

# **REFUGEE WOMEN AND DOMESTIC VIOLENCE: COUNTRY STUDIES**

**A report by**

**Refugee Women's Resource Project**

**Asylum Aid**

**March 2002**



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Refugee Women's Resource Project  
Asylum Aid  
28 Commercial Street  
London E1 6LS

Tel: 020 7377 5123

Fax: 020 7247 7789

Email: [rwrp@asylumaid.org.uk](mailto:rwrp@asylumaid.org.uk)

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## **Explanatory note**

This publication is an addition to the report *Refugee Women and Domestic Violence: Country Studies*, published by RWRP in September 2001. That report examined the situation in 5 countries – Albania, Bosnia & Herzegovina, China, Iran and Pakistan – and also included an introduction, which outlined the aims and objectives of the report and an overview of the issue of domestic violence in the context of refugee and asylum law.

This report contains an additional 2 country studies – Colombia and Democratic Republic of Congo – as well as updates on the 5 previous country reports. It is intended that the updates be inserted (as Appendix B) after the appropriate report. The new overall contents page and the country report contents pages included here should be substituted for the previous ones.

RWRP plans to publish additional country reports and updates at 6-monthly intervals.

Copies of the initial report, provided in a ring binder to which this and subsequent issues can be added, can be obtained from RWRP at the address on the previous page at £10 each. Alternatively, the report can be downloaded from our website.

**Refugee Women's Resource Project  
March 2002**

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# COLOMBIA

## 1. Introduction

### 1.1 Political background

The Republic of Colombia is a multi-party democracy, whose President, Andres Pastrana of the Conservative Party was elected in 1998. The Liberal Party controls the Legislature. The US State Department report for 2001 notes that ***“The civilian judiciary is largely independent of government influence; however, the suborning or intimidation of judges, witnesses, and prosecutors is common.”***<sup>1</sup>

The 40-year conflict to overthrow the Colombian Government continues; however, ***“Although the violence is deadly and large swaths of the countryside are under guerrilla influence, the movement lacks the military strength or popular support necessary to overthrow the government.”***<sup>2</sup>

The US State Department reports that, in 2001

***“The Government continued to face serious challenges to its control over the national territory, as longstanding and widespread internal armed conflict and rampant violence--both political and criminal--persisted. The principal participants in the conflict were government security forces, paramilitary groups, guerrillas, and narcotics traffickers”.***<sup>3</sup>

The 2000 US State Department report noted

***“The 2 major guerrilla groups, the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN), consist of an estimated 11,000 to 17,000 full-time combatants organized into more than 100 semiautonomous groups. The FARC and the ELN, along with other smaller groups, exercised a significant degree of territorial influence and initiated armed action in nearly 1,000 of the country's 1,085 municipalities during the year, which was approximately the same level as in 1999”.***<sup>4</sup>

This conflict has led to mass displacement of the civilian population. The Human Rights Watch 2001 report stated that

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<sup>1</sup> U.S. Department of State, (2002) *Country Reports on Human Rights Practices – 2001: Colombia*, Washington, Bureau of Democracy, Human Rights and Labor. Available at: [www.state.gov/g/drl/rls/hrrpt/2001/wha/8326.htm](http://www.state.gov/g/drl/rls/hrrpt/2001/wha/8326.htm)

<sup>2</sup> CIA, (2001) *The World Factbook 2001*. Available at: [www.cia.gov/cia/publications/factbook](http://www.cia.gov/cia/publications/factbook)

<sup>3</sup> US Department of State, (2002) op. cit.

<sup>4</sup> US Department of State, (2001) *Country Reports on Human Rights Practices – 2000: Colombia*, Washington, Bureau of Democracy, Human Rights and Labor. Available at: [www.state.gov/g/drl/rls/hrrpt/2000/wha/741.htm](http://www.state.gov/g/drl/rls/hrrpt/2000/wha/741.htm)

***“Forced displacement continued to increase, with at least 300,000 Colombians reported displaced in 2001, the highest number ever in a single year. Increasingly, Colombians applied for exit visas to travel abroad and applied for political asylum in other countries.***

***“Kofi Asomani, the United Nations special coordinator on internal displacement of the Office for the Coordination of Humanitarian Affairs, visited Colombia in August and concluded that the conflict had “catastrophic consequences” for the civilian population. Despite government programs meant to assist the displaced, Asomani found that they continued to suffer extreme hardship, living in overcrowded and unsanitary conditions with limited access to basic services”.***<sup>5</sup>

## **1.2 Human rights practice**

There is widespread concern over the human rights situation in Colombia, expressed by all sources. **Human rights violations are perpetrated by all parties to the internal armed conflict, including government forces. The government itself is unwilling or unable to prevent human rights abuses** by its own security forces or the paramilitary organisations and armed opposition groups. **Impunity for perpetrators is the norm.**

The Amnesty International 2001 report states

***“The human rights crisis continued to deepen against a background of a spiralling armed conflict. The parties to the conflict intensified their military actions throughout the country in campaigns characterized by gross and systematic violations of human rights and international humanitarian law. The principal victims of political violence were civilians, particularly peasant farmers living in areas disputed between government forces and allied paramilitaries, and armed opposition groups. Human rights defenders, journalists, judicial officials, teachers, trade unionists and leaders of Afro-Colombian and indigenous communities were among those targeted. More than 4,000 people were victims of political killings, over 300 “disappeared”, and an estimated 300,000 people were internally displaced. At least 1,500 people were kidnapped by armed opposition groups and paramilitary organizations; mass kidnaps of civilians continued. Torture - often involving mutilation - remained widespread, particularly as a prelude to murder by paramilitary groups. “Death squad”-style killings continued in urban areas. Children suffered serious human rights violations particularly in the context of the armed conflict. New evidence emerged of continuing collusion between the armed forces and illegal paramilitary groups. Progress***

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<sup>5</sup> Human Rights Watch, (2002a) *World Report 2002: Colombia*, New York, Available at: <http://hrw.org/wr2k2/americas4.html>

*continued in a limited number of judicial investigations, but impunity for human rights abuses remained the norm”.*<sup>6</sup>

Human rights abuses are perpetrated by all parties to the conflict. The US State Department commented that

