' and 'victim'
3. An understanding of what is understood by 'domestic'

Violence: Within definitions of 'domestic violence', this term generally refers to the experience of physical, sexual, emotional or financial abuse, including:

- Physical acts ranging from slapping, punching, kicking, to serious assault and murder
- Sexual assault and rape
- Emotional or psychological violence such as verbal abuse or persistent 'labelling' based on destructive or derogatory stereotypes, or the denial of women's feelings and experiences
- Economic abuse such as the withholding or taking of money, or removal of a woman's rights to resources such as food or other essential living items

Whilst physical, sexual and economic abuse *may* be easier for others to identify, the experience of emotional or psychological violence may often be denied. As well as verbal abuse identified above, it is important to recognise how families and communities may perpetrate emotional violence by forcing women to marry against their will or exerting pressure on women to stay in violent relationships. Psychological violence may also include denial of women's rights to education or access to health services, and imprisonment in the home.²

Domestic violence may result in injury or long-term physical health problems, unwanted pregnancy, and frequently in psychological or mental health problems such as depression, anxiety, or Post Traumatic Stress Disorder (P.T.S.D.). The impact of the fear of living under a constant threat of further abuse must not be underestimated.

² U.K. Home Office documents defining domestic violence can be found at: www.homeoffice.gov.uk/domesticviolence: See for example, Home Office (2000) *Domestic Violence: Break the Chain: Multi-Agency Guidance for Addressing Domestic Violence*, which contains a definition encompassing physical, sexual, emotional and financial abuse.

Perpetrators and victims³

A strict interpretation of the term domestic violence incorporates any abuse that occurs within the family home, such as abuse of children and elders. It does not have to be gendered, nor does it discriminate by age. However, since this study is concerned with the protection of women and girls, our focus here is on violence directed against females, by either male or female perpetrators.

We do not make any distinction according to age, since specifying that domestic violence only occurs between adults presents difficulties in identifying an internationally consistent definition of 'adult'. Our working definition does not, therefore, exclude violence towards young girls, although we have not sought evidence of specific legislation to protect children from family abuse, or referred to research studies into child abuse per se.

Certain definitions exclude violence from perpetrators other than husbands and family members, such as partners, ex-partners, and in-laws. We consider such relationships as within a definition of domestic violence. Where violence within these relationships is omitted from legal definitions and social understandings of domestic violence, this should be acknowledged as a barrier to adequate protection for women in this position.

'Domestic' violence

It is widely accepted that although mostly occurring within the home, domestic violence does not only happen there. It may be manifested as constant humiliation in public, for example. We understand the term 'domestic' to specify the nature of the *relationship* within which the violence takes place, i.e. that the perpetrator is a partner, ex-partner, relative or close friend.

In order to reflect these concerns, our working definition is therefore:

Domestic violence is the physical, emotional, sexual or financial abuse of women or girls perpetrated by partners, ex-partners, relatives, close friends or their agents, self-appointed or otherwise.⁴ This violence does not have to occur within the family home.

³ Disagreement surrounds use of the term "victim" as implying passivity on the part of the person who suffers the violence; the term "survivor" is often used instead. However, this term is also problematic since it perhaps implies that the woman is no longer in danger, whereas research has shown that risk often increases after women leave violent relationships. See for example, Binney V., Harkell G., Nixon, J. (1988) *Leaving Violent Men*, Bristol, Women's Aid Federation of England. We avoid using either the term victim or survivor where possible.

⁴ In some societies, community members may be self-appointed perpetrators of abuse against women, who take upon themselves the responsibility to maintain the status of women in the perceived "interests" of the community or wider society.

This definition:

a) Enables a consistent evaluation of each country's legislation i.e.:

Whether there is specific domestic violence legislation or whether domestic violence is dealt with by general legislation for dealing with assault, sexual violence etc.

If there is specific legislation, what forms of violence it recognizes

How any such legislation defines perpetrator: victim relationships i.e. does it include women experiencing violence from their sons, daughters or other family members? Does it include violence from ex-partners, from outside the family home, or from other relatives or close friends?

And also

b) Should be borne in mind when interpreting cited sources

This is particularly important in considering the extent to which different resources recognize the multidimensional nature of experiences of domestic violence.

Domestic violence & refugee and asylum law

The 1951 Convention

Article 1A(2) of the Convention relating to the Status of Refugees defines a refugee as anyone who:

“owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”.

Such persecution must be perpetrated either by the State of the individual’s country of origin, or by “groups that the government either cannot or will not control”.⁵

Successful claims for asylum must show how an asylum seeker fits this definition of a refugee, and will be addressed below with reference to domestic violence. However, first the issue of how women’s experiences of human rights abuses have been differently treated by interpretation of the Convention should firstly be considered.

Gender and asylum

It is only recently that the interpretation of what defines a refugee has been recognised as male-oriented. Many forms of persecution that cause women to seek asylum have fallen outside traditional interpretations of what constitute, for example, “political opinions” or “persecution”, and interpretation of the Convention has discriminated against women.

It has been argued that the emergence of international human rights instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979), or the International Covenant on Economic, Social and Cultural Rights (1966), have facilitated the incorporation of women’s perspectives into interpretation of the 1951 Convention via explicit non-discriminatory principles.⁶ One such implication has been that individuals as well as States have increasingly been recognized

⁵ Office of the United Nations High Commissioner for Refugees (UNHCR) (1979) *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, Geneva, paragraph 65

⁶ See Stamatopoulou, E. (1995) ‘Women’s Rights and the United Nations’ in Peters, J. & Wolper, A. (eds.) *women’s rights, human rights: international feminist perspectives*, New York, Routledge, 36-48. Such standards have been incorporated into legislation such as the European Convention on Human Rights or the African Charter on Human and Peoples’ Rights.

as perpetrators of Human Rights violations, and that gender-based discrimination may be measured against international standards.⁷

This has facilitated the recognition that such gender-based human rights abuses, even when perpetrated by individuals, may actually amount to the persecution of women as members of a social group if they occur in an overall social or political context that discriminates against women, for example by denying them adequate or equal protection against these abuses.

The need to incorporate an understanding of gender-based forms of human rights abuses and how these may amount to the persecution of women has led the Refugee Women's Legal Group to advocate gender guidelines for interpreting the 1951 Convention, and the Immigration Appellate Authority to publish similar guidance.⁸

Domestic violence

As with other forms of gender-specific human rights abuses, the arguments that domestic violence might provide sufficient grounds for a woman to gain protection under the 1951 Convention have essentially focused on interpreting her fear of persecution as due to her "*membership of a particular social group or political opinion*".⁹ Such arguments have been problematic (see below for interpretation of the 1951 Convention). The difficulties faced in attempting to recognise domestic violence as grounds for Refugee status can essentially be seen as rooted both in traditional, dominant perceptions of domestic violence, and in interpretations of the 1951 Convention that have failed to recognize women's experiences of gender-based abuses as valid:

Firstly, domestic violence, where perpetrators are non-State agents and which for the majority of women, takes place within the context of a current or former intimate relationship, is consistently perceived as a private matter, affecting women as individual members of society, rather than as members of a "*particular social group*".

Secondly, that women who seek State or other protection from perpetrators of domestic violence might be seen as expressing a "*political opinion*" does not fit into common perceptions of what is meant by political opinion. However, in

⁷ See von Sternberg, M. R. (2000) 'Battered Women and the Criteria for Refugee Status: 'Private' Persecution and the Emerging Law of State Responsibilities', in US Committee for Refugees (USCR) *World Refugee Survey 2000*; at www.refugees.org/who/whomain.htm; See also Goldberg, P. (1995) 'Where in the World is There Safety for Me?: Women Fleeing Gender-Based Persecution' in Peters, J. & Wolper, A. (eds.) *women's rights, human rights: international feminist perspectives*, New York, Routledge, 345-355

⁸ Crawley, H. (2001) *Refugees and Gender: Law and Process*, London, Jordan Publishing Ltd; Immigration Appellate Authority (I.A.A.) (2000) *Asylum Gender Guidelines*, London, Immigration Appellate Authority.

⁹ It is necessary to recognize that arguments need not be restricted to these two criteria alone – individual experiences may indicate substantial evidence that the grounds of the abuse were based on her race, religion or nationality. Nevertheless, the criteria of membership of a particular social group or political opinion are most flexible for interpreting cases of domestic violence under the 1951 Convention.

the sense that her objections to the status quo regarding the position of women, including not tolerating domestic violence, may represent a political challenge to dominant views regarding women's status and position within the family, community or wider society, it *is* arguable that this can be seen as a "*political*" opinion.

Notwithstanding the difficulties in interpreting women's experiences of domestic violence within the 1951 Convention definitions of "persecution", "membership of a particular social group" and "political opinion", in certain contexts we hope to suggest that there *is* scope for arguing that women experiencing domestic violence be granted protection.

Domestic violence and interpretation of the 1951 Convention relating to the Status of Refugees

In order for a woman fleeing her country of residence due to domestic violence to use this as grounds for protection as a refugee, it is necessary for her to show how her case fits the 1951 Convention definition of a refugee. It must be demonstrated:

a) that she has a well-founded fear of being persecuted

and

b) that this fear is for a Convention reason

Before these two points are addressed, it is important to note that the Convention sets a unique level and burden of proof that must be met by successful asylum applicants; this reflects the circumstances under which people seek asylum:

"196. ...Often... an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule. In most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently even without personal documents. Thus, while the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner. Indeed, in some cases, it may be for the examiner to use all the means at his disposal to produce the necessary evidence in support of the application. Even such independent research may not, however, always be successful and there may also be statements that are not susceptible of proof. In such cases, if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt.

“197. The requirement of evidence should thus not be too strictly applied in view of the difficulty of proof inherent in the special situation in which a applicant for refugee status finds himself.”¹⁰

a) a well-founded fear of being persecuted

As stated in the UNHCR Handbook *“there is no universally accepted definition of ‘persecution’”,* rather it has widely been interpreted to consist of both *“serious harm” plus a “failure of state protection”.*¹¹ The concept of fear may be subjectively defined:

*“Since fear is subjective, the definition involves a subjective element in the person applying for recognition as a refugee. Determination of refugee status will therefore primarily require an evaluation of the applicant’s statements rather than a judgement on the situation prevailing in his country of origin”.*¹²

It is necessary to show that her fear is “objectively” well-founded:

“To the element of fear – a state of mind and a subjective condition – is added the qualification ‘well-founded’. This implies that it is not only the frame of mind of the person concerned that determines his refugee status, but that this frame of mind must be supported by an objective situation. The term ‘well-founded fear’ therefore contains a subjective and an objective element, and in determining whether well-founded fear exists, both elements must be taken into consideration.”¹³

Evidence that could substantiate her fear might include police or medical reports, but in many cases she may not be able to provide such documentation simply because the majority of women in abusive relationships find it extremely difficult to approach police or doctors either for support or for such evidence. This is particularly the case where a woman flees her country and claims asylum.

In such situations, practitioners particularly need to rely on substantiating how “well-founded” her fear of persecution is, by evidence for example that protection is not available to victims of domestic violence. It is such “objective” evidence that these reports hope to provide.

Where the home state or its agents are the source of the ill treatment feared, an asylum seeker need only show that such harm is reasonably likely to be serious enough (i.e. by the level of harm or its repetitive nature) for it to be “persecution”. Domestic violence, however, involves harm from non-state

¹⁰ UNHCR (1979), op. cit., paragraphs 196-197

¹¹ See for example, I.A.A. (2000), op. cit. There is by no means consensus on this interpretation. There are clearly cases where a fear of persecution might exist alongside State protection that is made available. For discussion, see for example, Crawley (2001) op. cit.

¹² UNHCR (1979), op. cit., paragraph 37

¹³ UNHCR (1979), op. cit., paragraph 38

actors, or private individuals. A special definition of “persecution” applies, as established in *Horvath v Secretary of State for the Home Department*.¹⁴ In such a case, irrespective of the severity of ill treatment feared, “persecution” will only be found if the lack of protection afforded by the home state against domestic violence is such as to indicate that that state is unable or unwilling to discharge its duty to establish and operate a system to protect its own nationals against harm. This might reasonably include an absence of legal provisions, failure to investigate reported domestic violence and / or a failure to bring to justice the perpetrators of domestic violence and / or a failure to ensure that the victims of domestic violence can access support and safety.

It is also important to stress that it is not only or necessarily past persecution that has to be established, but the reasonable likelihood of future persecution, which can be difficult. However, many women and their children who are fleeing domestic violence face a lifetime of fear. The highly personal nature of an abusive relationship often means that the threat of future violence remains with women for the rest of their lives, particularly if there is inadequate protection available. This is not merely subjective fear, but evidence has also shown that the risk of harm not only continues, but may actually increase after a woman has left a violent relationship (as noted above).

In some domestic violence cases, the nature of the persecution feared may change once she has left the relationship. Most notably, this occurs where, as a result of leaving her husband (even if he initiates her leaving or forces her to go), the woman as a divorcee or as a woman living alone, is ill treated on a continuum of discrimination, ostracism, or worse. The stigma experienced by women who have been raped may also result in similar experiences.

b) that this fear is for a Convention reason – in most cases, those given are either her membership of a particular social group or her expression of a political opinion, and we focus on these here.¹⁵

i) “Membership of a Particular Social Group”

*“a systematic denial of equal protection affecting women’s standing in courts of law, inheritance rights, and rights in marital disputes (including standing in custody battles) serves as important evidence that the harm or suffering the claimant faces arises not out of a personal dispute but out of an implicit policy of discrimination in which the “agent” of persecution is seeking to enforce gender-based norms toward women as a group”.*¹⁶

In considering the argument that women may belong to a particular social group subject to discrimination, it is essential to evaluate the role of the State

¹⁴ *Horvath v Secretary of State for the Home Department* [2000] 3 WLR 379.

¹⁵ There may be other applicable Convention reasons that better reflect the circumstances of an individual woman’s experience of domestic violence

¹⁶ Von Sternberg (2000) op.cit.

and how it fails to offer women protection from harm on the basis of their belonging to that group. In the case of domestic violence, Von Sternberg argues that the case for a particular social group subject to discrimination is demonstrated “*whenever private groups are able to act out of an implicit policy of discrimination toward a defined group in an environment of impunity*”.¹⁷

Although it is increasingly recognised that women may constitute a particular social group within such a context of overall discrimination, arguing successfully that the fear of persecution experienced by women fleeing domestic violence is based upon their membership of a particular social group is still considerably difficult. Case law, albeit limited, provides valuable guidance.

The 1999 landmark House of Lords ruling on the cases of Shahanna Sadiq Islam and Syeda Khatoon Shah provide an essential starting point for this argument in the UK context due to the contribution they made to the understanding and interpretation of the concept of “*membership of a particular social group*”.¹⁸ These two women from Pakistan had both experienced domestic violence and had been forced to leave their family homes. In their case they were at risk of being accused of adultery and thus criminal proceedings for “sexual immorality”. If found guilty, they faced being flogged, or possible death sentences. Furthermore, there was a serious risk of further violence being perpetrated by members of the public, including their families, and that this violence would be condoned by the authorities. The crucial issue in this case was whether their fear of persecution was due to a Convention reason.

Shahanna Sadiq Islam’s and Syeda Khatoon Shah’s applications for asylum were refused, and eventually taken to the House of Lords, where it was held that the 1951 Convention *should* be interpreted to consider women as a particular social group if they lived in a country that discriminated against them due to their being women:

*“The distinctive feature of this case is that in Pakistan women are unprotected by the State: discrimination against women in Pakistan is partly tolerated by the state and partly sanctioned by the State”*¹⁹

Importantly, the decision also established that the Convention definition of “social group” does not require an element of cohesiveness amongst its members, nor has to form the grounds or basis upon which the persecution takes place.²⁰ This case is highly significant for women experiencing human

¹⁷ Von Sternberg (2000) op.cit.

¹⁸ *Islam v SSHD; R v IAT ex parte Shah* [1999] INLR 144 HL

¹⁹ *Islam v SSHD; R v IAT ex parte Shah* [1999] INLR 144 HL

²⁰ The nature and existence of women as a particular social group needs to be considered separately for individual countries. Pakistan might for instance, be considered amongst a small minority of countries in terms of the position of women and the degree of condoned discrimination.

rights abuses from private parties, since it represented a major development in bringing abuses previously regarded as “private” into the public realm.

ij) “Political Opinion”

The dominant interpretation of “political opinion” has been predicated on party political opposition, but its interpretation under Refugee law has been broadened *“to accommodate elements of the claimant’s persona that cause her to clash with powerful social and cultural elements”*.²¹ It is important to recognize that in many social and cultural contexts, as is indicated by this research, women are often so oppressed that a mere expression of opinion by a word or act that challenges the dominant perception of women’s roles may be interpreted as political.

The Immigration Appellate Authority’s Asylum Gender Guidelines clearly acknowledge how women might be seen as expressing a “political opinion” if they seek protection from domestic violence:

“where a woman is persecuted as a result of her opposition to, or refusal to comply with, the prescribed role of women in her country of origin such persecution will be on the basis of her political opinion”

and

“A woman who expresses views of independence from or refuses or fails to conform to the legal, social or cultural norms of society regarding women’s behaviour may be perceived as holding certain political views and thus persecuted on the basis of political opinions attributed to her, regardless of whether she does actually hold those views”.²²

Thus *“what makes an action or opinion political or non-political is the social structure and social context of the asylum-seeker’s country of origin”*.²³ This research hopes to provide contextual information that enables this to be assessed for each country.

Although the fear of persecution must be based on expression of this political opinion, it is important to note that interpretation of the Convention acknowledges that:

“it may not always be possible to establish a causal link between the opinion expressed and the related measures suffered or feared by the applicant”,

that

“there may... be situations in which the applicant has not given any expression to his opinions... [but]... it may be reasonable to assume

²¹ von Sternberg, (2000) op.cit

²² I.A.A. (2000) op.cit., pp.34-35

²³ I.A.A. (2000) op.cit, p.32

that his opinions will sooner or later find expression and that the applicant will, as a result, come into conflict with the authorities”,

and that

“An applicant claiming fear of persecution because of political opinion need not show that the authorities of his country of origin knew of his opinions before he left the country.... the mere fact of refusing to avail himself of the protection of his Government, or a refusal to return, may disclose the applicant’s true state of mind and give rise to fear of persecution”.²⁴

Internal Flight

If the woman establishes she has a well founded fear of persecution in one area, usually where her home is located, in domestic violence cases, a decision maker is likely to consider whether it is reasonable to expect her to relocate to another part of her home country.²⁵ What is tested in ‘internal flight’ is *“precisely the ability of the applicant to avail [her]self of the protection of the relevant state in some place other than where [s]he justifiably fears persecution”*. Once she reached the United Kingdom driven by a well founded fear in her home area *“the remaining questions will be whether there is a... part of the home state a) which is safe from persecution, and b) to which it would not be unduly harsh to return the asylum seeker”*.²⁶ All factors suggested on the woman’s behalf must be evaluated *“individually and cumulatively in considering internal relocation”*.²⁷

In relation to whether it would be ‘unduly harsh’ for her to move within her home state, we suggest that submissions on behalf of a woman asylum seeker in such a case must take gender and discrimination into account: to be found in the legal, cultural, social, economic, practical, obstacles and restrictions on free movement women face. In addition, women fleeing domestic violence are also likely to experience mental health problems with which she must cope, and the issue as to whether any sanctuary in her home country is durable.²⁸

Summary

Our research aims to assist in identifying how domestic violence may form the basis of a claim for refugee status under the 1951 Convention by focusing upon how domestic violence might result in a well-founded fear of persecution, and how this fear may be due either to her membership of a

²⁴ UNHCR (1979) op.cit., paragraphs 81-83

²⁵ See paragraph 91 UNHCR Handbook; *Robinson v SSHD and IAT* (CA) [1997] Imm AR 568.

²⁶ *Karanakaran v SSHD* (CA) [2000] INLR 122; [2000] Imm AR 271.

²⁷ These questions do not arise if she has no well-founded fear of persecution in her own area. See unreported I.A.T. determination Dyli (00 TH 02186) 30 August 2000

²⁸ See also I.A.A. (2000), op. cit.

particular social group or her expression of a political opinion via her “rejection” of the prevailing position of women in her particular country.

Our search for evidence on the prevalence of domestic violence and for a critical assessment of how women are able to access protection aims to assist practitioners to interpret how women experiencing domestic violence may fear such “persecution”. Consideration of the political and social context within which such violence takes place should assist in assessing whether a woman experiencing domestic violence and / or fleeing such violence might be perceived as a member of a particular social group or as expressing a political opinion, although we do not seek to identify what the nature of the particular social group might be in this instance.

The European Convention on Human Rights (ECHR)

Domestic violence may also form the basis of a successful claim for protection under articles of the European Convention on Human Rights. The following section addresses this. It should be noted however, that those recognised as refugees under the 1951 Convention are granted greater rights than asylum seekers offered protection by the Home Office under the ECHR.²⁹

The European Convention on Human Rights and the 1998 Human Rights Act

On October 2nd 2000, the 1998 Human Rights Act came into force in the United Kingdom, incorporating the European Convention on Human Rights (ECHR) into UK law. Its main implication for asylum seekers (and other non UK nationals) is that the UK government must not return those individuals to their country of origin in violation of their ECHR rights.

Domestic violence

Where a domestic violence based claim for protection does not succeed under the 1951 Convention, there may be arguments against removal on human rights and / or compassionate grounds. The range of E.C.H.R. articles offer scope for such arguments.³⁰

²⁹ The Home Office has stated that Exceptional Leave to Remain (E.L.R.) will be given if asylum seekers are offered protection under the 1998 Human Rights Act. This excludes certain rights granted with refugee status, such as the right to family reunion.

³⁰ For further detail on Articles of the ECHR and their interpretation, see Lester & Pannick, D. (1999) *Human Rights Law and Practice*, London, Butterworths

We suggest that the following Articles may be relevant: ³¹

Article 2 – Right to life

The Government is acting unlawfully if it knowingly returns an asylum seeker to their country of origin where there is a threat to their life. It is important to note that this threat to life can be from either public *or* private bodies, and as such does include domestic violence perpetrators.

Article 3 – Prohibition of torture and of inhuman or degrading treatment or punishment

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment”. The Government is thus acting unlawfully if it knowingly removes any person to face torture or inhuman or degrading treatment.

Article 4 – Prohibition of slavery

The Government will be acting unlawfully if it returns a woman to a situation where she faces being held in slavery or servitude.

Article 5 – Right to liberty and security

Everyone has a right to liberty and security of person. This article mainly pertains to situations where authorities detain individuals in violation of their human rights.

Article 8 – Right to respect for private and family life, home and correspondence

This Article states that everyone has the right to respect for private and family life (the definition of family does not have to be biological), and that a public authority will not interfere with this right except in order to uphold the law. *“Private life”* includes the right to moral integrity.

Article 9 – Freedom of thought, conscience and religion

Everyone has the right to freedom of thought, conscience and religion. Freedom surrounding the practice of religion or belief can only be restricted by laws drawn up to protect the rights and freedoms of other members of society.

Article 12 – Right to marry

“Men and women of marriageable age have the right to marry and to found a family according to the national laws governing the exercise of this right”.

Article 14 – Freedom from discrimination in respect of Convention rights

This article prohibits discrimination in enjoyment of Convention human rights according to *“sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”*.

³¹ The applicability of some of these Articles remains to be decided by the courts.

THE FIRST PROTOCOL

Article 1 of the First Protocol – Right to property

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions”.

Article 2 of the First Protocol – Right to education

“No person shall be denied the right to education”.

Research in the UK has shown that women are frequently still at risk (or even greater risk), of serious harm, or even being killed once they have left an abusive relationship.³² Even with the refuge and support services in the UK, which operate under strict confidentiality measures, women are regularly traced by ex-partners. Many countries have considerably fewer and less developed support services, so the likelihood of a woman securing and maintaining her safety may be considerably reduced. The evidence offered in Section 4 of each country report provides some indication as to the adequacy of these services and how women access them.

The issue of ‘internal flight’ (above) indicates that such constraints must be taken into account, which might also give rise to ECHR considerations.

For example, many women who have experienced domestic violence suffer from significant emotional and mental health problems, ranging from depression and anxiety to Post Traumatic Stress Disorder. To return her to the environment she fled might damage her psychologically or impair her recovery. Women might also be faced with confiscation of her property or denial of residence rights to her children. Similarly, other factors shaping the experiences of single women must also be considered. These might include discrimination against women, few opportunities for her to support herself independently, and housing shortages that may mean it is not physically possible for her to find shelter. Such factors may be exacerbated by social and cultural stigmas against divorced women, single mothers, or women living alone. Section 5 of each country report considers some of these issues.

³² See Binney *et al* (1998) *op. cit.*; Mirrlees-Black, C. (1999) *Home Office Research Study 191. Domestic Violence: Findings from a new British Crime Survey self-completion questionnaire*, London, Home Office Research, Development and Statistics Directorate; available at: <http://www.homeoffice.gov.uk/rds/pdfs/hors191.pdf>

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ALBANIA

1. Introduction

1.1 Political background

Albania is a republic with a multiparty parliament (dominated by the Socialist Party in the last elections of 1997), a prime minister, and a president elected by the Parliament. The Prime Minister heads the Government; the presidency is a largely ceremonial position with limited executive power. A Constitution was declared in 1998.

A recent report by the International Crisis Group describes continuing problems with the country's progress towards stability and democracy:

“Meanwhile, the country is beset by problems flowing from chronically weak state institutions and rampant levels of crime and corruption, which have left the majority of Albanians demoralised and apathetic towards the very concept of democracy. Despite the recent clampdown on localised criminal gangs, the Albanian authorities remain incapable of combating the steady growth of organised crime, which appears to be consolidating its activities in the country's capital and two main ports, Vlore and Durrës. This is clearly a phenomenon which is linked with and dependent upon a network of organised crime in all Albania's neighbouring countries. Albania has become the springboard into Western Europe for the illegal trafficking of people and drugs. In the absence of real progress in tackling the problems associated with rampant criminality and weak state institutions, Albania's continued internal stability is far from guaranteed.

[...]

“Kosovo might be free, but for many Albanians not much has changed nine years on from the collapse of the one-party state. Burdened by 45 years of impoverished isolation, followed by spasms of violent uprisings, anarchic social destruction and political chaos, Albania remains plagued by endemic crime and corruption. Political rivalry is as intense and malicious as ever, the population is still heavily armed, the roads are still impassable and unemployment is growing. The very concept of democracy remains in an embryonic stage.

“The country's problems appear as intractable as ever with a return to old party politics with the same personalities. The re-election of the two dinosaurs of post-communist Albanian politics - Sali Berisha and Fatos Nano - has confirmed the continued predominance of the old guard in both Albania's major parties. The undisguised hostility between Nano and Berisha has already raised political tensions, and represents another unwelcome distraction from Albania's grave problems.

“Despite the recent positive moves by the state against corruption and a slight improvement, albeit only by Albanian standards, in public order, the main problems facing Albania remain the absence of national

reconciliation and the reconstruction of functioning state institutions. The overall security situation is still very poor with sporadic violent incidents continuing to undermine the government's efforts to bring internal stability to the country. The presence of 1,800 NATO personnel remains one of the few stabilising factors both domestically and regionally.”¹

1.2 Human rights practice

The US State Department Report for 2000 summarised the human rights situation in the country as follows:

*“The Government generally respected the human rights of its citizens in some areas; however, numerous, serious problems remained. The opposition Democratic Party (DP) alleged that the Government was responsible for the killing of one of its members during the year. Police killed a DP demonstrator when a crowd of DP members attacked the police station and other public buildings in Tropoja. **The police beat and otherwise abused suspects and prisoners.** The DP often credibly complained about incidents of police harassment of its members and of the dismissal of some of its members from official positions for political reasons. **The police at times arbitrarily arrested and detained persons, and prolonged pretrial detention is a problem. The judiciary is inefficient, and subject to corruption. Executive pressure on the judiciary remains, but decreased slightly. There were complaints of unqualified and unprofessional judges and credible accounts of judges who were intimidated or bribed by powerful criminals.** The Government occasionally infringed on citizens' privacy rights. Government respect for freedom of speech and of the press improved slightly; however, police at times beat and detained journalists, and academic freedom was constrained. Violence and discrimination against women and child abuse were serious problems. The Government took some steps to improve the treatment of ethnic minorities; however, societal discrimination against religious and ethnic minorities, particularly against Roma, persisted. Child labor was a problem. Vigilante action, mostly related to traditional blood feuds, resulted in many killings. Trafficking in women and children was a serious problem.”*²

¹ International Crisis Group (2000) *Albania, State of the Nation Part I* available at <http://www.intl-crisis-group.org/projects/albania/reports/alb07mai.htm>

² U.S. Department of State (2001) *2000 Country Reports on Human Rights Practices*, Bureau of Democracy, Human Rights, and Labor, Washington D.C.

1.3 Albania and international legal instruments

Albania is party to the Convention on the Elimination of All Forms of Discrimination against Women, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.³ However, the Albania Helsinki Committee comments that the reports required under these instruments have not been submitted by the government, and in fact the instruments themselves have not yet been officially translated into Albanian, making implementation illusory although they prevail over domestic law:

“The six main international human rights instruments were ratified by Albania, but up to now no initial report has been complied on law and practice under the different instruments. Furthermore the ratification of the instruments does not foresee the official translation into Albanian language. The lack of an official translation attached to the ratified instruments, published in the Official Journal, implies that courts, national officials, members of parliament and the public at large are not aware of them. The governmental Committee “Woman and Family” is, at the moment, working on the official translations of CEDAW and, if the procedure devised is effective, it will proceed with the official translation of all human rights instruments ratified by Albania.

“The international instruments provide in fact policy guidelines for the implementation of the rights therein expressed from the member states. The Albanian Constitution, articles 116(1) and 122(2), whereby ratified international instruments prevail over contradicting national law, represents an effective improvement in compliance with international instruments. But in order to be effective, such norms need subsidiary legislation providing for the dissemination of the Albanian text of the ratified international instrument. The Government of Albania, by ratifying these international instruments is also bound to report periodically about the national law and practice relating to such instruments. For the moment Albania has not submitted any of the reports. Therefore the priorities of the Republic of Albania(as the Platform of Action for The Improvement of the Status of Women in Albania 1999-2000 shows), are: The translation and dissemination of international instruments on women’s and children’s rights, – The preparation of initial reports for the Convention on the Elimination of All Forms of Discrimination Against Women(CEDAW) and the Convention on the Rights of the Children(CRC).”⁴

³ See Office of the United Nations High Commissioner for Human Rights, *Status of Ratifications of the Principal International Human Rights Treaties as of 18 May 2001*, available at www.unhcr.ch

⁴ Albania Helsinki Committee (2000) *A Perspective on The Women’s Status*, Tirana, Albania, pp 6-7, available at www.ihf-hr.org/albhc.htm#publications

1.4 Women's human rights

Women in Albania live in a traditional society where they are considered and treated as subordinate to men. According to Minnesota Advocates for Human Rights, who conducted in-depth research into women and domestic violence in Albania:

"Despite protracted communist rule, Albania is a "society still deeply imbued with a powerful and somber patriarchal tradition that dates back well over 1,000 years." [21] In this tradition women had duties rather than rights. [22] Gender-based subordination was deeply ingrained in the consciousness of men and women and it was generally regarded as a natural corollary of biological differences between them. [23] During the transition to democracy, "women are suffering both as a result of the general economic and political crises which continue to grip Albania and because of a resurgence of traditional male attitudes." [24] Violence against women is part of this deeply entrenched patriarchal tradition. This tradition still influences Albanian society today:

"It is clear that violence has to do with social factors and individual characteristics. It is rooted in the complex web of tradition, practices and belief . . . Albanian law and traditions, which have ruled for centuries, have been very conservative as to the position of women. That law sanctioned inequality between men and women in economic, social and family issues. [25]

"The lack of economic development in Albania today also contributes to the overall subordination of women:

One must understand that the situation of Albanian women over the last half century and the progress which they have made . . . Albania was and still is an overwhelmingly peasant population (today 64% of the population live in the countryside) . . . The resulting intellectual and material backwardness provided the grounds for the underestimation and ill-treatment of women (suffice it to say that wife-beating was considered a normal and proper action.) [26]

"This patriarchal tradition is embodied in the Kanun of Lek Dukagjini, an unwritten law dating back to the middle ages. This law governed many aspects of life, including marriage, family, gender roles and criminal justice. The Kanun was followed in the Northeastern region of Albania until it was replaced by the Civil Code in the early twentieth century. [27] Although the Kanun does not have the force of law, it still influences attitudes and opinions in some parts of Albania. Numerous people cited the Kanun to help explain the current mentality in Albanian society.

"The Kanun provides that men have the right to beat and publicly humiliate their wives if their wives disobey them. [28] If the wife does

not "conduct herself properly toward her husband," the man may "cut a ribbon from her belt[29] or a lock of her hair" and leave her. [30] The man is directed 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. [31] The Kanun further provides:

If a husband 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 man must give an explanation.[32]

"The Kanun also provides that, under certain conditions, a man may kill his wife with impunity[33]:

For two acts, a woman may be shot in the back . . . and she may be left:

a) for adultery; and b) for betrayal of hospitality.

For these two acts of infidelity, the husband kills his wife, without requiring protection or a truce and without incurring a blood feud,[34] since the parents of his killed wife received the price of her blood, gave him a cartridge and guaranteed her conduct.[35]

"Thirty years of communist rule did not completely eradicate the patriarchal attitude attendant to the Kanun. Many women still view the Kanun as a graphic illustration of the underlying social attitudes towards women's rights that influence Albania today."⁵

The International Crisis Group reports on some of the current problems for Albanian women:

"The increase in violent crime in Albania has given rise to a number of disturbing social phenomena: most notably a dramatic escalation in the number of blood feud vendettas; a growing number of girls kidnapped or tricked into prostitution; and a worrying decrease in the number of girls continuing their education. The lives of young Albanian women, especially those living in rural districts and towns other than the capital, are overshadowed by the fear of abduction and rape. Stories abound of girls being snatched by armed men, who then ship them to a life of enforced prostitution in Western Europe.

"Thousands of girls are not being allowed to continue schooling beyond primary level because their parents fear for their safety and honour. A border monitor working for the Organisation for Security and Co-operation in Europe, (OSCE) who is currently completing a study of the issue, noted a typical case of a girl in Pilaf village near the north eastern town of Peshkopi who had finished high school with good

⁵ Minnesota Advocates for Human Rights (1996) *Domestic Violence in Albania*, Section IIB, available at www.mnadvocates.org . See Bibliography for references.

grades, yet her family decided not to send her to secondary school because this would have meant a fifteen minute walk to school every day. They were worried that she might be approached and her honour compromised during this daily trip. In another example, a nineteen year-old woman from Muhur village said she had stopped going to school at age fourteen because her parents were worried about the security situation, she was shortly about to embark in an arranged marriage to a man from a neighbouring village.⁵⁸

“A number of EU member states have expressed alarm at the rise in criminal activities controlled by Albanian gangs. Belgium is now facing a rising tide of young Albanian prostitutes, who have been tricked into paying traffickers up to 5,000 USD to be smuggled into Western Europe. These girls are part of a growing wave of victims of human trafficking that is having a particularly damaging effect upon the lives of Albanian women. A senior Brussels police officer, Christian Van Vassenhoven, estimates that as many as half of the foreign prostitutes who work in Brussels are Albanian.⁵⁹

“Eric Van der Sypt, a public prosecutor specialising in the problem of prostitution, told Reuters that “a new phenomenon has emerged of Albanian men selling women from Albania and Belgium. It appears that Albanian criminal groups are establishing links with Bulgarian organisations. Some of the girls are abducted, others have been made false promises of work, but once they get into Italy they are forced to work as prostitutes.”⁶⁰ The girls are thus caught in a no win situation between exploiters and the authorities. They have no legal documentation, they are far from their families, and they fear retribution from their pimps and the local authorities should they try and escape.”⁶

⁶ International Crisis Group (2000) op.cit., Part II

2. Domestic violence

All sources we consulted concur on the high prevalence of, and low availability of protection from domestic violence in Albania.

According to the UNDP's National Women Report:

*"Women's safety is at risk in Albania. Violence in the household is perceived as a serious problem (no reliable countrywide data exist on the phenomenon). **Being perceived as a private matter between husband and wife, domestic violence is not addressed by public policies.** The existing Family Code does not contain any provision, while the penal code makes reference only to sexual violence, but it does not distinguish between violence exerted by members of the household or by other perpetrators."*⁷

Human Rights Watch states in its report of 2000: *"Women's rights remained a serious concern, including the ongoing practice of trafficking. **Domestic abuse also remained a serious but largely unmentioned issue in Albanian society.**"*⁸

The US Department of State notes that, in 2000,

"Violence against women and spousal abuse are serious problems. In the country's traditionally male-dominated society, cultural acceptance and lax police response result in most abuse going unreported. Rape is punishable by law, as is spousal rape; however, in practice spousal rape is not reported or prosecuted. The concepts of spousal rape and sexual harassment are not well established, and, consequently, such acts often are not considered crimes. No government-sponsored program protects the rights of women. An NGO maintains a shelter in Tirana for abused women, but the facility has the capacity to house only a few victims at a time. The same NGO also operates a hotline that women and girls can call for advice and counseling. The line received thousands of calls during the year. In 1999 the Advice Center for Women and Girls, an NGO, conducted a poll that showed that as many as 64 percent of females claimed to be victims of domestic violence.

"Many men, especially those from the northeastern part of the country, still follow the traditional code known as the "kanun," in which women are considered and treated as chattel. Also under the kanun, it is acceptable to kidnap young women for brides. This practice continues in some areas of the northeast.

⁷ United Nations Development Programme (1999) *Albanian National Women Report 1999*, Tirana, Albania, p 7, available at www.undp.al

⁸ Human Rights Watch (2000) *World Report 2000: Albania*, New York, USA, available at www.hrw.org

“Women are not excluded, by law or in practice, from any occupation; however, they are not well represented at the highest levels of their fields. The Labor Code mandates equal pay for equal work, but no data are available on how well this principle is implemented in practice. Women enjoy equal access to higher education, but they are not accorded full and equal opportunity in their careers, and it is common for well-educated women to be underemployed or to work outside the field of their training. An increasing number of women are beginning to venture out on their own, opening shops and small businesses. Many are migrating along with men to Greece and Italy to seek employment.

“Trafficking in women and girls for the purpose of prostitution is a serious problem (see Section 6.f.).”⁹

A report by the International Helsinki Federation for Human Rights (IHFHR) in 2000 noted that:

“Domestic violence has become a serious problem in Albania. During the communist regime, it was never considered a public problem, and, today, the patriarchal mentality that justifies domestic violence in Albanian families is still alive and influential and women are still inferior in their families. During the years of transition, the economic conditions of women deteriorated, leading to the greater social and economic dependence of women on men. As they are without strong and effective social and political support, women remain the targets of domestic violence.”¹⁰

A report by the Immigration and Refugee Board, Ottawa notes that

“Media reports indicate that domestic violence is a serious problem in Albania (Off Our Backs^[11] May 1997; DPA 15 Oct. 1996; The Irish Times 11 Mar. 1997; AP 30 Jan. 1996). One report describes Albania as a “patriarchal, macho society” where there is a “culture of violence against women” (The Irish Times 11 Mar. 1997). Domestic abuse is rarely discussed in Albanian society and few women are aware of their rights (Off Our Backs May 1997; AP 30 Jan. 1996).”¹²

⁹ U.S. Department of State (2001), op.cit.

¹⁰ International Helsinki Federation for Human Rights (2000) *Women 2000: An Investigation into the Status of Women’s Rights in Central and South-Eastern Europe and the Newly Independent States*, p 30, available at www.ihf-hr.org

¹¹ Off Our Backs is a US feminist journal

¹² Immigration and Refugee Board (2000) *Response to Information Request ALB33911.E*, Research Directorate, Ottawa

References from the above:

The Associated Press (AP). 30 January 1996. AM Cycle. Merita Dhimgjoka. "Survey Finds Two-Thirds of Albanian Women Targets of Violence." (NEXIS)

Deutsche Presse-Agentur (DPA). 15 October 1996. BC Cycle. "First Telephone Hotline in Albania." (NEXIS)

The Irish Times [Dublin]. 27 September 1999. Nuala Haughey. "Women Lose Gains Made in Eastern Europe." (NEXIS)

11 March 1997. City Edition. Catherine Cleary. "Macho Society Where Women Can Never Win." (NEXIS)

In another IRB report, it is noted that

*“Domestic violence undoubtedly exists, but no statistics are kept. Women's organizations believe that domestic violence against women is common, particularly in poor, rural families and in poorly educated urban families. **Police are seldom called to intervene in cases of family abuse, and women almost never bring charges against spouses.**”*¹³

Minnesota Advocates for Human Rights notes:

*“The problem of domestic violence is also complicated by the high rate of unemployment and the severe housing shortage in Albania. **Often, people are forced to stay in abusive relationships because they have no other place to go.** The severe housing shortage in Albania provides additional problems for many women. Traditionally, young married couples live with the husband's parents. Often, a married couple is forced to live in a small apartment with parents, married siblings and nieces and nephews. **For some women, this means that they are not only abused by their husbands but also by their fathers-in-law, brothers-in-law and other extended family members.**”*¹⁴

Off Our Backs. May 1997. Vol. 27, No. 5. Brigitte Alfter. "Refleksione: Listening to Albanian Women." (NEXIS)

¹³ Immigration and Refugee Board (1995) *Response to Information Request ALB22416.E*, Research Directorate, Ottawa

¹⁴ Minnesota Advocates for Human Rights (1996), *op.cit.*, Section IIA

3. Domestic violence and the law

3.1 Legal provisions

The Special Rapporteur to the United Nations stated in her report of 1999 on violence against women:

*“Reportedly, there is no law specifically addressing domestic violence, including marital rape, and no provision for social services by the Government. The Special Rapporteur encourages 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.”*¹⁵

3.1.1 Criminal Code

Domestic violence is not specifically mentioned in the Criminal Code. Penalties for sexual violence against women specifically are set out as follows.

“Article 100: Intercourse with minor girls. Intercourse with a minor girl who has not reached the age of thirteen years, or has not reached sexual maturity, is sentenced from five to fifteen years of imprisonment. When sexual intercourse was had without consent, or serious harm to the health of the victim has been caused, it is sentenced from ten to twenty years of imprisonment. When the act has resulted into death or suicide of the girl, it is sentenced to no less than twenty years of imprisonment.

Article 101: Intercourse with minor girls between fourteen to eighteen. Unconsensual sexual intercourse with a minor girl between fourteen to eighteen years and who has reached sexual maturity is sentenced from five to ten years of imprisonment. When serious consequences result for the minor girl's health, it is sentenced from ten to fifteen years of imprisonment. When the act lead to the death or suicide of the minor girl, it is sentenced no less than fifteen years of imprisonment.

Article 102: Unconsensual sexual intercourse with mature women. Unconsensual sexual intercourse with mature women is sentenced from three to ten years of imprisonment. When serious consequences are caused to the health of the victim, it is sentenced from five to fifteen years of imprisonment. When the act lead to the death or suicide of the victim, it is sentenced from ten to twenty years of imprisonment.

Article 103: Intercourse with handicapped persons unable to protect themselves. Sexual intercourse with an either physically or mentally handicapped victim who has reached the age of fourteen and is sexually mature or, when it is had while the victim has lost consciousness, is sentenced from five to ten years of imprisonment.

¹⁵ Coomaraswamy, Radhika (1999) *Violence against women in the family: Report of the Special Rapporteur on violence against women, its causes and consequences*, E/CN.4/1999/68, Geneva, Switzerland, Office of the United Nations High Commissioner for Human Rights

When serious consequences are caused to the health of the victim, it is sentenced from five to fifteen years of imprisonment. When the act has led to the death or suicide of the victim, it is sentenced from ten to twenty years of imprisonment.