*“The Government’s human rights record remained poor; there were continued efforts to improve the legal framework and institutional mechanisms, but implementation lagged, and serious problems remained in many areas. A small percentage of total human right abuses reported are attributed to state security forces; however, government security forces continued to commit serious abuses, including extrajudicial killings. Impunity remained a problem. Despite some prosecutions and convictions, the authorities rarely brought higher-ranking officers of the security forces and the police charged with human rights offenses to justice. Members of the security forces collaborated with paramilitary groups that committed abuses, in some instances allowing such groups to pass through roadblocks, sharing information, or providing them with supplies or ammunition. Despite increased government efforts to combat and capture members of paramilitary groups, security forces also often failed to take action to prevent paramilitary attacks. Paramilitary forces still find support among the military and police, as well as among local civilian populations in many areas”.*<sup>7</sup>

The report also noted that

*“NGO’s attributed a large majority of political killings, social cleansing killings, and forced disappearances to paramilitary groups... Throughout the country, paramilitary groups killed, tortured, and threatened civilians suspected of sympathizing with guerrillas in an orchestrated campaign to terrorize them into fleeing their homes, to deprive guerrillas of civilian support and allow paramilitary forces to challenge the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN) for control of narcotics cultivations and strategically important territories”.*<sup>8</sup>

The Human Rights Watch 2001 report states that

*“In the first ten months of the year, the office of the Public Advocate (Defensoría del Pueblo) recorded ninety-two massacres, which they defined as the killing of three or more people at the same place and at the same time. Most were linked to paramilitary groups, followed by guerrillas.*

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<sup>6</sup> Amnesty International, (2001) *Annual Report 2001: Colombia*, London, Available at: [www.web.amnesty.org/web/ar2001.nsf/webamrcountries/COLOMBIA?OpenDocument](http://www.web.amnesty.org/web/ar2001.nsf/webamrcountries/COLOMBIA?OpenDocument)

<sup>7</sup> US Department of State, (2002) op. cit.

<sup>8</sup> US Department of State, (2002) op. cit.

...

**“Overall, President Andrés Pastrana and his defense ministers failed to take effective action to establish control over the security forces and break their persistent ties to paramilitary groups. Even as President Pastrana publicly deplored atrocities, the high-ranking officers he commanded failed to take steps necessary to prevent killings by suspending security force members suspected of abuses, ensuring that their cases were handed over to civilian judicial authorities for investigation and prosecution, and pursuing and arresting paramilitary leaders.**

...

**“Mayors, municipal officials, governors, human rights groups, the Public Advocate's office and even some police detachments regularly informed the appropriate authorities about credible threats by paramilitaries or even massacres that were taking place. An early warning system paid for by the United States and administered by the office of the Public Advocate registered twenty separate warnings nationwide between June, when the system began to function, and September. But rarely did the government take effective action to prevent atrocities. Of the warnings that were received, eleven incidents resulted either in killings being committed or the continued, pronounced presence of armed groups that threatened civilians”.**<sup>9</sup>

Regarding impunity, Amnesty International's 2001 report notes that,

**“The Attorney General's Human Rights Unit investigated over 900 cases of violations of human rights and international humanitarian law. Significant progress was made in a number of cases. However, the vast majority of perpetrators of violations of human rights and international humanitarian law continued to evade accountability. Despite numerous outstanding arrest warrants, no attempt was made by the armed and security forces to capture paramilitary leaders responsible for widespread human rights violations. Paramilitary leaders arrested by civilian judicial investigators, routinely escaped from police or military detention. In defiance of the Constitutional Court, the military justice system continued to claim jurisdiction in cases in which senior armed forces officers were implicated”.**<sup>10</sup>

Although a law was enacted in July 2000 (after six failed attempts) criminalizing “disappearances, genocide and forced displacement”, the Amnesty International 2001 report criticised this law for failing to provide that all heinous crimes be tried by civilian courts.<sup>11</sup> Human Rights Watch was also

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<sup>9</sup> Human Rights Watch, (2002a) op. cit.

<sup>10</sup> Amnesty International, (2001) op. cit.

<sup>11</sup> Amnesty International, (2001) op. cit.

concerned with the powers of the military in investigations into human rights abuses, stating

***“The Security and National Defense Law that President Pastrana signed on August 13 threatened to reinforce impunity for human rights abuses. The law gave the security forces judicial police powers under certain circumstances and severely restricted the ability of civilian investigators to initiate disciplinary investigations against security force personnel for human rights violations committed during operations. Also, the law limited the obligation of the armed forces to inform judicial authorities about the detention of suspects, increasing the risk of torture”.***<sup>12</sup>

The impact of the February 2002 suspension of peace negotiations between the Government and the Revolutionary Armed Forces of Colombia-People's Army (FARC-EP), and the kidnappings of a Senator and a candidate in the forthcoming Presidential elections, on the overall human rights situation in Colombia, remains to be seen. **However, a Human Rights Watch press release expressed serious concerns that “paramilitary forces could inflict brutal reprisals against civilians” in the rebel controlled area.**<sup>13</sup>

### **1.3 Colombia and international legal instruments**

Colombia has ratified the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention Against Torture (CAT), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Convention on the Elimination of Racial Discrimination (ICERD) and the Convention on the Rights of the Child (CRC).<sup>14</sup>

In addition, Colombia is a party to the American Convention on Human Rights “Pact of San Jose, Costa Rica” and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women “Convention of Belem do Para”.<sup>15</sup>

**Colombia has not yet submitted its fifth periodic report to the Committee on the Elimination of Discrimination Against Women, which was due in 1999. Its previous report, due in 1995, was submitted in 1997 and considered by the committee in 1999. Also outstanding are the 1997 and 2000 reports for the Committee Against Torture, and the 2000 reports for**

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<sup>12</sup> Human Rights Watch, (2002a) op. cit.

<sup>13</sup> Human Rights Watch, (2002b) *Colombia: Sudden End to Peace Negotiations Puts Civilians at Risk*, New York, February 21, 2002, Available at: <http://hrw.org/press/2002/02/colombia0221.htm>

<sup>14</sup> Office of the High Commissioner for Human Rights, *Status of Ratifications of the Principle International Human Rights Treaties*, as at February 2002, Available at: [www.unhchr.ch](http://www.unhchr.ch)

<sup>15</sup> Organization of American States, *Signatories and Ratifications of the Inter-American Treaties*, as at February 2002, Available at: [www.oas.org](http://www.oas.org)

the Committee on the Elimination of Racial Discrimination and the Human Rights Committee.<sup>16</sup>

## 1.4 Women's human rights

Article 13 of the 1991 Colombian Constitution states that

*“All individuals are born free and equal before the law and are entitled to equal protection and treatment by the authorities, and to enjoy the same rights, freedoms, and opportunities without discrimination on the basis of gender, race, national or family origin, language, religion, political opinion, or philosophy.”<sup>17</sup>*

**Despite this equality enshrined in law, discrimination and human rights violations are widespread.** The Committee on the Elimination of Discrimination Against Women (the Committee) noted

*“that no systematic effort is being made to counter discriminatory cultural traditions and change sexist stereotypes and that the media continue to project stereotyped images of women.”<sup>18</sup>*

In 2000, a report for the UN High Commissioner for Human Rights found that **women received 28% less pay than men for the same work.<sup>19</sup> The unemployment rate for women was 24.5% during 1999 and 16.9% for men.<sup>20</sup>** The situation is worse for rural women. **Average earnings for rural women are just 58% of the amount earned by men.<sup>21</sup>** Women's participation in management and decision-making bodies is low and the Committee expressed its concern that there were no specific measures for promoting increased participation by women.<sup>22</sup> A report by the International Women's Rights Action Watch noted **“Under Colombian law there is still no legal recourse for women who are subjected to sexual harassment in the workplace”<sup>23</sup>.**

While education is one of the areas where most progress has been made with regard to the position of women, there are problems remaining. There is

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<sup>16</sup> Office of the High Commissioner for Human Rights, *Reporting Status*, as at February 2002, Available at: [www.unhchr.ch](http://www.unhchr.ch)

<sup>17</sup> Text of the Constitution of Colombia (1991) available in English at: [http://confinder.richmond.edu/columbia\\_const2.html](http://confinder.richmond.edu/columbia_const2.html), Original available in Spanish at: [www.georgetown.edu/pdba/Constitutions/Colombia/col91.html](http://www.georgetown.edu/pdba/Constitutions/Colombia/col91.html)

<sup>18</sup> Office of the High Commissioner for Human Rights, (1999) *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Colombia 04/02/99*, UN Doc. A/54/38, paras.337-401, Available at: [www.unhchr.ch](http://www.unhchr.ch), para 381

<sup>19</sup> US Department of State, (2002) op. cit.

<sup>20</sup> US Department of State, (2002) op. cit.

<sup>21</sup> Latin America and Caribbean Committee for the Defense of Women's Rights (CLADEM), (1998) *Alternative Report Presented to the Follow-up Committee on the Convention for the Elimination of All Forms of Discrimination Against Women – CEDAW*, Bogota, Available at: [www.cladem.org/Ingles/cedawcol.doc](http://www.cladem.org/Ingles/cedawcol.doc), p. 3

<sup>22</sup> CEDAW Concluding Observations, op. cit. para 383

<sup>23</sup> International Women's Rights Action Watch (IWRAP), (1997) *IWRAP Country Reports: Colombia*, Available at: [www.igc.org/iwraw/publications/countries/colombia.html](http://www.igc.org/iwraw/publications/countries/colombia.html)

inconsistency in the quality of education received by male and female students, and in higher education, women are significantly under represented in agriculture, mathematics, sciences and engineering.<sup>24</sup> **The Committee also expressed concern at the high level of school drop-out of girls and young women, suggesting it was linked to sexist stereotypes.**<sup>25</sup>

The US State Department report stated that **“Rape and other acts of violence against women are pervasive in society, and like other crimes, seldom are prosecuted successfully”** and described sexual harassment as a problem.<sup>26</sup> **Trafficking in women and girls is also a major problem.**

*“The DAS reported in 2000 that the country is one of the three most common countries of origin of trafficking victims in the Western Hemisphere; in 2000 an estimated 35,000 to 50,000 Colombian trafficking victims were overseas. The majority of women trafficked for prostitution reportedly go to the Netherlands, Spain, Japan, Singapore, and Hong Kong. A study carried out in Spain in 1999 by the Roman Catholic religious order the “Adoratrices” found that Colombian women constituted nearly half of all trafficking victims in that country. The Organization for Security and Cooperation in Europe issued a report on trafficking in persons in 1999 that stated that women and girls from Colombia also are trafficked to North America. According to press reports, more than 50 percent of women from Colombia who enter Japan are trafficking victims forced to work as prostitutes”.*<sup>27</sup>

The Committee addressed the issue of prostitution and trafficking in its concluding comments on Colombia’s report, expressing its concern

*“...that, although national legislation condemns inhuman and degrading treatment, many women are forced to become prostitutes in order to survive and there is traffic in women. Preventive mechanisms are lacking and the State has little capacity to confront the national and international criminal organizations engaged in procurement, which operate with a high degree of impunity”.*<sup>28</sup>

The Committee was particularly concerned with the situation of women in rural areas, stating that, in rural areas

*“...there is a considerable lag in basic services infrastructure, low health and education coverage, and lower quality of life for most of the population. These factors are an obstacle to integrating women in development and ending their difficult living conditions, which, together with violence, are responsible for rural women*

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<sup>24</sup> CLADEM, op. cit. p. 26

<sup>25</sup> CEDAW Concluding Observations, op. cit. para. 385

<sup>26</sup> US Department of State, (2002) op. cit. See Section 2 for a detailed examination of violence against women

<sup>27</sup> US Department of State, (2002) op. cit.

<sup>28</sup> CEDAW Concluding Observations, op. cit. para. 377

***being one of the population groups that are most vulnerable and subject to discrimination***".<sup>29</sup>

## **1.5 Women and conflict**

The conflict in Colombia has resulted in serious violations of women's human rights and particular problems in women's everyday lives. The Inter-American Commission on Human Rights (IACHR) reported in 1999 that not only was the internal armed conflict resulting in increasing numbers of women who are victims of internal displacement,<sup>30</sup> but that ***"there are numerous complaints regarding murders, injuries, unlawful deprivation of liberty, and intimidation by the various armed actors"***. It went on to state ***"every two days a woman dies in Colombia for political reasons"***.<sup>31</sup>

An Amnesty International Report, "Women in Colombia" reported that

*"Throughout this conflict, women have been the victims of human rights abuses for a variety of reasons: some because they are themselves politically active; others because of the political activity of their partners or relatives; and others simply because they live in areas where guerrilla forces are active and are automatically considered by the armed forces to be guerrilla sympathizers or supporters.*

...