Article 104: Intercourse under threat of gunpoint. *Sexual intercourse under threat of gunpoint is sentenced from five to fifteen years of imprisonment.*

Article 105: Intercourse through abuse of office. *Sexual intercourse through abuse of office or subordinate relations is sentenced up to three years of imprisonment.*

Article 106: Incest. *Sexual intercourse had between parent and offspring, brother and sister, between other persons in direct gender with one another, or between persons who have either custodial or adoption relationship among themselves, is sentenced up to five years of imprisonment.*

Article 107: Intercourse in public places. *Sexual intercourse in public places or in places exposed to the sight of people constitutes criminal contravention and is sentenced to a fine or up to one year of imprisonment.*

Article 113: Prostitution. *Prostitution is sentenced to a fine or up to three years of imprisonment.*

Article 114: Indulging prostitution. *Soliciting prostitution, mediating or gaining from it is sentenced to a fine or up to five years of imprisonment. When the same act is committed against a minor girl or forcefully, it is sentenced from five to ten years of imprisonment.*¹⁶

Other types of assault which women who experience domestic violence may be subjected to are covered in the Criminal Code as follows:

“Article 87: Torture resulting in serious consequences. *Torture, like any other degrading or inhuman treatment, when it has inflicted handicap, mutilation or any permanent harm to the well-being of a person, or death, is sentenced from ten to twenty years of imprisonment.*

Article 86: Serious intentional injury. *Serious intentional injury inflicting handicap, mutilation or any other permanent detriment to the health, or inflicting interruption of pregnancy, or which has been dangerous to the life at the moment of its inducement, is sentenced from three to ten years of imprisonment.*

Article 89: Non-serious intentional injury. *Intentional injury, inflicting temporary work incapacity of no longer than nine days constitutes criminal contravention and is sentenced to a fine or up to two years of imprisonment.*

Article 90: Other intentional harm. *Assault as well as any other violent act, constitutes criminal contravention and is sentenced to a fine. The same act, when causing temporary work incapacity of up to nine days, constitutes criminal*

¹⁶ People’s Assembly of the Republic of Albania (1995) *Criminal Code of Albania* Law No. 7895, translated by Agron Alibali, available at <http://pbosnia.kentlaw.edu>

contravention and is sentenced to a fine or up to six months of imprisonment.

Article 184: Threat. *Serious threats to kill or severely wound someone is sentenced with reeducation through work or with imprisonment of up to one year.*

Article 177: Battery. *Beating, hitting or any other violent act, whether or not accompanied by unimportant injury, causing physical pain is punished by criticism, a maximum fine of 500 leks, reeducation through work or imprisonment up to six months. The same act done publicly against more than one person is punished by reeducation through work or imprisonment up to two years.”¹⁷*

However, see Section 4 for comments on the inefficacy of these laws to protect women experiencing domestic violence.

3.1.2 Code of Penal Procedure

To compound the problem of lack of specific legislation, according to Minnesota Advocates for Human Rights, access to justice is further impeded by the lack of assistance provided by the state in prosecuting a case:

“Under the Code of Penal Procedure, domestic violence is prosecuted by complaint of the victim and closed by withdrawal of the complaint by the victim. [58] This means that the case is only brought if the victim files a complaint. The victim must also prepare the entire case herself. She must gather evidence and witnesses and present her case in court. The state does not assist with the prosecution.[59]”¹⁸

3.2 Rape

Minnesota Advocates for Human Rights notes that:

“The Albanian Penal Code does not recognize marital rape as a crime. Many Albanian women also do not view marital rape as a crime: The problem of spousal rape is not fully addressed because only 10 percent of interviewed women had a clear understanding of this phenomena . . . Generally, female students considered this kind of violence more destructive than being raped by a stranger; they considered it a very grave violation of a woman's dignity which impairs a normal spousal relationship. [60]

“The survey conducted by Refleksione^[19] found that marital rape is a widespread phenomenon. Twenty percent of the women surveyed reported that they had been forced by their partners to have sexual relations against their will.[61]”²⁰

¹⁷ People's Assembly of the Republic of Albania (1995), op.cit.

¹⁸ Minnesota Advocates for Human Rights (1996), op.cit., Section IIIA. See Bibliography for references.

¹⁹ Refleksione is a women's NGO based in Tirana, Albania

²⁰ Minnesota Advocates for Human Rights (1996), op.cit., Section IIIA

3.3 The role of Non-Governmental Organisations (NGOs)

Human Rights Watch states in its report of 2000: *“There were no state-run institutions to provide assistance for victims of domestic violence, who had to use Albania’s small and underfunded nongovernmental organisations for shelter or counselling.”*²¹

The UNDP’s National Women Report gives the following information on women’s non-governmental organisations in 1999:

*“The total number of women’s NGOs is at present 64. Their range of activities vary from family planning to leadership, to legal protection and counselling, to sensitisation on gender discrimination, to domestic violence. Together with the improvement of the law and the legal status of the women, women’s organizations are offering legal assistance for abused women. The Women Advocacy Center functioning since November 1997 offers free legal counseling and assistance in court to abused women and to women who could not afford legal counseling otherwise. [...] Domestic violence was tackled for the first time in 1995 with an awareness campaign carried out by Refleksione. Partial data estimate that as much as 63.7% of married women are psychologically, physically or sexually abused. Indirect reports tell us that only 5% of the abuse exercised on them is reported, while the data of the Ministry of Public Order indicate that only 1% of the crimes in 1997 were sexual crimes. The Counseling Center for Women since its inception three years ago has conducted 3000 phone and 150 personal counseling sessions. The opening of the first shelter for battered women (December 1998) in Albania is an example of the need for institutions that protect and rehabilitate victims of abuse.”*²²

²¹ Human Rights Watch (2000), op.cit.

²² United Nations Development Programme (1999), op.cit., p 36

4. The reality of seeking protection

4.1 The police

The Albania Helsinki Committee notes:

*“According to the statements of women victims and some surveys of NGOs on domestic violence, **in most cases this violence is treated as a private matter by the police .They, in most cases, do not intervene on this form of violence.** Also, there is limited information about domestic violence available from public opinion. The police, prosecutors and doctors are not supposed to keep official statistics on the women beaten by their spouse or partners. In addition, many women do not report to the police or medical professionals that they have been victims of domestic violence. This is so because of the patriarchal [sic] mentality of the Albanian society where these are considered private problems of the family and the individual. Unfortunately there is a lack of sensibility from the state.”²³*

4.2 The judicial and legal system

4.2.1 The rule of law

According to the US State Department Report:

“The Constitution provides for an independent judiciary; however, continued political instability, limited resources, political pressure, and endemic corruption weaken the judiciary's ability to function independently and efficiently. Corruption remains a serious and widespread problem, especially with the growth of organized crime, and judges are subjected to both bribery attempts and intimidation.”²⁴

The growth in violent crimes associated with blood feuds is one sign of the continuing lawlessness in many areas of the country, and demonstrates the weaknesses of the criminal justice system. The following information from the International Crisis Group gives a clear picture of the situation:

“There are two main reasons why district judges and prosecutors let prisoners off - either straightforward bribery or fear of retaliation by the criminal's relatives. Despite efforts by the government to wipe it out, the 15th century code of customs, the Kanun of Lek Dukagjini, has re-appeared throughout northern Albania. The Kanun, which has been handed down orally through generations, lays out a code of "laws" governing marriage, birth, death, hospitality and inheritance, which have traditionally served as the foundation of social behaviour and self-government for the clans of northern Albania. In particular, the Kanun regulates revenge killings in order to stop the total annihilation of families.

²³ Albania Helsinki Committee (2000), op. cit., pp 9-10

²⁴ U.S. Department of State (2001), op.cit.

“The Kanun has been used as a system for administering justice in northern Albania, which historically has remained isolated from central government law. With the collapse of communism in 1991 and the subsequent lack of nationwide law and order, the number of vendetta killings has soared. Today, revenge killings in the name of the Kanun have taken on threatening proportions. A recent survey on the Kanun by the Independent Social Studies Centre, Eureka, expressed concern that many killers were using the rules of the Kanun as a cover to commit ordinary crime. According to the Eureka statistics, over 50 per cent of teenagers polled said that they respected the rules of the Kanun and would be willing to take revenge in the name of the Kanun. The report also highlights the fact that thousands of male children are being locked inside their homes because of the fear of revenge (females are exempt from revenge killings).⁶¹

“In one sense it could be argued that northern Albanians are resorting to the Kanun in order to fill the law and order vacuum. In most cases, however, it is not the traditional rules of the Kanun that are being applied but rather a self-selected interpretation. In fact it is a means of settling accounts amongst gangs of traffickers, smugglers, and other criminal elements who, in the absence of official law and order, can use the fear, respect and moral justification associated with the Kanun to terrorise local people into a code of silence.

“A blood feud can start over any number of causes - an untoward advance to a woman or the killing of a sheep dog. A typical example occurred in mid-December when a father and son gunned down a neighbour who shot their dog. The man was walking his horses back home at night when he was attacked by the dog and, fearing for his life, shot the dog. The dog's owners witnessed the shooting and immediately wreaked revenge with machine guns.⁶² Even drivers responsible for traffic accidents have been killed by their victim's families. The vast majority of contemporary feuds, however, are the result of disputes over land and water rights.

“Since the end of the one-party state in 1991, collective ownership of the land has been abolished. This has resulted in a land grab whereby the pre-1944 owners have returned to reclaim their property and forced the "occupiers" to relocate themselves. Conflict has become inevitable due to high population growth, together with an acute shortage of agricultural land and the absence of firm policing. Despite the existence of several blood-feud reconciliation bodies, such as the Tirana-based Peace Studies and Conflict Resolution Centre, there has been no concerted and co-ordinated strategy devised to combat this growing and deeply damaging phenomena.

“The Kanun is being used to compensate for a weak and corrupt judicial system, as well as the fact that for too long now it has become the accepted tenet that northern Albania is beyond the rule of law, that the government has no jurisdiction in the north, and so the north must

rely on its own customary law to provide justice for its citizens. Blood vendettas are particularly rife in and around the town of Shkoder where gangs routinely call at bars in the town to collect "gjoba" or protection money, which if not paid will result in the automatic killing of the bar's owner.

"One such example occurred at the beginning of July 1999 when a dozen men armed with kalashnikov assault rifles called at the Sahati bar in the centre of Shkoder. The bar's owner, Ibrahim Isufi, was waiting for them. In the ensuing shootout, five of the gang members were killed and three of Isufi's relatives were wounded. As a result, Isufi's male relatives are hiding in their homes for an indefinite period, in the hope of escaping the inevitable quest for revenge by the families of the five dead gangsters. Throughout northern Albania, hundreds of men have not stepped outside their homes for months for fear of being murdered. A few have managed to escape abroad but the majority remain trapped indoors, having to rely on their womenfolk to bring in supplies and to work the land, a fact that is severely hampering economic progress.

*"The reintroduction of the Kanun into the lives of the communities of northern Albania must be seen as a serious challenge to the state. Today paperback copies of the Kanun are widely available in Albania, Kosovo and Western Macedonia, and the fact that new translations and interpretations of the Kanun are appearing must be viewed with real concern."*²⁵

Human Rights Watch notes ongoing problems with *"politicized courts, abusive police, and abuses against women,"* and states that *"victims of abuse rarely obtained redress through the legal system"* in 1999.²⁶

4.2.2 Women and legal redress

The Albania Helsinki Committee gave the following comments on the situation for women experiencing domestic violence in their 2000 report 'A Perspective on Women's Human Rights':

"[Until] now there was no special training of the judicial personnel (specified for women) to protect women victims of violence during the investigation period or in court. Only few NGOs have organised round tables on women's rights, but not specifically for judicial personnel.

[.....]

"From the legal point of view there are no specific laws addressing domestic violence in Albania. Domestic violence is prosecuted under the general assault status. Under the Code of Criminal Procedure, domestic violence is prosecuted by

²⁵ International Crisis Group (2000), op.cit., Part II

²⁶ Human Rights Watch (2000), op.cit.

complaints of the victim and closed by the withdrawal of the complaint. The victim must also prepare the entire case herself. She must gather evidence and witnesses and present her case in court. The state does not begin the process without the woman denouncing. ("Domestic Violence in Albania"- study of the Minnesota Advocate for Human Rights,1996)

■ *In fact there is an absence in the Albanian legislation which would prevent violence against women in the family:*

• *In our legislation, some preventive dispositions towards violence against women do not exist, for example: if a woman believes that she is at serious risk for her life she would have the right to ask for a temporary court decision which could limit or stop violence. This kind of denominated decision as a limited and temporary order can be investigated in a special court session. In the case that this limited order is not carried out by the person who is the perpetrator of the violence the state organs must intervene (A.Fullani- Study on the legitimate rights of Women, Realities and Perspectives).^[27]*

• *As for the time of the occurrence of this attack against the woman in the family, if she would have the above-mentioned order, she could inform the police in order to report this violent situation. Albanian legislation, differently from other countries, does not have a law of obligatory detention. According to this law neither the police nor the victim have the right to decide the custody of the person who practices violence. The custody of the person who practice violence is obligatory.^[28]*

• *From the moment that this assault towards the victim has finished, a crime or a penal infringement is committed. It could have been fraction, beating resulting in slight or severe wounding. If the person who has committed such a crime is not arrested, the victim should go to witness at the police. At this moment the prosecutor, the attorney and the court system do appear in the scene. In other countries (but not in the Albanian legislation) there is a special attorney who can give immediate judicial help to the victims about this crime. In Albania, the penal process starts and continues based on the complaints of the victim and finishes with the withdrawal of the victim or with her absence from the court. **From indirect data it results that only 5% of the cases of violence in the family are reported to the court.** (V.Mecaj-"*

²⁷ In this and the following paragraph the writer is pointing out the **absence** in the Albanian system of legal measures such as non-molestation orders and / or occupation orders (referred to as a "temporary court decision" and "temporary order"), which are available in other countries to prevent a perpetrator committing further violence. Breach of a non-molestation order (to which a power of arrest may be attached) can result in arrest and return to court with the potential of committal to prison.

²⁸ The writer is noting that in other countries detention for violent offenders is mandatory, whereas in Albania it is at the discretion of the police.

Minnesota Advocates for Human Rights describe how the state and authorities actively dissuade women from accessing protection and deny the seriousness of the issue. This unwillingness to protect is apparent at various levels of the criminal justice system:

*"The Criminal Justice System in Albania provides no assistance to victims of domestic violence; women seeking to report or prosecute crimes are met only by barriers at every step in the process. **They are encouraged to drop their claims and at no level of the criminal justice system is the state even required to keep records of victims' complaints.** Police, prosecutors and judges generally treat domestic violence as a conflict for which each party has equal responsibility. At each step of the process, **law enforcement officials try to convince women to "pardon" their abusers. They are reluctant to prosecute or punish the men.** One male judge suggested that he would feel responsible for destroying the family if he sentenced an abusive husband to serve time in prison.[62] This judge explained that he believes that domestic violence is not a serious problem and that women beat men as much as men beat women, but "men are just too proud to talk about it." [63]*

*"Several women reported the lack of responsiveness of the police. [64] Women do not call the police to intervene in a domestic assault because they believe that the police will not help them.[65] The police generally do not remove an abuser from the home. A former police officer explained that he thought women who were abused avoided calling the police because they were ashamed of the abuse.[66] He said that **the police did not consider domestic violence to be an important issue.** Police, he explained, are more concerned about crimes that are "dangerous to society as a whole." [67] Police do not receive any training relating to the unique issues involved in situations of domestic assault. [68]*

"The Minnesota Advocates delegation requested meetings with police officials at two different police stations to discuss domestic violence issues. Police officials at both stations refused to meet with the delegation. [69] The delegation asked a police officer on the street where a woman could go to report that she had been beaten by her husband. The police officer laughed and did not give any information. [70]

"If a woman does get to the point where she wants to report a domestic assault, she will usually go to the police first. The police will arrange a meeting with the man and ask the women to pardon the man. [71] If a woman does not want to reconcile with her husband or partner, the

²⁹ Albania Helsinki Committee (2000), op.cit., p 9; pp 9-10

police will send her to the forensic hospital to document her injuries. At the forensic hospital, a doctor will examine the woman and issue her a certificate describing her injuries to be used as evidence in court. The certificate also grades the severity of the injuries sustained by the woman. A woman must be referred to the forensic hospital by the police. She may not decide on her own to get a certificate documenting her injuries.

“Most women who go to the forensic hospital to document their injuries have been repeatedly beaten and are asking for a divorce.[72] The doctors at the forensic hospital are not required to keep an official record of how many times a woman has reported being beaten[73] A forensic doctor reported seeing one women on more than thirty occasions for injuries inflicted by her husband. [74]

*“If the woman wants to file a charge against her abuser, she brings her case to the prosecutor. **The prosecutor will also often attempt to persuade the woman to pardon her abuser.** If a woman still refuses to pardon her abuser and proceeds with the prosecution, the prosecutor will send paperwork to the court to start the case. This is the extent of the state involvement in the process. **The prosecutor does not assist with the preparation of the case or with the actual trial. The victim gathers the evidence and the witnesses and presents her case in court.**[75] The prosecutor's office in Tirana reported that the state only prosecutes cases involving very serious injury amounting to torture[76] or death or in cases of repeated assaults. [77] No one, however, is required to keep a record of repeat offenders.*

*“When a case of domestic assault comes before a judge, the judge starts the case by asking the woman if she will pardon the man who is abusing her. [78] **The result of this continuous focus on the victim rather than on the aggressive prosecution of the abuser is that virtually all of the charges of domestic assault are dropped before a trial on the merits is conducted.** The Minnesota Advocates delegation reviewed records at the District Court in Tirana for the time period from January 1, 1995 through June 1, 1995. During this time period, approximately 10 cases of domestic assault were scheduled for trial.[79] Each of these cases was dismissed on the first day of the trial. Not a single person was convicted for domestic assault during this time period. In this same five month period in 1995, approximately 150 to 300 women reported being assaulted by their husbands or intimate partners to the Tirana prosecutor's office.[80] During this same time period, less than 50 of these women went to the forensic hospital to document their injuries for evidence in court.[81]*

“The research conducted by Refleksione reveals a similar lack of prosecution of domestic violence cases during 1994.[82] In 1994, 70 cases in the Tirana District Court involved violence against women in various forms. [83] More than 50% of these cases were closed without punishment because the women withdrew their complaints.

*“When a case is brought to trial and the perpetrator is convicted, the Penal Code provides for a jail sentence or a fine as a punishment for assault. [84] Prosecutors and judges both reported **that the most common punishment for domestic assault is a fine. [85] Therefore, even if a woman overcomes all of the emotional and procedural obstacles to prosecute her abuser successfully, he will likely not serve any jail time.** In one case, a woman reported that she had been able to prove her case for assault and her unemployed husband was assessed a fine. Because he had no money, the woman was required to pay the fine herself.[86]*

“Some women have taken extreme measures to protect themselves when the legal system has failed to protect them from domestic abuse and have killed or attempted to kill their abusers. There are 24 women currently serving jail terms for killing their husbands in the Tirana prison. [87] The women admit being guilty and generally all of them suffered from systematic abuse from their husbands, including physical assault, verbal abuse and lack of economic aid. [88] The courts did not consider evidence of the abuse in their trials.[89]

“The Universal Declaration of Human Rights (Article 8)[98] and the International Covenant on Civil and Political Rights (Article 2)[99] guarantee that states shall provide an effective and adequate remedy for acts violating fundamental rights guaranteed by constitution or by law.

“As set forth in detail above, the Albanian legal system does not provide an adequate remedy for the denial of women's fundamental rights to be free from violence. Women receive no support at any stage of the legal process. The police do not generally investigate claims of domestic violence, arrest perpetrators or remove abusers from the home. Women are consistently pressured to pardon their abusers. The system focuses on trying to persuade the victims of domestic assault to drop their cases rather than on effective prosecution of the abusers. When women try to prosecute their abusers they are not assisted by the state prosecutors and often are not assisted by the police officers who may be the only witnesses to the crime.

***“Even when a woman successfully prosecutes a complaint, the system does not protect her from further abuse. Men rarely serve jail time if they are convicted and often are not punished at all.** The courts rarely force a man who has assaulted his partner to leave the family home, and the housing shortage precludes many women from seeking alternative living arrangements. This failure to take action leaves the woman at serious risk of experiencing more violence. Women do not have effective recourse against their violent husbands under the Albanian legal system. The legal system's failure to protect women from domestic violence and to punish perpetrators violates Albania's obligation under the International Covenant on Civil and*

Political Rights to provide an adequate remedy for the violation of a woman's fundamental human rights.”³⁰

³⁰ Minnesota Advocates for Human Rights (1996), op.cit., Section III B & C, Section IV A & B

5. The situation of separated or divorced women

5.1 Discrimination

The International Helsinki Federation for Human Rights notes:

“Staying in an abusive relationship

*The inherited patriarchal mentality of the Albanian family is also reflected in the unequal treatment of male and female family members, where males are privileged. This is obvious in rural areas, where gender discrimination is prevalent. Behaviour towards males and females are different and female family members are in the lowest position. Such a mentality can clearly lead to the poor treatment of women in the family. This situation and economic dependence are the most important factors that prevent women from leaving an abusive relationship. It is very difficult to raise children in the existing economic situation in Albania, with a high rate of unemployment and very low salaries.”*³¹

Julie Mertus notes in her report on women’s rights in Eastern and Central Europe:

*“The divorce rate in Albania traditionally was extremely low. [FN769] After the Albanian Parliament enacted a no-fault divorce law, the rate rose significantly as the procedure became easier to obtain. [FN770] Some advocates for women’s rights in Albania are working further to modernize divorce and child support procedures. [FN771] **Presently, a severe housing shortage presents a significant obstacle to divorce.** [FN772] According to a recent survey by the Albanian women’s group “Reflections”, most marriages in the country are still arranged. [FN773] Women report a far greater incidence of violence in these marriages than in “love marriages”. [FN774] Concurrently, women who are divorced or single also face a significantly greater risk of violence and harassment. [FN775]”*³²

³¹ International Helsinki Federation for Human Rights (2000), op.cit., pp 31-32

³² Mertus, Julie (1998) *Human Rights of Women in Central and Eastern Europe*, American University Journal of Gender and the Law, Spring, 1998

References from the above:

[FN769]. See Albanian Marriages Hit by Social Crisis, DEUTSCHE PRESSE-AGENTURR, Jun. 21, 1997, (page references unavailable). Before 1990, divorces were almost non-existent in Albania. According to the Albanian National Statistics Institute, there have been 2,500 divorces in the first six months of 1997 compared with 2,331 divorces in the whole of 1995.

[FN770]. See MINNESOTA ADVOCATES, ALBANIA REPORT, supra note 270, at 19.

[FN771]. Zaka & Imhotz Survey, supra note 369.

[FN772]. See MINNESOTA ADVOCATES, ALBANIA REPORT, supra note 270, at 19.

[FN773]. See MIRIA supra note 273, at 7 (reporting 58.17% of marriages are arranged).

[FN774]. See MIRIA supra note 273, at 7.

[FN775]. See MIRIA supra note 273, at 19-20, 25-26.

In the section of this report on lesbians and single women, Mertus notes that “single women are treated as “abnormal” or “unfortunate.” [FN841]”³³

5.2 Property rights

The comments below from Minnesota Advocates for Human Rights draw attention to the problems faced by divorced women:

*“It is very difficult for women to live alone in this society . . . Many estranged couples decide against divorce simply because of public opinion. **A divorced woman is seen as guilty** . . . in addition to the public opinion factor resulting in the shunning of divorced women, poverty and the lack of housing tend to keep families together. There is still the patriarchal feeling . . . Often a divorced woman lives for many years in the same flat with the ex-husband. [38]*

[...]

*“The Albanian Parliament recently adopted a no-fault divorce law. Several judges and attorneys reported that the no-fault divorce law has resulted in an increase in the number of divorces. The United Nations Development Project reports that one of the main causes of divorce in Albania is violence in the family. [93] The new law, therefore, appears to provide greater freedom for women to escape from abusive relationships. **The reality for many women, however, is that because of the housing shortage they must continue to live with their abusive husbands because neither they nor their husbands have any place to go.**”³⁴*

[FN273]. SILVANA MIRIA, REFLEKSIONE, VIOLENCE AGAINST WOMEN AND THE PSYCHOLOGICAL TABOOS FAVORING VIOLENCE (1996).

[FN841]. Zaka & Imholz Survey, supra note 369.

[FN369]. Survey response of Tefta Zaka & Kathleen Imhotz, in Tirana, Alb. (Aug. 1996) [hereinafter Zaka & Imhotz Survey]; MINNESOTA ADVOCATES, ALBANIA REPORT, supra note 270, at 15.

³³ Mertus, Julie (1998), op. cit. as follows:

“5. Lesbians And Single Women [FN838]

Albania:

There is no mention of lesbian relationships in the criminal code. The previous criminal code criminalized male homosexual relationships. [FN839] Therefore, at this time, neither male nor female same sex relationships are criminal offenses in Albania. [FN840] The issue of lesbianism is taboo in Albania; single women are treated as “abnormal” or “unfortunate.” [FN841]”

References from the above:

[FN841]. Zaka & Imholz Survey, supra note 369.

[FN369]. Survey response of Tefta Zaka & Kathleen Imhotz, in Tirana, Alb. (Aug. 1996) [hereinafter Zaka & Imhotz Survey]; MINNESOTA ADVOCATES, ALBANIA REPORT, supra note 270, at 15.

³⁴ Minnesota Advocates for Human Rights (1996), op.cit., Section IIC; Section IIIC

5.3 Economic security

A report by the Council of European Ministers Responsible for Family Affairs notes that:

“At present Albanian law attributes to lawfully married couples common property on all goods bought or received during the marriage and in case of divorce property shall be divided equally. However, the spouse traditionally moves to the house of the husband, and thus belongs exclusively to the man. Upon divorce wives are not entitled to alimony and both parents are responsible for maintenance of their children up to 18 years of age, or 25 if they are students. The right to alimony triggers only if one of the parties is declared unable to work and for a limit of three years. Child support is based on the parents' earnings and on the child's needs. De facto however, courts do not investigate on the actual income of the parents and apply a fixed amount monthly (very low).

“Even before the 1997 crisis poverty was widely spread. In 1996 the World Bank estimated that one fourth of the population was in relative poverty, 30% of the rural, and 15% of the urban population. Poverty is more pervasive in rural areas but more severe in towns. The household size is directly proportional to poverty; poverty incidence is highest among household with primary school children from 6 to 9 years old.

“When extended households are headed by women poverty incidence is twice that of male-headed families and the poverty gap is higher. It is estimated that women are family heads in 10% of all households.”³⁵

The Albania Helsinki Committee notes various inequities for women which would cause severe problems for a single woman:

“Albanian law prohibits gender discrimination and job segregation in public and private employment. But despite this prohibition and despite the high level of women educated, employment opportunities for women are still very few and badly remunerated. Women in Albania do have few opportunities in economic recourses and little autonomy, despite their contribution to the society. Employment of women as an economic force is 38.2%, which is very low figure The Albanian experience has shown that the state has been passive in encouraging the employment of women even though the law of employment does exist. At the same time there are problems with the implementation of this law; the employer does not feel himself responsible for the existing discriminating practices.

“According to the information from the National Council of Employment in the Ministry of Labour and Social Issues, initiatives are undertaken on the qualification of these categories of the population, currently

³⁵ Conference of European Ministers responsible for Family Affairs (1999) *Towards a Child-Friendly Society: National Reports: Albania* XXVI Session, Stockholm, 14-16 June 1999

unemployed, in order to improve their employment chances. These qualifications are realized in seven centers, two in Tirana and others in the main cities. They consist of courses on computers, secretary, hotel skills for women, whereas for men they consist of auto service, courses for electricians, carpenters etc. Private initiatives for the employment are undertaken by women's NGOs like Youth and Women Christians Association. In the private sector women have limited possibilities. Regarding the development of women undertakings, the participation of women in the economic life of the country is low. In private business, women managers are few (18%). The main economic activities in which women are involved is trade and services. This low participation of women has brought unemployment rate, mainly for the group over 35 years old. The average salary of a woman, in all sectors and in all levels, is about 80-85 per cent of a male salary.

[...]

“Unemployment in Albania is a very serious problem. During 1998, unemployment increased by 4,000 to 5,000 people per month. According to data for the registered unemployed, the largest portion is comprised of people aged 21 to 34. Among the registered, the greatest part is made up of those living in urban areas. The nature of unemployment in Albania has shown nearly no preference by gender. The percentage of unemployed women and men from 1993-1998 was varying within the limits of 45 to 50 percent.(according to the unemployment data-UNDP Report 1998). There are reasons to believe that this official figure is underestimated. Many long-term unemployed (women mainly) are not registered officially as unemployed. Furthermore in rural areas people receiving land parcels under the land privatisation scheme do not have the right to register as unemployed even though the allocated land parcel is too small to guarantee survival. The economic situation of women in these areas is worse than in urban areas.”³⁶

A European Commission report on Albania published in June 2001 gives the following information on unemployment and poverty:

“With a population estimated at 3.0-3.4 million (a new census has been recently carried out and results will be made available shortly) and a per capita GDP of € 1,340, Albania is one of the poorest countries in Europe. One fifth of the population is living on less than € 1.2/day. Poverty in the north and rural areas is widespread, with 90% of the population living below the poverty line. Unemployment levels are high, both in urban and rural areas, but official unemployment figures (close to 20%) significantly underestimate the reality. They only cover people who register in a labour office and, because of tight restrictions on employment benefits, the motivation to register is low. The restriction on benefits is reflected in government expenditure on unemployment,

³⁶ Albania Helsinki Committee (2000), op.cit., pp 17-18; p 19

*which has constantly decreased over the last 10 years. Social assistance to families in need has slightly increased, but has clearly fallen in real terms. Overall, the decline in social transfers has been marked since 1995, indicating that the social well being of the poor has deteriorated.*³⁷

³⁷ European Commission (2001) *Report from the Commission to the Council on the work of the EU/Albania High Level Steering Group, in preparation for the negotiation of a Stabilisation and Association Agreement with Albania* Section 3.7.5, p 35 'Employment and Social Policy', June 2001, available at http://europa.eu.int/eur-lex/en/com/rpt/2001/com2001_0300en01.pdf

6. Case law

6.1 Canada

Below is an example of a grant of refugee status from Canada's Immigration and Refugee Board to an Albanian woman who had suffered domestic violence:

*“The principal claimant was subjected to extended physical abuse by her husband, whose family had been well-connected within the former Communist political structure in Albania and who was himself an official in the present-day governing party. After she was granted a divorce and custody of their daughter, the abuse and harassment intensified. The husband kidnapped the daughter several times and threatened to kill the daughter and the principal claimant. The principal claimant approached the authorities on many occasions, but neither the police, the public prosecutor nor the courts were able to offer her any protection. The Refugee Division accepted that the principal claimant’s husband, who had shot at her in the past, might very well kill her. **She had a well-founded fear of persecution on the ground of membership in a particular social group, namely, women.** The daughter was also found to be a Convention refugee. CRDD A97-00808 et al., **Kagedan, October 21, 1998** (reasons signed October 30, 1998).”*³⁸

³⁸ Immigration and Refugee Board (1998), Ottawa, Canada, available at www.irb.gc.ca

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- [27] Hasluck, Margaret, *The Unwritten Law in Albania*, p. 11, Cambridge University Press (1954).
- [28] Kanun of Lek Dukagjini, Sections XXVIII and XXXI, Albanian text collected and arranged by Shtjefen Gjecov, translated by Leonard Fox.
- [29] The ribbons are woolen fringes attached to the belt worn by women in the mountains of Mirdite.
- [30] Kanun of Lek Dukagjini, Section XXXI, Albanian text collected and arranged by Shtjefen Gjecov, translated by Leonard Fox.
- [31] Id.
- [32] Kanun of Lek Dukagjini, Section XXVIII, Albanian text collected and arranged by Shtjefen Gjecov, translated by Leonard Fox.
- [33] Kanun of Lek Dukagjini, Section XXXI, Albanian text collected and arranged by Shtjefen Gjecov, translated by Leonard Fox.
- [34] According to the Kanun, a blood feud generally results between two families when a member of one family kills a member of another family.
- [35] Under the Kanun, when a woman married, her parents gave a cartridge to her husband, along with her dowry money, for the purpose of killing her if she behaved improperly.
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- [62] Interview June 16, 1995, Tirana.
- [63] Id.
- [64] Interviews June 7, 8 and 9, 1995, Tirana.
- [65] Interviews June 7, 8 and 9, 1995, Tirana. Several women reported that the police can be bribed and therefore, they did not feel that men would be punished for their abuse.
- [66] Interview June 26, 1995, Tirana.
- [67] Interview June 26, 1995, Tirana.
- [68] Id.
- [69] June 26, 1995, Tirana. A woman advocate also reported that she was denied information from the police when she was researching the prevalence of domestic violence. Interview June 22, 1995.
- [70] Interview June 23, 1995, Tirana.
- [71] Interview with prosecutor, June 1, 1995, Tirana.
- [72] Interview June 6, 1995, Tirana.
- [73] Interview June 6, 1995, Tirana.
- [74] Interview June 6, 1995, Tirana.
- [75] Interview June 1, 1995, Tirana. This same procedure applies to cases of stranger assault. Id.
- [76] "Torture" in Albania is generally defined as infliction of injuries which take more than 21 days to heal.
- [77] Interview June 1, 1995, Tirana.
- [78] Interview June 16, 1995, Tirana
- [79] The delegation was able to verify that all cases of assault were dropped on the first day during this time period. For a few of the assault cases, the delegation was not able to confirm whether the victim and the perpetrator were married or involved in an intimate relationship because the files of the more recent cases were not in the clerk's office.

[80] In interviews June 1, 1995 and June 20, 1995, a representative of the Tirana prosecutor's office conservatively estimated that they have between 30 and 60 cases of domestic assault reported to them per month. This prosecutor believed that this number does not accurately reflect the number of women who are beaten by their husbands or partners because many women are reluctant to report domestic abuse.

[81] See statistics from the Forensic Hospital for the time period January 1, 1995 through May 31, 1995 set forth in Appendix A.

[82] Fullani, Arjana, *A Comparative Study of the Albanian Legislation and that of the Developed Countries on the Issue of Violence Against Women*, (October 25, 1995) (Unpublished).

[83] Statistics were consolidated for all cases involving violence against women, including rape as well as murder and battery within the family.

[84] See footnote 56.

[85] Interviews June 1, 1995 and June 16, 1995, Tirana.

[86] Interview June 26, 1995, Tirana.

[87] "The Dusty Shelter of the Prisoners," Elsa Ballauri, *Aleanca*, June 9, 1995. Six of these women were prosecuted before 1990 and were not allowed defense lawyers. Under the new Penal Code, the women technically have the right to a new trial, but they do not have the financial resources to hire lawyers.

[88] *Id.*

[89] *Id.*; Interviews with women in prison June 26, 1995, Tirana.

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Appendix A

Home Office Country Information and Policy Unit, October 2000: Country Assessment, Albania

"I. Women

5.35 Violence against women and spouse abuse still occurs in this traditionally male-dominated society. Cultural acceptance and lax police response result in most abuse going unreported. No government-sponsored programme protects the rights of women. A non-governmental organisation maintains a shelter in Tirana for abused women, but the facility can hold only a few victims at a time. That organisation also operates a hot line which women and girls can call for advice and counselling. The line received thousands of calls during 1999. The concepts of marital rape and sexual harassment are not well established, and most such acts would not be considered crimes. (5a)

5.36 Many men, especially those from the north-eastern part of the country, still follow the old traditions known as the "kanun", in which women are considered chattel and may be treated as such. It is acceptable under the kanun to kidnap young women for brides; this practice continues in some areas of the north-east. (5a)

5.37 Women are not excluded, by law or in practice, from any occupation; however, they are not well represented at the highest levels of their fields. The Labour Code makes mandatory equal pay for equal work, but no data are available on how well this is implemented in practice. Women enjoy equal access to higher education, but they are not accorded full and equal opportunity in their careers, and it is common for well-educated women to be under-employed or to work outside the field of their training. An increasing number of women are beginning to venture out on their own, opening shops and small businesses. Many are migrating along with men to Greece and Italy to seek employment. (5a)"

BOSNIA AND HERZEGOVINA

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BOSNIA AND HERZEGOVINA

1. Introduction

1.1 Political background

The State of Bosnia and Herzegovina has existed as an independent state since 1995, consisting of **two entities**: the **Federation of Bosnia and Herzegovina**, and the **Republika Srpska**

“The 1995 General Framework Agreement for Peace in Bosnia and Herzegovina (the Dayton Accords) ended the 1991-95 war and created the independent state of Bosnia and Herzegovina, previously one of the constituent republics of Yugoslavia. The agreement also created two multiethnic constituent entities within the state: The Federation of Bosnia and Herzegovina (the Federation) and the Republika Srpska (RS). The Federation, which has a postwar Bosnian Muslim (Bosniak) and Croat majority, occupies 51 percent of the territory; the RS, which has a postwar Bosnian Serb majority, occupies 49 percent. The Constitution (Annex 4 of the Dayton Accords) establishes a statewide government with a bicameral legislature, a three-member presidency (consisting of a Bosniak, a Serb, and a Croat), a council of ministers, a constitutional court, and a central bank. The Accords also provided for the Office of the High Representative (OHR) to oversee implementation of civilian provisions. The High Representative also has the power to impose legislation and remove officials who obstruct the implementation of the Dayton Accords. The entities maintain separate armies, but under the Constitution, these are under the ultimate control of the presidency of Bosnia and Herzegovina. Municipal elections held in April and general elections conducted in November were generally free of violence, although there were some voting irregularities in both elections. Multiethnic parties committed to building on the foundation established at Dayton, such as the Social Democratic Party (SDP), made inroads against the support for the nationalist, ethnically based parties in the November elections, resulting in a state House of Representatives almost evenly divided between the two groups. In the RS, the ethnically based Serb Democratic Party (SDS) maintained its dominant position, while the nationalist Croatian Democratic Union of Bosnia and Herzegovina (HDZ) remained strong in Croat-majority municipalities. The Party of Democratic Action (SDA) remained the largest nationalist Bosniak party. Although formally independent, the judiciary remains subject to influence by political parties and the executive branch and is unable to prosecute complex or even simple crimes fairly and effectively.

“One of the two entities that make up Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, was established in March 1994 and transformed the government structure of the Bosnian territories under Bosniak and Croatian control. The President of the

Federation appoints the Prime Minister subject to parliamentary approval. The Federation Parliament is bicameral. Federation structures continue to be implemented only gradually. Major steps were the creation of canton governments, the unification of Sarajevo under Federation control in spring 1996, and the 1996, 1998, and 2000 elections of the Federation Parliament. However, serious ethnic and political rivalries continue to divide Croats and Bosniaks. Parallel Bosniak and Croat government structures continued to exist in practice.

“The Republika Srpska of Bosnia and Herzegovina is the other entity that makes up Bosnia and Herzegovina. In 1997-98, most of the RS political and administrative agencies moved from Pale, a stronghold of former Bosnian Serb leader and indicted war criminal Radovan Karadzic, to Banja Luka. The President and Vice President were elected in November for 4-year terms. The RS National Assembly is unicameral and elected on a proportional basis. The November general elections in the Republika Srpska were relatively free and fair, and resulted in the nationalist parties, led by the SDS, increasing their strength at the expense of the pro-Dayton moderates.

“Demilitarization of the city of Brcko, which was made a "self-governing neutral district" in March, was completed in February. A districtwide multiethnic police force also was established. The internationally appointed supervisor is empowered to address such issues as taxation, law enforcement, district management, and composition of the district assembly”.¹

The results of the November 2000 general election saw nationalist parties maintain a significant amount of political power, and it has been argued that the political stalemate that has followed presents a barrier to the advancement of human rights in the country.² Section 1.2 provides more detail.

1.1.1 Social and economic context

Following the conflict in the countries of the former Yugoslavia, there remain severe and extensive economic and social problems. Bosnia and Herzegovina is no exception. The most recent evidence from the Human Rights Co-ordination Centre (HRCC) summarises the situation as follows:

“Economic and social conditions remain poor for much of the population. Unemployment is extremely high (40-50%) and many of

¹ U.S. Department of State (2001) *Country Reports on Human Rights Practices: Bosnia and Herzegovina*, Washington, Bureau of Democracy, Human Rights, and Labor

² UN Economic and Social Council Commission on Human Rights (January 2001), *Situation of human rights in the former Yugoslavia: Report of Mr. Jiri Dienstbier, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia*, E/CN.4/2001/47, Accessed via <http://www.unhcr.ch/html/menu2/7/a/myug.htm>

*those most capable of contributing to the future development of the economy continue to migrate, especially the youngest and brightest, which exacerbates the problems of an ageing population. Overall, the economy in BiH remains fragile, with the main difficulties during 2000 being increased external debt service requirements and the impact upon the budgets of both Entities. In order to avoid economic and social crisis, economic reform in BiH is a priority”.*³

1.1.2 Returnees

The conflict in the former Yugoslavia also resulted in the displacement of hundreds of thousands of people.⁴ Many European countries, including the United Kingdom, agreed to offer Bosnian refugees temporary protection on the condition that they return to Bosnia and Herzegovina once areas were designated as ‘safe’.⁵ The UNHCR was given primary responsibility for ensuring the safe return of displaced people, and in 2000 estimated that approximately 350,000 refugees had returned to Bosnia, although they stress that *“because of ongoing political tension between the Muslim, Serb and Croat communities, the majority were not able to go to their old homes”.*⁶

The situation regarding the sheer number of returnees, continuing ethnic tensions, disputed claims to land and property, and systems for dealing with these remains acute. There are major shortages of accommodation. The Human Rights Co-ordination Centre reported in March this year:

“Approximately 67,000 minority returns were registered in 2000 compared with the 41,000 in 1999. The upward trend continues this year: In January 2001, there were 4,026 minority returns and in February there were 4,697. Within these figures, Property Law implementation statistics have also greatly improved with 21% of property claims having been resolved. However, the number of security incidents involving minority returns is also high.

...“During the reporting period, the rate of implementation of property legislation increased by one percent each month, on average. At this rate of implementation it would take approximately six-and-a-half years to solve all property claims. To date, 13% of all cases in the Republika Srpska (RS) have been solved, and 29% in the Federation, giving a countrywide average of approximately 21%. BiH-wide, the implementation of applications for repossession of property has increased from 18% (43,500 repossessions) to 21% (51,709

³ Human Rights Co-ordination Centre (HRCC) Quarterly Report (2001), *HRCC Human Rights Report: 01 September 2000 –31 March 2001*, p.31; available at http://www.oscebih.org/oscebih_eng.asp There is also substantial information available via the United Nations High Commission for Refugees (UNHCR) website: www.unhcr.ch/world/euro/seo/bosnia.htm

⁴ UNHCR (2000) estimated that approximately 700,000 Bosnians became refugees in Western Europe; see <http://www.unhcr.org/>

⁵ UNHCR (2000) *The State of the World's Refugees: Fifty Years of Humanitarian Action*, New York, Oxford University Press

⁶ UNHCR (2000) <http://www.unhcr.org/>

repossessions). However, the overall rate of implementation remains unacceptably low as local officials fail to take ownership of the repossession process.

... “The statistics show that the implementation of the property legislation is more than twice as poor in the RS than in the Federation, with Eastern RS particularly bad and the Bosniak majority areas of the Federation with the best record.

...**“Lack of Alternative Accommodation: Failure by Local Authorities to provide alternative accommodation continues to be a significant obstacle. Lists of unclaimed socially owned property, intended to be used as alternative accommodation, are often incomplete. In addition, the allocation of the apartments, which should be used as alternative accommodation, remains problematic. The allocation of newly built housing units generally occurs in a non-transparent and discriminatory manner. There are some small signs of improvement - notably in Prijedor, where the RS Ministry of Displaced Persons and Refugees (MRDP) and the municipal authorities have jointly agreed to finance the accommodation of evicted DPs in a local hotel. Similar steps have taken place in Bosanski Novi/Novi Grad, Kotor Varos and Ljubinje in the RS, and Kakanj and Busovaca in the Federation. In general, however, few municipal/government officials fully accept their responsibilities regarding the identification and provision of suitable alternative accommodation”.**⁷

The state of such accommodation is frequently unsuitable and considered a major barrier to appropriate and sustainable resettlement:

*“In addition to deprivations suffered by the returnees in the areas of social and economic rights, it has been noticed that an increasing number of people repossessing their property have subsequently been cut off from utilities such as telephone, water, electricity or gas. The lack of supply of these services is considered to be an obstruction to a sustainable return.”*⁸

As will be shown in Section 5, women returnees frequently experience a disproportionate impact of these difficulties via discrimination in property allocation and access to employment. Returnees are subject to further human rights abuses as detailed below.