***"Amnesty International has received persistent reports that in areas with a guerrilla presence, women who socialize with members of the armed forces and police have been harassed, threatened and in several cases killed by members of armed opposition groups.***

***"Some guerrilla groups have resorted to the practice of abduction and forcible recruitment of young women from rural areas where they operate. Other women have been kidnapped and held hostage by guerrilla organizations something that has become increasingly widespread as ransom money has become one of the principal sources of income for guerrilla groups. Some kidnap victims, particularly women holding public office such as mayoresses and local councillors, are held hostage for political motives, either to pressurize them into implementing guerrilla proposals in their administrations or in an attempt to demand publicity for their policies. However, reliable statistics for the number of women kidnapped by armed political groups are difficult to compile"***.<sup>32</sup>

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<sup>29</sup> CEDAW Concluding Observations, op. cit. para. 397

<sup>30</sup> See section 5.1 for a detailed examination of women and internal displacement

<sup>31</sup> Inter-American Commission on Human Rights (IACHR), (1999) *Third Report on the Human Rights Situation in Colombia*, Available at: [www.oas.org](http://www.oas.org), Chapter XII, para. 35 and 38

<sup>32</sup> Amnesty International, (1995) *Women in Colombia: Breaking the Silence*, Available at: [www.amnesty.se/women/23ca.htm](http://www.amnesty.se/women/23ca.htm)



**Women are victims of violence and intimidation when they actively fight for their rights.** The Committee recommended that

*“...the Government step up security measures for all those who promote and defend human rights, especially in view of kidnappings and other acts that constitute an assault on physical integrity, with particular attention to the situation of women”.*<sup>33</sup>

**Women who work towards finding out the fate of their husbands, sons or other relatives and strive for justice after violations of the rights of their family members are also threatened.** Amnesty International noted that

*“Relatives of victims of human rights violations also face a serious risk of reprisal if they push for investigations and for those responsible to be brought to justice. In many cases relatives decide not to make complaints or testify because they feel that they are too vulnerable to acts of reprisal. **On numerous occasions relatives of victims have been threatened or even killed if they persisted with their struggle for justice”.***<sup>34</sup>

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<sup>33</sup> CEDAW Concluding Observations, op. cit. para. 372

<sup>34</sup> Amnesty International, (1995) op. cit.



## 2. Domestic violence

There are few statistics on the prevalence of domestic violence in Colombia. Those that exist are not up to date. The World Health Organisation (WHO) and the United Nations Statistics Division, in their surveys of domestic violence worldwide, state that 19% of Colombian women have experienced domestic violence within an intimate relationship.<sup>35</sup> However, the sample of 6,097 women “included women who had never been in a relationship and therefore were not in exposed group”.<sup>36</sup>

The International Planned Parenthood Federation quotes a higher figure, stating

**“...41 percent of women in Colombia report having been physically abused in a current relationship (DHS 2000)”.**<sup>37</sup>

The 1999 report of the Special Rapporteur on violence against women, its causes and consequences stated

*“There were 51,451 cases of inter-family violence reported in 1996, in which 34,796 of the victims were spouses. Ninety-three per cent of the cases of spousal abuse were perpetrated against women.”*<sup>38</sup>

The Inter-American Commission on Human Rights reported in 1999, that

**“Despite legislative progress and the efforts of the public and private sectors, the official figures reveal that violence against women in Colombia continues to occur at alarming levels, with a tendency to worsen. Such is the case that, in 1993, the Institute of Legal Medicine of Colombia issued reports on 15,503 cases of non-fatal injuries due to family violence, reported in the departmental capitals. This figure climbed to 19,706 in 1994, and 23,288 in 1995.”**<sup>39</sup>

The Colombian government said, in its most recent report to CEDAW, that the problem of domestic violence was not investigated until the 1980s and acknowledged that research around the subject needed to be “expanded and

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<sup>35</sup> World Health Organisation, *Prevalence of Violence Against Women by an Intimate Male Partner*, Available at: [www.who.int/violence\\_injury\\_prevention/vaw/prevalence.htm](http://www.who.int/violence_injury_prevention/vaw/prevalence.htm) and United Nations Statistics Division, *The World's Women 2000: Trends and Statistics*, Available at: [www.un.org/depts/unsd/ww2000/table6c.htm](http://www.un.org/depts/unsd/ww2000/table6c.htm), both sources quote a study by Demographic and Health Surveys (DHS). Colombia. *Encuesta nacional de demografía y salud 1995*. PROFAMILIA and DHS/Institute for Resource Development and Macro International, 1995.

<sup>36</sup> World Health Organisation, op. cit.

<sup>37</sup> International Planned Parenthood Federation Western Hemisphere Region, *Gender-Based Violence*, Available at: [www.ippfwhr.org/whatwedo/gbv.html](http://www.ippfwhr.org/whatwedo/gbv.html)

<sup>38</sup> Report of the Special Rapporteur on Violence Against Women, its causes and consequences, (1999) *Violence against women in the family*, UN Doc. E/CN.4/1999/68

Available at: [www.unhchr.ch](http://www.unhchr.ch), para. 81

<sup>39</sup> IACHR, (1999) op. cit. para. 43

strengthened”.<sup>40</sup> The statistics in the CEDAW report vary; however, all the research projects quoted agree that domestic violence is under-reported and that the figures found in the research are just a fraction of the real numbers. A 1995 survey found that

**“Of the married or cohabiting women surveyed, 52 per cent had been abused by their husbands, more than half insulted, and more than a third beaten.**

...

**“Of all the battered women, 27 per cent had reported the facts to the authorities; this figure is somewhat higher than the one found five years earlier in the 1990 survey, when only 11 per cent of the women victims of physical violence had reported it. Ten per cent visited a police station, eight per cent a family commission, and five per cent the Colombian Family Welfare Institute (ICBF).**

*“The reasons given by the women for not reporting the domestic violence included: belief that they could solve the problem without any help (31%), fear of retaliation (22%), and belief that the husband would change (17%).”<sup>41</sup>*

The Colombian Government report to CEDAW also addresses domestic violence in the section on women and health. It states that

*“With regard to domestic violence, which primarily affects women, 33 per cent of women living with a man say that they have suffered verbal violence, 19.3 per cent physical violence, and 5 per cent sexual violence. Factors such as marital status, place of residence and number of children do not cause any significant differences in the incidence of violence.*

**“The only factor having a clear impact is education, for almost 24 per cent of poorly educated women living with a man have suffered physical violence, whereas the figure for women with higher education is 7 per cent.**

...

*“According to the data of the National Institute of Forensic Medicine, in cases of domestic violence in 1994 it issued about 12,000 reports on non-fatal bodily harm inflicted on women aged between 25 and 34, approximately 6,000 reports for the 35-44 age group, and some 4,000 reports for the 15-24 age group. These figures stand in sharp contrast*

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<sup>40</sup> Committee on the Elimination of Discrimination Against Women (CEDAW), (1997) *Fourth Periodic Report*, UN Doc. CEDAW/C/COL/4, Available at:

[www.un.org/womenwatch/daw/cedaw/columbia99.htm](http://www.un.org/womenwatch/daw/cedaw/columbia99.htm)

<sup>41</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

*with the figures for reports on men in the same circumstances, which did not exceed 1,000 for any age group.*<sup>42</sup>

In its section on spouse abuse, the CEDAW report highlights

*“The National Reference Centre on Violence of the National Institute of Legal Medicine stated that in 1995 it received a total of 42,963 reports of domestic violence, 71 per cent of them concerning spouse abuse. Of this total, 95 per cent of the acts of violence were committed against women. This means a ratio of one man for every 18 women victims. Sixty-seven per cent of these women were aged between 18 and 34.*

*“It should be remembered, however, that these figures represent only the cases reported to the Institute in connection with legal proceedings; **the under-recording of domestic violence is very high.***

*“A comparison of the cases of bodily harm resulting from spouse abuse recorded by the Institute in 1993 and 1995 shows alarming increases of up to 819 per cent in Medellín and up to 241 per cent in Florencia. However, it is impossible to determine the extent to which these increases are due to a higher incidence of spouse abuse or to the fact that more cases are being reported.*

*“In 1995 the Institute surveyed one in every three victims reporting spouse abuse and receiving a report from the Institute, with a view to classifying these victims. It found that 95 per cent were women, 45 per cent aged between 25 and 30, 26 per cent with primary education, 59 per cent with secondary, and 11 per cent with at least one semester of university education; 60 per cent lived in open marriages and 31 per cent were married; 93 per cent had an average of two dependants; and only 13 per cent received medical treatment for their injuries.*

*“In 88 per cent of cases the injuries occurred in the victim's home, and 55 per cent of the attackers had been drinking alcohol prior to the attack. In 85 per cent of cases the victims had a history of injury by the same attacker.”<sup>43</sup>*

The US State Department reported that

*“According to the Ombudsman's 2000 report, **intrafamilial violence, sexual assault, and the murder of women were increasing problems.** The governmental Institute for Family Welfare and the Presidential Adviser's Office for Youth, Women, and Family Affairs continued to report high levels of spousal and partner abuse throughout the country. Between January and August, the Institute for Forensic Medicine reported 19,066 cases of spousal abuse. There were 8,757 cases of domestic violence by other family members.*

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<sup>42</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

<sup>43</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

...

***“The Institute commented that the crimes of domestic violence and rape are grossly underreported, citing its 1995 survey that indicated that as few as 5 percent of these crimes are reported, and that only 2 percent of victims receive a medical evaluation.”<sup>44</sup>***

The Inter American Commission on Human Rights noted

***“Sexual violence in Colombia is also a matter of special concern to the IACHR. In 1995, the Institute of Legal Medicine of Colombia issued 11,970 opinions in investigations of sexual crimes nationwide. Of the victims, 88% were women, for a rate of 34 women per 100,000 population. According to the information received, it is estimated that there are some 775 rapes of adolescents annually, and that the rate of rape for this age group is 3.5 per 1,000 women. Nonetheless, only 17% of the victims denounce such acts. It should be noted that of all such attacks on women over 20 years of age, 47% are by relatives.”<sup>45</sup>***

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<sup>44</sup> US Department of State, (2002) op. cit.

<sup>45</sup> IACHR, (1999) op. cit. Chapter XII, para. 45

### 3. Domestic violence and the law

#### 3.1 Domestic legal provisions

Article 42 of the Colombian Constitution states that

***“Family relations are based on the equality of rights and duties of the couple and on the mutual respect of all its members. Any form of violence in the family is considered destructive of its harmony and unity, and will be sanctioned according to law.”***<sup>46</sup>

Law 294 of 1996 gives effect to this prohibition on violence. It defines the members of the family unit who the law protects as

***“...the spouses (man and woman) or permanent partners; the father, the mother, the ascendants, descendants and other persons that remain in the family unit.”***<sup>47</sup>

It aims to end “*maltreatment or aggression*” and includes “*physical, psychic, sexual or psychological, harm or threats or injury*”. Once maltreatment has been determined, measures of protection may be imposed, for example issuing a restraining order or evicting the aggressor for the family residence.<sup>48</sup>

Law 294 also provides for punishment, stating that “*he who maltreats physically, psychically or sexually any member of his family nucleus, shall incur an a prison sentence from one (1) to two (2) years*”. If maltreatment results in physical or psychological damage to the family member, the sentence can be increased by up to a half.<sup>49</sup>

Another provision deals with “*maltreatment by means of liberty restriction*”, and means that forcible restriction of the freedom of movement of an adult within the family unit can be punished by between one and six months imprisonment or a fine. Penalties for any offence under Law 294 can be increased by up to a half, if the offence was “*committed in violation of a protection order*”.<sup>50</sup>

**Despite these provisions, the fourth Colombian State report to CEDAW acknowledged**

***“However, it is regrettable that the Law establishes a less severe penalty for sexual violence between spouses (six months to two years imprisonment) in comparison with the penalties provided in the Criminal Code for the crimes of sexual intercourse with violence (two to eight years imprisonment) and other sexual acts with violence (one to three years).”***<sup>51</sup>

<sup>46</sup> Constitution of Colombia, (1991) op.cit.

<sup>47</sup> CLADEM, op. cit. p. 43

<sup>48</sup> CLADEM, op. cit. p. 43

<sup>49</sup> CLADEM, op. cit. p. 43

<sup>50</sup> CLADEM, op. cit. p. 44

<sup>51</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

**There is a gap in the protection against sexual assault on partners afforded by Law 294.** The law protects “*spouses; individuals who currently cohabit or cohabited in the past; and women who have had a child with the perpetrator*”. **This means that partners, who are not cohabiting with the perpetrator, are not covered by the law, unless they are the mother of the perpetrator’s child.**<sup>52</sup>

The Special Rapporteur expressed interest in the provision concerning “*maltreatment through restriction of freedom*”; however, she was concerned that “***punishments are limited to one to six months’ imprisonment, indicating that such crimes may not be perceived to be serious***”.<sup>53</sup>

In its 2000 update, the Center for Reproductive Law and Policy (CRLP) noted

*“In the area of domestic violence, Law 575 of 2000 amended Law 294 of 1996 and gave family courts the power to order protection measures. If there is no family court, this power falls to the municipal court judge.*

...