⁷ HRCC (2001) op. cit., p.1-7

⁸ HRCC (2001) op. cit., p.33

1.2 Human rights

Recent reports by the United Nations Economic and Social Council's Special Rapporteur of the Commission on Human Rights have expressed serious concern at human rights abuses in Bosnia and Herzegovina:

*"In his previous report to the Commission on Human Rights, the Special Rapporteur stated that **Bosnia and Herzegovina remained divided along ethnic lines and that substantial human rights violations were continuing, in particular violations of the rights to property and to return. One year later, he must observe once again that there is little fundamental change or significant progress to report on respect for human rights and the rule of law. The main reason for this unsatisfactory situation continues to be deliberate obstruction by those who hold the power in Bosnia and Herzegovina.** The municipal elections of April 2000 led to cautious optimism among international observers as non-nationalistic forces gained some ground, especially in parts of the Federation of Bosnia and Herzegovina (the "Federation"). However, the results of the general elections of November 2000, organized and supervised by the Organization for Security and Co-operation in Europe (OSCE) mission in Bosnia and Herzegovina, did not meet the expectations of the international community, and the success of nationalist parties was a significant reverse.*

"A climate of nationalism, as illustrated by the aggressive election campaign in November, continues to prevail in the country. Compared to the dramatic changes in both the Republic of Croatia and the Federal Republic of Yugoslavia in 2000, change in Bosnia and Herzegovina is happening at a much slower pace. This is perhaps not surprising, considering the large portions of the population that were and continue to be affected by the war and that therefore remain susceptible to nationalist rhetoric. The political environment, complicated constitutional and legal framework, and fragmentation of State institutions are the main impediments to any real change in Bosnia and Herzegovina. In addition, corruption and organized crime plague the society and prevent the healthy development of the economy. Illegal migration through Bosnia and Herzegovina to Western Europe and the trafficking of human beings have also been major issues in 2000

"B. General human rights situation

*In his previous reports, the Special Rapporteur outlined his major areas of human rights concern in Bosnia and Herzegovina. These concerns remain valid. **The role of the police, as agents of the State, in ensuring the effective protection of human rights is vitally important. Despite the efforts of the United Nations Mission in Bosnia and Herzegovina (UNMIBH) to restructure the local police, police forces remain mono-ethnic in most areas and their effectiveness in crime detection, investigation and response remains low. The lack of a functioning and independent judiciary***

continues to be another major concern. *The interference of political power structures both within law enforcement agencies and the judicial system remains strong. The judicial system assessment programme (JSAP) of UNMIBH, which is closing down in December 2000, has over a period of two years monitored and assessed the court system. Its main findings have been that the entire judiciary is politically, professionally and structurally dysfunctional. The successor of JSAP, the Independent Judicial Commission, will have the difficult task of actually implementing the judicial reforms needed.*

“On a more positive note, there has been a continued trend towards greater implementation of decisions of the Human Rights Chamber, the Ombudsman (previously the Ombudsperson), and the Federation Ombudsmen during the reporting period. Even recommendations and decisions in politically-sensitive cases, such as the decision to rebuild the destroyed mosque in Banja Luka, are finally being implemented. In April 2000, the first three Ombudsmen for the Republika Srpska were appointed as a multi-ethnic Ombudsman institution. As of November 2000, the first complaints were lodged with this new institution and will be investigated.

“The main concern in Bosnia and Herzegovina continues to be the return of refugees and displaced persons. Security is still a major factor hindering return in some parts of the country. *More than 300 return-related incidents were reported to the United Nations International Police Task Force (IPTF) since March 2000. Impunity of perpetrators of ethnically motivated attacks on returnees or their property remains the rule rather than the exception. Other factors slowing the rate of return of minorities are obstruction in property law implementation, lack of basic utilities, lack of employment opportunities, difficulties with regard to receiving pensions and health care, lack of facilities for education, and discrimination. The authorities at all levels have failed to create conditions conducive to sustainable return - one of the key demands of the Dayton Agreement. The question of the sustainability of return is of the utmost concern to the Special Rapporteur and hence is the main focus of the present report”⁹*

This year’s update of his previous report also highlights the significance of discrimination as a main source of human rights abuses:

“The months following the November 2000 elections in Bosnia and Herzegovina have been dominated by political crisis and stalemate. It was only on 22 February 2001 - more than three months after the elections - that the Council of Ministers was formed, and other key structures have been similarly delayed. The delays have been detrimental to the people of Bosnia and Herzegovina, especially as the

⁹ U.N. Economic and Social Council Commission on Human Rights (January 2001), op. cit., p.6-8

country is faced with competition from neighbouring countries for aid and investment. The Special Rapporteur hopes that the new Government – the first formed without the three main nationalist parties since the conflicts began - will make the protection of human rights one of its top priorities.

“One of the country’s principal challenges, as frequently observed by the Special Rapporteur, is endemic and institutionalized discrimination. It may be recalled that the Constitutional Court in 2000 issued an important decision stating that some of the provisions of the entity constitutions (especially in the Republika Srpska) were incompatible with the federal Constitution. Despite this decision, little has been done to implement its requirements. On 11 January, the High Representative issued a decision to establish constitutional commissions in both entities, with the ultimate aim of abolishing discrimination and protecting the rights and interests of all peoples in the country. The decision imposes an interim arrangement until the Constitutional Court’s ruling is fully implemented”.¹⁰

Roma

The above references to the problems facing returnees draw particular attention to the clear divisions that exist between ethnic groups, and to the fact that members of minority groups in any one area are susceptible to discrimination and human rights violations. However, it should be emphasised that the Roma are particularly vulnerable throughout the country:

“The European Roma Rights Centre reports upon the widespread discrimination against, and violent attacks upon, Roma throughout Europe, maintaining that Roma continue to be the most disadvantaged minority group in Europe. In BiH, Roma constitute a large minority group, and yet are often overlooked in all spheres of public life. In particular, Roma are discriminated against in the fields of employment and housing. Furthermore, the absence of ‘national minority status’ for the Roma and often lack of awareness that the Roma constitute an ethnic minority group adds to the difficulties and prejudices encountered”.¹¹

¹⁰ UN Economic and Social Council Commission on Human Rights (March 2001), *Situation of human rights in the former Yugoslavia: Report of Mr. Jiri Dienstbier, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia, and the Federal Republic of Yugoslavia*, Addendum, E/CN.4/2001/47/Add.1, p.3; Accessed via <http://www.unhchr.ch/html/menu2/7/a/myug.htm>

¹¹ HRCC (2001) op. cit., p.35

1.3 Bosnia and Herzegovina & international legal instruments

Bosnia and Herzegovina has ratified the main human rights treaties including the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. However, human rights guarantees under these treaties have also been incorporated into the state's Constitution, which actually binds it to internationally recognised Human Rights legislation, including the European Convention on Human Rights.

1.3.1. The Constitution of the State of Bosnia and Herzegovina

"The Constitution of Bosnia and Herzegovina is a document binding the state to "the highest level of internationally recognised human rights and fundamental freedoms", as it is stated in Article 2.1. Having incorporated the European Convention on Human Rights directly into domestic legislation, the Constitution applies its provisions in protecting individuals from violations by the state.

... "Thus, the state can be held responsible if a given law, whose scope falls within the European Convention on Human Rights, fails to protect individuals or groups of individuals, or if it regulates or is applied in a discriminatory manner.

.... "According to Article II, paragraph 4 of the Constitution, Bosnia and Herzegovina must protect the rights and freedoms provided for in the mentioned documents for all its citizens, "without discrimination on any ground such as sex, race, skin colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.""¹²

The Constitution also incorporates:

"the two International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the European Convention on Human Rights, the European Social Charter and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)".¹³

¹² International Helsinki Federation for Human Rights (IHFHR) (2000) 'Bosnia and Herzegovina' in *A Perspective on Women's Human Rights*, p. 84-85; www.ihf-hr.org/index.htm

¹³ IHFHR (2000), op. cit. Further detail of how international legislation has been incorporated is given: "The relationship between international and domestic legislation in the field of human rights is regulated by Section VII - Article 3 of the Federation Constitution, which states that "International treaties and other agreements in force in respect of the Federation and the general rules of international law shall form a part of the law of the Federation. In case of incompatibility between a treaty and legislation, the former shall prevail."

These obligations on the State are further reinforced by the respective Constitutions of the Federation of Bosnia and Herzegovina, and the Republika Srpska:

*“Section II.A, Article 2 further re-affirms that all persons within the territory of the Federation shall enjoy the right to equality before the law - paragraph 1(c), and to freedom from discrimination based on, inter alia, sex (paragraph 1 (d)). The Constitution of the Republika Srpska guarantees the protection of human rights and freedoms in accordance with international standards (Section I, Article 5). Like its Federation counterpart, Section II of the Republika Srpska Constitution is dedicated to human rights and freedoms, and Article 10 provides for equality of all persons within the RS, irrespective of, inter alia, sex. Article 16 expressly guarantees equal protection before the courts and other state bodies and organisations”.*¹⁴

CEDAW

As stated above, the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) has been incorporated into the State’s Constitution, and was ratified by succession in 1993. However, the two states have reached different stages in including CEDAW in their own constitutions:

“Although the Constitution of Republika Srpska makes no direct reference to CEDAW, it does contain several key provisions and general principles that refer to women’s rights. Thus, the provisions of the CEDAW are directly applicable through the state Constitution.

*“Bosnia and Herzegovina was expected to submit an official report on the implementation of CEDAW by January 1998, but failed to do so. The previous report submitted on compliance with CEDAW did not meet the procedural standards established under Article 18 of the Convention and it was sustained orally in January 1994”.*¹⁵

1.4 Women’s human rights

The Constitutional provisions imply that women enjoy an equal status to men in Bosnia-Herzegovina. However, although in 1999 and 2000 the U.S. Department of State reported that there was *“little legal or social discrimination against women”* in Bosnia and Herzegovina, their latest report states that:

“Discrimination against women persists, and violence against women, in particular domestic violence, is a persistent yet underreported

¹⁴ IHFHR (2000) op. cit., p. 84

¹⁵ IHFHR (2000) op. cit., p.84

*problem...There is little **legal** discrimination against women, and women serve as judges, doctors, and professors; however, a male-dominated society prevails in both entities, particularly in rural areas, with few women in positions of real economic power or political power”*¹⁶

The extent of domestic violence, trafficking for forced prostitution, and discrimination against women (in the workplace for instance), that are highlighted by this report indicate that women experience discrimination and human rights abuses in many aspects of their lives.

¹⁶ U.S. Department of State (2001), op. cit.

2. Domestic violence

2.1 Prevalent, under-researched and underreported

Research into the prevalence and nature of domestic violence in Bosnia-Herzegovina has been limited, as highlighted by a 1998 report conducted by researchers on behalf of the Sarajevo Branch of the Lawyers' International Forum for Women's Human Rights, in conjunction with Non-Governmental Organisations working in the area:

*“Many participants already had a good idea of the prevalence of domestic violence in the Sarajevo area, or factors influencing its incidence, and of the response of state and other agencies. However, it was apparent that their work was hampered by the fact that there was no available data on women's experience of violence”.*¹⁷

Three years on, this still appears to be the case, although there is substantial evidence that domestic violence is prevalent:

*“Violence against women is a problem. **Credible NGO observers reported that violence against women, including spousal abuse and rape, remained widespread and underreported.** A report by the International Helsinki Federation for Human Rights estimates that about 30 percent of women in the country are victims of domestic violence; however, there is little data available regarding the extent of the problem. Throughout the country, rape and violent abuse are considered criminal offenses. The laws prohibit rape in both the Federation and the RS. Spousal rape and spousal abuse are also illegal in the Federation. However, domestic violence usually was not reported to the authorities; a sense of shame reportedly prevents some victims of rape from coming forward to complain to authorities”.*¹⁸

Medica Zenica, a women's Non-Governmental Organization based in Zenica (Federation of Bosnia-Herzegovina), conducted research that attempted to gauge the prevalence of violence against women by using interviews, a survey, and documentation research. Their survey of 540 women found domestic violence in the Zenica municipality to be:

“prevalent and far-reaching. Every fifth woman (20%) we interviewed said her partner (husband or boyfriend) had threatened her with violence; of the women who said that their partners had threatened them, four out of five (79%) said that this had happened more than once. Every fifth (23%) had been beaten by their partners; of the women who said that their partners had beaten them, four out of five

¹⁷ Maguire, S (1998) 'Researching 'a family affair': domestic violence in former Yugoslavia and Albania' in *Gender & Development*, Volume 6, No.3, pp.60-66, Oxfam, London

¹⁸ US Department of State (2001), op. cit.

*(77%) said that this had happened more than once. almost every fourth (24%) had been battered over a long period of time.”*¹⁹

It should be noted that this research appeared to be primarily concerned with threats or incidences of physical violence, rather than sexual, psychological or emotional abuse.

The International Helsinki Federation for Human Rights (IHFHR) has reviewed research carried out by the International Committee in Gorazde Canton, which:

*“revealed that over 50% of the women interviewed confessed to either having been hit or beaten by their husbands or boyfriends or to have witnessed similar incidents”*²⁰

2.2 Sexual violence

Other sources have stressed that sexual abuse is also difficult to measure, and underreported:

*“Statistics on rape and other sexual crimes are not systematically collected or maintained by the authorities at any level. A number of NGOs have tried to meet this need, but none have the resources to do so at a national level”*²¹

However, the International Human Rights Law Group also report that data from the police in Tuzla Canton indicated that from over 100 cases of reported domestic violence, a substantial number involved sexual violence, and how sexual violence, like domestic violence, is similarly underreported:

*“almost 20% of reported violence were cases of sexual assault... Like domestic violence, rape and other sexual crimes are not regularly reported, and for similar reasons.... victims of sexual crime are often humiliated and ashamed to make known their experience”.*²²

2.3 The impact of conflict

Both Medica Zenica and the International Helsinki Federation for Human Rights agree that the prevalence of domestic violence in Bosnia and Herzegovina increased during the aftermath of the Former Yugoslavian conflict.²³ This increase in violence is often attributed to problems associated

¹⁹ Medica Zenica (1999) *To Live Without Violence: Final Report*

²⁰ IHFHR (2000) *op. cit.* p.96. Note that different definitions and methodologies may account for considerably different figures

²¹ International Human Rights Law Group (IHLRG) (1999) *National NGO Report on Women's Human Rights*

²² IHLRG (1999), *op. cit.*

²³ See also Immigration and Refugee Board Research Directorate (2000) *Bosnia and Herzegovina: Availability of police protection to women victims of domestic violence (1992-1999)*, BOS34122.E, Ottawa; available at www.irb.gc.ca

with the reintegration of families following the war, and with “war trauma” where “men who had been in combat used violence as a response to their emotions”. According to Medica Zenica, for these reasons, women often suffer in silence.²⁴ The International Helsinki Federation for Human Rights state that this results in women tolerating violence because they believe it to be

“rooted in the post-war social environment, due to post-traumatic stress syndrome, unemployment, or men’s refuge in alcohol”²⁵

This evidence suggests that domestic violence might tend to be more socially and officially condoned partly as a consequence of the conflict, and as such, any interventions inappropriate. However, attributing an increase in domestic violence to the experience of conflict is not without its counter arguments. It may be for instance that, as with other crimes, factors influenced the frequency with which domestic violence was reported during the conflict, and the nature of authorities’ responses. It does seem plausible that reporting domestic violence might have been less of a priority for women during the conflict – indeed, many women’s partners were away from the domestic environment. Sarah Maguire found that many women’s agencies reported an increase in demand for their services during the “lead-up” to the war, but that this was followed by a reduction in the level of domestic violence reported once the war had begun.

However, she argues that it is essential to remember that “*violence against women is an ongoing and ubiquitous problem, and a feature of society before, during, and after conflict*”.²⁶ The apparent increase following the conflict may therefore simply reflect the return of men to the family home and a change in circumstances that enables women to report domestic abuse more frequently.

2.4 Violence from sons to mothers

Most of the research referred to by this report has focused on the abuse of women by their husbands or partners. However, the International Helsinki Federation for Human Rights report stated that:

“According to the report issued by the Center for Development Information and Evaluation – U. S. Agency for International Development, another form of violence within the family is increasing at an alarming rate in Bosnia and Herzegovina: a SOS hotline in Mostar revealed an increasing number of mothers being abused by their sons. Some of the cases were analysed and the victims’ opinion was that this is one of the very specific consequences of the post-war phenomenon”.²⁷

²⁴ Medica Zenica (1999), op. cit.

²⁵ IHFHR (2000) op. cit., p.96

²⁶ Maguire (1998) op. cit., p.62

²⁷ IHFHR (2000), op. cit., p.96.

3. Domestic violence and the law

The new Constitution of the State of Bosnia and Herzegovina provided both the Federation of Bosnia and Herzegovina and Republika Srpska with significant governing powers, and each entity has different legislation for addressing domestic violence

3.1 Federation of Bosnia and Herzegovina – the law and physical violence

The revised Criminal Code of the Federation of Bosnia and Herzegovina was implemented in 1998, and does contain some specific legal provision regarding domestic violence. The International Helsinki Federation for Human Rights reports that:

“The new Criminal Code contains specific legal provisions addressing physical injuries committed against the spouse within the marriage, or against the partner within a partnership...”²⁸

“Article 178” states that:

“a person will be held criminally responsible for an act of minor physical injury against a spouse or person with whom he or she cohabits, or a parent of his or her child with whom he or she lives”²⁹

However, it is essential to note that this definition of domestic violence only refers to physical injury occurring within a co-habiting relationship between adult partners, thus adopting a narrow definition of domestic violence.

3.2 Federation of Bosnia and Herzegovina – the law and sexual violence

The new Criminal Code also amended the definition of rape in order to recognise its occurrence within marriage:

“The new Criminal Code of the Federation of Bosnia and Herzegovina includes a new provision on rape. The former provision, which defined rape as vaginal intercourse under the pressure of serious threat to the life and body of the victim, or a person close to the victim, committed by a man against a woman with whom he did not live in a marital relationship, was replaced with Article 221. The new legal text stipulates that rape is forced vaginal intercourse under the pressure of serious threat to life and body of the victim, or a person close to the victim, that one person commits against another. The punishment shall be imprisonment for three to ten years.

“Despite the new legal possibilities available through Article 221 for punishing marital rape, it should be noted that the law is articulated

²⁸ IHFHR (2000) op. cit., p.95

²⁹ IHRLG (1999), op. cit.

*from the perspective of the perpetrator, and not of the victim. The definition of rape is limited to forced sexual intercourse; any other forms of forced sexual assaults must be punished under Article 226 as acts of debauchery. The penalty in such cases is imprisonment for up to three years”*³⁰

It should therefore be noted that sexual abuses excluded from this Article, i.e. those other than “*forced sexual intercourse*”, carry much lower penalties. Placing the focus of the legal definition on particular acts of abuse, by failing to incorporate the perspective of the woman herself, means that her “*experience of a violation of her bodily integrity and...self is irrelevant under the law*”.³¹

3.3 The law and domestic violence in Republica Srpska

There is no specific domestic violence legislation. Republica Srpska still operates the Criminal Code of the former Socialist Republic of Bosnia and Herzegovina. More general legislation against violence contained in this code must be referred to in assessing the adequacy of protection for women fleeing domestic violence. It should be noted that although most of the critical analysis of legislation and protection available to women experiencing domestic violence is specific to the Federation of Bosnia & Herzegovina, this does not mean that the situation in Republica Srpska is any better. The lack of specific legislation suggests it might be worse, and indeed this is the conclusion reached by Medica Zenica, although most of their work was carried out in the Federation:

*“All our meetings with women from the Republic of Srpska show that the problem seems to be the same, if not worse, there”*³²

3.4 The law and sexual violence in Republica Srpska

A report by the International Helsinki Federation for Human Rights states that the criminal code also “*does not contain any specific legal provision regarding marital rape*”, so whilst rape is prohibited, within marriage it will not be recognized as such.³³

3.5 Summary of legislative protection in both entities

To summarise, although the US Department of State reported in 1999 that:

“Throughout the country, rape and violent abuse are considered criminal offenses. The laws prohibit rape in both the Federation and the RS

³⁰ IHFHR (2000), op. cit., p.97.

³¹ IHRIG (1999), op. cit.

³² Medica Zenica (1998b) *Situation of women victims of violence*

³³ IHFHR (2000) op. cit., p.95

*[Republika Srpska. Spousal rape and spousal abuse are also illegal in the Federation].*³⁴

this must be considered critically since in the Federation of Bosnia and Herzegovina, the definition of domestic violence is limited, as highlighted above, and only recognises such abuses within the contexts of certain types of relationships. Rape within marriage is not specifically recognised in the Republica Srpska, and other forms of sexual abuse are also neglected.

Indeed, this is confirmed by the HRCC:

“In cases of sexual and physical violence against women, including domestic violence (see above), lack of awareness within the Criminal Justice System exists and legislative mechanisms for the protection of women’s rights are also wanting. In response to the ground-breaking pilot project undertaken by Medica Zenica, to raise awareness, amongst members of the Criminal Justice System and local authorities, of violence against women, UNICEF have begun seeking NGOs as Implementing Partners for a similar project to be implemented BiH-wide”.³⁵

³⁴ U.S. Department of State (2001), op. cit.

³⁵ HRCC (2001) op. cit., p.34

4. The reality of seeking protection

Several reports suggest public awareness of domestic violence is extremely limited, and that women frequently prioritise maintaining the “unity” of the family over ensuring their own protection and security:

*“[The] level of acceptance by women of domestic violence is also a serious issue... **Thirty percent of the women interviewed by IRC Gorazde agreed with the statement ‘It is OK if a husband beats a wife if she does something wrong’**”³⁶*

Further:

*“...women in Bosnia and Herzegovina refrain from reporting cases of family violence, as Bosnian society is traditionally patriarchal and views domestic violence as a part of life... domestic violence is further perpetrated by men and tolerated and accepted by women without really questioning whether a dominant behaviour pattern plays a role. Due to this perpetuation of the understanding of the family environment, women very often do not “recognise” the existence of domestic violence. Consequently, the number of those cases that are actually reported gives a far from accurate picture of the extent of the problem. Educated to endure what is normally seen as a part of life, namely the violent behaviour of their husbands/male life partners, 73% of the women interviewed in the above report [Medica Zenica research, 1999] declared that it is very important, almost a duty, for a woman to keep the family together, whatever the price. Moreover, 15% of respondents did not agree that there is no excuse for violence in the family”.*³⁷

Maguire has argued that the sheer number of male lives lost has resulted in women being more prepared to tolerate domestic violence:

*“In... Bosnia and Hercegovina, almost the entire adult male population were killed, disappeared or fled. Some years after the war, women constitute up to 90% of the population in some areas... **There is evidence that younger women – who are conscious of the competition to find and keep a man – are tolerating patterns of male behaviour that their older sisters and mothers would have considered unconscionable in pre-war years**”³⁸*

If these factors are interpreted together with the evidence given above that suggests women are more likely to feel pressure to support husbands and partners traumatized by war, it suggests that many women are unlikely to

³⁶ IHRIG (1999), op. cit.; The research referred to is that of the International Rescue Committee in Gorazde which consulted 249 women.

³⁷ IHFHR (2000), op. cit., p.96.

³⁸ Maguire (1998), op. cit., p.65

seek help for domestic violence. Here we consider the responses she might receive if she does.

As Section 3 indicated, there is only limited specific legislation available to protect women experiencing domestic violence, and this exists only in the Federation of Bosnia & Herzegovina. This may be one reason why research has found that women are reluctant to report incidences of domestic violence to the police or other authorities.

*“domestic violence usually was not reported to the authorities, and a sense of shame reportedly prevents some victims of rape from coming forward to complain to authorities”.*³⁹

The research carried out by Medica Zenica found that 60% the women who had experienced physical violence (23% of the total 540 women [i.e. approximately 124] they interviewed) had never used the services of *“either the Centre for Social Work, the police, or the courts”*⁴⁰

This study found it difficult to ascertain the reasons for women not seeking protection from such agencies, but they suggest that it may be related to *“the lack of a cohesive series of protective legal codes about domestic violence”*, thus making it difficult for institutions to pursue cases, and also lack of recognition of or understanding of domestic violence.⁴¹ This seems a reasonable conclusion where no clear legal definition exists.

Women’s reluctance to report domestic violence may also be explained by the responses of various authorities and the lack of an adequate system of justice. The HRCC explain this as follows:

*“During the reporting period, there were approximately 45 cases of domestic violence reported to the local police throughout BiH. Local authorities generally continue to treat such cases as domestic disputes instead of crimes. In January 2001, however, the Bihac Municipal Court sentenced a man to 3.5 years imprisonment after finding him guilty of stabbing his wife eight times with a knife. The sentence was reduced because of medical evidence submitted by defence indicating that the husband suffered from a brain disorder”.*⁴²

4.1 The police

Again, the lack of information is evident, as indicated by research into the availability of Police protection for women experiencing domestic violence conducted by the Research Directorate of Canada’s Immigration and Refugee Board last year.⁴³ There are however, major problems with the operation of the Police in both entities of Bosnia and Herzegovina, which should be

³⁹ US Department of State (2001) op. cit.

⁴⁰ Medica Zenica (1999), op. cit.

⁴¹ Medica Zenica (1999), op. cit.

⁴² HRCC (2000) op. cit. p.21

⁴³ Immigration and Refugee Board Research Directorate (2000), op. cit.

recognised as having an impact on their responses to all crime. Firstly there is evidence of Police inaction, corruption and misconduct in the Federation of Bosnia and Herzegovina, and in the Republica Srpska:

*“Of 1,063 incidents reported to IPTF since 26 July 1999, 49% have involved officers from the Federation, 45% from the RS, and 6% from the Brcko District. Categories of misconduct include assault, beatings in custody, excessive use of force, ill treatment, harassment, police inaction, illegal detention, restriction of movement, improper seizures, abductions, sexual assaults, negligence, corruption, and abuse of power”.*⁴⁴

Also:

*“Despite the efforts of the United Nations Mission in Bosnia and Herzegovina (UNMIBH) to restructure the local police, police forces remain mono-ethnic in most areas and their effectiveness in crime detection, investigation and response remains low”.*⁴⁵

Secondly, the domination of police forces by one ethnic group has also been documented by the HRCC, although it is apparent that steps are being taken to redress this imbalance:

*“The total number of registered police personnel throughout BiH stands at 22,598. Of the 12,646 police personnel registered in the Federation, 66% are Bosniaks, 30% are Croats, and 3% are Serbs. Of the 9,400 police personnel registered in the RS, 97% are Serbs, 2.5% are Bosniaks, and 0.5% are Croats”.*⁴⁶

There is also a lack of female officers. Research carried out by the Research Directorate of Canada’s Immigration and Refugee Board refers to information from the United Nations:

“According to a 24 October 1999 UN report on the human rights situation in Bosnia and Herzegovina, the statutory shortcomings are exacerbated by the small number of women police officers:

“The number of women in the police forces of both [Bosnia and Herzegovina] is alarmingly low: only some 200 female police officers out of more than 11,000 in the Federation and approximately 30 out of 8,500 in the Republika Srpska. This has serious implications for the proper investigation of gender-based violence, such as domestic violence and rape. The problem is compounded by the fact that the

⁴⁴ IPTF refers to the International Police Task Force; HRCC (2000) op. cit. p.18

⁴⁵ U.N. Economic and Social Council Commission on Human Rights (January 2001), op. cit. N.B. This also implies that any investigation into the availability of protection should take into account the ethnic origin of a woman in order to assess factors that might affect agency responses.

⁴⁶ HRCC (2000) op. cit. p.17-18

*police are in general not trained to respond adequately and in a gender-sensitive manner to gender-specific crimes”.*⁴⁷

4.1.1 Reporting domestic violence to the police

It is highly plausible that the above factors present major additional barriers to seeking protection, above and beyond those faced by all women experiencing domestic abuse, and that there are additional problems for women from minority ethnic groups. This has been found to be the case in the research by the International Helsinki Federation for Human Rights, where, in Bosnia and Herzegovina, although any incidence of domestic violence reported to the Police together with a file of complaint of *bodily* injury requires Police investigation, the reality is that:

*“victims of domestic violence are very reluctant to report to police, mainly due to a fear of not being understood or of being further ostracised by making their private life public. **The custom of ‘disciplining’** a woman through violence for something she did wrong as part of her family duties means that the police are unresponsive when called to intervene in a violent family situation...*

“The police have little or no training in investigating cases of domestic violence and research and case studies have revealed that police officers usually react in one of two ways when dealing with such cases: they will either intervene if the violence results in death or, if a woman files a complaint for being abused by her husband/partner, they will treat her as responsible for triggering the violence. This latter situation arises out of the law and public protectors’ (in the case of Federation of Bosnia and Herzegovina) limited understanding of the nature of domestic violence and from the subjectivity with which the police treat cases of bodily injuries (in the case of Republika Srpska).

*“One could conclude that, in cases of domestic violence, the police are themselves a significant obstacle to intervention and legal redress”*⁴⁸

The United States Department has also described the limited abilities of the police to deal with domestic violence:

“The police have little or no training in investigating cases of domestic violence, and there were reports of police inaction in cases of domestic violence and sexual assault. According to human rights groups, in one case, a police officer from Zvornik was accused of raping two teenage girls. The father reported the incident to the local police station, but the officers on duty did not record the complaint. When the police finally interviewed the victims, the accused officer was allowed to be present in the room. The IPTF has requested an independent investigation. The OHR reported that in one case, police answering a call about

⁴⁷ Immigration and Refugee Board Research Directorate (2000), op. cit.

⁴⁸ IHFHR (2000) op. cit., p.97

*domestic abuse noticed injuries on the woman and her minor daughter, but offered only to take them to the hospital. The woman, who had previously reported other incidents of abuse to the police, later committed suicide. In Canton 4, a police officer hung up on a midnight call from a daughter calling for help when her father threatened her mother with a knife. No record of the complaint was made. The IPTF has called for an investigation and for disciplinary action against the duty officer”.*⁴⁹

4.1.2 Reporting sexual abuse and rape to the police

The same appears to be true of sexual abuse:

*“As is the case with domestic violence, women in Bosnia and Herzegovina do not report rape or other forms of sexual assault. If women victims of these crimes do report to the police, the subsequent investigation frequently involves three or more cross-examinations. Police are untrained and insensitive in investigating sexual offences and the attitude towards the victim is somewhat more oriented to passing judgement on her character and appearance than to considering the physical and psychological trauma that she experienced. Traditional investigation methods and criminal procedures require the victim to prove the act of rape actually took place and the woman must explain how the rape happened. She must also prove that she tried to escape and was unsuccessful in her attempt. Unfortunately though, the law neither defines nor specifies the concrete terms and procedures for proving that the offence took place. As a result, law enforcement in this regard is open to police interpretation, which in practice lessens women’s chances of seeking justice”.*⁵⁰

The International Human Rights Law Group also emphasise the above:

*“Police are untrained and notoriously insensitive in the investigation of sexual crimes, especially in terms of attitudes towards victims, often seeking, instead, to judge the character of the victims and ignore the physical and psychological trauma they have experienced. Moreover, the Bosnian police force is overwhelmingly male”.*⁵¹

⁴⁹ US Department of State (2001) op. cit.

⁵⁰ IHFHR (2000), op. cit., p.97. NB This refers to the Federation of Bosnia and Herzegovina only.

⁵¹ IHRLG (1999), op. cit.

It must also be stressed that even with the revised criminal code in the Federation of Bosnia and Herzegovina, it is still the woman's responsibility for pursuing proceedings against the perpetrator. The International Human Rights Law Group highlight this as a significant barrier to women seeking protection. The same is applicable for women seeking to bring perpetrators to justice under the Republica Srpska criminal code:

*“the fact that the Criminal Codes of both entities require a victim to personally initiate criminal proceedings in cases of light bodily injury, rather than the state, is a serious impediment in the prosecution of domestic violence. **Having to file charges against a husband, father, boyfriend, or other family member, puts the victim in a dangerous situation, since more often than not she is still living with him...**It also places the burden of proof on the victim, as opposed to prosecution ex officio where the burden is proved by the state which has offices to investigate and collect the necessary evidence. It is thus obvious why domestic violence so often goes unreported”.*⁵²

Importantly, there are also no legal measures available to ensure that any perpetrator who has proceedings being brought against him has to stay away from the woman he has been violent towards:

*“the lack of any form of injunctive relief or restraining orders to physically separate and keep an offender away from his victim (temporarily or permanently) is a significant obstacle to the effective legal protection of women's lives. There is also a real danger to a victim of violent crime who is required to pursue a prosecution personally, without protection against the heightened risk of intimidation or further violence by a vindictive offender that such a prosecution is likely to encourage”*⁵³

4.2 The judicial and legal system

Given the above, it is not surprising that only a minute proportion of cases reach the courts. In 1997, the Sarajevo Municipal Court recorded receipt of only eight cases of minor physical assault.⁵⁴

Even then, the lack of an explicit legal definition of domestic violence in both entities means that:

*“the courts alone are left to decide what measures to take in this very sensitive and serious situation. The lack of a cohesive set of protective measures regarding domestic violence is no obstacle to the courts being able to adequately punish this crime”*⁵⁵

⁵² IHR LG (1999), op. cit.

⁵³ IHR LG (1999), op. cit.

⁵⁴ IHR LG (1999), op. cit.

⁵⁵ IHR LG (1999), op. cit.

This together with the lack of protection for women pursuing charges may explain why of these eight cases, “four were withdrawn or rejected, two were given suspended sentences, and [in 1999] two cases are still in process”.⁵⁶ The inadequacy of mechanisms for dealing with domestic violence is also noted by a 1999 HRCC report, referred to by the Canadian Immigration and Refugee Board Research Directorate:

*“Violence against women is not defined in any domestic law nor have there been any official instructions or policy statements regarding the problem by government at any level. ... Given the lack of legal definition of domestic violence, courts are left to decide what measures to take, if any against perpetrators (Oct. 1999)”.*⁵⁷

There are further problems regarding the inadequate functioning of an independent judiciary in both entities of Bosnia and Herzegovina, as identified by the United Nations:

*“The lack of a functioning and independent judiciary continues to be another major concern. The interference of political power structures both within law enforcement agencies and the judicial system remains strong. The judicial system assessment programme (JSAP) of UNMIBH, which is closing down in December 2000, has over a period of two years monitored and assessed the court system. Its main findings have been that the entire judiciary is politically, professionally and structurally dysfunctional”.*⁵⁸

There have however, been significant attempts to improve the independence of the Judiciary, with the establishment of an Independent Judicial Commission in December 2000. This Commission is responsible for implementing recent legislation passed in both entities regarding the functioning of the justice system.⁵⁹

4.3 Other support services

Medica Zenica reported in 1998 that

*“Bosnia-Herzegovina has no women’s shelter in the sense of a place of refuge for survivors of domestic violence, apart from the work done in projects like ‘Medica Zenica’ or ‘Vive zene Tuzla’”*⁶⁰

⁵⁶ IHR LG (1999) op. cit.

⁵⁷ Research Directorate, Immigration and Refugee Board (2000), op. cit.

⁵⁸ U.N. Economic and Social Council Commission on Human Rights (January 2001), op. cit. The U.S. Department of State corroborate this: “Although formally independent, the judiciary remains subject to influence by political parties and the executive branch and is unable to prosecute complex or even simple crimes fairly and effectively”, U.S. Department of State (2001), op. cit.

⁵⁹ HRCC (2001) op. cit., p.1; p.16-17

⁶⁰ Medica Zenica (1998a), op. cit.

There is limited information on the work of these agencies. Medica Zenica provides accommodation for approximately forty women. However, this is clearly only a small number, and furthermore is based in Zenica. Their report goes on to say that *“Female isolation is prevalent in rural areas – women here have no knowledge of legal help”*.⁶¹ Maguire also states that as well as a lack of research into domestic violence in Bosnia and Herzegovina,

“there were areas of work which had not been begun; for example, there was no provision of information for women experiencing violence, and no public awareness campaigns had taken place. Organisations not only lacked the necessary financial resources to carry out such work, they also lacked training. Even in instances where health-care professionals and social workers were receiving training on trauma from international NGOs, very few trainers were able to provide training on gender issues, let alone on violence against women”.⁶²

⁶¹ Medica Zenica (1998a), op. cit.

⁶² Maguire (1998) op. cit., p.59-60

5. The situation for separated or divorced women

The extent to which there is a lack of state and voluntary sector protection for women experiencing domestic violence is illustrated by the preceding section. The prospects of her facing further human rights abuses as identified by the European Convention on Human Rights can, to some extent, be drawn from this. The following evidence considers some of the difficulties that might face women who are forced to return, particularly in attempting to secure economic and social independence. As always, it is important to consider the individual circumstances of every woman - factors such as ethnicity may be particularly important in the context of Bosnia and Herzegovina, as highlighted by Section 1. It is plausible that these factors contribute to an extremely difficult situation facing women forced to return to either entity of Bosnia and Herzegovina. This being the case, coupled with the lack of support for women fleeing domestic violence, the danger of her returning to an abusive relationship is heightened.

5.1 Discrimination

As referred to in Section 1, the most recent U.S. State Department report notes widespread discrimination against women. Further to this, the HRCC state that:

*“In light of various reports from the field, **gender discrimination against women continues unabated**, especially in employment practices, in accessing health care services, and in the protection of property rights”.*⁶³

Section 1 also highlighted the additional discrimination faced by returnees, and this United Nations report from 1997 indicates that women have experienced these difficulties disproportionately:

“Economic recovery in post-war Bosnia is proving to be a slow process, and for every sector of the population, access to income-earning opportunities is a major concern. For displaced and returnee women, a large proportion of whom are widows and single heads of households, the economic situation is particularly difficult. Many were financially dependent on their spouses before the war and they consequently have no marketable skills or entrepreneurial experience. Others who are of rural origins and who are unable to go back to their home areas face considerable problems in adapting to life in a town.

Visiting Bosnia in the aftermath of the war, a team of experts, some of them from the US-based Women’s Commission for Refugee Women and Children, concluded that displaced and returnee women required much better access to vocational, literacy and skills training programmes, as well as banking and credit facilities. Without such services, they would not become economically independent.

⁶³ HRCC (2001) op. cit., p.34

Acting upon these findings, in 1996, UNHCR established the Bosnia Women's Initiative (BWI) with the help of a major grant from the US government. The organization then began a detailed process of consultation with the many women's groups which had sprung up in Bosnia during and after the conflict, so as to gain a better understanding of their needs and aspirations.

In its first year of operation, the BWI has sponsored a wide range of activities, including the provision of legal training and advice to Bosnian women on issues such as land, property, employment and pension rights, as well as family law. The latter is of particular importance as there has been a disturbing increase in the incidence of domestic violence since the war came to an end. The programme also attempts to address some of the particular legal, social and political problems experienced by women with husbands from a different ethnic group”⁶⁴

It is unclear whether the majority of women would benefit from such initiatives. Certainly the most recent evidence, such as that from the Human Rights Co-ordination Centre detailed in the introductory section of this report suggests that returnees continue to experience discrimination in accessing housing, and this extract from the UN Special Rapporteur indicates how gender and ethnicity continue to shape women's experiences of return:

“As a reflection of the division of the country into three separate ethnic zones, ethnically-motivated violations of economic and social rights persist throughout Bosnia and Herzegovina. It is all the more difficult to combat these violations in that they are intrinsically linked with various forms of corruption. While the international community has focused on property issues and judicial and police reform, equally essential economic and social rights have been disregarded, even though in some cases they have an impact even on the right to life, especially for the most vulnerable groups.

“It would not be an exaggeration to state that the deprivation of economic and social rights is a mere continuation of policies of ethnic cleansing. In areas where security is not at stake any more, such deprivation constitutes an obvious obstruction to sustainable return. Economic arguments are frequently used to rebuff concerns about economic and social rights violations, but problems in Bosnia and Herzegovina cannot be simplistically explained in economic and financial terms. The economic situation must not prevent the international and local communities from protecting economic and social rights and from combating all forms of discrimination. This is especially true since the dysfunctional economy is to a large extent the consequence of policies of ethnic division. The manipulation of the privatization process is but one illustration of this. Despite the

⁶⁴ United Nations (1997); available at http://www.unhcr.ch/refworld/pub/state/97/box4_4.htm

importance of this part of the reconstruction process, the international community seems to have overlooked this central problem.

“Among the core objectives of the international community is the economic viability of Bosnia and Herzegovina. The privatization process is considered a principal tool to speed up the transition towards a market economy and attract investment in a country that bears the double burden of a communist legacy and war devastation. However, the process should not be conducted at any price and without strict monitoring. In general there seems to be poor understanding of the complex realities in Bosnia and Herzegovina, and this ignorance has serious consequences, notably in that it reinforces discrimination and ethnic division.

*“Five years after Dayton, **discrimination on the basis of ethnicity, political opinion and gender remains one of the core problems in Bosnia and Herzegovina.** The importance of this matter increases as the international community tries to push for the accelerated return of refugees and IDPs. Return makes sense only if it is sustainable. Once the familiar obstacles of poor security and difficulties in property repossession are overcome, access to social and economic rights will be of primary importance. Unfortunately, many returnees - particularly in rural areas and locations where returnees are a small minority (in particular in eastern Republika Srpska and some Bosnian Croat controlled areas) - find themselves in extremely precarious conditions. This is especially true for the most vulnerable groups among the returnees, including the elderly, sick and disabled, and residents of collective centres.”⁶⁵*

5.2 Economic security

The following extract from International Helsinki Federation for Human Rights details some of the context:

“Women’s lives are affected by the social and economic conditions in society, and their economic position is often worse than men’s. Despite the pervasive belief that women and men were fundamentally equal in the field of employment and economics in the pre-war socialist system, this was not in fact the case and it is certainly not the case in post-war Bosnia and Herzegovina, where the transition from a system of State ownership to private enterprise has implications for women’s ability to take advantage of their economic rights. Despite the protections within the labour laws, they are often not implemented in practice, in large part because of the dysfunctional enforcement mechanisms at all levels of government (i.e. court cases can drag on for years). Administrative bodies for grievances or other worker protections (e.g. Workers’ Councils) are often politically controlled; and disciplinary

⁶⁵ U.N. Economic and Social Council Commission on Human Rights (January 2001), op. cit., p. 9

decisions go unimplemented. The lack of State law to regulate labour relations along with the implementing instruments in administrative and judicial arenas throughout the country is a significant deficiency in the protection of everyone's human rights.”⁶⁶

5.2.1 Access to employment

The following evidence indicates that women are in a disadvantaged position in attempting to gain employment that is both secure and of sufficient remuneration. The financial security of single women is thus threatened, although it is clear that there is a lack of official data that adequately reflects the position of women:

“Official data on women in the labour force is generally unavailable. It appears that in 1988, women comprised 38.7% of the national registered labour force, but by 1991 the percentage was 35.9%. In 1992, the Federation Employment Institute reported that women made up 53% of the registered unemployed. These official figures ignore the fact that Bosnian women were largely engaged in what is generally considered the non-productive activity sector, such as unpaid labour on family farms, in the home, or in the underground parallel market. Gender-disaggregated data is still not available today, in the post-war environment. The European Commission and the World Bank concluded that little in-depth analysis has been carried out on the composition of unemployment (e.g. according to gender, age, occupation, and region). However, a household survey conducted by the above international agencies revealed that women, especially those in households where the male figure is absent, have lower employment rates, and 20-50% lower wages than their male counterparts.

“Another survey targeting the socio-economic status of women, conducted by Prism Research in late 1998 and involving 2,100 women aged 18-55, found that 30% of the Republika Srpska respondents were registered as employed and 25% of the Federation respondents were registered as employed. Thus, 62% of this random selection of women in the RS are unemployed, compared with 71% of women in the Federation. Dnevni Avaz recently reported that 45% of those seeking employment in the Federation of Bosnia and Herzegovina are women; but Prism predicts that official statistics underestimate the actual unemployment levels of women by as much as 25%.”⁶⁷

The gender stereotyping of women's occupational opportunities also means that they tend to be restricted to less well paid employment:

⁶⁶ IHFHR (2000) op. cit., p.90

⁶⁷ IHFHR (2000) op. cit., p.87-89

“Although the assumption is that women in pre-war BiH had equal access to jobs, again the reality of their actual employment was somewhat different and occupations in BiH have always been gender-typed.

“According to Prism research, currently nearly two-thirds of employed women are in state/socially-owned enterprises. This is significant when one considers the disproportionate impact of privatisation on women, particularly their presence on “waiting lists” for downsized or defunct companies, and that many women have had difficulty in securing benefits earned over the years. Furthermore, 20% of Federation women reported being employed in positions below their formal qualifications; the situation was slightly better in the Republika Srpska. The gender stereotyping of occupations continues, affecting women’s opportunities in the labour market. Women are virtually excluded from some of the most active occupations in the post-war economy, such as construction-related jobs and are being pressured to accept more traditional roles as mothers and housewives, as well as traditional occupations in administrative fields, clothing manufacturing, or the production of homemade goods. The average salary for women in the FBiH is 400 DM, and below 200 DM in the RS.”⁶⁸

5.2.2 Workplace discrimination

Women also face further discrimination in securing work **and** in the workplace:

“Women have been discriminated against in the workplace in favor of demobilized soldiers, and a small but increasing number of gender-related discrimination cases have been documented. Anecdotal accounts indicate that women and men receive equal pay at socially owned enterprises but not necessarily at private businesses. Women are entitled to 12 months’ maternity leave and may be required to work no more than 4 hours per day until a child is 3 years old. However, women in all parts of the country encounter problems with regard to the nonpayment of maternity leave allowances and the unwarranted dismissal of pregnant women and new mothers. A woman with underage children may not be required to perform shift work”.⁶⁹

The Prism research referred to above by the International Helsinki Federation for Human Rights found that of women surveyed, 25% reported experiences of employment related discrimination, 46% of whom had faced this in obtaining work.

“Women are still involved in the “parallel economy” (i.e. underground economy) or are simply not officially registered by their employers (as is required by law), although this is not only a gender problem. Still,

⁶⁸ IHFHR (2000) op. cit., p.87-9

⁶⁹ US Department of State (2001), op. cit.

according to a random survey of 100 women in Mostar, only 6% of those employed in private enterprises are officially registered. When asked why they did not contact the proper institutions to protect their rights and employee benefits, most said they were afraid to take action against their employer for fear of losing their job. On the other hand, even when legally employed, some employers declare lower salaries than they actually pay, in order to reduce their financial obligations towards the state for health and pension benefits. Similarly, employees are reluctant to press charges because they are afraid of being dismissed in retaliation. It is also interesting to note that, of the approximately 25% of the Prism survey respondents who reported having experienced discrimination, 38% were discriminated against in trying to acquire the relevant documents to claim employment and pension benefits. It is not immediately obvious that these problems affect women in greater numbers than men...

...“Another problem for women is that legal preferences are given to ex-soldiers in a number of areas, including employment (it has been reported that ex-soldiers have the lowest unemployment rates and the highest wages). Such preferences directly violate international and domestic standards of non-discrimination and equal opportunities, as men constitute the majority of demobilised soldiers. Article 9 of the Republika Srpska Employment Law, for example, provides priority in employment first to the families of deceased soldiers (if no other member of the household is employed). Priority is also given to disabled war veterans, according to disability, to demobilised soldiers and last to individuals officially listed as unemployed for at least two years. In this context, the increased potential for discrimination against women seeking employment has been noted.”⁷⁰

This research found further evidence that such discrimination would be even greater for women forced to return, and women from ethnic minorities:

“Minority women and displaced women report being discriminated against in employment, although it is difficult to prove that displaced women are affected to a greater extent than displaced men. Still, discrimination on the basis of displaced person status was reported by the Prism respondents (all women) as slightly more common than gender discrimination. The European Commission and the World Bank also note that, because of reduced access to social networks, displaced persons and returning refugees have greater difficulty finding jobs, and are often subject to discrimination. Another significant aspect is that minority women are frequently passed over for jobs, while people with lesser qualifications fill their positions. Women in mixed marriages have been particularly vulnerable.”⁷¹

⁷⁰ IHFHR (2000) op. cit., p.87-9

⁷¹ IHFHR (2000), op. cit., p.89

5.3 The consequences of divorce

5.3.1 Divorced women's property rights

Although women and men appear by law to have equal rights to property, in marriage, property and other assets are generally owned and controlled by the male partner:

*“men usually control the marital assets, leading women and children to suffer upon divorce. In many cases, the woman and children leave the home while the man stays pending the outcome of the divorce proceedings. Additional problems occur because the division of marital property is a long, drawn-out procedure and is handled separately from the relatively swift divorce proceedings. As a result, divorced women are initially faced with an uncertain financial situation”.*⁷²

This male control of assets is protected by the unequal legislation, albeit at the draft stage in Republika Srpska:

*“The issue on unequal treatment of women in the process of privatisation of state owned apartments continues to raise concern. According to the draft RS Law on Privatisation of the State Owned Apartments, the wife has to sign the purchase contract together with the husband, but the ownership is transferred to the husband only. This arrangement is satisfactory if the couple remains together but can be detrimental if the woman wants to leave the marriage. Of particular concern is if the woman is a victim of domestic violence and remains with the husband in order to avoid homelessness”.*⁷³

The International Helsinki Federation for Human Rights cites that the law in the Federation of Bosnia and Herzegovina is also discriminatory:

*“Article 21 of the Law on the Sale of Apartments with Occupancy Rights (of the Federation of Bosnia and Herzegovina) appears to be neutral, but can have a disproportionately discriminatory impact on women. It gives the holder of an occupancy right a reduction in the purchase price of the flat based on a percentage of the number of years of work”.*⁷⁴

This not only impacts on divorced women's long-term financial security but should also be interpreted in terms of its potential impact on her return, i.e. it is arguable that, given this situation, she might be forced to return to an abusive relationship.

⁷² IHFHR (2000) op. cit., p.90-91

⁷³ HRCC (2001) op. cit., p.34

⁷⁴ IHFHR (2000) op. cit., p.90-1

5.3.2 Divorced and separated women's entitlements to financial support

For women separated from their husbands, and divorced women if they have not remarried, there are entitlements under the laws of both entities to financial support from their husbands or ex-husbands:

“The pre-war Family Code is still in force in both entities and establishes the mutual obligation of both spouses to support members of the family, in proportion to their capabilities and according to the needs of the dependants (Article 229). Above all, parents are obliged to support minor children (Article 230). A spouse is entitled to support from the other spouse if she/he is incapable of working or unable to obtain employment (which terminates when the dependent spouse remarries, Article 239). In addition, the Family Code obliges a former spouse to pay alimony to an otherwise dependent ex-spouse. Article 237 of the Family Code provides for the right of a dependent spouse to maintenance from his/her spouse “in proportion to the capabilities of that person.” Avoiding such financial obligation carries criminal penalties, and avoiding alimony payments is a crime under Article 238 of the Criminal Code, punishable by up to one-year imprisonment. This is also true for divorced couples”⁷⁵.

However, in practice there are significant problems faced by separated women in securing the financial support to which they are entitled. Note that women are most likely to be given custody of children.

“Despite reasonable legislation, non-compliance with the law is a serious problem and this is particularly important with respect to child support when parents separate, and is felt acutely by Bosnian women who often have difficulty obtaining alimony. Court proceedings to obtain alimony from the father are routinely long and drawn out, during which time the mother is forced to care for the children on her own. Even where they obtain a court order granting alimony or child support, Bosnian women have a great deal of trouble in securing the enforcement of their orders and most defendants know that the failure to appear in court has no real consequences.

“In most cases, by default or court decision, the mother is given custody of the children after divorce. Before the war, such court orders were sent directly to the defendant's employer, and the child support was deducted from his wages. Following the war, this system of enforcement has broken down since many people are illegally employed, i.e. not registered. There is also a problem in securing child support from men leaving the country, or from those who stayed behind as refugees in host countries when women and children decided to return to Bosnia after the war.

⁷⁵ IHFHR (2000), op. cit., p.91

*“Although it is a crime to avoid court ordered financial support both in the Federation of Bosnia and Herzegovina as well as in Republika Srpska, in practice a substantial burden is placed on the complainant to prove that she (in most cases it is the woman) is entitled to the money, going through various procedural hurdles to prove that the defendant has “avoided” the support and to help the court determine his income, and also to attempt to execute the order. The Federation Criminal Code (Article 238, para. 3) allows a defendant charged with failure to pay alimony to pay off his obligation at any time up until the first instance court reaches a decision. If he does so, even at the last moment, the court will not impose penalties. In practice, this gives offenders great latitude to harass their former spouses, knowing they can ultimately avoid punishment or accountability for such behaviour”.*⁷⁶

5.4 Trafficking

Trafficking has emerged as a major concern in many of the former Yugoslavian countries. It is essential to consider whether a vulnerable woman forced to return may be at risk of being the victim of traffickers. The extent of trafficking, and a local failure to protect women was highlighted by the Special Rapporteur’s recent report:

“E. Gender based violence and trafficking

24. The trade in women and children for the purpose of forced prostitution remains one of the most serious human rights violations now being committed in Bosnia and Herzegovina. Information has been received from NGOs that women from Bosnia and Herzegovina are arriving at shelters in some Western European countries, indicating that the country is no longer a country of destination only, but also a country of origin.

25. The causes for the trafficking problem in Bosnia and Herzegovina include the lack of an effective State border service, the existence of a market and - of greatest significance – economic conditions in the countries of origin. Most women found in Bosnia and Herzegovina come from Moldova, Romania and the Ukraine. Disturbingly, recent raids on brothels in Bosnia and Herzegovina have shown that a substantial number are minors, some as young as 14.

26. To date, responsibility for protecting the human rights of these individuals has fallen almost entirely on the shoulders of the international community. Raids on night clubs, coffee bars and other locations where trafficked women are believed to work are conducted by local police accompanied by members of the United Nations International Police Task Force. Initial interviews are conducted and women are asked whether they want to return to the country of origin. As far as is possible, women are informed of their legal rights and offered counseling and health care but, given the limited resources,

⁷⁶ IHFHR (2000), op. cit., p.91-2

neither the international community nor the local authorities can offer all the assistance that is necessary.

27. The number of victims assisted thus far by the International Organization for Migration (IOM) and UNMIBH, as of the end of November 2000, included 198 women who had been repatriated and more than 360 who had been assisted to leave the places where they were being held. It is believed, however, that these are only a small percentage of the women brought into Bosnia and Herzegovina.

28. The prosecution of perpetrators largely depends on evidence provided by the trafficked women against the traffickers or bar and night club owners. To date, however, only three perpetrators have been successfully prosecuted and sentenced, with sentences ranging from 4 to 20 months' imprisonment, with fines. Clearly this is inadequate as a deterrent".⁷⁷

Furthermore, women are often criminalized for their involvement in prostitution.

"It is illegal to run a brothel in Bosnia, but local police have focused primarily on women engaged in prostitution rather than procurers or those managing the brothels. As a result, women who have been coerced or forced into prostitution have little recourse. Authorities generally treat prostitution as a minor misdemeanor regarding the woman involved, but employers and customers do not face charges. Women convicted of prostitution can be fined, imprisoned for 60 days, or deported. It is estimated that there are some 700 brothels in the RS and some 300 in the Federation, where some 15,000 prostitutes work. Police officials in Brcko have been removed from office for involvement in prostitution".⁷⁸

⁷⁷ UN Economic and Social Council Commission on Human Rights (March 2001), op. cit., p.11; The problem has been widely documented elsewhere – see for example U.S. Department of State (2001) op. cit.; IHFHR (2000) op. cit.

⁷⁸ U.S. (2001), op. cit.

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Note

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PEOPLE'S REPUBLIC OF CHINA

1. Introduction

1.1 Political background

The Chinese Communist Party lead the political system in the People's Republic of China, with an ideology based on socialism but currently incorporating economic reforms. The US State Department report for 2000 notes:

“The People's Republic of China (PRC) is an authoritarian state in which the Chinese Communist Party (CCP) is the paramount source of power. At the national and regional levels, Party members hold almost all top government, police, and military positions. Ultimate authority rests with members of the Politburo. Leaders stress the need to maintain stability and social order and are committed to perpetuating the rule of the CCP and its hierarchy. Citizens lack both the freedom peacefully to express organized opposition to the Party-led political system and the right to change their national leaders or form of Government. Socialism continues to provide the theoretical underpinning of Chinese politics, but Marxist ideology has given way to economic pragmatism in recent years, and economic decentralization has increased the authority of regional officials. The Party's authority rests primarily on the Government's ability to maintain social stability, appeals to nationalism and patriotism, Party control of personnel, media, and the security apparatus, and the continued improvement in the living standards of most of the country's almost 1.3 billion citizens. The Constitution provides for an independent judiciary; however, in practice the Government and the CCP, at both the central and local levels, frequently interfere in the judicial process, and the Party and the Government direct verdicts in many high-profile political cases.

“The security apparatus is made up of the Ministries of State Security and Public Security, the People's Armed Police, the People's Liberation Army, and the state judicial, procuratorial, and penal systems. Security policy and personnel were responsible for numerous human rights abuses.”¹

¹ U.S. Department of State (2001), *2000 Country Reports on Human Rights Practices*, Washington, Bureau of Democracy, Human Rights, and Labor

1.2 Human rights practice

Human rights abuses continue to occur, including in relation to freedom of expression, religion and political opinion, and there were abuses by security forces and within the judicial system. Human Rights Watch noted in its 2001 report:

“Chinese authorities showed no signs of easing stringent curbs on basic freedoms. Their preoccupation with social stability, fueled by a rise in worker and farmer protests, severe urban unemployment, and separatist movements in Tibet and Xinjiang, led to tight political control. The leadership continued to see unauthorized religious practices as potentially subversive.

“China reacted to perceived threats with repression, control of information, and ideological campaigns. It released a few dissidents before their prison terms expired, but it imprisoned many more for acting in support of their political or religious beliefs. The government attempted to cut off the free flow of information within China and between China and other countries. The Internet and its potential for free exchange of ideas generated particular alarm in official circles, but academics, journalists, publishers, and film makers all faced censorship. On the ideological side, President and Party Secretary Jiang Zemin initiated two campaigns, the “three stresses” and the “three represents,” to reinforce unity within the Chinese Communist Party (CCP) and convince China’s citizens of benefits of the CCP’s role.

“On the positive side, Chinese authorities continued to reform the legal system, seeking international expertise to help design new legal structures, train judicial and legal personnel, and help disseminate information on the reforms to the public, the courts, and the police.

*“Legal reform moved forward, but judicial abuses were still common. In Hebei province, a high court on three occasions overturned murder convictions against four peasants, citing doctored evidence, torture, and threats. Local officials, however, decided to try the men again. **In Guangzhou, in July 1999, a migrant woman who appeared upset and who failed to present identification to police, was gang raped after police took her to a psychiatric ward. Her decision to press for an investigation led to destruction of evidence and allegations that she had fabricated the case. Only after the case had been publicized in November 1999 was one of the perpetrators charged with rape and eventually convicted, and three police reportedly dismissed.***

“Chinese courts continued to impose the death penalty for a wide variety of offenses, a list that grew as authorities stepped up their anti-corruption campaign. In October, China’s highest court issued a judicial interpretation calling for more aggressive use of the death penalty against smugglers of arms, counterfeit currency, and endangered

species, and against government officials who aided them. The executions of two high CCP officials were extensively publicized as warnings to other officials involved in bribe-taking: Cheng Kejie, former vice-chairman of the Standing Committee of the National People's Congress (China's legislature), executed on September 14, was the highest ranking official executed since the founding of the PRC in 1949; Hu Changqing, former governor of Jiangxi province and former deputy director of the Religious Affairs Bureau, was sentenced in February and executed March 8.

“South Korean NGOs reported the forcible repatriation of North Korean refugees by Chinese authorities, but independent confirmation was not possible.”²

The U.S. State Department report notes that in 2000:

“The Government's poor human rights record worsened, and it continued to commit numerous serious abuses. The Government intensified crackdowns on religion and in Tibet, intensified its harsh treatment of political dissent, and suppressed any person or group perceived to threaten the Government. However, despite these efforts, many Chinese had more individual choice, greater access to information, and expanded economic opportunity. Nonetheless by year's end, thousands of unregistered religious institutions either had been either closed or destroyed, hundreds of Falun Gong leaders had been imprisoned, and thousands of Falun Gong practitioners remained in detention or were sentenced to reeducation-through-labor camps or incarcerated in mental institutions. Various sources report that approximately 100 or more Falun Gong practitioners died as a result of torture and mistreatment in custody. Controls on religious practice and freedom of expression also were intensified in Tibet and remained tight in Xinjiang. Only a handful of political dissidents remained active publicly. The Government's respect for religious freedom deteriorated markedly during the year, as the Government conducted crackdowns against underground Christian groups and Tibetan Buddhists and destroyed many houses of worship. The Government significantly intensified its campaign against the Falun Gong movement, which it accused in October of being a reactionary organization, as well as against "cults" in general. A number of qigong groups were banned.

“The Government continued to commit widespread and well-documented human rights abuses in violation of internationally accepted norms. These abuses stemmed from the authorities' extremely limited tolerance of public dissent aimed at the Government, fear of unrest, and the limited scope or inadequate implementation of laws protecting basic freedoms. The Constitution and laws provide for fundamental human rights; however, these protections often are ignored in practice. Abuses included instances of extrajudicial killings,

² Human Rights Watch (2001), *World Report 2000*, available at www.hrw.org

the use of torture, forced confessions, arbitrary arrest and detention, the mistreatment of prisoners, lengthy incommunicado detention, and denial of due process. In May the U.N. Committee Against Torture issued a report critical of continuing serious incidents of torture, especially involving national minorities. Prison conditions at most facilities remained harsh. In many cases, particularly in sensitive political cases, the judicial system denies criminal defendants basic legal safeguards and due process because authorities attach higher priority to maintaining public order and suppressing political opposition than to enforcing legal norms. The Government infringed on citizen's privacy rights. The Government maintained tight restrictions on freedom of speech and of the press and increased its efforts to control the Internet; self-censorship by journalists continued. The Government severely restricted freedom of assembly and continued to restrict freedom of association. The Government continued to restrict freedom of religion and intensified controls on some unregistered churches. The Government continued to restrict freedom of movement. Citizens do not have the right peacefully to change their Government. The Government does not permit independent domestic nongovernmental organizations (NGO's) to monitor publicly human rights conditions.

“Violence against women (including coercive family planning practices-which sometimes include forced abortion and forced sterilization); prostitution; discrimination against women; trafficking in women and children; abuse of children; and discrimination against the disabled and minorities are all problems. Particularly serious human rights abuses persisted in Tibet and Xinjiang. The Government continued to restrict tightly worker rights, and forced labor in prison facilities remained a serious problem. Child labor exists and appears to be a growing problem in rural areas as adult workers leave for better employment opportunities in urban areas. Trafficking in persons is a serious problem.”³

1.3 China and international legal instruments

China is a party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Covenant on Economic, Social, and Cultural Rights. It has reaffirmed its support for the Universal Declaration of Human Rights and has signed but not yet ratified the International Covenant on Civil and Political Rights.⁴

³ U.S. Department of State (2001), op.cit.

⁴ see Office of the United Nations High Commissioner for Human Rights (2001) *Status of Ratifications of the Principal International Human Rights Treaties as of 18 May 2001*, Geneva, Switzerland, available at www.unhcr.ch

Human Rights in China⁵ made the following comments on China's latest report to the CEDAW committee on its implementation of the convention. In section 2 are included HRIC's comments on the Law on the Protection of Women's Rights and Interests (Women's Law), the principal mechanism the government has established for the enforcement of the provisions of CEDAW.

"The Chinese government's report lists many laws and policies aimed at implementing provisions of the Convention. It identifies the causes of discrimination against women and the obstacles to the full realization of equality as caused by economic and social conditions and "old ideas in real life." The report states that women's equal rights have yet to be fully realized, and that "belittlement of and discrimination against women, even violation of their rights and interests, are not uncommon." The major methods to deal with these problems are identified as government action to develop the economy, improve the legal system and "eliminat[e] all backward ideas that discriminate against women."

"Article 1 of CEDAW defines discrimination against women as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women... of human rights and fundamental freedoms." This explanation clearly indicates that both intentional and unintentional discrimination are prohibited by the Convention, both by public and private actors. Article 2 obligates states to take action to condemn discrimination and eliminate it through constitutional, legal and practical means, and Article 4 permits positive discrimination in favor of women in pursuit of such aims.

"China's report fails to mention Article 1 at all. Under Article 2, the report lists a series of laws, policies and programs aimed at fulfilling these objectives. However, throughout the report there is a distinct lack of information about the nature and extent of current discriminatory practices, or how they are addressed. During their review of China's second report to CEDAW, Committee members requested that in its next report the government should provide more specific information about the actual situation of women. In our view, it has generally failed to do so."⁶

⁵ Human Rights In China is an independent international non- governmental organization founded by Chinese scientists and scholars in March 1989. HRIC monitors the implementation of international human rights standards in the People's Republic of China and carries out human rights advocacy and education among Chinese people inside and outside the country. HRIC's objectives are to develop a grassroots human rights movement in China and to promote international scrutiny of China's human rights situation. HRIC publishes the bilingual quarterly magazine China Rights Forum. The journal includes interviews with dissidents, commentaries on all sides of the human rights issue, and updates on the human rights situation in China.

⁶ Human Rights in China, Asia Monitor Resource Centre, China Labour Bulletin, Hong Kong Christian Industrial Committee (1998) *Report on Implementation of CEDAW in the People's Republic of China: A Report with Recommendations and Questions for the Chinese Government Representatives*, available at www.hrichina.org

1.4 Women's human rights

It appears that women's status in Chinese society has regressed in the 1990's. The Government's focus on economic reform and political stability appears to have made the pursuit of gender equality a secondary priority, and women are being encouraged or forced back into traditional roles.

The US State Department report for 2000 notes:

"A high female suicide rate is a serious problem. According to the World Bank, Harvard University, and the World Health Organization, some 56 percent of the world's female suicides occur in China (about 500 per day). The World Bank estimated the suicide rate in the country to be three times the global average; among women, it was estimated to be nearly five times the global average. Research indicates that the low status of women, and social and economic pressures due to the rapid shift to a market economy are among the leading causes.

"There were credible reports of trafficking in persons, and the kidnapping of women for sale into prostitution or marriage is a serious problem.

"There is no statute that outlaws sexual harassment in the workplace, although there has been some discussion by legislators about the need for such legislation. The problem remains unaddressed in the legal system and often in society. There have been reports that due to the lack of legal protections and to women's increasing economic vulnerability, many victims of sexual harassment do not report it out of fear of losing their jobs. However, experts state that more women are raising their concerns about sexual harassment because of greater awareness of the problem.

*"The Government has made gender equality a policy objective since 1949. The Constitution states that "women enjoy equal rights with men in all spheres of life." The 1992 Law on the Protection of Women's Rights and Interests provides for equality in ownership of property, inheritance rights, and access to education. ^[7] Women's economic and political influence has increased. **Nonetheless female activists increasingly are concerned that the progress that has been made by women over the past 50 years is being eroded and that women's status in society regressed during the 1990's. They assert that the Government appears to have made the pursuit of gender equality a secondary priority as it focuses on economic reform and political stability. Social and familial pressure also has grown for women to resume their traditional roles as wives and mothers. A recent study of how women are portrayed in the media revealed that images of a woman's worth increasingly are linked to her ability to attract a wealthy husband and be a good mother.***

⁷ However, see section 2 for commentary on the lack of effectiveness of this law

“The 1992 Law on the Protection of Women's Rights and Interests was designed to assist in curbing gender-based discrimination. However, women continued to report that discrimination, sexual harassment, unfair dismissal, demotion, and wage discrepancies were significant problems. Efforts have been made by social organizations as well as the Government to educate women about their legal rights, and there is anecdotal evidence that women increasingly are using laws to protect their rights.^[8] For example, at Fudan University in Shanghai, the Women's Study Center with the support of Shanghai's labor union has established a hot line to inform workers, mainly women, of their legal rights. Nevertheless, women frequently encounter serious obstacles in getting laws enforced. According to legal experts, it is very hard to litigate a sex discrimination suit because the vague legal definition makes it difficult to quantify damages. As a result, very few cases are brought to court.^[9] Some observers also have noted that the agencies tasked with protecting women's rights tend to focus on maternity-related benefits and wrongful termination during maternity leave rather than sex discrimination or sexual harassment.^[10] The structure of the social system also prevents women from having a full range of options. Women who seek a divorce face the prospect of losing their housing since government work units allot housing to men when couples marry.

“The law promises equal pay for equal work. According to a 1997 World Bank report, women's salaries, on average, were 80 to 90 percent of the salaries of their male counterparts. However, a recent Government survey found that women were paid only 70 to 80 percent of what men received for the same work. Most women employed in industry work in lower skilled and lower paid jobs.”¹¹

⁸ However, see Section 4 for limitations on the effectiveness of legal remedies

⁹ Sophia Woodman, Director of Research at Human Rights in China, comments: *I do not agree with this statement. It seems to imply that it is possible to litigate such a suit. The fact is that the only remedies prescribed in the LPWRI for acts of discrimination are administrative. Please see the Article 2 section of our CEDAW report. I have not heard of any cases being brought to court.*

¹⁰ Sophia Woodman, Director of Research at Human Rights in China, comments: *This is because they are relying on specific laws/regulations other than LPWRI that provide for litigation as a remedy.*

¹¹ U.S. Department of State (2001), op.cit.

2. Domestic violence

Domestic violence in China has been largely ignored and, despite some recent partial measures being introduced to protect women, is a phenomenon that is not taken seriously and is largely viewed as a private, family matter. Efforts by women's organisations have brought about small changes but the reality for women is that very little, if any protection is in fact available.

The U.S. State Department report for 2000 notes:

*“Violence against women is a problem. Violence against women can be grounds for prosecution under the law, but there is no national law specifically targeting domestic violence, although proposed amendments to the 1980 Marriage Law are aimed in part at providing protection against spousal abuse. **In recognition of the seriousness of spousal abuse, 13 provinces and provincial-level cities have passed legislation to address the problem.**”^[12] Sociologists note that there has been no detailed research on the extent of physical violence against women. However, anecdotal evidence suggests that **the reporting of domestic abuse is on the rise**, particularly in urban areas, because greater attention has been focused on the problem. A July survey report by the All-China Women's Federation ^[13] found that violence occurs in 30 percent of families, with 80 percent of cases involving husbands abusing their wives. The survey implies that one in four married women suffers abuse. Actual figures may be higher because spousal abuse still goes largely unreported. According to experts, the percentage of households in which domestic abuse has occurred is higher in rural areas than in urban centers. The July survey found that domestic violence occurs at all socioeconomic levels. According to some experts, many women do not report domestic violence to the police because, **even when appropriate legislation exists, local law enforcement authorities frequently choose not to interfere in what they regard as a family matter.** Nonetheless in two recent cases in Liaoning Province, men were successfully prosecuted for severe cases of domestic violence. Despite an increasing awareness of the problem of domestic violence, there are no shelters for victims of domestic violence. Rape is illegal.”¹⁴*

¹² China consists of 32 provinces, autonomous regions, and municipalities (Source: CIA World Factbook)

¹³ The All-China Women's Federation (ACWF) is a state-run organisation with a membership of affiliated women's groups. According to the state news agency, “Aiming to represent and defend the interests of women, the federation devotes itself to promoting sexual equality and raising women's position in society.” (Source: Information Office of the State Council Of the People's Republic of China, June 1994, Beijing, *The Situation of Chinese women*, Chapter VII, 'Organizational Guarantees of the Rights and Interests of Chinese Women' available at www.china.org.cn/e-white/chinesewoman/11-7.htm)

¹⁴ U.S. Department of State (2001), op.cit.

On February 1 and 2, 1999, the most recent report from China under the Convention on the Elimination of Discrimination Against Women (CEDAW) was reviewed at the United Nations. Human Rights in China noted in their summary of the session that:

“The Committee expressed concern about violence against women, committed by the state and by private actors. It recommended that the government review its policies on this issue, enact legislation on sexual harassment and domestic violence, and provide services, including shelters, for victims of spousal abuse. The Committee called on the government to invite the U.N. Special Rapporteur on Violence Against Women to visit China as a way of demonstrating the seriousness of the government’s commitment to ending such abuse.”¹⁵

The same organisation reported in 1995 in *“The Property of Men: The Trafficking and Domestic Abuse of Women”* that:

“In China domestic violence is receiving belated attention from academics and feminists, but until very recently has been largely ignored officially -- the Chinese government's report on its implementation of the Nairobi Forward Looking Strategies (henceforth INFLS report) does not raise the issue specifically. When questioned about violence against women in the PRC by experts on the CEDAW Committee, China's representative said that "violence against women had not been a serious social problem in China." China's 1994 White Paper on Women states: "Strong measures have been adopted against unlawful cruel treatment of women," yet the term "domestic violence" is not mentioned. However, the official newspaper Legal Daily recently acknowledged that domestic abuse was on the rise and little had been done to combat it.

*“Domestic violence is certainly not new to Chinese society, where a male-centered cultural system in which women are required to be subservient to men has been in place for thousands of years. Neither in the history of modern China nor in the development of Chinese women's movements has domestic violence been considered as a significant social and legislative issue, since, as in so many countries, it has been viewed as a private matter. Although progress has been made in terms of drafting laws protecting women, establishing organizations to work on women's issues and raising public consciousness on gender equality, neither the government nor other social actors have implemented many specific measures to prevent domestic violence or to provide protection for battered women. Moreover, **domestic violence has never been discussed as a question of human rights.** Thus the various obvious deficiencies of definition, legislation, social response and public awareness have*

¹⁵ Human Rights in China (1999), available at www.hrichina.org/crf/english/99spring/e10_scrutiny.htm

hindered the development of a real campaign against domestic violence in China.

“In China, feminists, women's studies scholars and activists are starting to try to change the perception of domestic violence as a private, family matter. Although statistics and research on the scope of domestic violence are still insufficient, they are significant enough to evidence its seriousness as a social reality.

*“According to a survey conducted by the Beijing Women's Federation of eight districts and counties around the capital, domestic violence occurred in 20 percent of the families surveyed, and wife abuse accounted for 80 percent of the domestic violence cases. In 1990, the ACWF conducted a nation-wide survey on the social status of Chinese women which concluded that a total of over 29 percent of wives suffer from their husbands' use of physical force. Owing to the common belief that **“family shame should not be aired in public”**, there is reason to believe that these figures may still contain some underreporting. The surveys have shown that domestic violence affects women of all social strata, although it may be more pronounced in the rural areas where traditional attitudes towards women are more entrenched. County-level women's federation officials in a central China rural area said that 80 percent of the complaints they dealt with involved domestic violence. Women came to them when they could get no assistance from local officials. There are generally few avenues open for battered women to seek support and protection or prosecution of those who abuse them.*

“Official Attitudes and Social Awareness

Some of the lack of awareness about domestic violence is due to the way it is generally reported by the government-controlled media, which is also related to the lack of attention to the problem in Chinese society. In circumstances where the occurrence of domestic violence is an unquestioned part of the male-dominated cultural tradition and is widely tolerated by society, the media could have a significant impact in changing attitudes and developing awareness. However, with some notable exceptions such as publications on women's studies and China Women's News, so far the media has generally failed to play this progressive role.

“When domestic violence cases do appear in the media, they are generally treated as isolated and individual cases, rather than as part of a general social problem. Also, those cases which do get reported tend to be extreme instances in which either the female victim died or was brutally maimed or disfigured. This has hindered the development of a social consensus which views domestic violence as a social problem that needs urgent attention and social reform. The prevailing conception of such abuse also makes it difficult for battered women to escape from violence, since they and those around them may not view abuse that does not result in serious injury as sufficient cause to justify breaking up their families. Some changes in this pattern have been

seen recently: in the run up to the Fourth World Conference on Women, examination of this issue has increased, particularly in publications directed at women. It is to be hoped that more publications will take the lead from these media to increase coverage of domestic abuse and its consequences.

“HRIC believes that the Chinese government has not taken sufficient action to combat domestic violence and provide assistance to victims, as it is required to do under the DEVAW^[16]. The fact that most of the material HRIC has used on these issues comes from documentary sources is an indication of the crucial role that journalists, academics and women's groups in China are playing in exposing them. However, significant restrictions on such reporting remain and controls on freedom of association have hindered the development of the independent initiatives, such as telephone hotlines, shelters and counseling centers, which are essential if domestic violence is to be properly addressed. Although they are few and far between, some of the new solutions Chinese women are proposing to deal with domestic violence, if expanded broadly to other areas of the country, could have a significant impact. Services provided by the women's federations also need to be increased, improved and provided with more funding. If the authorities are serious about combatting domestic violence, such new approaches must be encouraged in every possible way. Domestic abuse must be explicitly legislated against and anomalies in the Criminal Code mandating lesser penalties for crimes against relatives should be eliminated.”¹⁷

Amnesty International notes in its 1995 report on Women in China:

*“Domestic violence in general was long assumed to be suffered mainly by rural women in impoverished villages where ideas that the “man is lord and master of the family, and woman is his private possession” persist. However, sample surveys of spiralling urban divorce cases indicate that wife beating is cited in at least a quarter of all cases. **Women are often blamed and brutalised for infertility or the birth of a girl.** Reports from rural areas indicate that “domestic” violence against rural women often involves members of the husband’s extended family. Rural women are particularly vulnerable as it is the norm for the wife to be the outsider, having moved to her husband’s home village.”¹⁸*

¹⁶ UN Declaration for the Elimination of Violence Against Women

¹⁷ Human Rights in China (1995) *The Property of Men: The Trafficking and Domestic Abuse of Women*, China Rights Forum, available at www.hrichina.org

¹⁸ Amnesty International (1995) *Women in China: Imprisoned and abused for dissent*, London, Amnesty International

A report from 2001 on the official state news website describes the high prevalence of domestic violence and notes:

“Issues in Focus for New Marriage Law: Should There Be Provisions Against Domestic Violence

In the first half of 1999, various women's federation in the 29 provinces, autonomous regions, and the municipalities directly under the central government handled a total of 55,892 complaints by letter and personal visits which were related to marital and family problems. Of this figure, 8,862 complaints involved domestic violence. These two figures went up to 110,070 and 20,148 respectively in the second half of the year. The complaints reveal that ever more relentless and cruel means have been adopted in domestic violence crimes, which has become less covert and ever more overt. For example, in November 1998 in Ningxia, three horrific cases of wife murder involved stabbing with a knife, battering with a stick or being set alight with oil. For the time being, however, law enforcement was the top priority, since many victims have encouraged continued violence by not being aware of their legal rights or regarding it as humiliating to admit to violence within the family. In addition, the public security departments seem to feel it “rather hard for an upright official to deal with his own domestic affairs”. And the courts even believe such cases are not serious enough to be judged as maltreatment, resulting in only a few perpetrators being tried and punished. In Guangdong, courts dealt with only five cases in 1998, rising to seven in 1999. ACWF proposed that domestic violence be clearly defined in the new marriage law, along with the rights and obligations of each party. Clear consequences for varying degrees of serious violence should also be established as a deterrent measure. A public opinion poll organized by ACWF also shows that 96.1 percent of respondents agree there must be a clear definition of what constitutes domestic violence in all its forms. The first such local code in the country, Resolution of the Standing Committee of the Hunan Provincial People’s Congress on the Prevention and Prohibition of Domestic Violence was adopted and took effect on March 31, 2000. It, according to Professor Yang, provides valuable guidelines for national legislation.”¹⁹

¹⁹ China Internet Information Centre (2001) *Issues in Focus for New Marriage Law*, at www.china.org.cn

3. Domestic violence and the law

3.1 Criminal Law

The Criminal Law of the People's Republic of China (1997) states penalties for some acts of physical and sexual violence but does not mention domestic violence specifically. Relevant articles are reproduced below:

“Criminal Law Chapter 4

CHAPTER IV CRIMES OF INFRINGING UPON CITIZENS' RIGHT OF THE PERSON AND DEMOCRATIC RIGHTS

Article 232 *Whoever intentionally commits homicide shall be sentenced to death, life imprisonment or fixed-term imprisonment of not less than 10 years; if the circumstances are relatively minor, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years.*

Article 233 *Whoever negligently causes death to another person shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years; if the circumstances are relatively minor, he shall be sentenced to fixed-term imprisonment of not more than three years, except as otherwise specifically provided in this Law.*

Article 234 *Whoever intentionally inflicts injury upon another person shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance.*

Whoever commits the crime mentioned in the preceding paragraph, thus causing severe injury to another person, shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years; if he causes death to the person or, by resorting to especially cruel means, causes severe injury to the person, reducing the person to utter disability, he shall be sentenced to fixed-term imprisonment of not less than 10 years, life imprisonment or death, except as otherwise specifically provided in this Law.

Article 235 *Whoever negligently injures another person and causes severe injury to the person shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention, except as otherwise specifically provided in this Law.*

Article 236 *Whoever rapes a woman by violence, coercion or any other means shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years.*

Whoever has sexual intercourse with a girl under the age of 14 shall be deemed to have committed rape and shall be given a heavier punishment.

Whoever rapes a woman or has sexual intercourse with a girl under the age of 14 shall, in any of the following circumstances, be sentenced to fixed-term imprisonment of not less than 10 years, life imprisonment or death:

- (1) the circumstances being flagrant;*
- (2) raping a number of women or girls under the age of 14;*
- (3) raping a woman before the public in a public place;*
- (4) raping a woman with one or more persons in succession; or*
- (5) causing serious injury or death to the victim or any other serious*

consequences.

Article 237 *Whoever acts indecently against or insults a woman by violence, coercion or any other forcible means shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention.*

Whoever gathers a number of people to commit the crime mentioned in the preceding paragraph or commits the crime before the public in a public place shall be sentenced to fixed-term imprisonment of not less than five years.

Whoever acts indecently against a child shall be given a heavier punishment in accordance with the provisions of the preceding two paragraphs.

Article 238 *Whoever unlawfully detains another person or unlawfully deprives the personal freedom of another person by any other means shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance or deprivation of political rights. If he resorts to battery or humiliation, he shall be given a heavier punishment.*

Whoever commits the crime mentioned in the preceding paragraph and causes serious injury to the victim shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years; if he causes death to the victim, he shall be sentenced to fixed-term imprisonment of not less than 10 years. If he causes injury, disability or death to the victim by violence, he shall be convicted and punished in accordance with the provisions of Article 234 or 232 of this Law.”²⁰

3.2 Law Safeguarding Women's Rights and Interests

The Law Safeguarding Women's Rights and Interests of the People's Republic of China again makes no mention of domestic violence, but states in Chapter VI, Rights of the Person:

“Article 33. *The state protects the rights of the person, which women enjoy equally with men.*

Article 34. *Women's rights of the person brook no infringement. It is prohibited to detain women unlawfully or use other unlawful means to deprive them of or restrict their freedom of the person. It is prohibited to make an unlawful body search of a woman.*

Article 35. *Women's rights to life and health brook no infringement. It is prohibited to drown, forsake, or cruelly injure or kill baby girls. **It is prohibited to discriminate against or abuse women who give birth to baby girls or bear no children. It is prohibited to cruelly injure or kill women by superstitious or violent means.** It is prohibited to abuse or forsake elderly women.”²¹*

²⁰ People's Republic of China (1997) *Criminal Law of the People's Republic of China*, National People's Congress, available at www.qis.net/chinalaw

²¹ People's Republic of China (1992) *Law Safeguarding Women's Rights and Interests of the People's Republic of China*, National People's Congress, available at www.qis.net/chinalaw

However, this law (often known as the 'Women's Law') *"did not actually establish any new criminal offenses, any new private causes of action, or any new penalties or remedies for violations of the law. Any lawsuit to protect the rights the law enumerates or punish those who infringe them, whether a public prosecution or a civil suit, has to be based on another law, such as the Criminal Code or the Civil Law."*²² See the following section for information on its effectiveness.

3.3 Amendments to marriage law

A possibly significant recent development is the passing by the National People's Congress in April 2001 of amendments to the Marriage Law which specifically name and prohibit domestic violence. The following news report gives further information:

*"Marriage Law to better protect women, children
BEIJING, April 30 (Xinhuanet) --Women and children will now get more legal support to protect their rights within the family unit following the adoption of amendments to the Marriage Law by senior legislators, according to today's China Daily.*

The Standing Committee of the Ninth National People's Congress (NPC), the nation's top legislative body, passed the long-debated amendments to the Marriage Law on Saturday when it closed its 21st session. [...]

The amendments to the 20-year-old Marriage Law were adopted with a vote of 127 approvals, one objection and nine abstentions from national legislators.

One of the guiding principles behind revising the law was to protect the rights of women and children, according to Wang Shengming, a legislative official with the Legal Affairs Commission of the NPC Standing Committee.

Most of the 33 major changes to the law were made in favour of women and children.

The legislation bans domestic violence, outlaws bigamy and prohibits married people from cohabiting with anyone other than their spouses. Women and children are widely considered to be most vulnerable in these circumstances.

*Domestic violence occurs in three out of every 10 families and has been cited in three-fifths of the country's divorce cases, according to figures from the All-China Women's Federation.*²³

Coming within the remit of the Marriage Law, domestic violence (often referred to as "family violence") appears to be defined as violence within a marital relationship, and the emphasis appears to be on women and children as the "victims". Physical violence is the only form of violence that is specifically mentioned in current commentary on the legislation; however a full

²² Human Rights in China et al (1998), op.cit.

²³ China.com (2001), *Marriage Law to better protect women, children*, at www.china.com. The full text of the amendments was not available at the date of publication of this report.

definition may not have yet been officially clarified, as there is still debate on the issue of whether rape in marriage should constitute “family violence”.

The following report on the official state news website gives some background to the Marriage Law amendments:

“Legal experts and women rights advocates are urging new changes to the existing Marriage law. “Banning family violence is a necessary part of the marriage law,” said Hu Kangsheng, deputy director of the Legislative Affairs Commission under the National People’s Congress (NPC) Standing Committee. Family violence happens in 30 percent of Chinese families, according to surveys conducted by the All-China Women’s Federation. Of the bruised wives, 32.1 percent were regularly beaten four times a month, and 39 percent more than once every month, according to another survey by the Women’s Federation of Guangdong Province. Hu said that four out of five married women in the United States are physically assaulted by men. In China, high-degree injuries inside marriages is rising rapidly. Out of 270 million families in China, more than 100,000 are break down every year because of family violence, he said. The Chinese Constitution, criminal codes and other administrative regulations all prohibit family violence and the maltreatment of family members. In south China’s Guangdong Province, only seven were punished by courts at all levels last year. Pi Xiaoming, author of “White Paper on Family Violence” and a well-known woman lawyer, said that Chinese women were usually victimized because of their physical disadvantage, their economic dependence on men, and poorer educational backgrounds. According to the NPC official, experts and officials have no disagreements on the ban of family violence, but they differ in defining what exactly constitutes family violence. “For instance, should the sexual act not consented by the wife constitute family violence?” he said. Officials and experts also advocated that in addition to the existing punitive laws and regulations on family violence and maltreatment of family members, the new marriage law should also strengthen efforts to aid victims and deter perpetrators, and thus better protect the rights and interests of women, children and the elderly. The local legislature of Hunan Province passed a resolution on the prevention of family violence in March this year which has been hailed as China’s first legislation against family violence. (Xinhua)”²⁴

However, Amnesty International notes that in some areas 80% of marriages are unregistered, leaving women outside the protection of the Marriage Law, notwithstanding any improvements in it (see Section 4).

²⁴ China Internet Information Centre (2001) *Ban on Family Violence Urged in China*, at www.china.org.cn

3.4 Local regulations

Under the Chinese administrative system, provinces can introduce their own local regulations. Some provinces have introduced regulations relating to domestic violence. For example, a report by Canada's Immigration and Refugee Board states:

"On 10 January 1996 the Chinese city of Changsha, in Hunan province, became the first city in China to establish local rules according to which family violence was officially recognized as a public order problem (ibid.). Under the new rules public prosecutors were instructed to permit arrests and "criminal procedures" in cases of domestic violence (ibid.).