*“The new Penal Code includes the domestic violence offenses created by the 1996 Law, in Chapter 1 of Title IV of crimes against the family. Punishable conduct was not modified, **but the new Penal Code clarifies that the law relating to domestic violence is only applicable in the absence of other offenses that carry a stiffer sentence.**”<sup>54</sup>*

The Canadian Immigration and Refugee Board, addressing Law 575, noted that

*“The newer law stipulates, among other things, a range of possible measures that an authority can issue to address a case of domestic violence, from penalties or treatment for an aggressor to protection measures for a victim.*

...

*“The Haz Paz program states that one of the key changes established by Law 575 is that Family Commissions can legally attend to cases of domestic violence and issue protection measures (Haz Paz 2000b).*

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<sup>52</sup> Canadian Immigration and Refugee Board, (2000) *REFINFO Query: Colombia: Individuals to whom Law No. 294 on domestic violence applies (1999-February 2000)*, COL33769.E February 8, 2000, Available at: [www.irb.gc.ca](http://www.irb.gc.ca)

<sup>53</sup> Report of the Special Rapporteur on Violence Against Women, its causes and consequences, (1999) op. cit. para. 80

<sup>54</sup> Center for Reproductive Law and Policy, (2000) *Excerpt draft translation from CRLP, Women of the World: the laws and policies affecting their reproductive lives, Latin America, Update 2000*, Original in Spanish available at: [www.crlp.org/pdf/colombia\\_sup\\_sp.pdf](http://www.crlp.org/pdf/colombia_sup_sp.pdf)



*The ICBF adds that in the absence of a Family Commission, a Justice of the Peace or a municipal officer known as Promiscuo Municipal can legally address a case of domestic violence (ICBF 2000).<sup>55</sup>*

In its concluding comments, the Committee expressed concern that

***“...there is currently before Congress a bill to decriminalize domestic violence at both the civil and criminal level, passing responsibility for dealing with these human rights violations to an administrative court.***

***“The Committee recommends that the bill be reassessed, since it represents a step backwards from the progress achieved by the country in legislative terms in tackling and confronting the problem of domestic violence and sexual abuse.”<sup>56</sup>***

We have been **unable to find** evidence to show whether or not this change occurred.

### **3.2 Sexual violence**

The IACHR expressed concern over the high level of sexual violence in Colombia. (See section 2) The Commission stated

***“...as in other cases, the Colombian State has proceeded to update its domestic legislation to address the problematic situation described. Under a recent change in Colombian legislation, the punishments for crimes against sexual liberty and human dignity have been increased. These crimes currently include the categories of rape, sexual abuse and statutory rape. The crime of violent sexual intercourse (acceso carnal violento) is titled rape and is punishable by four to 10 years in prison. In a positive move, Law 360/97 repealed the Criminal Code provision by which the criminal action for all of the offenses mentioned was extinguished if the perpetrator married the victim.”<sup>57</sup>***

The International Women’s Rights Action Watch highlighted

***“Colombian law contains a narrow definition of rape which excludes sexual violence not involving penetration. It also provides different penalties for rape outside the marriage relationship (1-3 years imprisonment) and within marriage (6 months-2 years imprisonment). Since 1996, cases of conjugal rape can only be prosecuted at the request of the rape survivor. Education***

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<sup>55</sup> Canadian Immigration and Refugee Board, (2001) *REFINFO Query: Colombia: Status of the application and enforcement of the law on domestic violence (Law 294 of 1996)*, COL37210.E July 11, 2001, Available at: [www.irb.gc.ca](http://www.irb.gc.ca)

<sup>56</sup> CEDAW Concluding Observations, op. cit. para. 375-376

<sup>57</sup> IACHR, (1999) op. cit. Chapter XII, para. 46

*programs for rape prevention and services for the support of rape victims are apparently nonexistent.”<sup>58</sup>*

The US State Department’s examination of the legal provisions on sexual violence stated

*“A 1997 law also made additional, substantial modifications to the Penal Code and introduced sentences of between 4 and 40 years for crimes against sexual freedom or human dignity, including rape, sex with a minor, sexual abuse, induction into prostitution, and child pornography. The law also repealed an old law that fully exonerated a rapist if he subsequently offered to marry the victim and she accepted. **However, there was little evidence that this legislation was enforced systematically. The reforms to the Penal Code approved in June reduced the maximum sentence for violent sexual assault from 20 to 15 years; the minimum sentence is 8 years.**”<sup>59</sup>*

All sources expressed concern over the status of abortion in Colombian law. A report by IRAW stated, *“In January 1997, Colombia’s Constitutional Court upheld the imprisonment of women for abortion, even in cases of rape and incest”*. The report quoted figures showing widespread use of abortion by Colombian women, despite its illegal status. According to the

*“...Universidad Externado de Colombia, at least one-third of Colombian women between 15 and 55 years old have had one induced abortion (this is considered to be a minimal estimate). Estimates indicate that four abortions are performed for every ten live births (women from 15 to 49 years of age).”*

...

***“The criminalization of abortion has a discriminatory effect on impoverished women: while women of higher socio-economic classes are able to obtain safe, though illegal, abortions, women of lower incomes are forced to seek dangerous backroom abortions.”<sup>60</sup>***

In its concluding comments, the Committee noted that abortion is the second cause of maternal deaths in Colombia. It stated

***“No exceptions are made to that prohibition, including where the mother’s life is in danger or to safeguard her physical or mental health or in cases where the mother has been raped. The Committee is also concerned that women who seek treatment for induced abortions, women who seek an illegal abortion and the doctors who perform them are subject to prosecution. The Committee believes that legal provisions on abortion constitute a violation of***

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<sup>58</sup> IRAW, (1997) op. cit.

<sup>59</sup> US Department of State, (2001) op. cit.

<sup>60</sup> IRAW, (1997) op. cit.

***the rights of women to health and life and of article 12 of the Convention***".<sup>61</sup>

### **3.3 Constitutional law**

The Colombian Constitution states, in Article 93

*"International treaties and agreements ratified by the Congress that recognize human rights and that prohibit their limitation in states of emergency have priority domestically.*

*"The rights and duties mentioned in this Charter will be interpreted in accordance with international treaties on human rights ratified by Colombia."*<sup>62</sup>

**The pre-eminence of International Human Rights treaties over domestic law was affirmed by the Colombian Government report to CEDAW.**

*"Thus, as an international treaty promoting women's right to equality the Convention, which was ratified by Law 51 of 1981, takes precedence in the juridical order. When a conflict of laws arises the Convention is given priority and it functions as the most important criterion for interpretation of the rights embodied in the Constitution."*<sup>63</sup>

**Protection against violations of fundamental human rights can be sought through the action of *tutela*, described in Article 86 of the Constitution.**

*"Every person has the right to file a writ of protection before a judge, at any time or place, through a preferential and summary proceeding, for himself/herself or by whomever acts in his/her name for the immediate protection of his/her fundamental constitutional rights when that person fears the latter may be violated by the action or omission of any public authority.*

*"The protection will consist of all orders issued by a judge enjoining others to act or refrain from acting. The order, which must be complied with immediately, may be challenged before a superior court judge, and in any case the latter may send it to the Constitutional Court for possible revision."*<sup>64</sup>

When describing *tutela*, the report to CEDAW noted

***"Although it is a requirement for bringing such an action that the person affected has no other means of legal protection, its use is allowed as a temporary recourse to avoid irremediable harm.***

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<sup>61</sup> CEDAW Concluding Observations, op. cit. para. 393

<sup>62</sup> Constitution of Colombia, (1991) op.cit.

<sup>63</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

<sup>64</sup> Constitution of Colombia, (1991) op.cit.

...

*“In exceptional cases actions of tutela can be brought against individuals in the circumstances specified in Decree 2591 of 1991 on the recourse of tutela. In some such cases women, or any other persons, may defend their rights against private education institutions on the ground that education is a public service, or against enterprises or other individuals when the plaintiff is a subordinate or defenceless. **This means of recourse has become in practice the main instrument for the protection of fundamental rights; it has proved its effectiveness and people turn to it because of the flexibility of the procedure; it has helped to generate a social awareness of such rights.***

...

*“The findings of a national study on the use of tutela in the period 1991-1993 provide eloquent testimony: during this period 22,658 actions were brought, 6,514 (28.8%) of them by women. **The five rights most frequently cited as violated were the rights of petition, education and employment, and due process, and the rights to life and equality.**”<sup>65</sup>*

The report to CEDAW also stated that

*“**Actions of tutela have also become an important means of defence against domestic violence and is used by women in particular. In several such cases the Constitutional Court has decided that the women and/or their children are defenceless against the men and has ordered the police authorities to take the necessary measures of protection and supervise the behaviour of the defendants, who are prohibited from committing acts of violence.**”<sup>66</sup>*

See section 4.3 for a more detailed evaluation of the effectiveness of *tutela* as a tool for women seeking protection from domestic violence.

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<sup>65</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

<sup>66</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

## 4. The reality of seeking protection

### 4.1 Introduction

As stated in section 2.1, reporting of domestic violence is low. A 1995 study found that although levels of reporting had increased since 1990, only 27% of women suffering from domestic violence reported it to the authorities. Of that 27%, 10% reported the abuse to the police, 8% to a family commission and 5% to the Colombian Family Welfare Institute (ICBF).<sup>67</sup>

To what extent this reflects a view that, once reported, the mechanisms for providing protection are not effective, is unknown. However, the Inter-American Commission on Human Rights suggested that the State deals ineffectively with domestic violence, resulting in impunity for perpetrators. The IACHR stated

*“In Colombia, as in many other countries, most acts of domestic violence are still considered to be a private matter. Consequently, they are not reported, and it is not possible to determine the full extent of the problem. According to information received by the Commission, less than half of battered women seek assistance, and only 9% of the women lodge a complaint with the authorities. The Commission also received information according to which neither the State nor society is sufficiently sensitive to the need to tackle the problem of domestic violence. Impunity for the perpetrators of acts of domestic violence against women is practically 100%”.*<sup>68</sup>

### 4.2 The police

All sources report violations of human rights that are perpetrated by the police. For example, the US State Department reported *“Members of the armed forces and the police committed serious violations of human rights”*.<sup>69</sup> We were able to find no information on the extent to which women may be reluctant to report domestic violence to the police because of concerns over police behaviour. Neither could we find information on the extent of concerns over whether there is a potential for factors linked to the internal armed conflict, such as perceived political affiliations, to affect treatment by the police.

The US State Department report also noted that on average one person was killed every 20 minutes<sup>70</sup> and highlighted

*“The police and the Prosecutor General’s office have insufficient resources to investigate most killings adequately. The Superior Judicial*

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<sup>67</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

<sup>68</sup> IACHR, (1999) op. cit. Chapter XII, para. 44

<sup>69</sup> US Department of State, (2002) op. cit.

<sup>70</sup> US Department of State, (2001) op. cit.

*Council estimated based on a 1997 survey that 63 percent of crimes go unreported and that 40 percent of all reported crimes go unpunished.*<sup>71</sup>

**It would appear likely that insufficient police resources for dealing with most crimes, combined with the perception of domestic violence as a private matter, as stated above by the IACHR, is an important factor in the near 100% impunity for perpetrators of domestic violence reported by the IACHR.**

It is also important to note that **women are severely under-represented in the police and military.** Current figures for the number of women in the police are unavailable; however, the Colombian Government report to CEDAW stated that there were 1,909 women members of the police and 621 women in the military forces, equivalent to 1.7% of the total.<sup>72</sup> **This could have an impact on the willingness of women to report domestic violence, sexual abuse or rape to the police and their confidence in police action to tackle it,** especially given the IACHR statement, quoted above, that **the State is not “sufficiently sensitive to the need to tackle the problem of domestic violence”**.<sup>73</sup>

The State report to CEDAW notes *“Colombia has many women's groups, associations, networks of organizations and non-governmental organizations (NGOs)”*, some independent and some State-sponsored. These range from research organisations to community based groups.<sup>74</sup> **Sources reported that the police and army are responsible for attacks and intimidation of human rights defenders.** Human Rights Watch stated

*“The security forces were also directly implicated in abuses. In May, it was revealed that a combined police-army unit had illegally tapped over 2,000 telephone lines in the city of Medellín, many belonging to nongovernmental and human rights groups.”*<sup>75</sup>

We could find no information on the extent to which women's groups or organisations working with survivors of domestic violence are affected by this police and military intimidation of NGOs.

### **4.3 The judicial and legal system**

The US State Department outlined the judicial system, stating

*“The judiciary includes the Constitutional Court, Supreme Court of Justice, and the Council of State, the Superior Judicial Council, and lower courts... The Prosecutor General's office is an independent prosecutorial body that brings criminal cases before the courts.”*

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<sup>71</sup> US Department of State, (2002) op. cit.

<sup>72</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

<sup>73</sup> IACHR, (1999) op. cit. Chapter XII, para. 44

<sup>74</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

<sup>75</sup> Human Rights Watch, (2002a) op. cit.