.....

"The Chinese press reported in July 1996 that the local authorities in Tangshan had promulgated "regulations for the prevention and stopping of domestic violence" (Xinhua 12 July 1996). The regulations suggested that local courts order abusive husbands to divorce their wives and pay them compensation, among other things (ibid.).

"On 18 June 1997 a man in Henan province was convicted of causing "malicious bodily harm" to his wife after the court rejected his claim that spousal abuse was beyond the court's purview (WIN News Spring 1998, 54). The husband was forced to pay a sum of money to his wife to defray expenses incurred by the injury (Ibid.).

.....

"It was reported in September 1998 that special regulations relating to domestic abuse had been formulated in Hunan province, after a man threw his wife from a building (Beijing Xinhua 5 Sept. 1998). As a result of the new regulations, a county official who had abused his wife was punished with dismissal (ibid.)."²⁵

²⁵ Immigration and Refugee Board (1999) *Response to Information Request CHN32888.E*, Ottawa, Research Directorate

References from the above

- Beijing Xinhua [in English]. "Beijing Declares War Against Family Violence." (FBIS-CHI-98-248 5 Sept. 1998/WNC)
- China Daily [Beijing]. 14 January 1999. "China NGOs aid women in distress." (NEXIS)
- Far Eastern Economic Review [Hong Kong]. 22 August 1996. "China Establishes Its First Centre for Victims of Domestic Violence." (C.I.S. On-Line Information Services)
- Reuters. 6 February 1996. BC Cycle. Jane Macartney. "China Passes First Rules to Stop Wife-beating." (NEXIS)
- WIN News [Lexington, Mass.]. Spring 1998. Vol. 24, No. 2. "China: Spousal Abuse Is Illegal and Punished by the Courts."
- Xinhua. 20 June 1998. "Protecting Chinese Women Against Violence." (NEXIS)
- 12 July 1996. "China Courts Urged to Sentence Violent Husbands to Divorce." (NEXIS)
- Professor of Law, Queen's University, Kingston. 14 October 1999. Correspondence.

3.5 Medical and legal services provided by state institutions

Some local authorities have established medical and legal services. The report quoted above by Canada's Immigration and Refugee Board states:

"In 1994, China's first "forensic medicine centre," specializing in violence against women, was established in Beijing (Reuters 6 Feb. 1996). By February 1996 the clinic had received calls from hundreds of abused women and reportedly helped about 50 of them to file lawsuits against their husbands (ibid.).

....

"China's first government institution dedicated to eliminating domestic violence, the Tangshan Anti-Domestic Violence Association, was established by local authorities in that city in April 1996, and had dealt with over 200 cases by August (Xinhua 12 July 1996; Far Eastern Economic Review 22 Aug. 1996).

....

*"On 20 June 1998 Li Hui, a female judge on the Supreme People's Court, stated in a seminar that **China had established 170 special courts to deal with divorce, abandonment and domestic violence** (Xinhua 20 June 1998).*

....

"The article [China Daily 14 Jan. 1999] also reports a large increase in the number of women filing court cases against their husbands in Qianxi county in Hebei province following the establishment of 17 legal aid centres, 40 per cent of whose cases dealt with domestic violence (ibid.)."²⁶

3.6 Non-Governmental Organisations (NGOs)

The report quoted above also mentions two women's legal aid services run by NGOs:

"The Chinese press reported in 1999 that a legal aid project for women, "Women's Hotline," had been established in Beijing by sociologists from the Chinese Academy of Social Sciences, staffed by over 100 volunteers (China Daily 14 Jan. 1999). In addition, there is a legal aid NGO for women called the Beida Women and Law Consultation and Research Centre, which often deals with cases of domestic violence (ibid.)."²⁷

²⁶ Immigration and Refugee Board (1999) op. cit.

²⁷ Immigration and Refugee Board (1999) op. cit.

Attempts have been made by women's NGOs to open refuges for women experiencing domestic violence. However, the report on China's implementation of CEDAW quoted above notes:

"In 1996 a privately-financed shelter for battered women in Shanghai was closed down soon after it opened. An investigation team which included ACWF representatives justified the shutdown on account of unspecified "financial irregularities," the international media attention the shelter had attracted and that it was "inappropriate" for such a center to be run by private individuals."²⁸

Sophia Woodman from Human Rights in China also comments:

"It is also important to note that attempts by NGOs to establish shelters for battered women have encountered significant obstructions from the authorities. There are still very few such shelters in China. One in Shanghai was opened and then closed a few months later, after the municipal women's federation objected because it was not run by them. In Beijing, as far as I know, women activists have been trying to open a shelter since around 1993-4, but have been unable to obtain permission."²⁹

²⁸ Human Rights in China et al (1998), op. cit.

²⁹ Sophia Woodman, Human Rights in China, correspondence

4. The reality of seeking protection

4.1 The police and reporting procedures

Canada's Immigration and Refugee Board's Research Directorate notes that domestic violence may be reported either to the neighbourhood committee or the police:

"The following information is based on correspondence with a Professor of Law at Queen's University, Kingston who has published on the subject of Chinese family law and who is in contact with Chinese lawyers.

*"In cases of domestic violence that is not severe, women will generally report it to the neighbourhood committee, which can try to persuade the husbands to mend their ways (Domestic violence is rated "severe" or "not severe" according to the degree of injury, the frequency of the abuse, and the health situation of the victim). Women may also go to the police to complain. The police will record the facts and, if they believe there is credible evidence of abuse, they can detain the husband for up to 15 days and fine him up to 200 Yuan and warn the man not to abuse his wife again. The police are able to impose these punishments without a trial under their administrative punishment authority."*³⁰

Human Rights in China's report describes the efforts of a teacher to escape from her violent ex-husband, where her efforts to obtain protection by repeatedly reporting the offences were fruitless:

"In 1992, a Guangzhou newspaper published a letter entitled, "The Voice of a Helpless Woman." The letter described how Xu Wenni, a secondary school teacher, suffered four years of repeated harassment, physical violence, verbal abuse, threats and humiliation at the hands of her ex-husband, Qiu Guangmin, after she had divorced him. Xu received no protection from Qiu, who was never prosecuted for any crime against her. According to the letter to the editor of Yangcheng Evening News and a follow-up investigation by a reporter at the paper, Xu Wenni had repeatedly appealed for assistance to many "concerned departments," and had reported the abuse she was suffering, but in vain. One major reason was that officials thought that Qiu's actions were not serious enough to be considered "criminal."

"Official Monitoring of Domestic Violence

In order to curb instances of domestic violence effectively, China needs to set up an effective monitoring system as well as centers providing help for battered women. Under the current system, a woman suffering from repeated domestic violence may report her case many times, but each of her reports may be treated as an isolated instance if each time she sees a different official. Unless a woman can show evidence of

³⁰ Immigration and Refugee Board (1999), Ottawa, Research Directorate at www.irb.gc.ca

*being critically injured, her complaint will not generally be treated seriously. If each time she reports being abused her complaints can be recorded in a single file, particularly if she suffers from repeated abuse and yet is not seriously injured, this may later on become important evidence in future adjudication of marital disputes, or criminal prosecution of maltreatment, intentional injury or murder.”*³¹

4.2 The judicial and legal system

4.2.1 Inadequacies of the legal system

On the subject of violence against women, Human Rights In China notes that:

“Legal Provisions

Although new laws have raised the issue of violence against women, the legal system remains severely inadequate in addressing this problem. The formulation "domestic violence" has not been used in any of the new laws and awareness among judicial and legal personnel remains low. Furthermore, owing to the lack of development of the legal system in the countryside, rural women have little access to any legal recourse in cases of domestic violence.

*“In comparison to previous legislation protecting women's personal rights, the LPWRI [Law Protecting Women's Rights and Interests] is more detailed and specific. Moreover it covers some areas that have never before been mentioned in law, such as infanticide, persecution of women who give birth to female children or are infertile and the maltreatment of elderly women. However, no part of the law is drafted specifically to protect all women from domestic violence. Obviously domestic violence as a social problem was again overlooked by the government, legal institutions and society. Furthermore, according to both the Criminal Code and the Security Administration Punishment Act, penalties for physically abusing and even killing family members are much lighter than those for such crimes committed against strangers. Minor assaults are not prosecuted, so victims have to bring private actions in such cases.”*³²

Amnesty International notes in its 1995 report on Women in China:

“In some areas, nearly 80 per cent of marriages are unregistered and therefore outside the protection of the Marriage Law. Divorce is not a viable option for the majority of women, and few are aware of their rights in law. The Criminal Law includes two separate crimes of battery, depending on whether or not the parties are members of the same family. Comparison of the different penalties indicates that punishment for battery within the family is less severe. Women's issues experts in Shanghai claim

³¹ Human Rights in China (1995), op.cit.

³² Human Rights in China (1995), op.cit.

that the judicial authorities do not take domestic violence seriously and may refuse to certify women's injuries. Where mediators are involved, for rural women these may be members of her husband's extended family."³³

Canada's Immigration and Refugee Board notes that:

*"A woman may also go to court in severe cases of abuse (few actually do). There is a special department of the court with responsibility for ensuring that abused women have proper medical treatment and that the requisite medical evidence is gathered. The court may impose punishment on husbands who are guilty of wife abuse. Normally the sentence is two years imprisonment, but it could go up to seven years. If a husband kills his wife or causes her extremely serious injury (e.g. by destroying her face by throwing acid at her), he may be sentenced to death. A woman must go to a separate court if she wants to divorce an abusive husband."*³⁴

4.2.2 Law protecting women's rights and interests (the 'Women's Law')

Below is a full explanation of the limitations of the Women's Law in terms of protecting women from discrimination and abuse, taken from a report by Human Rights in China.

"Although some Chinese legal scholars have claimed that the Women's Law is an "anti-discrimination law" and the Chinese government has stated that the law was passed to give effect to CEDAW, according to the government's report the general premise of the Women's Law is "protecting the lawful rights and interests of women." This indicates a somewhat different approach, which, while providing a significant scope for dealing with problems of inequality, is not equivalent to an anti-discrimination perspective. Although the words "discrimination" and "discriminate" are used in the Women's Law and the province-level implementing regulations which have been enacted to give it local application, neither contain a definition of discrimination.

[.....]

*"Implementing laws and policies
The Women's Law and its provincial implementing regulations, as well as some other laws mentioned in the Chinese government's report, contain comprehensive provisions for protecting most of the rights articulated in CEDAW. We welcome the enactment of such laws.*

However, there are major problems with the implementation of these laws, both in terms of the lack of available legal mechanisms and in terms of the government's lack of action to enforce them. In essence, the Women's Law depends almost entirely

³³ Amnesty International (1995), op.cit.

³⁴ Immigration and Refugee Board (1999), Ottawa, Research Directorate at www.irb.gc.ca

for its enforcement on whether or not the government chooses to take administrative measures to fulfill the promises of the law. As an American scholar of Chinese law, Jonathan Hecht, puts it:

Despite frequent assertions that the [Women's Law] is a powerful tool for women to protect their lawful rights, the reality is that the law is not designed to be used by the victims of discrimination themselves... [T]he law is essentially a set of normative principles to be inculcated through education and propaganda. The process of activating the legal system to enforce the norms—that is, to apply sanctions against those who violate women's rights—operates almost entirely at the discretion of the state.

Article 48 of the Women's Law provides that "[w]hen a woman's lawful rights and interests are infringed upon, she has the right to request the competent department concerned for a disposition or bring a lawsuit in a people's court according to law." In addition, Article 52 provides that "[w]here an infringement upon a woman's lawful rights and interests causes loss of property or other damage, the infringer shall make due compensation or bear other civil liabilities according to law."

But the central problem is that the Women's Law did not actually establish any new criminal offenses, any new private causes of action, or any new penalties or remedies for violations of the law. Any lawsuit to protect the rights the law enumerates or punish those who infringe them, whether a public prosecution or a civil suit, has to be based on another law, such as the Criminal Code or the Civil Law.

[.....]

“Administrative enforcement

In the absence of direct channels for legal action, women whose rights under the Women's Law have been violated must approach an administrative agency responsible for the matter in question and lodge a complaint. As with other methods of dealing with complaints in China, the agency responsible for dealing with the complaint is generally the one which has been responsible for the violation, so a satisfactory resolution of the issue is often very difficult to achieve.

In certain types of cases, however, the question of which agency to approach may be unclear, in part because the law is very vague on this. In a private matter, say for example an infringement of a woman's right to freedom of marriage, no government agency may actually be involved.^[35] In such circumstances the woman's only recourse is to approach the ACWF, and request assistance. But the ACWF does not have any power to enforce decisions it makes about particular cases.

Even if an administrative agency does agree to take up the case, penalties available are generally ineffective. In the absence of specific penalties under the law, government can only have recourse to administrative sanctions, which would include warnings to the

³⁵ This would be the case for a woman suffering domestic violence.

individual involved in violating the law, demotions and other such measures. Such sanctions do not include fines or ways of reversing the wrong in question. **Administrative sanctions really only have effect within the government and the state sector, which can impose such discipline on those employed within them. In the private sector and in matters involving women's rights within the family, such measures are useless.**

Furthermore, in many cases the person who has committed the violation **may actually be a leader in the administrative agency that should be responsible for dealing with it.** As Chinese legal scholar Ma Yinan has put it:

Many violations of rights—such as firing women workers because of marriage, pregnancy, maternity leave or nursing; violating the principle of equal rights between men and women in allocating land—are perpetrated by the leader or person in charge of the work unit to which the victim belongs. Under such circumstances, it is very difficult to expect the heads of the unit to rectify the situation or take administrative disciplinary action against the person directly responsible for violating a woman's rights and interests.

She concludes that despite the enactment of the Women's Law, **“there are still no reliable guarantees for the protection of women's legal rights and interests.”**³⁶

4.2.3 Rape and the legal system

Legal and societal attitudes towards rape and sexual violence seriously hinder women's access to protection or redress. Amnesty International notes in its 1995 report on Women in China:

“In a 1990 survey on women's status, nearly 70% of all respondents agreed with the statement that “a woman's virginity is more important than her life”. The stigma and the social consequences of rape and sexual violation are such that speaking out may be totally against the interests of any woman. In 1992 rape accounted for 3 per cent of reported crime and, according to Chinese experts, was a factor in a large proportion of murder and assault cases. Women who attempt to report incidents to families have been driven out of their homes. Others fear they will lose their jobs through characterisation as the guilty party.

“Pursuing a rape case is difficult in itself. An official casebook on the crime of rape published in 1991 urges law enforcement officials not to take the “moral character of the woman” as the only determining factor. A textbook on the state compensation law provides insights into other difficulties; a woman who in 1982 accompanied an alleged rape victim to the police station was charged with “false accusations and charges” and sentenced to three years' imprisonment. She was released one year later after a successful appeal, but received no compensation.

³⁶ Human Rights in China (1998), op.cit.

“In recent years there has been much debate around the issue of non-consensual sex within marriage. It seems unlikely that non-consensual sex forced on a woman by her husband alone within a marriage that was still legally binding would be considered rape. Chinese legal scholars have stressed a couple’s rights and duties towards sexual relations within a marriage. A legal casebook goes further: “If a husband forces a woman to have sex against her will only in order to satisfy the requirements of a sex life, rape is not a suitable definition. If the husband’s intentions are obscene, or designed to humiliate, etc, where the circumstances are serious, this may be defined as the offences of humiliation or hooliganism.”³⁷

Human Rights In China notes that:

“Another problem is the issue of marital rape. The Chinese legal system has not recognized marital rape as a crime unless the husband and wife have separated and divorce papers have been filed. Legal commentators have argued that husbands have a “right of cohabitation” with their wives, regardless of whether the women agree. There have been several cases recently in which husbands were convicted of raping their wives. All, however, involved estranged husbands who abducted the woman as well as forcing her to have sex.”³⁸

4.3 Other support services

Human Rights in China notes the difficulties in accessing the tiny number of support services that are available:

“The first hotline specifically devoted to assisting battered women went into operation in Beijing in October 1994 and other cities, such as Nanning, have radio call-in programs to provide counseling for women facing problems of all kinds. However, assistance programs are extremely limited and such efforts must be rapidly expanded, particularly to the rural areas.”³⁹

The Immigration and Refugee Board’s report states:

“There are few shelters for battered women in China. Normally, women go to stay with their mothers to get away from abusive husbands. A woman in those circumstances normally takes her children with her, particularly if the children are young. It is not difficult to get the required approval and documentation to live in a new town,^[40] but if the woman

³⁷ Amnesty International (1995), op.cit.

³⁸ Human Rights in China (1995), op.cit.

³⁹ Human Rights in China (1995), op.cit.

⁴⁰ In fact, “It is difficult, for example, for a person to move to a city unless he or she has a permanent job and a housing permit.” Source: Paul Halsall, Brooklyn College, City University of New York, available at <http://academic.brooklyn.cuny.edu/core9/phalsall/texts/chinfact.html>.

does not have relatives there she will have difficulty finding a place to live. It is legally possible for a woman to force her abusive husband to leave their housing unit, but women don't try to enforce this legal right because of the prevailing view that the housing belongs to the husband.”⁴¹

Sophia Woodman, Director of Research at Human Rights in China, also comments: *This is completely wrong. Changing one's place of registered residence remains very difficult in China unless one has a lot of money to pay for the necessary papers. It is also important to note that attempts by NGOs to establish shelters for battered women have encountered significant obstructions from the authorities. There are still very few such shelters in China. One in Shanghai was opened and then closed a few months later, after the municipal women's federation objected because it was not run by them. In Beijing, as far as I know, women activists have been trying to open a shelter since around 1993-4, but have been unable to obtain permission.*

⁴¹ Immigration and Refugee Board (1999), Ottawa, Research Directorate at www.irb.gc.ca

5. The situation of separated or divorced women

5.1 Seeking a divorce from a violent husband

Human Rights in China's report shows significant barriers to divorce, including lack of housing and an emphasis on mediation:

“The chronic shortage of housing means that a battered woman may find herself with no place to live if she leaves her husband, and many women have been prevented from filing for divorce by the lack of available housing. This is just one of many barriers placed on divorce in China, barriers which may force women to stay with abusive husbands.

“Problems of Divorce

Prior to the enactment of the 1980 Marriage Law, no-fault divorces were not permitted in China. Following the promulgation of the new law, if both parties agreed, the “breakdown of affection” (ganqing polie) was sufficient grounds for a divorce. The break-up of families is still officially discouraged and the mediation system tries to prevent it if possible, but the divorce rate in both rural and urban areas has steadily risen since 1982. In 1990, 60 percent of petitions for divorce in the Beijing Intermediate People's Court were initiated by women, and according to recent studies in Beijing, wife abuse was cited in between 20 and 25 percent of divorce cases.

“According to a Chinese legal scholar who clerked for a judge, 70 to 80 percent of divorce cases were supposed to be dealt with through mediation and judges always preferred to have divorce petitions withdrawn, which would be considered “successful mediation.” In such circumstances, a woman may be put under tremendous pressure to accept a settlement which is not advantageous to her and an abusive husband may have further incentive to intimidate his wife into withdrawing her case. Interviews in the late 1980s with five women who had been imprisoned for bigamy found that all had been repeatedly abused and had again and again withdrawn petitions for divorce. In the end, they just left their violent husbands and set up house with other men.”⁴²

5.2 Social attitudes, abuses and discrimination

The position of single and divorced women in China is fraught with difficulties, as they face discrimination both from individuals and society, and also from institutional structures, particularly in relation to rights to housing and employment.

⁴² Human Rights in China (1995), op.cit.

5.3 Property rights

Dia Warren explains in her report on women's housing rights in China, that

"The Women's Rights Law [Law Safeguarding Women's Rights and Interests] says that "[t]he State shall guarantee that women enjoy the equal right, with men, to property" (Article 28). More specifically, the Law nominally protects common property in case of a divorce and succession rights (Articles 29,31)....

"Despite its grand pretensions, the Women's Rights Law has been criticised as consisting more of form than substance, as it lacks legal enforcement mechanisms, and whatever protection there is remains at state discretion. The language is all too often ambiguous. Article 44, for example, provides: "If the wife has no housing to live in at the time of divorce, the husband shall help her in this regard whenever he can afford to." Because this is an ambiguous legal standard, the main strength of the Women's Rights Law may be as a consciousness-raising tool rather than as an effective legal tool (Jordan, 1994: 96; Stearns, 1993: 54; J. Hecht, 1995: 4-6).

"The Women's Rights Law has accorded some degree of protection against discriminatory housing practices. But it does not yet seem to be consistently applied, and the question remains whether it adequately combats discrimination against women as a group or merely serves the few individuals who have access to the system. Furthermore, patriarchal and virilocal practices, and women's ignorance of their own rights, may impede many cases from reaching the courts at all."⁴³

In rural areas, the village authority owns the land and is responsible for allocating its use to families, women receiving a share in their parents' or their spouse's family property.

"In case of divorce, a woman may technically be allocated housing rights in her husband's village; however, this is rarely practiced, as the housing distributor is its own regulator. Furthermore, there is such a strong social stigma attached to divorce that a divorced woman may be castigated within the local community if she chooses to stay (and a large proportion of the village would be relatives of her former husband). Often, the only option is to return to the family home and village. Even then it is often difficult to acquire land rights. The same factors discussed above – cultural biases against divorced women, lack of bureaucratic checks – may stand in her way, and in addition there may not be housing available."⁴⁴

⁴³ Warren, Dia (1999), 'Chinese Women's Housing Rights: An International Legal Perspective' in Tinker, Irene & Summerfield, Gale (eds) *Women's Rights to House and Land: China, Laos, Vietnam*, London, Lynne Rienner Publishers, p 169

⁴⁴ Warren, Dia (1999), op.cit., p 171

In addition, the growth in unregistered marriages poses another threat to women:

“By not obtaining state sanction for their marriage, women forfeit the legal guarantee to property that they have.... Protection of property arrangements associated with unlawful cohabitation differ sharply from those related to marriage, and joint ownership will often not be recognized by the court in case of divorce, usually to the disadvantage of the woman.”⁴⁵

The situation is no better for women in the cities:

“In urban China, women usually live with their parents until they marry and then live in a house belonging to their husband’s work unit [dan wei]. Women who remain single usually have difficulties finding housing units of their own...

“Following the promulgation of the Women’s Rights Law in 1992, discrimination remains pervasive. The All China Trade Union Female Workers Department surveyed 103 dan wei in five regions after the Women’s Rights Law was passed and found excessive discrimination.... In Hebei, one factory’s rules required a woman to be employed for twenty years before she became eligible for housing, while men had to work for four years before their housing rights accrued.”⁴⁶

In summary, Warren notes that:

“Reasons for discrimination in housing allocation are related to women’s limited ability to enforce their evolving legal rights. They include: (1) male dominance in positions of control, (2) lack of adequate independent legal recourse against dan wei, (3) insufficient access to legal aid and judicial ignorance of the recent policies, (4) women’s own lack of adequate legal education and knowledge of their own rights, and (5) no effective independent channel that women can use to protect their rights.”⁴⁷

5.4 Economic security

The ongoing reforms of the housing and labour markets are having negative effects on women, which would particularly affect single or divorced women:

“The removal of guaranteed jobs, moreover, has already weakened housing security; a person who is permanently laid off from her/his state-owned enterprise job or whose work unit declares bankruptcy cannot expect to continue living in the work unit’s housing. Women are

⁴⁵ Warren, Dia (1999), op.cit., p 171

⁴⁶ Warren, Dia (1999), op.cit., pp 171-172

⁴⁷ Warren, Dia (1999), op.cit., pp 173-174

more likely to lose their jobs as firms cut costs..... Women are discriminated against in the labor market because firms consider them more expensive compared to men (due to maternity leaves and health care costs, such as prenatal care, that the firm had to cover) and because of traditional biases.

“The separation of employment and housing may make access to housing harder for women who do not have the support of a husband or father regardless of whether they are gainfully employed; the gap between women’s and men’s wages is increasing, and women face growing discrimination in the emerging labor market. In the housing market, women face a direct bias – managers may not want to rent to single women whom they consider immoral – as well as an indirect bias – rising prices will make the difference in wages more obvious.”⁴⁸

The U.S. State Department report also notes these problems, which would impact particularly on a single woman without husband or family support:

“Women have borne the brunt of the economic reform of state-owned enterprises. As the Government’s plan to revamp state-owned enterprises is carried out, millions of workers have been laid off. Of those millions, a disproportionate percentage are women, many of whom do not have the skills or opportunities to find new jobs. A December 1998 Asian Development Bank report noted that almost 70 percent of the 23 million persons who could lose their jobs as a result of state-owned enterprise reform were women, even though they only constituted 36.4 percent of the work force. A 1998 All-China Federation of Trade Unions (ACFTU) report estimated that 80 percent of those laid off from state-owned enterprises in Heilongjiang Province were women. Women between the ages of 35 and 50 were the most affected, and the least likely to be retrained. In addition female employees were more likely to be required to take pay cuts when a plant or company was in financial trouble. There have been reports that many women have been forced or persuaded into early retirement as well. Discriminatory hiring practices appear to be on the rise as unemployment rises. Increasingly companies discriminate by both sex and age, although such practices violate labor laws.

“Many employers prefer to hire men to avoid the expense of maternity leave and childcare and some even lower the effective retirement age for female workers to 40 years of age (the official retirement age for men is 60 years and for women 55 years). Lower retirement ages have the effect of reducing pensions, which generally are based on years worked.”⁴⁹

⁴⁸ Summerfield, Gale & Aslanbeigui, Nahid (1999), ‘Housing Reform in Urban China’, in Tinker, Irene & Summerfield, Gale, op. cit., pp 184-185

⁴⁹ U.S. Department of State (2001), op.cit.

6. Case law

6.1 Canada

The following claimant in Canada was granted refugee status, as there was found to be no state protection available to her:

CRDD U97-02858, Schlanger, November 2, 1998.

*“The claimant feared persecution at the hands of her abusive boyfriend, who raped her twice and stalked her when she tried to end the relationship. She reported both rapes to the Public Security Bureau (PSB) but her boyfriend was released for lack of evidence and because the PSB viewed the matter as a “domestic dispute”. The boyfriend’s uncle had power and influence within the PSB. **The Refugee Division found that no state protection was available to the claimant in the circumstances. There is no national spousal abuse law in China and women are regarded as the property of their male relatives. Although some victims of domestic violence may have an internal flight alternative (IFA) within China, the claimant had no IFA because she would have to obtain a permit to move and her boyfriend could then find her through his uncle’s PSB sources. If she became part of the large itinerant population of China without official residence status, she would not have full access to social services and education and would have to pay a premium for those services. Moreover, young rural women in such situations are frequently subject to sexual assault.**”⁵⁰*

⁵⁰ Immigration and Refugee Board, Research Directorate, Canada, at www.irb.gc.ca

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Appendix A

Home Office Country Information and Policy Unit, October 2000: Country Assessment, China

“Women

5.134. Article 48 of the 1982 Constitution states that "Women in the PRC enjoy equal rights with men in all spheres of life, political, economic, cultural and social, including family life. The state protects the rights and interests of women, applies the principle of equal pay for equal work for men and women alike and trains and selects cadres from among women." The Communist regime has consistently articulated the ideal of gender equality and has enacted a series of laws to protect women's rights. However, the persistence of traditional views on the position of women, the government's family planning policies (see paragraphs 6.5-6.11) and the preference for sons, and the economic reform programme (see paragraph 3.18) are obstacles to the effective application of these laws.[3c]

5.135. Deeply entrenched social habits and customs that mitigate against gender equality are the major cause of the continuing violence against women in China, especially in the rural areas. The roots of this discrimination against women lie in Chinese philosophy, religion and popular culture. The social organisation of rural society, which views women as temporary residents in their natal families until they move to their husband's residence, is also a significant factor. Domestic abuse reportedly is more frequent in rural areas. Women in urban areas are usually more educated and tend to have a better understanding of their rights, although there is no national spousal abuse law. Some localities (eg. Hunan province) have passed legislation to address the problem.[3c,2d] The central authorities have pledged to tackle injustices in rural areas, particularly in the fight against domestic violence and in trafficking of women. [4ek] New economic pressures have fuelled early retirement amongst female workforce. The economic downturn has seen an increased domestic violence, coercion into prostitution, and a marked difference between men and women in suicide figures. [4ba]

Abduction

5.136. The abduction and sale of women is on the rise in China. These practices, which occurred in traditional Chinese society, have seen a resurgence as a result of the economic reform programme which has loosened strict communist moral controls at the same time that it has unleashed the profit motive; the growing shortage of women; and the increase in cost of betrothal gifts. Chinese authorities have consistently condemned the practise of the abduction and sale of women. In 1991 tougher penalties were enacted, imposing sentences of between 10 years in prison and death for gang leaders, up to 3 years in prison for those who buy women and children, and 2-7 years in prison for government cadres who obstruct who obstruct rescue attempts. Campaigns to catch and convict those involved in the abduction of women are regularly organised.[3c,10o] In 1999, police claimed that they had rescued 23,000 women and 4,260 children who were kidnapped, broke up 8,000 kidnapping gangs, and arrested 26,000 people between 1996 and 1998.[4ag]

Divorce

5.137. It is relatively easy for a woman to get a divorce under China's Marriage Law (1980). Women, however, may be discouraged from applying for a divorce because of the housing shortage in China. During marriage women usually live in a house

belonging to their husbands' work unit. After divorce, if a woman's own unit does not assign her a house, she is forced to seek housing with family and friends.[3c]

All China Women's Federation

5.138. *The government-sponsored All China Women's Federation (ACWF) plays a key role in promoting and safe-guarding women's rights and interests. The ACWF is a mass organisation, with branches at each government level, and has 89,000 professionals specialised in working with women. Since 1980, the ACWF has sponsored a nationwide effort to develop family planning education, including counselling services. The organisation actively protests cases in which women are discriminated against by the hiring practices of companies and factories. Women's protection committees, medical schemes, domestic abuse hotlines and emergency centres been set up in some areas.[3c,7g,4p]*

Children

5.139. *The 1992 Law on the Protection of Juveniles forbids infanticide, as well as mistreatment or abandonment of children. Physical abuse of children can be grounds for criminal prosecution. The Constitution provides for 9 years of compulsory education.[2d]*

5.140. *There have been reports of female infanticide. A World Health Organisation paper in 1997 reported that the national ratio of male to female births was 117:100 (the worldwide statistical norm = 106:100). Part of the gap may be attributable to female infanticide, sex-selective abortion and abandonment; or to the underreporting of female births by couples trying to evade family planning laws to try to have a son (see 'One Child Policy').[2d]"*

ISLAMIC REPUBLIC OF IRAN

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ISLAMIC REPUBLIC OF IRAN

1. Introduction

1.1 Political background

Iran was declared an Islamic Republic on 1 April 1979, after the overthrow of the Shah, Muhammad Reza Pahlavi. The U.S. State Department comments:

“The Constitution ratified after the revolution by popular referendum established a theocratic republic and declared as its purpose the establishment of institutions and a society based on Islamic principles and norms. The Government is dominated by Shi'a Muslim clergy. The Head of State, Ayatollah Ali Khamenei, is the Supreme Leader of the Islamic Revolution and has direct control of the armed forces, internal security forces, and the judiciary. Mohammad Khatami was elected to a 4-year term as President in a popular vote in February 1997. A popularly elected 290-seat unicameral Islamic Consultative Assembly, or Majles, develops and passes legislation. All legislation passed by the Majles is reviewed for adherence to Islamic and constitutional principles by a Council of Guardians, which consists of six clerical members, who are appointed by the Supreme Leader, and six lay jurists, who are appointed by the head of the judiciary and approved by the Majles. The Constitution provides the Council of Guardians with the power to screen and disqualify candidates for elective offices based on an ill-defined set of requirements, including the candidates' ideological beliefs. The judiciary is subject to government and religious influence.

“Several agencies share responsibility for internal security, including the Ministry of Intelligence and Security, the Ministry of Interior, and the Revolutionary Guards, a military force that was established after the revolution. Paramilitary volunteer forces known as Basijis, and gangs of thugs, known as the Ansar-e Hezbollah (Helpers of the Party of God), who often are aligned with specific members of the leadership, act as vigilantes, and are released into the streets to intimidate and threaten physically demonstrators, journalists, and individuals suspected of counterrevolutionary activities. Both regular and paramilitary security forces committed numerous, serious human rights abuses.”¹

Mohammad Khatami was re-elected as President following the elections of June 2001.

¹ U.S. Department of State (2001) *2000 Country Reports on Human Rights Practices: Iran*, Bureau of Democracy, Human Rights, and Labor, available at <http://www.state.gov/g/drl/hr/index.cfm?id=1470>

1.2 Human rights practice

Human rights abuses continue in Iran. The US State Department notes that, in 2000:

“The Government's human rights record remained poor; although efforts within society to make the Government accountable for its human rights policies continued, serious problems remain. The Government restricts citizens' right to change their government. Systematic abuses include extrajudicial killings and summary executions; disappearances; widespread use of torture and other degrading treatment, reportedly including rape; harsh prison conditions; arbitrary arrest and detention; and prolonged and incommunicado detention. Judicial proceedings were instituted against some government officials for misconduct. However, perpetrators often committed such abuses with impunity. A group of 20 police officials was brought to trial in March for their actions in an attack on a Tehran University student dormitory in July 1999. All but two were cleared, including the senior official involved. In December 18 former officials of the Intelligence Ministry were tried before a military court for the killings of four dissidents in 1998. The proceedings were closed and the results of the trial were not made public by year's end.

“The judiciary suffers from government and religious influence, and does not ensure that citizens receive due process or fair trials. The Government uses the judiciary to stifle dissent and obstruct progress on human rights. The Government infringes on citizens' privacy rights, and restricts freedom of speech, press, assembly, and association. The Government closed nearly all reform-oriented publications during the year and brought charges against prominent political figures and members of the clergy for expressing ideas viewed as contrary to the ruling orthodoxy. However, the Ministry of Culture and Islamic Guidance continued to issue licenses for the establishment of newspapers and magazines, some of which challenged government policies.

“The Government restricts freedom of religion. Religious minorities, particularly Baha'is, continued to suffer repression by conservative elements of the judiciary and security establishment. In July 10 Iranian Jews were tried and convicted on charges of illegal contacts with Israel, and sentenced to between 2 and 13 years in prison. Three others were acquitted. The trial procedures were unfair, and violated numerous internationally recognized standards of due process. The selection of candidates for elections effectively is controlled by the Government. Intense political struggle continued during the year between a broad popular movement that favored greater liberalization in government policies, particularly in the area of human rights, and certain hard-line elements in the government and society, which view such reforms as a threat to the survival of the Islamic republic. In many cases, this struggle is played out within the Government itself, with reformists and hardliners squaring off in divisive internal debates.

Reformers and moderates won a landslide victory in the February Majles election, and now constitute a majority of that body; however, the Council of Guardians and other elements within the Government blocked much of the early reform legislation passed by the Majles.

“The Government restricts the work of human rights groups and continues to deny entry to the country to the U.N. Special Representative for Human Rights in Iran. Violence against women occurs, and women face legal and societal discrimination. The Government discriminates against religious and ethnic minorities and restricts important workers' rights, including freedom of association and the right to organize and bargain collectively. Child labor persists. Vigilante groups, with strong ties to certain members of the Government, enforce their interpretation of appropriate social behavior through intimidation and violence.”²

According to the most recent UK Home Office Assessment:

“5.4. The Iranian government's human rights record is poor. There are improvements in a few areas, but problems remain. [4(6)] Human rights abuses are not being comprehensively addressed. The government has sought to conform public policy to its political and socio-religious values, although serious differences exist within the leadership and within the clergy. Ayatollah Khamenei, who supported President Khatami's opponent in the Presidential elections, remains Supreme Leader and the clergy's grip on the regime continues. The government has maintained power through repression and intimidation. [4(2),9(4)]
5.5. Procedures governing arrest, detention and trial are rarely made public. [4(2),9(4)] Reports of systematic human rights abuses include extrajudicial killings and summary executions; disappearances; widespread use of torture and other degrading treatment; harsh prison conditions; arbitrary arrest and detention; lack of due process; unfair trials; infringement on citizens' privacy; and restrictions on freedom of speech, assembly, association, religion and movement. [4(6)]”³

1.3 Iran and international legal instruments

Iran is a signatory to the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights (ICCPR), the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, the International Convention on the Elimination of All Forms of Racial Discrimination, and five other international instruments.

It is **not** a signatory to the Convention on the Elimination of All Forms of Discrimination against Women or the Convention against Torture and Other

² U.S. Department of State (2001), op.cit.

³ Home Office (October 2000), *Iran Assessment*, London, Country Information and Policy Unit. See Appendix A for references

Cruel, Inhuman or Degrading Treatment or Punishment. Neither is it a signatory to the optional Protocols to the ICCPR (including that aimed to abolish the death penalty).⁴

1.4 Women's human rights

The most recent U.S. State Department report on Iran notes the following:

“Women have access to primary and advanced education; however, social and legal constraints limit their professional opportunities. In September the Majles approved a controversial bill to allow single women to travel abroad for graduate education. The legislation was under consideration by the Council of Guardians at year’s end. [5] Women are represented in many fields of the work force, and the Government has not prevented women from entering many traditionally male-dominated fields, including medicine, dentistry, journalism and agriculture. However, many women choose not to work outside the home. [6] A 1985 law enacted by the Government instituted 3 months of paid maternity leave, and 2 half-hour periods per day for nursing mothers to feed their babies. Pension benefits for women were established under the same law, which also decreed that companies hiring women should provide day-care facilities for young children of female employees.

“The State enforces gender segregation in most public spaces, and prohibits women mixing openly with unmarried men or men not related to them. Women must ride in a reserved section on public buses and enter public buildings, universities, and airports through separate entrances. Women are prohibited from attending male sporting events, although this restriction does not appear to be enforced universally. While the enforcement of a conservative Islamic dress codes has varied with the political climate since the death of Ayatollah Khomeini in 1989, what women wear in public is not entirely a matter of personal choice. Women are subject to harassment by the authorities if their dress or behavior is considered inappropriate, and may be sentenced to flogging or imprisonment for such violations. The law prohibits the publication of pictures of uncovered women in the print media, including pictures of foreign women. There are penalties for failure to observe Islamic dress codes at work (see Section 6.a.).

“Discrimination against women is reinforced by law through provisions of the Islamic Civil and Penal Codes, in particular those sections dealing with family and property law. Shortly after the 1979 revolution, the Government repealed the Family Protection Law, a hallmark bill that was adopted in 1967, which gave women increased rights in the

⁴ see Office of the United Nations High Commissioner for Human Rights (2001), *Status of Ratifications of the Principal International Human Rights Treaties as of 18 May 2001*, Geneva, Switzerland, available at www.unhcr.ch

⁵ Note: the Council of Guardians later overturned this bill's approval

⁶ Note: see section 5 for information on women's employment

home and workplace, and replaced it with a legal system based largely on Shari'a practices. In 1998 the Majles passed legislation that mandated segregation of the sexes in the provision of medical care. The bill provided for women to be treated only by female physicians and men by male physicians and raised questions about the quality of care that women could receive under such a regime, considering the current imbalance between the number of trained and licensed male and female physicians and specialists.

"In October the Parliament passed a bill to raise the legal age of marriage for women from 9 to 15. However, the Council of Guardians in November rejected the bill as contrary to Islamic law, although even under the current law, marriage at the minimum age is rare. All women, no matter the age, must have the permission of their father or a living male relative in order to marry. The law allows for the practice of Siqeh, or temporary marriage, a Shi'a custom in which a woman or a girl may become the wife of a married or single Muslim male after a simple and brief religious ceremony. The Siqeh marriage can last for a night or as little as 30 minutes. The bond is not recorded on identification documents, and, according to Islamic law, men may have as many Siqeh wives as they wish. Such wives are not granted rights associated with traditional marriage.

"The Penal Code includes provisions that mandate the stoning of women and men convicted of adultery (see Sections 1.a and 1.c.). Under legislation passed in 1983, women have the right to divorce, and regulations promulgated in 1984 substantially broadened the grounds on which a woman may seek a divorce.^[7] However, a husband is not required to cite a reason for divorcing his wife. In 1986 the Government issued a 12-point "contract" to serve as a model for marriage and divorce, which limits the privileges accorded to men by custom and traditional interpretations of Islamic law. The model contract also recognized a divorced woman's right to a share in the property that couples acquire during their marriage^[8] and to increased alimony rights. Women who remarry are forced to give up to the child's father custody of children from earlier marriages.^[9] In 1998 the Majles passed a law that granted custody of minor children to the mother in certain divorce cases in which the father is proven unfit to care for the child (the measure was enacted because of the complaints of mothers who had lost custody of their children to former husbands with drug addictions and criminal records). Muslim women may not marry non-Muslim men. The testimony of a woman is worth only half that of a man in court (see Section 1.e.). A married woman must obtain the written consent of her husband before traveling outside the country."¹⁰

⁷ However, see section 4 for the limitations of this provision

⁸ But not if the divorce has been initiated by or caused by any fault of the wife – the issue of fault being decided upon by the court : see Mir-Hosseini, Ziba (2000) *Marriage on Trial: A Study of Islamic Family Law*, London, I.B. Tauris, p 57

⁹ Note: for women's custody rights after divorce, see section 5

¹⁰ U.S. Department of State (2001), op.cit.

2. Domestic violence

The patriarchal structure, cultural traditions and religious edicts prevalent in Iranian society create a climate in which women are seen as men's property and domestic violence thus becomes an accepted expression of male dominance. Statistics on the prevalence of domestic violence are not available; however all sources consulted agree on its occurrence.

Haleh Afshar discusses the Islamic concept of *nushuz* (disobedience or failure to observe one's religious duties) in relation to women's duty to be submissive to their husbands. She notes that there is textual support from the Koran for the husband's duty to punish such disobedience, and comments that there is much evidence that Iranian men use this to justify domestic violence:

*"Good women are obedient. As for those from whom you fear disobedience, admonish them and send them to beds apart and beat them. Then if they obey you, take no further action against them. (IV: 34)"*¹¹

According to the UK Home Office Assessment:

"6.7. Violence against women in the family is recognised, with "blood money" (Deyah) only awarded if the aggrieved party is a man. In addition, families of female victims of violent crimes are reported to have to pay for an assailant's court costs. Little detail is known of the degree of domestic violence in Iran, with no official statistics on abuse within the family.[4f] There is a lack of legislative provision to regulate actions against women.

*"6.11. In 1998 the Government published several papers on a three-year action plan to help prevent, identify and deal with violence against women[10q]"*¹²

The US Department of State Report for 2000 states:

*"Although reported cases of spousal abuse and violence against women occur, the statistics on such reports are not available publicly. Abuse in the family is considered a private matter and seldom is discussed publicly. In May 1999, the President's Advisor on Women's Affairs was quoted in the press as stating that "one cannot claim that violence against women does not take place in Iran." The Special Representative noted in his September report that media reporting on the situation of women has diminished, in part due to the closure of the reform-oriented press (see Section 2.a)."*¹³

¹¹ Afshar, Haleh (1998) *Islam and Feminisms: An Iranian Case-Study*, Basingstoke, Macmillan, p 143

¹² Home Office (October 2000), op.cit.

¹³ U.S. Department of State (2001), op.cit.

The Special Rapporteur to the United Nations on Violence Against Women noted in her 1999 report on Iran's three-year National Plan of Action on the Elimination of Domestic Violence Against Women that she was concerned about *"the link made in the Plan of Action between women's rights and 'duties in the family and society', since duties are often invoked to negate women's rights."* She also noted in her report that no specific criminal law exists in relation to domestic violence, and that statistics specifically relating to domestic violence were *"not provided"*.¹⁴

A report by the National Council of Women for a Democratic Iran gives some background information and an example of a woman's experiences:

"This situation [difficulties in obtaining justice in cases of domestic violence] has created an atmosphere of exhaustion, restlessness, and hopelessness among the women in the families where there is violence. The exploited women continue on with their lives with distrust and a lack of confidence in a better future. Violence in families will create lasting effects on the children, who are the men and women of the next generation. The cycle continues and they raise their children with the same rules that they are taught. As a result, violence in the family takes its toll on the society and creates a harsh living environment susceptible to violations and criminal activities.

*"For instance, a woman says "I was married at the age of 12, and I had my first child when I was 13. My husband was unemployed and we fought all the time. We never applied for a divorce because I was afraid of losing my child. Finally one night, he poured a bucket of acid over my body and I was completely burned. When I rushed to the sink to flush my face and body. I realized that he had shut off the main water supply. I was taken to the hospital. My operation was held up pending advance money for the surgery, and permission from my husband to operate on my face. My mother sold all of her valuables and provided the money. My husband said he would only permit my operation if I consented to not seeing my children for the rest of my life. Finally, with hospital's pressure on the family court they allowed me to receive the operation on my face and body. (Zanon Magazine, #42.)"*¹⁵

¹⁴ Coomaraswamy, Radhika (1999), *Violence against women in the family: Report of the Special Rapporteur on violence against women, its causes and consequences*, E/CN.4/1999/68, Geneva, Switzerland, Office of the United Nations Commission on Human Rights

¹⁵ National Council of Women for a Democratic Iran (2000), *Alternative Report by National Committee of Women for a Democratic Iran* submitted to the Conference of NGOs in Consultative Relationship with the United Nations, available at www.womenaction.org/global/ncwdi.htm

3. Domestic violence and the law

3.1 Lack of provision

There is no specific recognition of domestic violence in Iranian legislation. A woman whose husband is physically violent towards her could have recourse to the relevant article in the Criminal Code which is a general provision prohibiting assault and battery. Assault and battery is a “qisas” crime (see Craig Silverman, below, for an outline of categories of crime in Iran), which is seen as an assault against the victim and his/her family, and gives rise to a right of retribution or blood money. However, reports to the police are unlikely to be taken seriously unless perhaps several incidences of very severe injury have been reported; more information on the actual practice of trying to obtain justice through this system for women experiencing domestic violence is given in the next section.

Women suffer discrimination in the legal system (see below) and in any event, violence in the context of a husband and wife or family relationship will be viewed in the Islamic context of marital relationships, making it unlikely that the law will offer any redress.

3.2 The legal system in Iran

Iran's Constitution, adopted in 1979, states that the form of government of Iran is that of an Islamic Republic, and that the spirituality and ethics of Islam are to be the basis for political, social and economic relations.

The executive, legislative and judicial wings of state power are subject to the authority of the Wali Faqih (supreme religious/spiritual leader).

The following extract from an article in the New England International & Comparative Law Annual outlines the legal system in Iran:

“The sources of law in Iran are Islamic law, constitutional law, legislation (such as the code discussed here), and other informal sources such as Muslim customs and traditions and revolutionary considerations.(86) The legislative and judicial organs of the State are responsible for codifying and applying the shari'a (Islamic law).(87) The penal code of Iran has divided crimes into four categories: hudud, qisas, ta'zir, and diyat.(88) The distinctions between them are based on the type of punishment for each category of offense.(89)

“1. CATEGORIES OF CRIME IN IRAN

The hudud category of crimes includes those prohibited by God and punishable by mandatory penalties defined by the Quran.(90) The Quran houses God-given laws considered to be "infinitely more than just man-made laws."(91) Examples of hudud crimes, as enumerated in the Iranian penal code, include "theft, robbery, adultery, apostasy, drinking of alcoholic beverages, and rebellion against Islam."(92) The penalties imposed for these types of crimes are specified, and restricted to those listed in the Quran.(93) These punishments include

the amputation of hands for theft and the stoning to death for adultery.(94)

"The category of offenses designated as qisas include such acts as murder, manslaughter, battery, and mutilation.(95) These offenses, under Islamic law, are regarded as acts against the victim and his family.(96) The punishments for such offenses are retributive in nature and allow for "inflicting on a culprit an injury exactly equal to the injury he inflicted on his victim'."(97) Although retribution and vendettas are permissible punishments for qisas crimes, the "Quran and Iranian penal code recommend forgiveness, because the act of forgiving pleases God."(98)

"The ta'zir category of crimes in Iran are those which have no specific penalties assigned to them in the Quran.(99) The crimes in this category include such offenses as "immodest clothing, immoral behavior, and public drunkenness."(100)

"The range of punishment for crimes in the ta'zir category of offenses, not being designated in the Quran, is left to the discretion of the judge.(101) This discretion, however, is limited to the range designated in the Islamic Penal Code.(102) Punishments within this discretion include such things as admonition, fines, seizure of property, and public flogging.(103)

"The final category of crimes in Iran, diyat, is in actuality not a crime, but a category of punishment. Diyat is a form of compensation or blood-money which is ordered to be paid to a victim or his family as reparation for an injury or murder.(104) This is an alternative available to a family who chooses to "forgo their right of retribution under qisas and instead demand blood money from the perpetrator of the crime."(105) The measure of diyat, and methods of payment, for various crimes has been codified in the Iranian penal code.(106)"¹⁶

¹⁶ Silverman, Craig (1997) *An appeal to the United Nations: Terrorism must come within the jurisdiction of an international criminal court*, New England International & Comparative Law Annual

References from the above

86. See Amin, *supra* note 8, at 5.80.5.

87. See Nadar Entessar, *Criminal Law and the Legal System in Revolutionary Iran*, 8 B.C. Third World L. J. 91, 95 (1988).

88. See *Id.* at 96.

89. See *Id.* See also Kourosh Eshghipour, *The Islamic Revolution's Impact on the Legal and Social Status of Iranian Women*, 3 *New Eng. Int'l and Comp. L. Ann.* 161, 166-169 (1997).

90. See *Id.* at 96-97.

91. Entessar, *supra* note 85, at 92.

92. *Id.* at 97.

93. See *Id.*

94. See *Id.*

95. See Entessar, *supra* note 85, at 97.

96. See *Id.* at 97.

97. *Id.*

Domestic violence is not specifically mentioned in the criminal code, but would be considered under the offence of battery as a q'isas crime. The following section examines difficulties in obtaining any redress for such an offence.

3.3 The Civil Code

The Civil Code of Iran, in its chapter on marriage, details the circumstances in which a woman may seek a divorce, including maltreatment or bodily injury by her husband. However, the reality for women experiencing domestic violence in trying to access such provision is discussed in Section 4.

“Article 1102—As soon as a valid marriage takes place, matrimonial relations come into being between the parties and reciprocal rights and duties of the spouses are established.

“Article 1103--Man and wife are bound to treat each other well.

“Article 1114—The wife should reside in the residence that the husband decides unless the power to decide the residence has been reserved for her.

“Article 1115—If the cohabitation of the spouses involves the risk of bodily or financial injury or causing disreputation to the wife, she may choose a separate place of residence; and if the said suspected risk is proved the court may not order her return to the husband’s place of residence and so long as she is excused from returning to the husband’s residence her maintenance is to be borne by the husband.

“Article 1116—In respect of the preceding Article, so long as the litigation between the spouses has not ended, the place of residence of the wife shall be determined by mutual agreement of the parties failing which the court will decide on her residence after obtaining the views of the close relations of the parties; and where there are no relations the court itself will appoint a safe place for her.

“Article 1119—The parties to a marriage contract may stipulate in it or in another binding contract any condition which is not incompatible with the nature of the marriage contract; for example, it may be stipulated that if the husband marries another woman or absents himself for a certain period, or fails to continue to provide her with maintenance, or makes an attempt against the life of the wife or maltreats her in a

98. Id.

99. See Entessar, *supra* note 85, at 98.

100. Rose Marie Karadsheh, *Creating an International Criminal Court: Confronting the Conflicting Criminal Procedures of Iran and the United States*, 14 *Dick. J. Int'l L.* 243, 267 (1996).

101. See Entessar, *supra* note 85, at 98.

102. See Id.

103. See Id.

104. See Id.

105. Entessar, *supra* note 85, at 98.

106. See Id.

manner that makes their life together intolerable, the wife will have the power of an agent authorised to appoint another person to obtain her divorce after proving the realization of the stipulated condition in the court and the issuance of a final judgment thereon.

“Article 1130—(As amended on 21-8-1370 AH=12-11-1991) Where the continuation of marriage causes difficulty and hardship for the wife, she may refer to the religious judge requesting a divorce. If the difficulty and hardship is established for the court, the court can compel the husband to divorce his wife; where this may prove impractical the wife may be divorced by the permission of the religious judge⁶⁹

“69. The former text of Article 1130 read as follows: ~The ruling of the preceding Article shall apply to the following cases as well:

1—Where the husband does not attend to the other indispensable rights of the wife, and compelling him to do so proves impossible.

2—The ill-treatment by the husband of his wife to such an extent that it makes the continuation of the wife’s living with him unbearable.

3—Where because of contagious diseases of generally incurable nature the continuation of the married life may no longer be safe for the wife.”¹⁷

¹⁷ Taleghany, M.A.R. (trans) (1995) *The Civil Code of Iran*, Littleton, USA, Fred B. Rothman

4. The reality of seeking protection

4.1 The police

There appears to be little, if any protection available from the police in cases of domestic violence. The report by the National Council of Women for a Democratic Iran quoted above mentions the following news report which shows the lack of such protection. Please refer also to Section 6 for case law which confirms this.

*“Family violence against women, Iran Times” Sept 25, 1998 - In another example, a woman was murdered by her husband's brutal battery and torture. She was rushed to Sina hospital in Tehran. Shortly after, she died due to infection and deep injuries. Before her death, Mina Omolbanin was questioned on what had happened to her. She had lied that she had fallen down some steps, from fear of what else her husband might do. When the nurses insisted that she tell the truth about her injuries, she finally admitted, " My mother-in-law troubled me and my husband burned me with cigarette ashes and with skewers. He also beat me up with a cable." When asked why she didn't run away, she said, " I was imprisoned in a shed located at the end of the yard and did not see the sun for twelve days. He burned and beat me. Then he locked me up and left. I asked my father for help and he ignored my plea. My father told me, "You went to your husband's home with a bridal gown. You should leave that home with a white burial shroud." **In a few instances, I reported the beating and burning to the nearest police station. However, they did not help and never took control of the case.**" The judge released the content of the file to the news media. This 22 year old victim of violence was married off against her will in the city of Sarab. " ¹⁸*

Canada's Immigration and Refugee Board Research Directorate refers to information on police intervention in cases of domestic abuse provided by a professor of sociology at Concordia University in Montreal, who specializes in women's issues in Iran:

***"If a woman who is being beaten by her husband calls the police from her home, it is unlikely that they would intervene;** however, the woman has the option of going to the police station to lodge a complaint against her husband. If a woman chooses that option, she must produce a medical certificate proving that she has received a serious physical injury (e.g. a broken bone or knife-wound) at the hands of her husband before the police will open a file on the case. Moreover, the professor is not aware of any instance in which the police have opened a file after the first certified instance of physical injury at the hands of a husband. However, the professor believes that*

¹⁸ National Council of Women for a Democratic Iran (2000), op.cit.

the police will usually open a file if a woman produces a certificate of serious injury for a second or third time (26 June 1998).¹⁹

4.2 The judicial and legal system

4.2.1 Overall discrimination against women

The UK Home Office Assessment issued in April 2000 highlights the lack of independence of the legal system in Iran and the many ways in which it discriminates against women:

“4.10. The traditional court system is not independent and is subject to government and religious influence.[4a,4f] There are two court systems; the traditional courts, which adjudicate civil and criminal offences, and the Islamic Revolutionary Courts, established in 1979 to try political offences, narcotics crimes "crimes against God" [4a,4f] and official corruption.[4f] Defendants have the right to a public trial, may choose their own lawyer, and have the right of appeal. Trials are adjudicated by panels of judges, advised by the government to base their decisions on Islamic law.[4f] The Revolutionary Courts may consider cases that are normally in the jurisdiction of the civil and criminal courts, and may also overturn their decisions.[4a]

“4.12. Revolutionary Court judges are legally authorised to act as prosecutor and judge in the same case and these judges are appointed for their ideological beliefs. No major reform of the Revolutionary Court system has been undertaken since 1992. The Lawyers Committee for Human Rights then concluded that these courts were associated with abuses.[4f]

*“4.13. The Supreme Court, which has 16 branches, revoked all laws dating from the previous regime which did not conform with Islam.[1a] It has limited authority to review cases.[4f] In October 1982 all courts set up prior to the Islamic Revolution were abolished. In June 1987 Ayatollah Khomeini ordered the creation of clerical courts to try members of the clergy opposed to government policy. A new system of **qisas** (retribution) was established, placing the emphasis on speedy justice. Islamic codes of correction were introduced in 1983, including the dismembering of a hand for theft, flogging for fornication and violations of the strict code of dress for women, and stoning for*

¹⁹ Immigration and Refugee Board (1998) *Response to Information Request IRN29616.E* Ottawa, Research Directorate

References from the above:

Professor of counselling psychology, Ontario Institute for Studies in Education (OISE), University of Toronto. 30 June 1998. Telephone interview.

Professor of sociology, Concordia University, Montreal. 26 June 1998. Telephone interview.

Women Living Under Muslim Laws (WLUML). Fall 1996. Mehranguiz Kar and Homa Hoodfar. "Personal Status Law as Defined by the Islamic Republic of Iran: An Appraisal," *Shifting Boundaries in Marriage and Divorce in Muslim Communities*. Grabels, France: WLUML.

adultery. The traditional courts adjudicate and civil and criminal offences may be punished by the death penalty.[1a]

*"5.17. Four types of proof exist within the Iranian legal system. The application of confession, testimony, oath and "the knowledge of the judge" remains unclear to those outside the Iranian judiciary. There is a marked concern that confessions are often gained by coercion and that **the "testimony of righteous men" excludes women and members of religious minorities.**[10i]*

"6.6. Women suffer discrimination in the legal code, particularly in family and property matters. It is difficult for many women, particularly those living outside large cities, to obtain legal redress.[13] Under the legal system, women are denied equal rights of testimony and inheritance.[10L] A woman's testimony is worth half that of a man's [13], making it difficult for a woman to prove a case against a male defendant.[13,9c]"²⁰

The reality of the protection available for women experiencing violence under the legal system is described in the 2000 report by the National Committee of Women for a Democratic Iran referred to above:

"Violence Against Women

A Woman's life is valued only half as much as a man's Life, as stated in Article 209 of Islamic criminal law. A convicted man who has intentionally slain a woman is subject to execution only after the payment of "Deyeh" by the family of the victim. "Deyeh" is defined as a sum of money that the victim's family has to pay to the assailant's family for the physical damages, dismemberment, or death of the assailant. Additionally, Article 300 of the Islamic criminal law states that the "Deyeh" of a Muslim woman is half of the "Deyeh" of a Muslim man. By law the life of a woman has half the value of a man in Islamic criminal law. The "Deyeh" for a man is about 7 million toman in Iranian currency, approximately \$11,000 US dollars. If the murderer and slain are both men, the amount of "Deyeh" is determined by the education, occupation, and social position of the murderer and the slain. However, for a slain woman, the value of "Deyeh" is about 3.5 million toman, \$5,500 US dollars. The academic and social achievements of a woman are not taken into consideration in determining the "Deyeh."

"These laws can be further clarified by the following example. Mr. Gholamreza Khoshrowkoran Kordieh raped eleven women and murdered the victims in a sadistic and brutal manner. He was convicted and condemned to death. However, the verdict was carried out only after the payment of "Deyeh" by the victims' families. Before his execution, each of the families of the victims

²⁰ Home Office (April 2000), *Iran Assessment*, London, Country Information and Policy Unit

paid 3.5 million toman to his family. The execution could only be carried out when each and every one of the families paid the "Deyeh." If any of the families failed to make their payment, his execution will not take place. In practice, the Islamic law is supportive of criminals who commit crimes against women.

"Further gender discrimination in Islamic criminal law can be seen in amendment One of Article 1210. It defines the age of maturity for males as fifteen lunar years and for females as nine lunar years. According to the law, boys and girls from the age fifteen and nine, respectfully, are held legally responsible for their actions. Consequently, women have criminal liability for an additional six years more than men, as imposed by this law. According to Article 102 of the: Law Of Islamic Punishment, "during stoning, a man is put in a hole up to [his] waist and a woman up to her breast. " The law provides that if a person who is to be stoned manages to escape, he or she will be allowed to go free. Since, it is easier for man to escapee, this discrimination is literally a matter of life and death for she would have less chances to pull herself out of the hole.

"The law and law makers in Iran do not show any concern about violence in the family. The victims of violence in the family, who resort to family courts are condemned for causing their husbands' harsh and disrespectful behavior. Women are cautioned to be submissive to their husbands' wishes. They are expected to understand what their husband's violence is for the good of the family, and is necessary for the proper rearing of the children. The prosecutors often overlook violence in the family, and allow the parties to compromise among themselves.

"According to article 1102, the law states that "a man and his wife are supposed to live peacefully." In the sequential article, it states that, "the parties should assist each other in rearing their children and reinforcing the family structure." There is no mention of violence in any part of family law.

"According to Islamic law, if two people are involved in a conflict that may result in an injury, the injured can charge the assailant for assault and battery. The convicted assailant can be fined a "Deyeh", receive lashes or a term of imprisonment. However, if the victim is a woman, the only action the court takes is advising the victim and the perpetrator to meet and negotiate. In the case where the wife is injured, the wife needs to prove her claim of assault and battery in the court. The proof might not be a problem if the claim was addressed promptly. However, most cases linger in the court's list of claims for a long time before it is brought to a hearing. Most often, the physical wounds from the assault and

*battery have already healed, making the case lacking in substantial evidence. Additionally, the psychological damage the woman experienced is nearly impossible to prove in court. Due to the difficulties involved with obtaining justice for victims of violence in the family, many times the victims would rather tolerate the pain and agony. **The victim will not charge the assailant, usually the husband, since the court offers no assistance or resolutions.** Slowly and surely, this violence will deteriorate the relationship. Unfortunately, most wait for the worse to come.”²¹*

4.2.2 Lack of restraining orders

The Immigration and Refugee Board report notes:

“Regarding the issuance of restraining orders by Iranian courts, the professor said that there is no such thing as a restraining order against a husband in a case where the wife is living with the husband. However, if a married woman can prove to a court that her life is in danger from her husband, the court may allow her to move to her father’s home, in which case the husband can be kept away legally (ibid.).”²²

In addition, the same report notes that in an article on Iran’s Personal Status Law, published in 1996:

*“A wife may choose to live in a separate residence if she can prove to the court that she has a reasonable fear of physical harm or harm to her reputation. If the court accepts her claim, she is entitled to receive economic support (nafaqa) until the couple reaches an agreement or the marriage ends. **However, despite these provisions, it is very difficult for women to convince the court that they are in danger from their husbands.** Prior history of abuse is considered evidence of danger only if the battery has caused major injury; this suggests that battery is permitted as long as it does not result in permanent harm or handicap. The judge is left to rule on the severity of a situation, and decisions are highly subjective. (WLUML 1996, 20)”²³*

4.2.3 Seeking a divorce from a violent husband

As mentioned above, Article 1130 of the Civil Code allows a woman to initiate a divorce if the continuation of the marriage causes her difficulty and hardship. A woman who married before 1967 is unlikely to have any stipulations relating to divorce in her marriage contract and has to establish one of the grounds in the Civil Code, such as the one above in the case of domestic violence.

A woman who married between 1967 and 1982 will have a right in her marriage contract to initiate divorce under one of the grounds of Article 8 of

²¹ National Council of Women for a Democratic Iran (2000), op.cit.

²² Immigration and Refugee Board (1998), op.cit.

²³ Immigration and Refugee Board (1998), op.cit.

the Family Protection Law (now repealed). These included the husband's failure to support his wife, his second marriage, or his failure to treat co-wives equally.

In 1982 a new form of contract was issued which includes a woman's right to initiate divorce because of her husband's maltreatment, to the extent that the continuation of the marriage has been rendered intolerable to her. However, a crucial feature of these extended "rights" is that they are dependent on the husband signing the relevant clause of the contract. **This is because Shari'a law recognises divorce as the exclusive right of men, and therefore a woman can be delegated this right by the husband only if he wishes.** Mir-Hosseini notes in her study of Islamic family law:

*"These stipulations, which are now printed in every marriage contract, are not valid unless they bear the husband's signature under each clause. The husband retains the right to refrain from signing anything he perceives as unacceptable. This is in conformity with the Shari'a mandate of divorce: a man is free to repudiate, to delegate or refrain from delegating this right."*²⁴

In practice, Mir-Hosseini notes that:

*"The grounds upon which a woman bases her application [for divorce] influence both the speed at which her case is dealt with and its outcome. In cases where the establishment of the grounds is simple and straightforward, the court issues the divorce without more ado. Otherwise, all depends on the husband's goodwill, or on the judge's assessment of the marital dispute."*²⁵

Obviously this is where cultural and personal prejudices are able to influence women's divorce rights.

Haleh Afshar, in her book "Islam and Feminisms: An Iranian Case-Study", describes women's efforts to initiate divorce proceedings from a violent husband after the institution of the Islamic Republic in 1979:

"Women could also stipulate from the outset [in a marriage contract] that if the man was morally corrupt or maltreated his wife, then she had the right to apply for power of attorney to divorce herself from him.

"However, in practice it was much harder for women to convince the courts of their grievances than it was for men. Violence, for example, was theoretically recognised as a case of hardship and entitled women to divorce, but, as Mehranguiz Kaar^[26] explained to a

²⁴ Mir-Hosseini, Ziba (2000), *Marriage on Trial: A Study of Islamic Family Law*, London, I.B. Tauris, pp 57-58

²⁵ Mir-Hosseini (2000), *op.cit.*, p 65

²⁶ Kaar, a women's rights activist and lawyer, is one of 16 people whose trial began at the Revolutionary Court in November 2000. She had taken part in an April conference in Berlin on the implications of the February Majles elections. The defendants were arrested in Iran

Zanan reporter, **there was no definition as to what constituted violence and at what level of violence a women could claim the right to divorce her husband.** It was left to the judge to decide 'and the judge is always a man'. Kaar notes that 'culture' and 'customs' led many to assume that a degree of male violence was normal part of everyday married life:

Of course the courts do not consider every sort of violence as being maltreatment and causing hardship since rows, rough treatment and beating are current in many Iranian families. So in the Family Courts the judge uses his own criteria to define violence. (Zanan III, no 18, June-July 1994)^[27]

"In particular judges assumed that husbands had to resort to violence as part of their managerial role to impose their control. There are cases where the wife has been beaten on more than one occasion and the judicial police have recorded and certified those beatings. Yet while these have been considered valid grounds by one judge for a woman to divorce her husband, another judge has disregarded ten certified beatings because in his opinion the man is entitled to beat his wife. The lack of clarity in defining what constitutes violence results in men using their own judgement to interpret and impose the law (Zanan III, no 18, June-July 1994)

"Tehran representative Marzieh Dastjordi made very much the same point when she deplored the tendency of judges to tell women to return to their abusive husbands and get on with it. She declared that the laws had to change to deal with 'this major injustice towards women'. She lamented the fact that when women have been beaten by their husband, or even where the husband has buried the wife alive, the courts keep advising these women to continue living with their husband:

We see that even where the Courts have the legal means to give a fair decision, they do not do so. What is more, if a court does decide in favour of a woman, then the men do not obey the orders anyway. Every time it is women who lose out. (Zaneh Ruz, 1 October 1996, no. 1575)^[28]

"As with adultery, so with violence women were also required to have a witness to prove that they had been beaten by their husband. Kaar

after the conference and charged with taking part in antigovernment and anti-Islamic activities. Kaar was sentenced to 4 years imprisonment but is appealing as at June 2001 (source: Islamic Republic News Agency, June 20 2001, at www.irna.com). See US Department of State report for 2000 for further details.

²⁷ Zanan ('Women') is a women's journal concerned with feminist reinterpretations of Islam and women's rights, now banned and published in the US: see Najmabadi, Afsaneh (1998) 'Feminism in an Islamic Republic', in Haddad, Y. & Esposito, J. (eds), *Islam, Gender and Social Change*, Oxford, Oxford University Press, pp 65 - 77

²⁸ Zaneh Ruz ('Women of Today') is an Islamist women's journal, aiming to improve women's rights within an Islamic framework: see Najmabadi, Afsaneh (1998), op.cit., p 62

criticises this requirement which is impracticable in the context of the modern nuclear family. Kaar argues that the section of Iranian criminal law which makes the judge's decision dependent on the presence of witnesses does not work well in the context of the daily lives of women. These laws were founded on the basis of households living within the extended family structures where there would have been plenty of witnesses if a man were to beat his wife, but such laws sit uncomfortably with the twentieth-century flat-dwelling style of urban life. Flat-dwelling women who are beaten by their husbands cannot prove violence and hardship and therefore cannot obtain justice. It is only where the violence is so extreme that the woman is physically scarred that she can claim to have evidence.

Even then she has to prove that her injuries are so great as to be equivalent in terms of religious law repayment, blood money, dayeh, to three camel loads. That is to say to qualify a woman would have had to have been mutilated and crippled by the injuries. (Zanan III, no. 18, June-July 1994)"²⁹

A report by the Canadian Immigration and Refugee Board's Research Directorate on the subject of obtaining a divorce because of domestic violence notes:

*"The source stated that women can ask for divorce in severe cases of violence that result in life-threatening injuries. The religious court can be addressed because of the husband's bad behaviour. The woman would need to document her injuries with, for example, photographs and a hospital or doctor's report. The source stated that the religious court would usually attempt to mediate the conflict first. It would be unusual for the religious court to grant a divorce to the woman after a first appearance. **The source added that for the woman the process of divorcing her husband would be difficult and, although it results in a divorce, her economic survival would again depend on her family.**"³⁰*

4.3 Other support services

No evidence has been found of any support services for women experiencing domestic violence run either by the state or by NGOs.

Friends and relatives may provide support but social attitudes favour the continuation of the marital relationship even in such circumstances.

²⁹ Afshar (1998), op. cit., pp 182-184

³⁰ Immigration and Refugee Board (1997) *Update to Responses to Information Requests IRN19097.E and IRN16039.E Research Directorate, Ottawa*

References from the above

Professor, Department of Sociology, York University. 7 May 1997. Telephone interview.

In the report referred to above, the Research Directorate refers to the following information provided by a specialist on women's issues in Iran at the Department of Sociology at York University.

“The source stated that it is difficult to assess the extent of domestic violence in Iran because there are no statistics, but as in the rest of the world, violence against women exists in Iran. The source was not aware of state-run services for women victims of spousal abuse. In Iran and in the Middle East in general, the family is traditionally the provider for protection to women victims of spousal abuse.”³¹

In a later report, the same directorate refers to information supplied by a professor at the Ontario Institute for Studies in Education (OISE), who publishes on women's issues in Iran and on Islamic law:

*“Whether or not friends or neighbours would intervene when a woman is being abused by her husband depends on the nature of their relationship with the woman and on the kind of help sought by the woman. **The traditional attitude towards marital conflict in Iran (and this is reflected in the legal system as well as in social behaviour generally) inclines people to try to mediate between the husband and wife. The primary goal of a person who gets involved in a friend's or neighbour's marital dispute is likely to be to find a way to reconcile the couple so as to ensure that they continue to live together, even if the husband is abusive. This attitude is likely to be shared by male relatives of a woman who is being abused by her husband (30 June 1998).**”³²*

³¹ Immigration and Refugee Board (1997), op. cit.

³² Immigration and Refugee Board (1998), op. cit.

5. The situation of separated or divorced women

5.1 Social attitudes, abuses and discrimination

According to the Islamic regime, a woman's main purpose in life is to marry and have children. Single or divorced women have neither prestige nor social status and suffer discrimination in many areas in addition to those described earlier, which apply to women in general.

5.2 The consequences of divorce

5.2.1 Custody of children

A woman who had managed to divorce or separate from her husband would lose custody of her children under Iranian law. Ziba Mir-Hosseini notes in her study of Islamic family law:

*"The Iranian Civil Code devotes an entire chapter to 'incontestability of the guardianship rights' of the father and paternal grandfather (Book 8, Chapter 3). On the other hand, **the mother's access to hadana [custody] is severely restricted: she has the right to keep her son until the age of two (as soon as he is weaned) and her daughter until the age of seven (Article 1170, ICC [Iranian Civil Code]; after that the hadana right passes to the father. In case of the death of either parent, hadana passes to the one who is still alive (Article 1171, ICC); and in the case of the father's absence or disqualification, it passes to the paternal grandfather. Under no circumstances is custody transmitted through the maternal line.***

*"This not only restricts the scope of custody negotiations but confines them to the pre-divorce domain. Although in theory a woman can use her mahr [dower, bride price] as a bargaining tool to gain the custody of her children, in practice this is only possible if divorce is sought by the husband... [33] There are two related reasons for this, the first of which has to do with the customary and popular conceptions of mahr. This is seen as providing a woman with a kind of security in marriage, not a licence to divorce: if she wants to leave the marriage, then she has to leave the children behind. Secondly, **a woman's limited right to custody means that she cannot make any legal claims for the maintenance of children in her charge, which leaves her with no leverage. A man can always counter by demanding the exercise of his right to custody.**"³⁴*

Mir-Hosseini notes that the implementation of Shari'a law in Iran results in a patrifocal family structure, even after divorce. She comments that *"a mother-child unit becomes viable only when women are financially able to support*

³³ Note: under Shari'a, a husband who seeks a divorce has to pay his wife her *mahr* and three months' maintenance; Hosseini is suggesting that a wife could 'use this as a bargaining tool' by offering to forgo the payment in exchange for custody of the children.

³⁴ Mir-Hosseini (2000), op. cit. pp 153-4

*their children. in practice, a matrifocal option is a possibility for those who can afford to assume total responsibility for the upkeep of the children. Not many women are in a position to do this; for a large majority, divorce often entails the loss of their children, which may partially explain the lower incidence of divorce in Iran.*³⁵

The possibility of a woman keeping her children with her therefore depends not only on her financial position, but also on her husband's agreement to forgo his right to custody. In a case of domestic violence, this kind of voluntary concession is likely to be hard to obtain.

Haleh Afshar quotes the following case of a violent man who was given custody of his children:

“Zaneh Rouz published the case history of a man who had a long record of domestic violence and clearly lacked the competence to take care of his children. Nevertheless, the courts rejected the mother's plea and gave him custody; he proceeded to kill all three children. When Ayatollah Moussavi Bojnourdi, a well-known member of the judiciary, was asked to comment on this case, he replied ‘according to religious and legal requirements the father is entitled to have custody of his children after the stipulated age. The courts can only implement the law.’³⁶

5.2.2 Possible charge of adultery

A woman who had divorced abroad and was then returned to Iran would face severe problems on return. The Alternative Report by National Committee of Women for a Democratic Iran (NCWDI) states:

“Islamic government does not recognize the divorces and the marriages administered in foreign countries unless they are endorsed by Iranian embassies or consulates, or the rituals are repeated in Iran. The consequences and calamities of this restrictive rule translates as follows: If an Iranian married couple immigrate to a foreign country and divorce according to the laws of that country, the divorce is not legitimate for the woman. The process must be repeated in the Islamic embassy or the consulate. If each of the spouses remarries separately after the divorce in the overseas country and travels to Iran, the wife could be arrested and tried for committing adultery. The punishment for adultery is burying the woman in the ground and stoning her to death. However, this does not apply to the man. By law the man is not in marriage violation.

“Moreover, in the same situation as above if the couple have children, and the court granted custody of the children to the mother, if they traveled to Iran, the husband could take the

³⁵ Mir-Hosseini (2000), op. cit. p 160

³⁶ Zaneh Rouz, 7 July 1984, quoted in Afshar, Haleh (1987) *Women, State, and Ideology: Studies from Africa and Asia*, Albany, USA, State University of New York Press, p 83

children away from his ex-wife because husband is the sole custodian for the children. No custody privilege is granted to women under any circumstances.”³⁷

5.3 Economic security

Although many women do work outside the home, this activity must take place within an Islamic framework. Fatemeh Etemad Moghadam explains the prevailing ideology affecting women’s employment in Iran:

“The Constitution of the Islamic Republic states that no one can be forced into a specific occupation, or exploited in the job market. Irrespective of race, language, and sex, people are entitled to equal access to employment, provided that such access is not contrary to Islamic principles, public welfare, and the rights of others.”^[38] While the Constitution is not explicitly gender-biased, the reference to Islamic principles can be used as an obstacle to equal access to employment. According to the clergy, Islamic ideology emphasizes the complementary aspects of the biological differences between men and women, and considers family – not individual – as the basic social unit. Thus it can be argued that the proper place for women is at home, that men as heads of households should be given priority to women in employment, and that women are biologically unfit for certain occupations. One of the main ideological objectives of the revolution was to force women to wear the veil. Veiling and segregation had important implications for women seeking employment. The government undertook a campaign to expel from work women considered “morally decadent”, to paksazy (purify) the workplace. It also used incentives to persuade women to retire early. A 1979 law allowed workers to retire after 15 instead of 25 years of service. Although the law included male as well as female workers, more women than men retired.”³⁹

Women must obtain permission from their husbands and/or another male head of the family to seek employment or to be employed.⁴⁰ This could cause problems for a woman who had fled domestic violence and was unable to return to her family due to fear of being traced by her husband, or whose family refused to take her in. Indeed, women’s economic survival after divorce is dependent on family support.

Women suffer discrimination in relation to work-related benefits as well in employment rights. Maryam Poya explains that, in the 1990s,

³⁷ National Council of Women for a Democratic Iran (2000), op.cit.

³⁸ Constitution of the Islamic Republic of Iran, amendment 4, principle 43; amendment 2, principles 19,20,21 cited in Moghadam, Fatemeh Etemad (2001) ‘Female Employment in Postrevolutionary Iran’ in Joseph, Suad & Slyomovics, Susan (eds) *Women and Power in the Middle East*, Philadelphia, University of Pennsylvania Press, p 196

³⁹ Moghadam (2001), op. cit. pp 195-196

⁴⁰ see Poya, Maryam (1999) *Women, Work and Islamism*, Zed Books, London, p 113

“One important effect of gender ideology was the refusal to recognise women as breadwinners. Therefore their benefits were calculated as for single persons. A single person received half of a married person’s allowances and subsidies. For example, employers paid 3,000 rials per month to a single person and 7,000 rials to a married person in the form of goods or food subsidies. Sometimes, instead of a cash bonus, coupons were given for food items. These coupons could be sold in the black market if they were not needed for household use, adding a considerable amount to the family income.

“Women with children did not receive child benefit. Married women did not receive the married person’s allowance. This reduced their salary drastically in comparison with men’s. For the same reason, women’s tax, pension and retirement deductions and allowances were also calculated as for a single person. For example, after her death a woman’s pension would stop, while a man’s pension would be transferred to his family. Women and men were entitled to health schemes, but women could use the scheme only for themselves and not for their families.”⁴¹

A single woman would therefore receive a much lower income, and a woman who had managed to retain custody of her children would not be able to access any family-related benefits.

Nursery provision is inadequate, often overcrowded and expensive, meaning many women choose to take one to two years off per child until the child is old enough to leave with female relatives (with an inevitable impact on their salary, insurance and pension).⁴² A woman on her own with young children, who was estranged from family, would therefore have extreme difficulty in supporting herself.

The following extract from NCWDI’s report demonstrates the poor position of Iranian women relating to employment:

**“WOMEN AND ECONOMY, EMPLOYMENT
AND POVERTY**

“Jomouri Islami, May 12, 1999 - According to the daily Jomhuri Islami, only 9% of Iranian women have jobs. According to Hussein Mozaffar the Iranian Education Minister “Currently, women constitute 49.3% of the nations’ total population and girls 47% of the student population...The employment rate for women is nine percent, 72% of this being restricted to the educational sector.”

“International Labor Organization, quoted in Bergens Tidende, 12 July 1998 -An international study comparing workforce condition for women around the world ranked Iran 108th out of 110.

⁴¹ see Poya (1999), op. cit. p 119

⁴² see Poya (1999), op. cit. pp 114-117 for a full explanation of these problems

“IRNA, Aug 25, 1999, The country's official news agency, IRNA reported that only 0.3% of women are working at executive level. Zahra Shojai, Iranian Deputy for women's affairs, said that a large number of women are still deprived of their social rights and far from reaching an ideal point in this respect. She added that currently only 0.3% of executives in the country are women.

“Legal barrier to restrict women's participation in the job force

“Zanan magazine, No.55, Sept, 1999 Report by the public relations office of Tehran's Department of Education , Female teachers are strictly forbidden from attending classes of 10 year old boys in Iran. Khatami's Ministry of Education Barred Women Teachers From Teaching Boys Older Than 10”.⁴³

⁴³ National Council of Women for a Democratic Iran (2000), op.cit.

6. Case law

6.1 U.S.A.

The Center for Gender and Refugee Studies (CGRS) at Hastings, University of California, has listed one example of a successful asylum claim by a woman fleeing domestic violence in Iran, and one case whose outcome was pending as at July 1999. In both these cases police protection was not available.

"Case 49

Age/Birthdate: 1971

Key Facts

The applicant's marriage was arranged by her family when she was 17 years old. Her husband soon began to beat her, including throwing her out of the house in the middle of the night. Her husband is a member of the ruling Hezbollah Party, and share's the party's fundamentalist Islamic beliefs. He thinks that a woman should not work outside the home, speak with men, or leave the house without her husband's permission.

"She was raised by her mother to believe that women should have freedom and respect. She lost these freedoms when she became married. Her mother-in-law lived in the home and told her that she should see her husband as her "second god." Her mother- in-law also forced her to go to mosque. When her mother-in-law saw that the applicant disagreed with her husband, she got her son a second wife.

"Her husband's government connections include a brother-in-law who was the local judge. As a result, she could not go to the police when he beat her. He also was friends with the Islamic police, known as "Pasdars" or "Bassijis." The Pasdars would patrol the streets looking for women violating the dress codes, and beat or throw acid on those not in compliance. Vehicles would be pulled over to ensure that a woman was driving with a male relative. Although they are in charge of enforcing Islamic moral codes, the Pasdars themselves hired prostitutes and smoked opium, including at opium parties hosted by her husband in her own home.

"She received a scar when her husband threw a vase at her head. When she was 8 months pregnant, she was knocked unconscious after he kicked her down the stairs. On another occasion she was knocked unconscious and left alone in her home. Her reports to the police went ignored. He often threw her out of the house, and she would live with her family. She never wanted to return, but her father forced her to go.

"In 1993 her husband married an 18-year-old girl and threw the applicant out of the house. This time he did not ask her back. In 1995 he divorced her, but he still threatens her and her family. Complaints by her parents to the police led to her parents being threatened with prison; her parents, afraid, moved to another city.

"Due to the physical and psychological abuse that affected her and her daughter, the applicant's family arranged for her to leave Iran. She was put in touch with a friend; they met and agreed to marry. She then entered the United States on a K-1 visa, but he changed his mind after she came to the U.S. with her daughter.

"She would be subjected to abuse and disdain if returned to Iran as a divorced woman who has been in the U.S. Iranian assume that those who lived in the U.S. led an immoral life. She would be treated like a prostitute. Her contact with the U.S. would also lead her to being suspected of opposing the regime. Because the government embraces fundamentalist Islam, her views on the rights of women are opposed to the regime on both political and religious grounds.

"She would rather kill herself than return to Iran. She is opposed to the strict rules regulating women's conduct in Iran. She does not want her daughter to have to grow up in such an environment. Her husband would probably succeed in his effort to gain custody over their daughter.

Asylum Grounds

Political opinion; religion; social group

Legal Theory

Persecution and well-founded fear of persecution on account of political opinion; on account of religion; and on account of membership in the particular social group of divorced Iranian women who have lived in the United States.

Procedural History

Affirmative asylum grant, 12/98

Decision Level

Asylum Office

Asylum granted?

Yes

Attorney

Julia Day Marquez

San Francisco, CA; 415/392-7950

"Case 50

Age/Birthdate: 1959

Key Facts

"The applicant's marriage was arranged by the respective families when she and her husband were children; the marriage took place in 1982 when she was 13 years old. Her husband soon made clear his wish to have complete control over her life. She was told to ask permission to leave the home; she was not allowed to work, talk on the phone, etc. She was beaten for anything he disagreed with. She did not intentionally disobey his rules, because she was afraid of being hurt by his violent reaction. But she did express her opinion.

"Her husband does not believe that women have a complete brain; that

a wife must be a servant, remaining at home and dedicating her life to her children and husband. He has taken a second wife. She disagreed with almost all of his opinions.

"She was hospitalized numerous times due to her husband's violence, including twice when she was pregnant – once causing premature labor and stunting her son's growth. She has a scar on her leg from an attack with a stone and a cut on her hand from a knife.

"Because of her husband's position as an officer in the military, she is unable to gain protection from his abuse from the police, and he goes unpunished. The military has refused to hand him over to civilian jurisdiction for punishment even after he was convicted for causing her premature labor by pushing her down the stairs.

"She remained with her husband for several reasons. His military duties often took him away from home. Her family felt strongly that she should remain with her husband. A woman who leaves her husband is stigmatized and has no place in society. She did in fact often file for divorce, but only if a man files for divorce will the courts quickly process the case; a filing by a woman can take many years. Once she was talked out of it by his family; another time her husband simply failed to respond to the summons.

"She took the opportunity to come to the United States because, as a member of the Iranian military, her husband is not free to travel to the U.S. He has threatened to kill her if she leaves him. If returned to Iran, she fears that he will carry out his threats with impunity. She fears she and her children will be destitute. It is very difficult for a single woman to survive in Iranian society.

Asylum Grounds

Social group

Legal Theory

n/a

Procedural History

Affirmative application filed 2/11/98; pending as of 7/99.

Decision Level

n/a

Asylum granted?

n/a

Attorney

Julia Day Marquez

San Francisco, CA; 415/392-7950"⁴⁴

⁴⁴ Centre for Gender and Refugee Studies, University of California, available at www.uchastings.edu/cgrs/

6.2 Canada

Below is an example of a successful claim for refugee status from Canada's Immigration and Refugee Board:

“Throughout her 20-year arranged marriage, the claimant was beaten by her husband. She reported the abuse to the police several times, but nothing was done. She had not attempted to divorce her husband, but the documentary evidence indicates that physical abuse must result in permanent injury to constitute grounds for divorce and that economic survival is difficult for divorced women. Except for her children, the claimant had no family in Iran. Her failure to seek a divorce did not indicate a lack of a subjective fear of persecution. A psychological assessment indicated that the claimant was suffering from chronic Post Traumatic Stress Disorder. Referring to the Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution, the Refugee Division found that the claimant had a well-founded fear of persecution as a woman subject to domestic abuse. There was nothing to indicate that state protection would be any more available in the future than it had been in the past for the claimant. CRDD T98-07559, Sealy, Waters, June 9, 1999 (reasons signed June 24, 1999)”⁴⁵

⁴⁵ Immigration and Refugee Board (1999), Ottawa, available at www.irb.gc.ca

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88. See *Id.* at 96.

89. See *Id.* See also Kourosh Eshghipour, *The Islamic Revolution's Impact on the Legal and Social Status of Iranian Women*, 3 New Eng. Int'l and Comp. L. Ann. 161, 166-169 (1997).

90. See *Id.* at 96-97.

91. Entessar, *supra* note 85, at 92.

92. *Id.* at 97.

93. See *Id.*

94. See *Id.*

95. See Entessar, *supra* note 85, at 97.

96. See *Id.* at 97.

97. *Id.*

98. *Id.*

99. See Entessar, *supra* note 85, at 98.

100. Rose Marie Karadsheh, *Creating an International Criminal Court: Confronting the Conflicting Criminal Procedures of Iran and the United States*, 14 Dick. J. Int'l L. 243, 267 (1996).

101. See Entessar, *supra* note 85, at 98.

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Appendix A

Home Office Country Information and Policy Unit, October 2000: Country Assessment, Iran

“Women

6.1. Both the Constitution and international conventions adopted by Iran grant men and women equal rights. This conforms with Islamic criteria. Further, Article 21 of the Constitution stipulates that the government shall guarantee women's rights in all respects and create a favourable atmosphere for restoring their material and spiritual rights.[3(2)]

6.2. This is not to say that women do not face social and legal discrimination.[4(6)] The view of women in a primarily familial context and motherhood role continues to be encouraged. Women may work or study,[3(4)] although some areas of study are closed to women, female students are segregated from male teachers, and social constraints inhibit their opportunities.[2(5),13] This said, the literacy level was more than 80% among Iranian women in 1998 [14(2)] and may be above 90%. [10(16)] The choice of a woman's occupation depends on her husband, who may prevent her working if he deems it contrary to the family's interest, although he must prove this to the Special Civil Tribunal.[2(5),3(3),13]

6.3. 30% of doctors are said to be women; women's recruitment to the police force has been approved in 1998, though mainly to work in women-related functions; and women journalists now have their own professional association. The first female university chancellor has been appointed, albeit to a women's university. [10(16)]

6.4. In the political field, women have been appointed to two positions of Cabinet Minister by President Khatami, with Masumeh Ebtekar appointed as the first female vice president (for environmental protection) thereby giving a woman Cabinet rank for the first time since the founding of the Islamic Republic.[1, 4(2)] and Azam Nouri as Deputy Minister of Culture and Islamic Guidance, both in 1997. A first-time appointment of a female ambassador, to serve in the Iranian mission in New York, was announced in late 1998.[5(3)] He has also appointed a woman to serve as Presidential Advisor in the Foreign Ministry's Department for Women and Social Affairs. One of the district mayors of Teheran is also female. However, women held only 13 of the 270 Majlis seats in 1999 [1, 4(7)]

6.5. Women have been appointed to four positions of female family court judge by President Khatami.[3(2)] However, the role of the four female judges was challenged and described as symbolic, as judicial consultants brought in to improve the image of women in Iran for the benefit of the international community.[10(12),10(16)] Their authority is limited principally to family law cases.[4(6)] Following the first female prosecutor appointment in 1996, twenty women were reported to be training as investigative judges.[3(2)] Women have also been appointed to senior diplomatic positions overseas. These developments indicate some change in the situation of women within Iran.[10(16)]

6.6. Women suffer discrimination in the legal code, particularly in family and property matters. It is difficult for many women, particularly those living outside large cities, to obtain legal redress.[13] Under the legal system, women are denied equal rights of testimony and inheritance.[10(12)] A woman's testimony is worth half that of a man's [13], making it difficult for a woman to prove a case against a male defendant.[13, 9(3)]

6.7. Violence against women in the family is recognised, with "blood money" (Deyah) only awarded if the aggrieved party is a man. In addition, families of female victims of violent crimes are reported to have to pay for an assailant's court costs. Little detail is known of the degree of domestic violence in Iran, with no official statistics on abuse within the family.[4(6)] There is a lack of legislative provision to regulate actions against women. Iran welcomed UN contributions to the drafting of a convention on the elimination of forced labour and trafficking in women for sexual and other exploitation. [10(17)]

6.8. A prominent Iranian scholar, Ayatollah Bojnourdi, spoke out in favour of the revision of laws, which are discriminating between men and women. In 1998 the judiciary's Bureau of Women's Affairs further said that legislation meant to reduce hardship for women in divorce and property cases had not yet properly implemented.**[10(16)]** In addition to the position of women regarding evidence of witness, inheritance, retribution and judgement in civil and penal codes, the continued arranged marriages of young girls by fathers and grandfathers was noted.**[10(2)]**

6.9. Women are given segregated medical treatment following the recent "Medical Religious Standard Conformity Act", other than where emergency wards are used. They also travel in segregated railway carriages unless travelling with a male companion; have access to separate parks within some cities; and can use separate facilities in a newly opened passport office. While the Iranian authorities have claimed such steps are for the safety and convenience of women, they do not represent gender equality according to international standards. **[10(16)]** They may be perceived as discriminating against women.**[8(4)]**

6.10. In December 1997 President Khatami called for a re-evaluation of religious attitudes towards women, to "purge practices that are considered religious but are not".**[10(2)]** Conservatives responded by trying to ban activism for women's rights.**[8d]** In June 1998, Legal scholar Hojatoleslam Sayyid Mohsen Saidzadeh, was convicted by the SCC for his outspoken criticism of the treatment women under the law. He was released from prison early in 1999; however, the Government banned him from performing any clerical duties for 5 years and prohibited him from publishing. **[4(7)]** A bill aimed at making defence of women's rights outside legal and Sharia frameworks illegal, passed its second reading in August 1998. This bill would also prevent pictures of unveiled women from appearing in the press.**[8(4)]**

6.11. Limited practical improvement in the condition of women is evident. The Deputy Speaker in the Majlis has stated that laws need to be amended before women can enjoy their full rights. In 1998 the Government published several papers on a three-year action plan to help prevent, identify and deal with violence against women **[10(16)]**

The Hijab

6.12. The Hijab (modest dress code) became mandatory in 1980 and is required to be worn in all public places regardless of a woman's religion or citizenship. Women's hair must be fully covered and their faces free of make-up. Contravention of the dress code is punishable by either a verbal reprimand,**[3(1),3(2)]** a fine, 74 strokes of the lash **[3(1),3(2),8(2)]** or a prison term of up to three months.**[8(2)]** Enforcement has varied considerably since the death of Ayatollah Khomeini, and continues to be enforced arbitrarily.**[13]** Thousands of women have been arrested and taken in for questioning and in some cases flogged; arrests are carried out by the morality police, the Revolutionary Guards and the Baseej (see paragraphs 4.17-4.24). Detentions increase during periods such as the period of Moharram in May 1998, associated with mourning and piety.**[8(4)]** Failure to observe the Islamic dress code at work by government workers can result in prosecution under a law passed in 1993.**[4(6)]**

6.13. The public attempts at loosening the Hijab are driven predominantly by those aged under 25 years, who make up 60% of the population. The battle between Khatami and the hard-line conservatives over relaxing the Islamic restrictions continues.**[14(1)]**

Marriage

6.14. Current law in Iran sanctions two types of marriage: permanent marriage and temporary marriage (called **sigheh** or **mut'a**). Temporary marriage is limited by a period of time, normally specified in the marriage contract, which may vary from 1 hour to 99 years. The husband may terminate the marriage at any time. Men are allowed up to four permanent wives and an unlimited number of concubines or temporary wives.**[2(5),4(6)]** Muslim men are free to marry non-Muslim women, but marriage between Muslim women and non-Muslim men is not recognised.**[4(6)]**

6.15. The marriage rate has increased by only 4% from 1987 to 1995, whereas the divorce rate increased by 9% over the same period.**[3(2)]** The showing of the film "Leila" in Teheran in 1997 generated public debate about the status of married women, and of multiple marriage in particular.**[10(2)]** The minimum legal age for marriage is 18 for boys and 15 for girls. This was raised from 14 for boys and 9 for

girls, which is stipulated by Shari'a law. **[26(3)]** All women must have the permission of the father or a living male relative to marry. Muslim women may not marry non-Muslim men. **[4(6)]**

6.16. Following the 1979 Revolution in Iran, Islamic leaders told the populace to procreate and produce an army of 20 million. The population subsequently grew by up to 4% per annum. However, the clerics now support the notion of contraception with teachings from the Koran, and the population growth rate has halved. **[15(1)]**

Divorce

6.17. Divorce applies to permanent marriage only. A husband wishing to divorce is required to obtain court permission to register the divorce if his wife does not agree to the divorce, but registration can only be delayed by the court, not prevented. A husband is not required to cite a reason for divorcing his wife. The conditions under which a woman may divorce depend on the year that she married, and the legislation that was in effect at the time of her marriage. **[2(5),4(2)]** Divorced women, particularly in rural areas, may find themselves socially isolated and may face financial difficulty. **[21]**

6.18. In 1986 the government issued a 12-point model contract for marriage and divorce which limited the privileges traditionally accorded to men under Islamic law. A divorced woman's rights to a share of the matrimonial properties and to increased alimony rights were recognized. **[4(6)]**

6.19. In the event of divorce, the father traditionally has legal custody of his children **[2(5),4(2)]**, unless a woman can show her spouse to be an unfit father and applies under legislation passed in November 1998 to obtain custody. **[4(6),10(2)]** The civil code provides for custody of a male child to belong to the mother until the child is 2 years old, and of a female child until she is 7. **[2(5),4(2)]** Women who remarry are forced to give up custody of children from earlier marriages to their father. **[4(6)]**

PAKISTAN

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ISLAMIC REPUBLIC OF PAKISTAN

1. Introduction

1.1 Contemporary developments in women's rights

The 1973 Constitution of the Islamic Republic of Pakistan provides that all citizens are equal, and prohibits discrimination according to gender.¹

Prior to the Constitution, the first significant legislation to offer protection for women's rights in the realm of the family was the Muslim Family Laws Ordinance of 1961, which regulated marriage, divorce and polygamy, although only within Muslim marriages. During the 1970s and the rule of Zulfikar Ali Bhutto (1971-1977), apart from the Constitution, few legal advances were made for women's legal rights, although women did experience some improvement in their political, economic and social status. Weiss has argued that many current barriers to women's rights originate from the rule of General Zia ul-Haq who came to power in the 1979 military coup, yet many of the problems facing women certainly pre-existed Zia, and have also been perpetrated by successive regimes.² Zia's impact was however, significant; his intention that Pakistan's legal system should reflect the roots of Islam was the driving force behind major shifts in policy, and the groundwork for future legislative reforms that restricted and impaired women's legal and economic status, and perpetuated widespread social discrimination against them. Zia's aims essentially reflected his political motives, contradicting both Islamic requirements to protect the rights of Muslim women, as well as women's rights enshrined by the Constitution.³

"The fact that women's status became a lightning rod in Zia's political strategy came as no surprise. Women had historically been used to stabilize the unsteady balance between religion and politics in Pakistan. Within months of taking power, Zia introduced a series of legal and social changes that reversed many of the legal advances for women of the prior thirty years...Women's few hard-won legal gains were quickly curtailed".^[4]

... "Zia suspended all fundamental rights guaranteed in the Constitution that had been adopted in 1973, including the right to be free of discrimination on the basis of sex. He then introduced a series of laws that gave legal sanction to women's subordinate status, including... the

¹ See Appendix A: Country Information and Policy Unit (2001) *Pakistan Assessment*, Home Office; Weiss, A. (1994) 'The consequences of state policies for women in Pakistan' in Weiner, M & Banuazizi, A (eds.) *The Politics of Social Transformation in Afghanistan, Iran, and Pakistan*, Syracuse, Syracuse University Press

² Weiss, A.(1994), op.cit., p.416.

³ See Weiss, A. (1994) op. cit., pp.413-7; p.438

⁴ This quote is misleading: the only significant legal gain prior to this time was The Muslim Family Laws Ordinance 1961, which remained unaffected under Zia.

Qanun-e-Shahadat Order (Law of Evidence Order), which relegates women to inferior legal status and, in some circumstances, renders the testimony of a woman equal to only half the weight of a man's. Zia also proposed laws regarding Qisas and Diyat, Islamic penal laws governing compensation and retribution in crimes involving bodily injury.^[5]

*...“Zia reinforced the legal strictures he imposed on women with a series of informal regulations and unwritten policies designed to curtail women's personal liberty, visibility, and participation in public life”.*⁶

Perhaps the most significant legislative change introduced under Zia was the 1979 **Hudood Ordinances**, which replaced Pakistan's Penal Code, and aimed to reflect Islamic concerns. These Ordinances, in particular the *Zina (Enforcement of Hudood) Ordinance*, have been extremely detrimental to women's rights, particularly affecting how women, (especially married women), who have been subjected to sexual crimes, access protection and justice. This is addressed in greater depth under Section 3.2

Proposals for policies that discriminated against women were also suggested under Zia. Reiterating that Zia cannot be held solely responsible for an atmosphere in which women's human rights abuses are condoned, Hamza Alavi summarises the effects of these proposed changes, and details some of the campaigns against women that were launched in the name of religion:

“It must be said that degradation of women in Pakistan is nothing new and is not the result solely of the so-called 'Islamisation ' policies of the Zia dictatorship. But it reached abysmally low levels in the wake of its legislation and policies.

“In the name of fighting against 'obscenity' and 'pornography' the Zia government set in motion a mass campaign against women seen in public. An atmosphere was generated in the country in which attacks against women became commonplace, legitimated in the name of religion. Such campaigns against women are led by mullahs, the custodians of ignorance, and by criminals and mischief-makers in general, who all seem to derive a kind of perverted psychic pleasure from molesting women under the pretext of enforcing morality. A spate of directives were issued by the Zia regime ordering female government employees, women teachers and girls at schools and colleges to wear 'Islamic' dress and the chaddar or burqa. As a direct result of such campaigns against women who are depicted as a threat

⁵ The Qisas (retribution) and Diyat (compensation) Ordinance was actually not ordered by the Supreme Court to become an Ordinance until 1989 under Benazir Bhutto. See Shah, H. (1998) 'Reflections on the Law of Qisas and Diyat' in Shaheed, F., Warraich, S., Balchin, C., Gazdar., *Shaping Women's Lives: Laws, Practices & Strategies in Pakistan*, Lahore, Shirkat Gah, pp.253-267

⁶ Human Rights Watch (1999) *Crime or Custom? Violence Against Women in Pakistan*, USA, Human Rights Watch

to male virtue, the morality of Pakistani males sunk to new depths. They do not seem to be able to resist the temptation to interfere with and manhandle women, posing as guardians of public virtue. Violence against women has been on the increase behind the cloak of 'Islamisation'. The most obscene examples of such hypocrisy are numerous, widely publicised, incidents where women's noses have been cut off or they have been disrobed and paraded in the nude in public to 'teach them a lesson'. As a result of public outrage aroused by such incidents, the Zia regime announced punishments for such actions. But his so-called 'Islamic' regime did little to track down the culprits and punish them. Nor did it engage in any public campaign to denounce such actions and arouse public opinion against those who perpetrate them. Such incidents and attacks on women still continue".⁷

These policy proposals substantially shifted the nature of the debate surrounding women's rights and roles within society, which:

"effectively reduced women's power and participation in the larger society.... The Zia government idealized the image of women faithful to chador aur char diwari – remaining veiled and within the confines of the four walls of one's home – although in reality women were becoming increasingly integrated into the public realm"⁸

Hilda Saeed & Ayesha Khan add:

"The image of the self-effacing, self-sacrificing woman, an adjunct to her man and confined to her biological role, was constantly promoted in the state media during the Zia regime. Coercion and disempowerment of women spread to other institutions of society"⁹

To summarize:

"Zia's Islamization campaign had the effect not only of legitimating the existing subordination of women in the eyes of the state but also of intensifying that oppression. Women who deviated from prescribed social norms thus faced not only social censure but also criminal penalties. This development gave the more powerful and legally favored members of Pakistani society – men – a punitive sanction to hang over the heads of women and, by extension, their families. This

⁷ Alavi, Hamza (1991) 'Pakistani Women in a Changing Society' in Hastings, Donnan & Prina Werbner (eds.) *Economy and Culture in Pakistan*, London; available at: <http://ourworld.compuserve.com/homepages/sangat/pakwomen.htm>

⁸ Weiss (1994), op. cit., p.417

⁹ Saeed, H & Khan, A (2000) 'Legalised Cruelty: Anti-women laws in Pakistan', in Mirsky, J & Radlett, M (eds.) *No Paradise Yet: The World's Women Face the New Century*, London, PANOS / Zed, p.127

situation was amply suited to the martial law government's need to exert and maintain social control".¹⁰

Benazir Bhutto's election as Prime Minister in 1988 marked the end of Zia's rule, and initially appeared a turning point for the status of Pakistani women. The Women's Division, somewhat paradoxically established under Zia in order to identify discriminatory laws, was given the status of a full Ministry, and an unprecedented number of women were appointed to cabinet and ministerial posts. By 1989, the Division had recommended laws for amendment, yet Bhutto's insufficient majority meant that repealing those laws was impossible, and no legal amendments were made to improve the position of women, either under Bhutto's first period of office until 1990, or her second, from 1993-1996.¹¹ The governments of Nawaz Sharif (1990-1993 and 1997-1999) were damaging to women's human rights. Human Rights Watch state that Sharif's

"actions during during both periods at the helm indicate a political strategy of Islamization akin to his mentor's [General Zia], with detrimental consequences for women. When he first came to power in November 1990, Sharif promised to adopt Islamic law as the supreme law of Pakistan, albeit within a constitutional framework, and in April 1991 he introduced legislation to that effect. Furthermore, in 1997 Sharif and his supporters in parliament enacted the Qisas and Diyat Ordinance-which institutes shari'a-based changes in Pakistan's criminal law-into law, making it a permanent part of the Pakistan Penal Code rather than an ordinance subject to periodic renewal.

... "Nawaz Sharif's continuing Islamization efforts have not only reinforced the legitimacy of Zia ul-Haq's discriminatory Islamic laws; they have in effect also bestowed greater discretion and authority on judges to give legal weight, by invoking Islamic precedents and references at random, to biased assumptions about women in a variety of civil and criminal cases".¹²

To summarize, the impact of this long-term legal and institutional discrimination on the attitudes held by wider society should not be underestimated. Both Amnesty International and the independent Human Rights Commission of Pakistan (HRCP) have argued that discrimination was, at the end of the 1990s, on the increase:

"... the human rights of women continued to be routinely ignored and violated. Discrimination against women in law and practice persisted; violence against women, in custody, in the family and in the wider community was believed to have increased; and

¹⁰ Asia Watch & the Women's Rights Project (1993) *Double Jeopardy: Police Abuse of Women in Pakistan*, New York, Human Rights Watch, p.36

¹¹ See Weiss (1994), op. cit.; Saeed & Khan (2000), op. cit.

¹² Human Rights Watch (1999), op. cit.

institutions intended to protect women, police and the judiciary, continued to fail them”¹³

The Human Rights Commission of Pakistan have attributed some of this to an increase in religious fanaticism, but summarised the 1990s as a decade which:

*“fought bitterly against any assertion of women’s rights. It sanctified women’s subordination and battled in courts and legislatures – often successfully – in support of customs like honor killing and the parents’ coercion of their daughters in the choice of their spouses. Its undermining the status of women contributed to the increase of violence against them. The incidence of rape was now in the region of one every two hours”*¹⁴

1.2 Human rights in Pakistan today

In 1999, the military seized political power in Pakistan, ousting Prime Minister Nawaz Sharif, leader of the Pakistan Muslim League. General Pervez Musharraf has since launched a Human Rights campaign. Although critics have argued that what lies behind the campaign is a desire to improve international relations rather than a genuine commitment to human rights, some positive action appears to have been taken:

“In April the Government organized a conference on human rights and pledged to take “small but meaningful steps” including: an 8-month public relations campaign on human rights themes; requiring deputy commissioners to move female burn victims to hospitals (see Section 5); banning the use of fetters in prisons and jails (see Section 1.c.); ordering deputy commissioners to review all blasphemy cases prior to the filing of a FIR (see Section 1.d.); creating a commission for police reforms; releasing 20,000 prisoners from jail; calling for a Commission on the Status of Women; and changing the law so that women married to foreign husbands can claim citizenship for their children. The Government subsequently took no apparent steps to organize the public relations campaign and backtracked on having deputy commissioners review blasphemy cases (see Sections 1.e. and 2.c.). The Government made limited progress in the following areas: the Lahore High Court ordered local jail authorities to remove all fetters (see Section 1.d.); the Government reportedly released 47,000 prisoners who were convicted of petty crimes and that already had served their prison terms; the Government inaugurated a National Commission on the Status of Women on September 1; and in late April President Tarar issued an amendment ordinance to the citizenship law

¹³ Amnesty International (1998) *Pakistan: No Progress on Women’s Rights*

¹⁴ Human Rights Commission of Pakistan (2000) ‘The Legacy of the Nineties’ in *Human Rights Commission of Pakistan Annual Report: State of Human Rights in 1999*, available at: www.hrcp.cjb.net/

*to enable women married to foreigners to claim citizenship for their children”*¹⁵

1.2.1 Women

Although Musharraf’s campaign specifically addresses women’s rights, violence, ‘honour’ crimes, and other abuses towards women remain widespread, and often condoned within a context of institutional and social discrimination.¹⁶ The most recent U.K. Home Office Country Assessment summarised that despite Constitutional clauses that ensure equality and prohibit discrimination, the daily reality is far from this.¹⁷

Human Rights abuses against women are not only perpetrated within intimate relationships, but also by members of community and wider society:

*“Significant numbers of women were subjected to violence, abuse, rape, and other forms of degradation by spouses and members of society. The Government publicly criticized the practice of “honor killings” but failed to take corrective steps, and such killings continued throughout the country. There was considerable discrimination against women, and traditional social and legal constraints kept women in a subordinate position in society. Violence against children, as well as child abuse, and prostitution, remained serious problems”.*¹⁸

1.2.2 Non-governmental organisations (NGOs)

Change in social and institutional attitudes and practice can be slow. Encouraging the work of NGOs involved in Human Rights activity should facilitate the transition towards greater rights for women. Although there is considerable evidence that some of the repression and harassment of non-governmental and women’s human rights organisations that occurred under Nawaz Sharif has continued during the current Musharraf regime, there have been *some* advances towards greater freedom of speech, and encouraging the activities of NGOs. However, caution should be exercised: Musharraf’s motives are questionable (as above), and it is evident that the oppression of political opposition has also continued. The mixed messages this sends out *might* feasibly result in human rights advocates adopting a compromised position:

“The press was able to publish relatively freely; however, several journalists practiced self-censorship, especially on sensitive issues related to the military. There was not a systematic harassment campaign against newspapers or commentators critical of the

¹⁵ U.S. Department of State (2001) *Country Reports on Human Rights Practices – 2000*, Washington, Bureau of Democracy, Human Rights, and Labor

¹⁶ Constable, P (May 8th 2000) ‘In Pakistan, Women Pay The Price of ‘Honor’; Maiming, Killing Accepted Response to Perceived Sins’, *The Washington Post*, Washington; McCarthy, R (January 29th 2001) ‘I was sold to a man... is this Islam?’, *The Guardian*, UK

¹⁷ Country Information and Policy Unit (2001), op.cit.

¹⁸ U.S. Department of State (2001), op. cit.

Government during the year; however, the broadcast media remain a closely controlled government monopoly. The Government restricted freedom of assembly. During the year, the Government sporadically permitted several large antigovernment demonstrations; however, it prevented other protests and arrested organizers, reportedly for security reasons. In March the Government instituted a country-wide ban on strikes, processions, and outdoor political demonstrations. The Government maintained some limits on freedom of association.

...“In contrast to the Sharif Government, the Musharraf Government did not attempt to exercise direct control over views expressed in the print media. Newspaper editorials and commentators are increasingly critical of the Government; however, direct criticism of the military is rare. Investigative journalism is rare; instead the press acts freely to publish charges and countercharges by named and unnamed parties and individuals representing competing political and social interests”.

Further,

“There are several domestic human rights organizations, and new human rights and legal aid groups continue to form. These groups generally are free to operate without government restriction; however, they are required to be licensed. Human rights groups report that they generally have good access to police stations and prisons. The Government has provided protection to human rights lawyers defending accused blasphemers following threats and attacks on the lawyers by religious extremists. These threats became more explicit and public in 1998, with signed graffiti calling for the killing of well-known human rights activist Asma Jahangir.

“The Musharraf Government made some attempts to ease some of the previous government's restrictions on NGO's; the Sharif Government revoked the licenses of almost 2,000 NGO's in 1999. General Musharraf appointed several persons with prominent NGO backgrounds to his Cabinet and many NGO workers reported a smoother working relationship with the Government during the period covered by this report. The new government in Punjab under General Musharraf lifted the previous ban on NGO registration”.¹⁹

¹⁹ U.S. Department of State (2001), op. cit.; See also Country Information & Policy Unit (April 2001), op. cit.

1.3 Pakistan and international legal instruments

Pakistan ratified the United Nations Convention on the Elimination of All Forms of Discrimination against Women in 1996, although specifying reservations where The Convention may come into conflict with either Pakistan's Constitution, or Shar'ia law.²⁰ Pakistan has yet to submit a report to the CEDAW Committee.

Pakistan has also ratified the Convention of the Political Rights of Women, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, and has signed the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on the Rights of the Child (CRC).²¹

²⁰ Country Information & Policy Unit (2001), op. cit.

²¹ Country Information & Policy Unit (2001), op. cit; Office of the United Nations High Commissioner for Human Rights (2001) *Status of Ratifications of the Principal International Human Rights Treaties as of 18 May 2001*, available at www.unhcr.ch

2. Domestic violence

2.1 The extent of domestic violence

In 1998, Amnesty International reported that:

“... the human rights of women continued to be routinely ignored and violated. Discrimination against women in law and practice persisted; violence against women, in custody, in the family and in the wider community was believed to have increased; and institutions intended to protect women, police and the judiciary, continued to fail them”²²

Considerable reference is made to domestic violence in the context of a society that condones both discrimination against women, and serious human rights abuses including violence and murder. The shortcomings in legislation available for the protection of women, and the realities of women's access to such protection and justice in domestic violence cases is highlighted in Section 3. These failures have led to a situation where low levels of conviction (particularly under the Qisas and Diyat law) enable violence against women to occur in an atmosphere of impunity. Furthermore, institutions and authorities that should be responsible for protecting women do not only disregard, but are frequently guilty of perpetrating these abuses. Any chance of women's human rights being protected by the State is thus gravely undermined.²³

The main Human Rights organisations and Government reports on Human Rights not only provide substantial details of the extent of the problem, but also reflect the social and institutional context.

The U.S. Department of State Report for 2000 indicates that domestic violence is prevalent and often extreme:

“Domestic violence is a widespread and serious problem. Human rights groups estimate that anywhere from 70 to 90 percent of women are victims of domestic violence at the hands of their husbands, in-laws, or other relatives... The Parliamentary Commission of Inquiry for Women reported that violence against women “has been described as the most pervasive violation of human rights” in the country, and it called for legislation clearly stating that domestic violence against women is a criminal offense. Husbands are known to kill their wives even for trivial offenses. In 1999 the Pakistan Peace Coalition surveyed 1,000 women in 10 communities in rural Punjab; 82 percent of the respondents reported that they feared violence from their husbands over trivial matters.”

²² Amnesty International (1998) *Pakistan: No Progress on Women's Rights*, Amnesty International, Report ASA 33/13/98

²³ See for example, Shaheed, F (1994) 'The Experience in Pakistan' in Davies, M (ed.) *Women & Violence: Realities and Responses Worldwide*, London, Zed Books, p. 215

“Significant numbers of women were subjected to violence, abuse, rape, and other forms of degradation by spouses and members of society. The Government publicly criticized the practice of “honor killings” but failed to take corrective steps, and such killings continued throughout the country. There was considerable discrimination against women, and traditional social and legal constraints kept women in a subordinate position in society. Violence against children, as well as child abuse, and prostitution, remained serious problems.

“The Shirkat Gah Women's Resource Center in Karachi published a report in 1999 that summarized reports in the English language press about violence against women between 1993 and 1998. Even though it limited itself to reports of violence by close male relatives, Shirkat Gah documented 535 women who were killed or who committed suicide during the period; 95 of these women were killed or committed suicide after they expressed interest in marrying a man of their own choice.

“During the year, the press reported on hundreds of incidents of violence against women, and drew attention to the killings of married women by relatives over dowry or other family-related disputes. Most of the victims were burned to death, allegedly in kitchen stove accidents; some women reportedly were burned with acid. During the year, 593 burn cases were recorded in Lahore newspapers; cases were registered in 74 percent but suspects were arrested in only 10 percent”²⁴

The U.S. report for 1999 referred to a Human Rights Commission of Pakistan (HRCP) study documenting serious incidences of violence against women:

“In a survey of newspaper reports in Lahore from January to November, the Human Rights Commission of Pakistan (HRCP) found a total of 675 killings of women and 272 burn cases involving women reported”²⁵

The Human Rights Watch Report on violence against women in Pakistan makes particular reference to domestic violence:

“The most endemic form of violence faced by women is violence in the home. For 1997, HRCP [Human Rights Commission of Pakistan] reported that “[d]omestic violence remained a pervasive phenomenon. The supremacy of the male and subordination of the female assumed to be part of the culture and even to have sanction of the religion made

²⁴ U.S. Department of State (2001), op. cit. It should be noted that dowry is not common practice in Pakistan, and that stove burnings are essentially limited to one part of Punjab

²⁵ United States Department of State (2000) “1999 Country Reports on Human Rights Practices”, Bureau of Democracy, Human Rights, and Labor

violence by one against the other in a variety of its forms an accepted and pervasive feature of domestic life’.

...“According to HRCP, ‘[T]he extreme forms it [domestic violence] took included driving a woman to suicide or engineering an ‘accident’ (frequently the bursting of a kitchen stove) to cause her death . . . usually . . . when the husband, often in collaboration with his side of the family, felt that the dower or other gifts he had expected from his in-laws in consequence of the marriage were not forthcoming, or/and he wanted to marry again, or he expected an inheritance from the death of his wife.’ During 1997, the Lahore press reported an average of more than four local cases of women being burnt weekly, three of the four fatally. Police follow-up on these cases was negligible, with only six suspects taken into custody out of the 215 cases reported in Lahore newspapers during the year. In 1997, there was not a single conviction in a “stove-death” case in the country. The Lahore press also reported 265 homicides against women in the local area resulting from other forms of intrafamily violence. In the majority of cases, husbands and in-laws were responsible for the murders, while in other cases the perpetrators were brothers and fathers”²⁶.

The Human Rights Commission of Pakistan also stated that the deterioration in the position of women in Pakistan throughout the 1990s resulted in an increase of violence against them.²⁷ Their most recent report stated that *“Five women were killed every day of the year. In addition, more than two were burnt every three days in domestic violence”*.²⁸

2.2 Rape and sexual violence

Several of the above extracts highlight the problem of sexual violence against women, yet the legal framework means that it needs to be considered separately since recent amendments to Pakistan’s legislation (see below), which deal with rape mean that in effect it is interpreted by both perpetrators and victims as a crime that goes unpunished:

“Sexual assault is also alarmingly common in Pakistan. HRCP estimated that in 1997 at least eight women, more than half of them minors, were raped every twenty-four hours nationwide. The high incidence of sexual assault in the country is partly fostered by the societal subordination of women to men, by the custom of avenging oneself upon one’s enemies by

²⁶ Human Rights Watch (1999), op. cit. “Dower” should in fact read “dowry”; The Home Office noted in 2000 that *“The most common form of intra-family murder is the killing of a female member by the male head of the family”*: Country Information and Policy Unit (2000) *Pakistan Assessment*, London, Home Office

²⁷ Human Rights Commission of Pakistan (2000), op. cit.

²⁸ Human Rights Commission of Pakistan (2001) *State of Human Rights in 2000: Report Highlights*, available at <http://www.dchd.org/h-r-hl.htm>

*raping their women, who are seen as repositories of family honor, and by the impunity with which these crimes are carried out”.*²⁹

Further evidence from the U.S. Department of State:

*“Rape is an extensive problem. The HRCP estimates that at least eight women, five of them minors, are raped every day, and more than two-thirds of those are gang-raped. In 1997 the National Assembly passed a law that provided for the death penalty for persons convicted of gang rape. No executions have been carried out under this law and conviction rates remain low because rape, and gang rape in particular, is commonly used by landlords and criminal bosses to humiliate and terrorize local residents. It is estimated that less than one-third of all rapes are reported to the police.”*³⁰

The Human Rights Commission of Pakistan state that in 2000 “a rape occurred every two hours. One per every 12,500 women suffered rape”.³¹

2.3 Emotional and psychological violence

No evidence was found specifically relating to the extent of emotional and psychological violence perpetrated independently of other forms of domestic violence.

2.4 Honour killing

An extreme abuse of women’s rights is ‘honour killing’ which, according to the Human Rights Commission of Pakistan, was on the increase in 2000.³² This is summarised by Saeed & Khan:

*“A woman is considered the symbol of her family’s honour. Any deviation from social norms or tribal laws can result in her death. Karo kari (not an Islamic practice) is a frightening form of such killing, which takes the life of one woman a month in the provinces of Sindh and Balochistan. The expression refers to the ‘blackening’ of one person by another: a man who has been dishonoured – whose name has been ‘blackened’ – has the right to kill both his wife and her suspected paramour”*³³

The prevalence of honour killing has been reported extensively, for instance by The U.S. Department of State:

²⁹ Human Rights Watch (1999), op. cit.

³⁰ U.S. Department of State (2001), op. cit.

³¹ Human Rights Commission of Pakistan (2001), op. cit.

³² Human Rights Commission of Pakistan (2001), op. cit. Although statistics quoted in various sources appear contradictory, its occurrence and prevalence is undisputed; Honour Killing is perpetrated throughout Pakistan regardless of religion and ethnicity.

³³ Saeed & Khan (2000), op. cit., p.128. Honour Killing is only referred to as *karo kari* in specific areas

“There are numerous reports of women killed or mutilated by male relatives who suspect them of adultery. Few such cases are investigated seriously and those who are arrested often are acquitted on the grounds that they were “provoked,” or for a lack of witnesses. While the tradition of killing those suspected of illicit sexual relations in so-called “honor killings”, in order to restore tribal or family honor, applies equally to offending men and women, women are far more likely to be killed than men. The Progressive Women’s Organization, a human rights NGO, estimated that as many as 300 women are killed each year by their husbands or family, mostly as a result of “honor killings,” known as “karo/kari” in Sindh. The problem is believed to be even more extensive in rural Sindh. “Karo/kari” (or adulterer/ adulteress) killings are common in rural Sindh and Baluchistan. The HRCP reported an average of 30 killings per month for the first half of the year. Tribal custom among the Baluch and the Pathans also sanctions such killings. The Commission of Inquiry for Women has rejected the concept of “honor” as a mitigating circumstance in a murder case and recommended that such killings be treated as simple murder. Women who are the victims of rape may become the victims of their families’ vengeance against the victims’ “defilement.””³⁴

Although the issue of Honour Killing is not the focus of this study, it requires mention since both its practice and the failure of successive Governments and societies to prevent and it and bring perpetrators to justice represents perhaps the most extreme outcome of a tolerated hatred towards women, where the value of women’s lives is effectively subjugated to male pride. It thus enables further understanding of the context within which violence against women occurs.

It should be noted that most perpetrators of honour killing are women’s **brothers**, followed by their husbands.³⁵

³⁴ U.S. Department of State (2001), op.cit. This report also gives evidence that honour crimes are not properly investigated, and further that perpetrators are not brought to justice. See also U.K. Home Office Assessment (2001) in Appendix A of this report.

³⁵ Human Rights Commission of Pakistan (2001), op. cit.

3.Domestic violence and the law

Two aspects of the law in Pakistan need to be considered for the purposes of this research, the first concerning domestic violence, and the second regarding sexual assault and rape.

3.1 The law and physical violence

There is no specific domestic violence legislation, rather it is generally dealt with by The *Qisas* (retribution) and *Diyat* (compensation) law which governs bodily harm and murder:³⁶

*“most acts of domestic violence are encompassed by the Qisas and Diyat Ordinance of 1990, a body of Islamic criminal laws dealing with murder, attempted murder, and the crime of causing bodily "hurt" (both intentional and unintentional)”.*³⁷

However, this law is highly problematic in that it privatises these crimes by giving either the ‘victim’ or her ‘*wali*’ (either her heir or her guardian, who is in most cases her father), the option of pardoning the perpetrator:

*“If a domestic violence case does come before a criminal court, it may be punished either by qisas (retribution) or diyat (compensation) for the benefit of the victim or his or her legal heirs. In qisas and diyat crimes, **the victim or heir has the right to determine whether to exact retribution or compensation or to pardon the accused**...If the victim or heir chooses to waive qisas, or qisas is judicially held to be inapplicable, an offender is subject to tazir or discretionary punishment in the form of imprisonment... In these instances, judges not only have the power to determine the extent of punishment but also to decide whether to punish the offender at all.*

*“Commentators have noted that the qisas and diyat laws have, in many respects, converted serious crimes, including murder and aggravated assault, into crimes against the individual rather than the state”*³⁸

The Qisas and Diyat Law is inapplicable where women have children by the perpetrator, as is true of many domestic violence cases. It is then the responsibility of the judge to decide what punishment, if any, is delivered i.e. the *tazir* or discretionary sentencing cited above:

³⁶ Coomaraswamy, Radhika (1999) *Violence against women in the family: Report of the Special Rapporteur on violence against women, its causes and consequences*, E/CN.4/1999/68, Geneva, Switzerland, Office of the United Nations High Commissioner for Human Rights; Human Rights Watch (1999) op. cit.; U.S. Department of State (2001) op. cit.

³⁷ Human Rights Watch (1999), op. cit., p.7

³⁸ Human Rights Watch (1999), op. cit

*“Qisas and Diyat cannot be invoked where the victim's heir is a direct lineal descendant of the perpetrator, such as when a woman is killed by her husband”.*³⁹

Human Rights Watch:

*“Furthermore, murder (Qatl-e-Amd) is not liable to qisas “when any wali [heir] of the victim is a direct descendant, how low-so-ever, of the offender.” Thus, cases in which a woman has been murdered by her husband would be exempt from the qisas or maximum (i.e., capital) punishment for the murder if the couple in question have children, since in that case, a child or heir of the victim would also be a direct descendant of the offender”*⁴⁰

Whereas this might initially be expected to offer some protection to a women by removing from her the option of taking responsibility for pardoning the perpetrator, **until recently** the law stated that *tazir* could not be such a ‘maximum’ punishment.

3.2 The law and sexual violence

The second aspect of legislation concerns rape. In 1979, Pakistan’s Penal Code was replaced by the *Hudood Ordinances*, as part of General Zia’s drive to make the legal and penal system reflect Islamic stricture. As discussed in the introduction to this report, Zia’s campaign represented essentially a political means by which to maintain power, rather than any real concern that legislation reflected Islamic principles.

*“The Hudood Ordinances, promulgated by the central martial law government in 1979, aimed to make the Penal Code more Islamic. These ordinances provide for harsh punishments for violations of Shari’a (Islamic law), including death by stoning for unlawful sexual relations and amputation for other crimes (see Section 1.c.). These so-called Hadd punishments require a high standard of evidence. In effect, four adult Muslim men of good character must witness an act for a Hadd punishment to apply. In 20 years, not a single Hadd punishment has been carried out. However, on the basis of lesser evidence, ordinary punishments such as jail terms or fines are imposed. From 1979 to 1995, over 1 million Hudood cases were filed, and 300,000 were heard by the courts. More recent statistics are unavailable. The laws are applied to Muslims and non-Muslims alike.”*⁴¹

The law dealing with rape was modified as part of this revision, and rape is now addressed by the **Zina (Enforcement of Hudood) Ordinance** of 1979,

³⁹ U.S. Department of State (2000) op. cit.

⁴⁰ Human Rights Watch (1999), op. cit.

⁴¹ U.S. Department of State (2001) op. cit.

which punishes all forms of sex outside of marriage, including adultery, fornication and rape, making such actions crimes against the state. Human Rights Watch notes the impact of the Zina Ordinance on women who have suffered sexual crimes:

“The Zina Ordinance has had a profound effect on the rights of women, as it broadens the category of criminal sexual activity and redefines how such crimes will be handled by the legal system. The prohibited sexual activities, including rape (zina bil jabr), became religious offenses, subject to different standards of evidence and punishment and the appellate jurisdiction of Islamic higher courts.

*“Pakistan's previous rape laws, repealed by the Zina Ordinance, had defined rape as compulsory sexual intercourse. The new law added to this definition that **both a man and a woman may be guilty of rape** and narrowed the circumstances in which rape can be said to have occurred”.⁴²*

The *Zina Ordinance* also ruled that rape can **only** occur outside of matrimony, i.e. there is **no** recognition of marital rape. This, together with the fact that the Ordinance addresses sexual assault and rape under the same law as adultery and fornication, has led to a situation where these acts are often confused by police and the legal system, and women reporting rape or sexual assault have found themselves charged with *zina* offences such as adultery and fornication. This is detailed under Section 4 of this report.

Furthermore, there are strict evidence criteria that must be fulfilled to ensure punishment under this Ordinance i.e. either that the person accused confesses **or** that four adult Muslim males are willing to testify that rape occurred. These criteria have resulted in little protection for women, and little justice, as is again addressed by part 4.⁴³

3.3 Emotional and psychological violence

This is not recognised explicitly by legislation. Cassandra Balchin notes that although the Penal Code does provide punishment for acts such as

“wrongful constraint, wrongful confinement... criminal intimidation... [and] to act in such a way as to invoke ‘divine displeasure’... getting relief under these provisions in matters of domestic violence is extremely difficult”.

This is particularly true when such violence is perpetrated within marriage or the family:

⁴² Human Rights Watch (1999), op. cit., p.4; this is misleading because it states these offences are religious rather than criminal. They are criminal offences, but the way in which the law was changed was supposed to reflect religious concerns.

⁴³ Weiss (1994), op. cit., p.418; See also Saeed & Khan (2000), op. cit.

*“By virtue of marriage, confinement of a woman by her husband is not considered illegal. Similarly, fathers and brothers are taken to be their daughters’ and sisters’ guardians and not liable to be prosecuted for illegal confinement”.*⁴⁴

⁴⁴ Balchin, C (1998) ‘The Great Obstacle Race: Seeking justice for victims of domestic violence’, in *SHE*, Karachi, Zuhra Karim, pp.80-81; Balchin refers however to a Lahore High Court ruling that such confinement or restraint is clearly illegal

4. The reality of seeking protection

4.1 Introduction

Even when women do either manage to escape from the violent situation or overcome their fears to seek support from external agencies, it is evident that they face serious problems securing the protection that should be available.

“Police and judges tend to see domestic violence as a family problem, and are reluctant to take action in such cases. Thus, it is difficult for women to obtain relief from the justice system in cases of domestic violence.”⁴⁵

There is extensive evidence that women are unable to gain protection from a wide range of authorities when they suffer domestic violence, and in many cases may suffer further abuse at the hands of these authorities. Human Rights Watch summarise some of the State agents' responses to violence that they encountered throughout the course of their research:

“Through interviews with human rights lawyers and activists, women victims of violence, police officials, prosecutors, judges, and medicolegal doctors, Human Rights Watch found that bias against female victims of rape and domestic violence is not confined to the letter and interpretation of the law. Rather, it pervades all facets of the Pakistani criminal justice system. From the initial lodging of complaints until the final resolution of cases, women seeking redress for sexual and other assault regularly confront law enforcement institutions and officials with hostile, or at best indifferent, attitudes to their complaints. Police, prosecutors, judges, and doctors denied that sexual and domestic violence were critical problems for women and asserted that the occurrence of such crimes was precluded by Pakistani social and religious norms. Officials even failed consistently to acknowledge the criminal status of domestic violence, instead dismissing it as a “family matter” not serious enough to be handled by the criminal justice system. Officials frequently justified their cynical attitude toward women’s complaints of sexual and other assaults by attacking their veracity. Rather than addressing any inadequacies of the system with respect to prosecuting rape or domestic violence, officials were more interested in pointing out how frequently women fabricate these charges in order to frame men”.⁴⁶

Amnesty International reported in 1998 that:

“Abuses of women’s rights ... are also under prosecuted and under punished, due to connivance or indifference by police and judiciary and inadequacies in the law. Describing the high level of violence against women in Pakistan, the non-governmental Human Rights Commission of Pakistan (HRCP) in its report “State of Human Rights in 1997”

⁴⁵ U.S. Department of State (2001) op. cit.

⁴⁶ Human Rights Watch (1999) op. cit.

concluded, ‘worst of all was an attitude, largely, of resignation, of an unspoken social acceptance of the routineness of the condition’”

Further:

“Both the police and the judiciary as institutions tasked to uphold fundamental rights and ensure redress have failed women subjected to abuse... Amnesty International is aware of dozens of cases of police refusing to register complaints of rape, domestic violence and honour killings”.⁴⁷

The following evidence points to the failings of specific systems by which women should gain protection and legal redress.

4.2 The police

4.2.1 Reporting domestic violence to the police

Substantial evidence portrays a Police system in Pakistan that is corrupt, fails to act appropriately in dealing with reported crime, and perpetrates abuses against those in custody. These issues are exacerbated for women, reflecting overall social discrimination. Women’s complaints are often not taken seriously:

“While abusers may be charged with assault, cases rarely are filed. Police usually return battered women to their abusive family”.⁴⁸

“Even when police take note of a reported abuse of women they sometimes only initiate disciplinary measures instead of criminal prosecution... Police connivance in criminal offences against women sometimes takes the form of concealing evidence; this rarely comes to light”.⁴⁹

Amnesty International again highlighted in 2000 the unequal protection that women receive from police:

“Persistent bias against the rights of women on the part of the government, police and judiciary meant that abuses by private individuals, including the honour killings of hundreds of girls and women, were not investigated or punished”.

With regard to domestic violence, *“Police and judicial officers continued to treat such abuses leniently, contributing to a cycle of impunity and continued abuse”.*⁵⁰

⁴⁷ Amnesty International (1998), op. cit.

⁴⁸ U.S. Department of State (2001), op. cit.

⁴⁹ Amnesty International (1998) op. cit.

⁵⁰ Amnesty International (2000) ‘Pakistan’, in *Amnesty International Report 2000*, Amnesty International

In addition, many citizens do not realise the difference between making a police statement and registering a case with the police, of which the latter is an essential prerequisite for legal action. There have also been reports of police keeping an unofficial register which has no legal value, for recording *“complaints and verbal statements which they have no intention of pursuing, and simply want to satisfy the complainant that something has been written down in an official looking register”*.⁵¹

This might particularly be the case with domestic violence, where police often refuse to register it as a complaint, viewing such violence as a private matter rather than a recognizable offence.⁵² In the course of their research into violence against women, Human Rights Watch found that attitudes of many police officers corroborated these reports:

“...Police officials in Karachi and Lahore also dismissed domestic violence as a non-issue. The director of the police training center in Lahore, for example, told Human Rights Watch, “The social set-up does not allow that women should be abused” and that, on the contrary, women are respected in Pakistani society”.⁵³

Women’s police stations, set up recently not only to deal with women accused of criminal offences, but also to ensure that *“women complainants would feel more confident to lodge complaints related to gender”* have been *“extensively criticized as under equipped, ineffective and virtually inoperative”*.⁵⁴ Furthermore, there are very few such stations – only one in Lahore, for instance.⁵⁵

The U.K. Home Office Country Assessment also states that:

“These stations are staffed by female personnel, but receive even fewer material and human resources than regular police stations. According to the government's own Commission of Inquiry for Women the stations do not function independently or fulfill their purpose”.⁵⁶

4.2.2 Reporting rape to the police

Before considering police responses to women who report sexual crimes against them, it is essential to acknowledge the immense barriers that prevent women from disclosing rape or sexual assault, most particularly the fear, trauma and ‘shame’ they may experience. Secondly, it must be remembered that because rape within marriage is not recognised in Pakistan, **married women who are raped by their husbands have no recourse to the law.**

⁵¹ Balchin, C. (1998), op. cit. p. 77

⁵² Balchin, C. (1998), op. cit. p. 76

⁵³ Human Rights Watch (1999), op. cit.

⁵⁴ Amnesty International (1998), op. cit.

⁵⁵ Balchin, C. (1998), op. cit. p.76

⁵⁶ Country Information and Policy Unit (2001), op. cit.

For women to seek protection and justice when they have been raped or sexually assaulted (under accepted legal definitions) is extremely problematic given the legislative changes of 1979, as detailed above. It has been argued that the *Zina Ordinance*, by including rape (*zina-bil-jabr*) under the same law that deals with adultery and fornication (*zina*) has created a situation where rape may easily be confused with adultery or fornication.⁵⁷ Consequently, many women are extremely unlikely to report rape and sexual crime for fear of being charged with an offence under the *Zina Ordinance* themselves, frequently a charge of adultery:

*“With the passage of the Hudood Ordinance in 1979 legalizing punishment for adultery, theft, drinking and false accusations, the number of women in police custody has increased dramatically. Under the Hudood Ordinance the boundaries between rape [zina-bil-jabr] and adultery / fornication, zina, have become rather blurred. The women of Pakistan are thus caught in a double-bind: if they report a rape case – assuming that they can overcome all the familial and cultural barriers that militate against disclosure – not only may they not get justice, but there is every chance that they will be accused of adultery.... Women’s predicament in such situations and their fear-inspired reluctance to pursue justice is complex and multifaceted. This is due partly to the shame many raped women feel, partly to intimidation by the agents of ‘law and order,’ and partly to **the equation of rape with adultery under the Hudood Ordinance**. This strongly discourages many women from seeking help, rendering ‘sexual justice’ practically ineffective in Pakistan”.*⁵⁸

The knowledge that women may be charged with *zina* has meant that this may be used as a means for further control of women:

“The Ordinance provides new weapons to men against women by virtue of making Zina i.e. adultery and fornication, crimes against the state, cognisable offences for which the police can take action. Previously that was not the case, for then adultery was a matter of personal offence against the husband by the male party to adultery and extra-marital sex was not a penal offence at all. Now where a wife leaves her husband, it has become all too easy for the husband to go to the police and file a complaint against her for committing zina whereupon the wife is arrested and jailed. Given police corruption and the interminable length of time that it takes for such cases to be adjudicated by courts of law (often years) the woman is effectively punished without even going through the due process of law. The husband can bail the wife out of jail. But when that happens, she is totally at his mercy for he would threaten to withdraw bail which would return her to prison. Thus the woman’s position is made worse than

⁵⁷ Alavi, H (1991), op. cit., p.9

⁵⁸ Shahla, Haeri (2000) ‘The Politics of Dishonor: Rape and Power in Pakistan’ in Mahnaz Afkhami (ed.) *Faith and Freedom: Women’s Human Rights in the Muslim World*, London, I.B.Tauris, pp.169-170. Note that adultery is only one of the charges included in the offence of *zina* - women might also be charged with rape, bigamy or fornication.

*that of a slave. According to Asma Jahangir, a distinguished Pakistani woman lawyer and Secretary of the Human Rights Commission of Pakistan: 'it has now become common for husbands to file complaints of Zina against wives wanting separation. There are hundreds of cases every year where women are arrested for Zina on complaints filed by husbands' (SHE. March 1989: 81). It is likewise in cases of elopement, where a father refuses permission to his daughter to marry the man of her choice. The father brings charges of 'abduction' in such cases and the law presumes zina unless the couple can prove lawful nikah or marriage according to Islam".*⁵⁹

This is substantiated elsewhere:

"Under the Hudood Ordinances, the offence of zina (unlawful sexual relations before or outside marriage) has had the worst impact on women. False allegations of adultery or fornication have been brought against women to intimidate them. Blatant miscarriages of justice have become synonymous with zina, punishing women who are already deeply vulnerable to abuse by the criminal justice system

*"In rape cases (zina-bil-jabar), a woman, if unable to prove she has not given her consent to sexual intercourse, **may find herself convicted instead**".*⁶⁰

Furthermore, despite the fact that rape is recognised as an offence (outside of marriage), a limited understanding of rape, and discriminatory attitudes towards women often mean that women themselves are blamed or disbelieved by Police:

*"comments of police officials to Human Rights Watch consistently indicated a simplistic and biased understanding of the dynamics of rape, a lack of knowledge and imagination as to the range of circumstances in which rapes of women occur, and a predisposition to disbelieve victims of rape".*⁶¹

The following extract also draws attention to the fact that women are often at risk of further abuse from the Police themselves:

"rape, and gang rape in particular, is commonly used by landlords and criminal bosses to humiliate and terrorize local residents. It is estimated that less than one-third of all rapes are reported to the police. Police rarely respond to and sometimes are implicated in these attacks (see Section 1.c.). According to a police official, in most rape cases the victims are pressured to drop charges because of the threat

⁵⁹ Alavi, Hamza (1991), op. cit., p.9

⁶⁰ Saeed & Khan (2000), op. cit., p.123; Further evidence is also given by the U.S.

Department of State (2001) op. cit., and the U.K. Home Office Assessment – see Appendix A

⁶¹ Human Rights Watch (1999), op. cit.

of Hudood adultery or fornication charges against them if they cannot prove the absence of consent.

*...“If they report rape to the police, women's cases often are delayed or mishandled, and women frequently are harassed by police or the alleged perpetrators to drop the case. Police sometimes accept bribes to get the complainant to drop a case, and sometimes request bribes to carry it forward. Police tend to investigate the cases poorly, and may not inform women of the need for a medical exam or may stall or block women's attempts to obtain one”.*⁶²

This has had the devastating impact of allowing sexual crimes against women to be perpetrated in an atmosphere of impunity, in the knowledge that women are extremely unlikely to report them.

4.2.3 Legal medical services

Although most women do not report domestic violence or abuse to police, and evidence suggests that police are reluctant to register complaints officially, women that do face further difficulties in obtaining essential medical-legal reports, often because the police request payment for these:

*“supposedly for the conveyance of the police officials who would be involved in obtaining the medical report. This request, which is a common practice despite the fact that medico-legal reports in police cases are supposed to be free, is designed to test the victim's determination”*⁶³

Women are then faced with discriminatory attitudes from the medical services to which they have to present for examination, according to Human Rights Watch. Their report provides extensive details of interviews with medical officers stating that in most cases women fabricate evidence or, if they are rape victims, were not coerced into sex.

The U. S. Department of State summarise Human Rights Watch research:

“Human Rights Watch also reported that women face problems in the collection of evidence; that the doctors tasked to examine rape victims often believe that the victims are lying; that they are trained insufficiently and have inadequate facilities for the collection of forensic evidence pertaining to rape; that they do not testify very effectively in court; and that they tend to focus on the virginity status of the victim, and, due either to an inadequate understanding of the need for prompt medical evaluations or to inadequate resources, often delay the medical examinations for many days or even weeks, making any evidence that they collect of dubious utility. Medical examiners and police personnel sometimes are physically or verbally abusive during these exams, especially in cases where a

⁶² U.S. State Department (2001), op. cit.; Women may be accused of *zina*, which includes adultery, but also bigamy, fornication and rape

⁶³ Balchin, C. (1998), op. cit., p.77

woman is charged with adultery or fornication (for which an exam may be requested) and does not wish to be examined (such women, despite the fact that by law they should not be examined without their consent, have been examined, and even have been beaten for their refusal to be examined). Police and doctors often do not know that a woman must consent to this type of exam before it can be performed, and judges may not inform women of their right to decline ".⁶⁴

4.3 The judicial and legal system

4.3.1 Introduction

Although it is important to caution against unfounded generalizations, judicial indifference to women's rights has also been raised as cause for concern, and further undermines the attempts of women to gain justice:

"Redress for abuses suffered by women is hampered not only by disregard of police towards women's rights and their connivance with perpetrators of abuse; judicial decisions sometimes reflect insensitivity to women's concerns and contribute to a climate in which women's rights are violated with impunity... Male judges sometimes appear disinclined to accept women's testimony... The AGHS Legal Aid Cell in May 1998 in its resolution stated that 'the situation of women has seen a series of setbacks as Pakistan's judiciary remains insensitive to their rights'".⁶⁵

Human Rights Watch Report states that: *"Biased and chauvinistic attitudes are also common among prosecutors"* citing one example where a public prosecutor in one district of Karachi was unable to recollect any criminal proceedings against perpetrators of domestic violence.⁶⁶

4.3.2 The legal system and violence against women

The Qisas and Diyat law *"poses a huge obstacle to justice in domestic violence cases"*.⁶⁷ Section 3 explained how this law gives women and their guardians or heirs the opportunity to pardon perpetrators. It is clear that this law is inadequate for cases of domestic violence: it is highly inappropriate to place the onus of making such a decision regarding pardoning or punishment on the woman herself, since this clearly fails to recognise the power and control exercised over women that typifies abusive relationships. Pressures to pardon perpetrators do not only come from perpetrators themselves, and the woman's knowledge that she might face further violence as a result of her decision, but also from her own family, particularly where ties may exist between her family and the family of her abuser(s). Where perpetrators are

⁶⁴ U. S. Department of State (2001), op. cit.; See also Balchin, C. (1998), op. cit.

⁶⁵ Amnesty International (1998), op. cit.

⁶⁶ Human Rights Watch (1999), op. cit.

⁶⁷ Balchin, C. (1998), op. cit., p.81

the woman's own relatives, (she may be married to her cousin for instance), the pressure to pardon the perpetrator is likely to be even more intense.

Women are thus discouraged or coerced into pardoning perpetrators of violence, and the Qisas and Diyat law thus represents a major failure of the legal system to protect women who have experienced domestic violence. In addition, her heirs or guardians may make unofficial financial settlements with perpetrators in return for pardoning them:

"The "privatization" of crimes by the qisas and diyat laws has particularly damaging consequences in cases of intrafamily violence, the majority of which involve domestic abuse or spousal murder. As a result of the law, not only are women victims of domestic violence and their heirs susceptible to pressure and intimidation to waive qisas, but the concept of monetary compensation can be meaningless in a situation where payments flow from one member of the nuclear family to another".⁶⁸

The failure of the law of Qisas and Diyat has led to an atmosphere of impunity where perpetrators of domestic violence are fearless of punishment.⁶⁹

Where Qisas and Diyat cannot be invoked because the woman's heir is a direct relation of the perpetrator, the court has the power to punish the perpetrator using *tazir* sentencing. This power has been widely criticised, but *"as yet this right of the State has not been subjected to judicial scrutiny in the apex court"*.⁷⁰ Some of the criticism directed at *tazir* sentencing includes scepticism as to whether courts use *tazir* sentencing consistently and meaningfully in cases of domestic violence:

"courts are directed to weigh the decision to impose tazir punishment 'having regard to the facts and circumstances of the case', which grants them a large measure of discretion. In light of the biased attitudes of the courts with respect to domestic violence, the fact that punishment in such cases of spousal murder has been left entirely to the discretion of judges may well spell total impunity for the most extreme form of domestic violence. In the words of one commentator, 'Although it is still unclear how the law will be applied in practice, it may be a means by which the state abdicates its responsibility to control violence in the most common type of intrafamily murder-the killing of a female member by the male head of the family'.

"The large degree of judicial discretion embodied in the qisas and diyat law has been widely criticized in light of the endemic societal and judicial discrimination against women in Pakistan. Among the dangers

⁶⁸ Human Rights Watch (1999), op. cit.

⁶⁹ Balchin, C. (1998), op. cit. p.81

⁷⁰ Shah, H. (1998), op. cit., p.261

*that arise from decodification and an increase in judicial discretion is the opportunity for discrimination and corruption".*⁷¹

4.3.3 The legal system and sexual offences

It was noted above that there is no definition of rape within marriage. This has led to a situation where a perpetrator may avoid punishment not only by demonstrating that he was married to the woman he is accused of assaulting, but also that he *believed* he was married to her:

*"A showing by the perpetrator that he was or believed he was validly married to the victim at the time of intercourse is a complete defense to the crime of zina-bil-jabr or rape".*⁷²

As noted above, It has been argued that the *Zina Ordinance*, by including rape (*zina-bil-jabr*) under the same law that deals with adultery and fornication (*zina*) has created a situation where women reporting rape may find themselves charged with adultery or fornication if unable to prove that they did not consent.

Saeed & Khan provide disturbing evidence of this:

*"Out of the 473 women admitted to Lahore's central jail between March 1996 and June 1997, an astonishing 158 were accused of zina. Courts habitually fail to offer bail, parole or probation to women. Unlike men co-accused, women are unlikely to have money for bail. Nor do they often have a relative who is willing to provide this to the satisfaction of the court. According to a new report by HRCP [Human Rights Commission of Pakistan], most accused women face long periods of incarceration. Figures collected in 1998 from 20 jails in the Punjab found that of nearly 1000 women prisoners, almost 90 percent were awaiting trial. The Commission also found that more than one-third of women undergoing trials did not have a lawyer to defend them"*⁷³

Evidence suggests that most of these women are later found innocent, and that poorer women are even more likely to suffer unjust incarceration due to fewer resources:

The "Commission of Inquiry for Women criticized Hudood Ordinances relating to extramarital sex and recommended that they be repealed asserting that they are based on an erroneous interpretation of Shari'a (see Section 1.c.). The Commission charged that the laws on adultery and rape have been subject to widespread misuse, with 95 percent of the women accused of adultery being found innocent either in the court of first instance or on appeal. However, the Commission pointed out that, by that time, the woman may have spent months in jail, suffered sexual abuse at the hands of the police, and seen her reputation

⁷¹ Human Rights Watch (1999), op. cit.

⁷² Human Rights Watch (1999), op. cit., p.4; see also Alavi (1991) op. cit., p.9

⁷³ Saeed & Khan (2000), op. cit., p.125

destroyed. The Commission found that the main victims of the Hudood Ordinances are poor women who are unable to defend themselves against slanderous charges. These ordinances also have been used by husbands and other male family members to punish their wives and female relatives for reasons having nothing to do with sexual propriety, according to the Commission. At year's end, 511 women were awaiting trial for adultery under the Hudood Ordinance in Lahore; 400 in Peshawar; and 300 in Mardan (see Section 1.e.).

Most women tried under the ordinance are acquitted, but the stigma of an adultery charge alone is severe. A Hudood law meant to deter false accusations is enforced weakly, and one human rights monitor claimed that 80 percent of adultery-related Hudood cases are filed without supporting evidence. Men accused of rape sometimes are acquitted and released while their victims are held for adultery or fornication”.⁷⁴

Once cases are brought to the courts, there is also evidence of bias:

“According to Human Rights Watch, women face difficulty at every level of the judicial system in bringing rape cases. Police are reluctant to take the complaint and sometimes are abusive toward the victim; the courts do not have consistent standards of proof as to what constitutes rape and to what corroboration is required; and judges, police, and prosecutors are biased against female rape victims, tending towards a presumption of female consent and the belief that women lie about such things. Judges on the whole reportedly are reluctant to convict; however, if there is some evidence, judges have been known to convict the accused of the lesser offense of adultery or fornication (consensual sex)”.⁷⁵

Different standards of evidence govern the severity of punishments that might be administered for convictions under *Hudood Ordinances*. Whilst serious sexual offences are **liable** to *Hadd* (the most severe) punishments, difficulties in meeting the higher standards of evidence required for such punishments has meant no *Hadd* punishments have yet been delivered:

*“Hadd punishments are mandatory if there is enough evidence to support them. Hadd punishments regarding sexual offences are most severe for married Muslims; for example, if a married Muslim man confesses to rape or there are four adult male Muslim witnesses to the act, the accused must be stoned to death; if the accused rapist is not Muslim or married, if he confesses, or if the act is witnessed by four adult males (not all Muslim), the accused must be sentenced to 100 lashes with a whip, and such other punishment, including death, as the court may deem fit. The testimony of four female witnesses, or that of the victim alone, is insufficient to impose Hadd punishments. If the evidence falls short of Hadd criteria, then the accused may be sentenced to a lesser class of penalties (*Tazir*). **Since it***

⁷⁴ U.S. Department of State (2001), op. cit.; see also Alavi (1991), op. cit.

⁷⁵ U.S. Department of State (2001), op. cit; this therefore implies the woman is also guilty

is difficult to obtain sufficient evidence to support the Hadd punishments, most rape cases are tried at the Tazir level, under which sentences may be imposed up to 25 years in prison and 30 lashes. No Hadd punishment has ever been applied in the more than 20 years that the Hudood ordinances have been in force.⁷⁶

4.4 Other support services

Although there are services for women fleeing domestic violence, they are extremely limited, and the reality of gaining adequate protection is unlikely. There are both privately run and government run shelters, or *Darul Aman*. An article in The Guardian earlier this year raised concerns at the way privately run shelters operate, and stated that there is growing concern amongst Human Rights workers regarding the prison-like conditions within which women fleeing domestic violence are forced to abide.⁷⁷

The U.S. Department of State indicates the lack of support services.

*“A crisis center for women in distress was opened in 1997 in Islamabad. The center, the first of its kind in the country, is an initiative of the Ministry of Women's Development with the assistance of local NGO's. The center offers legal and medical referrals from volunteer doctors and lawyers, counseling from trained psychologists, and a hotline for women in distress. During the year, the crisis center served 75 women. A second crisis center in Vehari, in southern Punjab, opened during the year ”.*⁷⁸

4.5 Summary

Human Rights Watch Report summarises the reality of women gaining protection or justice being administered to the perpetrators of such violence

“There is no question that violence against women is an enormous problem in Pakistan that is exacerbated and perpetuated by the government's inadequate response to the problem. In fact, the state's response to domestic violence in Pakistan is so minimal and cases of intrafamily violence are so rarely addressed in any way by the criminal justice system that it was not possible for us to achieve one of our research goals for this report: that is, to track specific domestic violence criminal suits in order to identify larger patterns in the prosecution of domestic violence. We found that despite the staggering levels of intrafamily violence against women, it is widely perceived by the law enforcement system and society at large as a private family matter, not subject to government intervention let alone criminal

⁷⁶ U.S. Department of State (2001), op. cit.; see also Alavi (1991), op. cit., pp.9-10

⁷⁷ McCarthy (2001), op. cit.

⁷⁸ U.S. Department of State (2001), op. cit.

sanction. At present there is virtually no prosecution of crimes of assault and battery when perpetrated by male family members against women; even intrafamily murder and attempted murder rarely are prosecuted”⁷⁹

⁷⁹ Human Rights Watch (1999), op. cit.

5. The situation for separated or divorced women

That there is an extremely limited amount of protection for women experiencing domestic violence or abuse has been indicated above. The prospects of a woman fleeing domestic violence facing further abuses of her human rights as identified by the European Convention on Human Rights needs to be considered in this context. In this section, we consider the situation that might face women forced to return to Pakistan, and hope to provide further, complementary evidence to enable practitioners to evaluate the likelihood that a claim on human rights grounds might succeed.

5.1 Discrimination

The introduction to this report provides some detail of the extent of discrimination and human rights abuses perpetrated against women in Pakistan. Women face fewer chances than men in virtually all aspects of life. This is reflected by demographic and economic statistics:

*“More than one half of women (compared to a third of men) lived on or below the poverty line... Next to Afghanistan, Pakistan had the widest gender-gap in school-going population... Girls were twice as likely to die as boys between one to five years of age”.*⁸⁰

The U.S. Department of State also details women’s position in society:

“There are significant barriers to the advancement of women beginning at birth. In general female children are less valued and cared for than are male children. According to a UN study, girls receive less nourishment, health care, and education than do boys. In February Dr. Sher Shah Syed, of the Pakistan National Forum on Women's Health in Karachi, reported that the maternal mortality rate is 600 per 100,000 pregnancies; this figure contradicts the Government's figure of 300 per 100,000 pregnancies. At Karachi's civil hospital, the maternal mortality rate was 2,257 per 100,000 in 1999. According to a 1996 report by the Islamabad-based human development center, only 16 women are economically active for every 100 men.

“Discrimination against women is particularly acute in rural areas. In some areas of rural Sindh and Baluchistan, female literacy rates are 2 percent or less. A survey of rural females by the National Institute of Psychology found that 42 percent of parents cited "no financial benefit" as the reason they kept their daughters from attending school, and sent their sons instead. Similarly a study by the NWFP directorate of primary education concluded that most girls in rural areas do not go to school because they have to look after the household while their mothers help in the fields. In Karachi only 28 percent of girls completing matriculation (10th grade) exams in science during the year would be able to find places in government-run colleges, as opposed to

⁸⁰ Human Rights Commission of Pakistan (2001), op. cit.

83 percent of boys passing the same tests. In Baluchistan conditions are much worse, with only 2 percent of the province's women having send their daughters to school due to the poor quality of instruction and the lack of facilities.

*“Human rights monitors and women's groups believe that a narrow interpretation of Shari'a has had a harmful effect on the rights of women and minorities, as it reinforces popular attitudes and perceptions and contributes to an atmosphere in which discriminatory treatment of women and non-Muslims is more readily accepted”.*⁸¹

Most human rights reports refer to a greater degree of discrimination against women in rural areas, and fewer opportunities for women who are poor, although the situation varies considerably according to class and regional factors:

*“The situation of women in Pakistan varies considerably depending on geographical location and class. Women fare better in urban areas and middle- and upper-class sections of society, where there are greater opportunities for higher education and for paid and professional work and women's social mobility is somewhat less restricted. Seventy-five percent of Pakistan's female population is, however, rural, and the average Pakistani woman is beset with the "crippling handicaps of illiteracy, constant motherhood and poor health." And, despite the relative privilege of some, all Pakistani women remain structurally disadvantaged and second-class citizens as a result of legal and societal discrimination premised on social and cultural norms and attitudes”.*⁸²

Alavi highlights how in some rural areas women carry the burden of agricultural work, partly due to male migration to cities, whilst in other rural areas such as the Punjab, where women may belong to more wealthy agricultural families, they have experienced a shift in their position over the last thirty years:

“In rural areas, the place of women in society and their role in the division of labour in production differs very widely from region to region and also between different classes...

...“after the Green Revolution of the 1970s many well to do peasants, who had prospered, withdrew their womenfolk from the labour force and confined them, to the purdah, secluded and isolated within the four walls of their homes, as a mark of their new higher social status. In the course of research in Punjab villages my wife and I found that far from rejoicing in this partial relief from the burden of work, the women resented this change. Many of them described their new situation to my wife as the

⁸¹ U.S. Department of State (2001), op. cit.

⁸² Human Rights Watch (1999), op. cit.

*equivalent of being locked up in a prison. They had lost the small degree of economic freedom and with it their freedom of movement”.*⁸³

In urban areas, Alavi again highlights class differences: although women’s contributions (through paid employment) to the family economies of middle class families, have increased, *“judging from evidence brought up in court cases during the last decade, it seems that the women continue, nevertheless, to be subject to patriarchal domination”*. Equally, although women from upper class families might have greater access to financial resources, they may be in a position of extreme dependency upon their husbands:

*“worries stem from their total dependence on the husband and consequently insecurity for fear of being abandoned by the husband in favour of a second wife. In the absence of the possibility of an independent job or career, compounded by extreme difficulty for women in setting up an independent household without the 'saya', or protection, of a male head of family, their dependence on the husband is total. They are therefore reduced virtually to the status of well fed, well dressed and well ornamented slaves who depend absolutely upon the whim of their husbands. Where the husband ill-treats or abuses them they must put up with it. Because of the difficulty in setting up an independent household even women with careers share this problem”.*⁸⁴

This introduces some of the difficulties that may face women returned to Pakistan, both in terms of seeking divorce and attempting to establish themselves independently. Alavi adds:

*“No woman, even one with an independent career in a city can set up a home on her own, without the 'saya' (lit: shade or protection) of a male. A divorced woman or a widow must turn to her father or brother, if they will have her, unless she has a grown up son under whose protection she can live. This is a powerful factor of control over women”.*⁸⁵

Divorced women are likely to experience further discrimination.

⁸³ Alavi (1991), op. cit., p.2

⁸⁴ Alavi (1991), op. cit., p.3

⁸⁵ Alavi (1991), op. cit., p.1; Furthermore, the Human Rights Commission of Pakistan stated that last year *“A deficit of 150,000 housing units was added to the backlog up 6.45 million. A total of 20 million units served a population of almost seven times that number. There were an average of 6.6 persons to each unit”*, HRCP (2001), op. cit.

5.2 The consequences of divorce

Women are unlikely to seek divorce not only due to the impossibilities of setting up an independent home as raised above. There is substantial social stigma regarding divorce, and if she has children, she faces further difficulties in securing maintenance for them. Within regard to domestic violence:

“Women are reluctant to file charges because of societal mores that stigmatize divorce and make women economically and psychologically dependent on their relatives

*“Both civil and religious laws theoretically protect women's rights in cases of divorce, but many women are unaware of them, and often the laws are not observed. The Parliamentary Commission of Inquiry for Women has recommended that marriage registration (nikahnama) be obligatory and that women, as well as men, have the right to initiate divorce proceedings. It also has called for the punishment of those who coerce women or girls into forced marriages. A husband legally is bound to maintain his wife until 3 months after the divorce. A father is bound to maintain his children until they reach the age of 14 for males, or the age of 16 for females. However, the legal system is so complicated and lengthy that it can take years for the children to get maintenance”.*⁸⁶

Alavi states that women:

“dare not insist on a divorce for, generally, she has nowhere to go and virtually no prospects of building a new life in a society that despises a divorced woman who is invariably blamed for the failure of her marriage. She is lucky if she has grown up sons who might make it possible for her to set up an independent home”.

Furthermore, her potential isolation is illustrated:

*“In Pakistan, unlike the West, the social life of most people functions within frameworks of extended kinship, and the values and norms of kinship obligations cannot be flouted without penalty, except by the rich and the powerful or those who live in cosmopolitan circles”.*⁸⁷

In some cases, women living alone face not only discrimination but also a risk of further violence perpetrated by members of the public, as noted in this successful asylum claim made by a Pakistani woman in the United States:

⁸⁶ U.S. Department of State (2001), op. cit. This extract is incorrect for several reasons: “*The Parliamentary Commission of Inquiry for Women*” should read “The Commission of Inquiry for Women”; Marriage registration **is** mandatory; “*nikahnama*” is the term for the marriage contract, and not marriage registration – a marriage contract may or may not be registered; women **do** have the right to initiate divorce proceedings.

⁸⁷ Alavi (1991), op. cit., p.3

*“The applicant cannot permanently return to Pakistan because of the “crime” she committed by marrying outside of her faith. Furthermore, she has no male relatives in Pakistan who would protect her. Without protection, the applicant would face the severe discrimination, even rape or murder, that is meted out on women who live with no male head of household”.*⁸⁸

5.2 Economic security

Single or divorced women whose families are unable to support them, and who may consequently face living alone, experience extreme discrimination, and this may particularly hinder her economic security. Anita Weiss provides considerable information on the economic position of women in Pakistan; its intricate connections to traditional expectations about women’s roles means that in effect, in most cases, a woman’s chances of financial security are dependent upon being married or living within a family environment. Although women do work, it appears that in most cases this is within the family home and that the financial rewards are limited. It is plausible that if she were single, her chances of working at home would be restricted and she would be less likely to be able to provide economic security independently.

“Work in many parts of Pakistan – be it making, selling, fixing, or moving something for which there is some kind of economic compensation – appears to exist in the public space of the male world. While true virtually everywhere, it is particularly important in poorer areas of Pakistan for a woman’s status (as well as for that of her family) that her activities are popularly considered to be respectable. Historically, this has implied a prohibition on mixing freely with unrelated men and a marked sexual division of labor. Concerns over traditional notions of propriety have not prevented women from working for pay; instead, they often simply prevented women and their families from admitting that women engage in such work...

...“Most urban women are engaged at home, either in piecework or in contributing to family-based production

*...The traditional view that a woman’s modesty can best be protected if she remains within the confines of her home is still reported as the main impediment to female participation in industrial employment, even at the government level”*⁸⁹

Weiss refers to her own research in Lahore, which found that the most common form of women’s work is based within the home. Women’s dependency on middlemen to provide them with access to markets for work

⁸⁸ Centre for Gender and Refugee Studies (CGRS), University of California
www.uchastings.edu/cgrs/.

⁸⁹ Weiss (1994), op. cit., pp.420-3

that they are involved in, frequently sewing and embroidery, means that their financial rewards are less than those of men: *“Work within the home is possible because of its anonymity – but precisely because of this, wages are unreasonably low”*.⁹⁰

If women seek work outside the home in order to gain better financial rewards, they often experience discrimination:

“In rural areas, although women engage in labor for their family’s subsistence, few own productive resources or have an opportunity for paid employment. In urban areas, factory employment tends to be temporary and insecure, void of such luxuries as maternity leave and medical benefits”.⁹¹

⁹⁰ Weiss (1994), op. cit., p.422

⁹¹ Weiss (1994), op. cit., p. 422

6. Case law

6.1 The United Kingdom

The cases of two women, Shahana Islam and Syeda Shah who claimed asylum based on domestic violence were the subject of a groundbreaking House of Lords ruling in 1999.⁹² Both of these women had experienced domestic violence and were forced to leave their homes. They faced accusations of adultery, and thus possible criminal charges of “sexual immorality”, further violence not only from family but also community members, and possible death sentences.

The ruling recognised Syeda Shah and Shahanna Sadiq Islam as members of a social group, i.e. women in Pakistan, who experienced discrimination on the grounds of them being women; as such, the House of Lords ruled that they should be given protection under Article 1A(2) of the 1951 U. N. Convention. The ruling acknowledged that they would face both serious harm and a lack of State protection if forced to return to Pakistan, and they were recognised as refugees accordingly. The most important thing to note here is the recognition that women in Pakistan face persecution because the State was unwilling or unable to offer them protection.⁹³

Four of the Lords agreed with Lord Steyn, that:

“The distinctive feature of this case is that in Pakistan women are unprotected by the State: discrimination against women in Pakistan is partly tolerated by the state and partly sanctioned by the State”⁹⁴

6.2 The United States

The following case from the U.S. has been summarised by the Centre for Gender and Refugee Studies (CGRS) based at Hastings University in California, although little information is given as to how the evidence. It concerns the case of a Pakistani woman who was granted asylum on grounds of religion and social group. Despite not providing detail of how religion and social group were used within the case, the decision highlights the inadequate means of protection available for women fleeing violent families plus the stigmas attached to being a single woman in Pakistan.

“The applicant was born in Pakistan to a Muslim family of Iranian descent. She married a man of the Baha'i faith who was born in Pakistan of Iranian citizenship. Her parents were against the marriage because he was of a different faith. Since they married outside of their faith, the applicant and her husband had to flee from Pakistan to avoid persecution by Muslims in Pakistan. They moved to Africa and lived in

⁹² Islam v SSHD; R v IAT ex parte Shah [1999] INLR 144 HL. Further details of this case are given in the introductory section of the project

⁹³ Refugee Legal Centre (1999) *Refugee Legal Centre Bulletin No.50*

⁹⁴ Islam v SSHD; R v IAT ex parte Shah [1999] INLR 144 HL, p.146

several countries.

In the past few years, the applicant's husband has become physically abusive. Neither of the countries they have lived in provide adequate resources to protect her from her husband. The authorities in Botswana refused to intervene and told the applicant that she should be a better wife if she wants to be safe. She has nowhere to go in Botswana that she would be safe from her husband. There are no services for battered women in Botswana.

The applicant cannot permanently return to Pakistan because of the "crime" she committed by marrying outside of her faith. Furthermore, she has no male relatives in Pakistan who would protect her. Without protection, the applicant would face the severe discrimination, even rape or murder, that is meted out on women who live with no male head of household. She cannot return to Iran because she is not an Iranian resident.

Asylum Grounds: Religion; social group

Asylum Granted?: Yes”

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Appendix A: Home Office country assessment

PAKISTAN ASSESSMENT

April 2001

Country Information and Policy Unit

Women

5.3.86 The status of Pakistani women varies considerably with their social background and the region in which they live. Women belonging to the elite classes have been able to move beyond their traditional role and attend university, take up non-traditional careers, join political movements and even choose their husbands. However, women in rural areas and from the working classes of the industrial centres are illiterate, live in poverty and are subject to onerous labour. [3] & [12c] In Baluchistan for example, it is traditional for women to stay at home. In the poorer villages they are unlikely to go out alone, or even vote without their husband's consent. These traditions are however by no means universal. In the large cosmopolitan cities such as Lahore, Karachi or Islamabad a woman wearing a burqa would be a rarity, with most women following Islamic custom by wearing a headscarf. [28i]

5.3.87 The Pakistani Constitution recognises the equality of men and women before the law. It prohibits all forms of discrimination (especially sexual discrimination) within the civil service, and grants women the right to participate fully in all activities in the national arena. However in practice these constitutional clauses do not provide equality in the reality of daily life. [3] & [12c]

5.3.88 Apart from the women's wing of the Muslim League, the Women's Voluntary Service was the first women's movement to emerge in Pakistan and was founded in 1947. This opened the way for many other organisations, among them the All Pakistan Women's Association founded in 1949, which is affiliated with various international organisations. Aurat and Shirkat Gah, which came into being in the late 1970s, are two organisations that have also played an active role in the promotion of women's rights. The number of organisations working for the cause of women has subsequently continued to grow. Pakistani women can obtain legal and medical assistance as well as consultation services from centres such as Bedari and Roshni in Islamabad, Eve's Protector in Karachi, Behbood in Rawalpindi and AGHS Legal Aid Cell in Lahore. [12c]

5.3.89 Pakistan has signed and ratified the following international instruments:
Convention of the Political Rights of Women
Slavery Convention of 1926 as amended
Supplementary Convention on the Abolition of Slavery, Slave Trade, and Institutions and Practices Similar to Slavery
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. [15]

5.3.90 Pakistan has also ratified the United Nations' Convention on the Elimination of All Forms of Discrimination against Women in March 1996. However, according to Amnesty International, reservations were inserted whereby nothing in the Convention which came into conflict with the Constitution or Sharia Law would apply. [4c] Pakistan has also signed, but not ratified, the Convention on the Nationality of Married Women. [15]

5.3.91 Special women's police stations were established in 1994 in response to growing numbers of complaints of custodial abuse of women, including rape. These stations are staffed by female personnel, but receive even fewer material and human resources than regular police stations. According to the government's own Commission of Inquiry for Women the stations do not function independently or fulfill their purpose. Despite court orders and regulations that only female officers may interrogate female suspects, women continued to be detained overnight at regular police stations and abused by male officers during 2000. Based on Lahore newspaper reports from January to May 1999 the HRCP found 11 cases of violence, rape or torture of women in police custody. [2b]
See also Police: *paragraphs 5.2.1 - 5.2.5; and Torture: paragraphs 5.2.8 - 5.2.9.*

5.3.92 The Hadood Ordinances, and in particular the Offence of Zina (relating to rape, abduction, adultery and fornication), which replaced the sections in the Pakistan Penal Code relating to rape, have also had an impact on women. The Penal Code defined rape as forced sexual intercourse, but the Islamic definition of rape (zina) is that it is an extra-marital offence and thus excludes any notion of marital rape. A woman who reports a case of rape to the authorities can find herself charged with adultery under the Ordinances as all extra-marital sexual relations, whether consensual or not, are considered to be adultery and thus a violation of the Hadood Ordinances. As a consequence most women do not report sexual abuse and rape. [3] & [12c]

5.3.93 It is estimated that less than a third of all rapes are reported to police, who may be reluctant to take the complaint and sometimes be abusive toward the victim. The courts do not have consistent standards of proof as to what constitutes rape. Judges, police and prosecutors may be biased against female rape victims, tending towards a presumption of female consent and the belief that women lie about such things. Judges, although on the whole reportedly reluctant to convict, have been known to convict the accused of the lesser offense of adultery or fornication (consensual sex). [2b]
See also Hadood Ordinances: *paragraphs 4.2.17 - 4.2.18.*

5.3.94 Human Rights Watch report that women face problems in the collection of evidence. Doctors tasked to examine rape victims often believe that the victims are lying, and are trained insufficiently with inadequate facilities for the collection of forensic evidence pertaining to rape. Medical examiners and police personnel are sometimes physically or verbally abusive during exams, especially in cases where a woman is charged with adultery or fornication and does not wish to be examined. Such women, despite the fact that by law they should not be examined without their consent, have been examined and have even been beaten for their refusal. Women may also be harassed by police or alleged perpetrators into dropping cases. [2b]

5.3.95 Domestic violence is a widespread and serious problem. Human rights groups estimate that anything from 70% to 90% of women are victims of domestic violence at the hands of their husbands, in-laws or other relatives. Husbands are known to have killed their wives for trivial offences. There are no specific laws pertaining to domestic violence except for the Qisas and Diyat ordinances, which are rarely invoked and may privatize the crime. Qisas and Diyat however cannot be invoked where the victim is a direct lineal descendant of the perpetrator. Police and judges tend to see domestic violence as a family problem and are reluctant to take action in such cases. Thus it is difficult for women to obtain relief from the justice system in cases of domestic violence. [2b]

5.3.96 During 2000 the press reported on hundreds of incidents of violence against women and drew attention to the killings of married women by relatives over dowry or other family-related disputes. Most of the victims were burned to death, allegedly in kitchen stove accidents; some women were reportedly burned with acid. During 2000 593 burn cases were recorded in Lahore newspapers; cases were registered in 74% but only 10 % of the suspects were arrested. Human rights monitors assert that many cases are not reported by hospitals and even when they are the police are reluctant to investigate or file charges. Furthermore, human rights monitors agree that most 'stove deaths' are in fact killings based upon suspicion of illicit sexual relationship or upon dowry demands. Increased media coverage of cases of wife burnings, spousal abuse, spousal killing and rape has helped to raise awareness about violence against women. The Government has failed to take action in honour killing cases, particularly when influential families are involved. [2b] One human rights organisation estimated that there are three hundred deaths a year as a result of bride burning. [35a]

5.3.97 A crisis center for women in distress was opened in 1997 in Islamabad. The center - the first of its kind in the country - is an initiative of the Ministry of Women's Development with the assistance of local NGOs. The center offers legal and medical referrals from volunteer doctors and lawyers, counseling from trained psychologists and a hotline for women in distress. During 2000 the crisis center served 75 women. A second crisis center in Vehari, southern Punjab, opened during 2000. [2b]

5.3.98 There is no uniform family law for all Pakistanis: for each religious community a separate set of laws apply. The legislation which applies to Muslim citizens is the Muslim Family Law Ordinance, 1961. [23] This law circumscribed the practice of polygamy and required that all marriages must be registered, which eliminated the abused practice of divorce by declaration (talaq). Furthermore the law grants women the right of divorce on condition that a clause to this effect was written into the marriage contract (nikah nama). However it is reported that men continue to have an advantage in divorce proceedings, and can dissolve a marriage more easily than women can. [3] & [12c]

5.4.99 The class and caste system is a pervasive aspect of Pakistani society. Inter-caste marriages can cause problems, with mixed couples sometimes running a high risk of being killed. Although the legal system is designed to protect such individuals, police and the judiciary (particularly at the local level) may be unwilling or unable to offer effective protection from societal persecution. [20b]

5.3.100 In addition to the Muslim Family Laws Ordinance of 1961, the Dissolution of Muslim Marriages Act 1929 lays down the grounds on which a woman may divorce her husband. The Muslim Family Law Ordinance of 1961 only applies to Muslim citizens of Pakistan; the Dissolution of Muslim Marriages Act 1929 applies to all Muslims in Pakistan, whether or not they are citizens of Pakistan. [23]

5.3.101 According to a report by Amnesty International in 1998, several judgements over the last few years have stated that adult Muslim women have the right to marry men of their own choice, irrespective of their father's consent. There are nonetheless many instances of young women running away to marry men of their own choice, and subsequently living in fear of their male relatives' revenge for the woman's perceived disobedience and for "dishonouring" the family. [4g] On 6 April 1999, a woman seeking divorce was shot dead in her lawyer's office. The lawyer was also fired at but not injured, and a colleague was abducted by the perpetrators but eventually released. [4k] The issue gained widespread publicity following the killing. [31]

5.3.102 While the government does not generally interfere with the right to marry, it has on occasion assisted influential families to prevent marriages that they opposed. [2b] In a significant ruling in January 2001 however, a Punjab court ruled in favour of a woman who claimed to have been forcibly married to her cousin three years previously. The woman stated that she feared for her life if she was sent back to her husband's house and court officials took her to a refuge for women. It was nonetheless unclear whether this ruling would set a precedent for similar cases. [35c]

5.3.103 It has been estimated that as many as 300 women are killed each year by their husbands or family, mostly as a result of 'honour killings'. Those suspected of illicit sexual relations are killed in order to restore tribal or family honor. The problem is believed to be even more extensive in rural Sindh. 'Karo/kari' (or adulterer/adulteress) killings are common in rural Sindh and Baluchistan. The HRCP reported an average of 30 killings per month for the first half of 2000. Tribal custom among the Baluch and the Pathans also sanctions such killings. The Government has publicly criticized the practice of honour killings but has failed to take corrective steps and such killings have continued. The Government has also failed to take action in honour killing cases when influential families have been involved. [2b]

5.3.104 Although women participate in Government, they are under-represented in political life at all levels. The Musharraf Government announced in August 2000 that one-third of the seats in the forthcoming local council elections would be reserved for female candidates, although some political activists doubt that there would be enough female candidates in certain remote areas of the country to fulfill this requirement. Women participate in large numbers in elections, although some are dissuaded from voting by family, religious and social customs. [2b]