However, it emphasised

***“The civilian judiciary is inefficient, severely overburdened by a large case backlog, and undermined by intimidation and the prevailing climate of impunity. This situation remains at the core of the country’s human rights problems.”***<sup>76</sup>

Actions of *tutela* can be used to obtain a judicial guarantee of fundamental rights. The State report to CEDAW highlighted

*“The following are the practical advantages of tutela for the protection of fundamental rights:*

*\* Proceedings may be brought by any person, including children, without a lawyer or other legal intermediary.*

*\* The procedure is brief and is given priority, for the judge has a maximum period of 10 days in which to take a decision.*

*\* The decision must be complied with within the following 48 hours, and the judge can sanction a failure to comply by arrest and fines on the ground of contempt of court, without prejudice to any criminal liability.*

*\* Decisions can be appealed before the higher courts, and the Constitutional Court may review them.”*<sup>77</sup>

The report described progress Colombia had made including

*“Recourse by women to actions of tutela as a fairly effective and available means of protection against violence in the family”.*<sup>78</sup>

However, the reality is different. The State report to CEDAW acknowledged difficulties *“encountered in the efforts to eliminate sexist stereotypes”* including

***“The inability of the State to ensure application of the legislation punishing domestic violence, and the limited conception of the scope of possible action, which makes it difficult to tackle the problem in a comprehensive manner.”***<sup>79</sup>

The US State Department also highlighted that in mid 1999 *“the civilian judiciary suffered from a backlog of approximately 3,069,000 cases”* and

***“...approximately 223,000 writs for protection of fundamental rights (“tutelas”) were before the Constitutional Court for its legally mandated review. At year’s end, the CSJ reported that the judicial system was extremely overburdened; it received a total of 8.6 million suits in 1994-2000, of which 226,783 were criminal cases filed during 2000”.***<sup>80</sup>

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<sup>76</sup> US Department of State, (2002) op. cit.

<sup>77</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

<sup>78</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

<sup>79</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

<sup>80</sup> US Department of State, (2002) op. cit.

In its concluding comments, the Committee expressed its concern

***“that, despite the efforts that have been made, the Government’s ability to ensure compliance with the rules providing for punishment for domestic violence is restricted”.***

It then recommended, *“effective measures be taken to ensure compliance with the law”*.<sup>81</sup>

Law 294 of 1996 provides a mechanism for judges to protect women who are suffering from domestic violence.

*“Family- or civil-court judges can issue several forms of protective orders to address domestic violence. These include: orders removing someone from the home; orders for education and therapy; orders to pay damages; and orders providing police protection. The police also have mechanisms for assisting victims of abuse aimed at preventing repetition of abusive behavior”*.<sup>82</sup>

**The reality is that protection measures under Law 294 are less than effective.**

***“Unfortunately, however, these judicial and police measures are not adequately implemented, as evidenced by the high incidence of violent acts, police officials’ lack of training, and the general unavailability of police officers to address domestic abuse issues. Furthermore, these measures do not actually protect victims from violence, and judges do not issue orders as quickly as necessary”***.<sup>83</sup>

**In addition, the legal requirement that the law on domestic violence can only be applied when there are no other offences that carry a greater penalty (see section 3.1) is likely to reinforce the existing view that domestic violence is not a serious offence.**

As with the police, **women are under-represented in the Judiciary.** The US State Department reported that

*“There is 1 female among the 23 Supreme Court justices, 1 woman among 9 Constitutional Court magistrates, and 2 among the 13 magistrates of the Superior Judicial Council.”*<sup>84</sup>

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<sup>81</sup> CEDAW Concluding Observations, op. cit. para. 373-374

<sup>82</sup> Center for Reproductive Law and Policy (CRLP), (1999) *Women’s Reproductive Rights in Colombia: A Shadow Report*, Available at: [www.crlp.org/pdf/SRcolumbia99en.pdf](http://www.crlp.org/pdf/SRcolumbia99en.pdf), p.20

<sup>83</sup> CRLP, (1999) op. cit. p.20

<sup>84</sup> US Department of State, (2002) op. cit.



In the context of wider societal attitudes to domestic violence, the lack of women in the judiciary could have an influence on the treatment of domestic violence and sexual abuse cases by the courts. Similarly, it is liable to affect the perception of court treatment of domestic violence cases, thereby impacting on women's confidence in the process and the numbers of women reporting abuses to the authorities.

#### **4.4 Other support services**

The 1999 report of the Special Rapporteur on Violence against Women stated

***“The Special Rapporteur is encouraged to note the establishment in 1996 of the National Directorate of Equity for Women, which is charged with creating policies to combat violence against women, generally, and domestic violence, specifically.”***<sup>85</sup>

The State report to CEDAW listed among the factors assisting the National Directorate/Office in its work

***“\* The existence of a basic body of knowledge about women and the obstacles to their advancement.***

***\* The experience of women's organizations and NGOs”.***

However, it noted among the difficulties hindering work

***“\* The shortage of human and financial resources, which affects the capacity of the National Office and its advisory organs to provide technical assistance to the sectoral agencies and delays the mainstreaming of women's needs and interests in policies and programmes for women.***

***\* The lack of personnel specializing in the issues of equality for women.***

***\* The fact that the National Office is an advisory and not an executive agency means that it and its subsidiary organs can merely make proposals and that the implementation of proposed activities depends exclusively on the attitude of other ministries and State agencies”.***<sup>86</sup>

The Committee, in its concluding comments recommended

***“...that the Government consider strengthening the role of the National Office for Equality for Women, by means of a national law raising its status to that of an autonomous body with all the requisite powers and***

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<sup>85</sup> Report of the Special Rapporteur on Violence Against Women, its causes and consequences, (1999) op. cit. para. 79. (The National Directorate of Equity for Women is described in the CEDAW report as the National Office for Equality for Women.)

<sup>86</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

resources to be able to exercise more effective influence in Colombian society”.<sup>87</sup>

The State report to CEDAW also described the practical protection mechanism, outside the legal system, for women affected by domestic violence.

*“The family commissions were created by the Minors' Code as a special means of tackling the problem of domestic violence. They perform policing functions and are organized by the municipal councils as part of the family welfare system. They are conceived as the most appropriate means of combating this kind of violence, since they have the services of lawyers, psychologists, social workers and doctors who can give immediate attention to the victims of abuse and/or the perpetrators. They also perform functions of conciliation but only with respect to family maintenance payments.*

*“The Presidential Council on Youth, Women and the Family of the 1990-1994 Government created a programme to promote the family commissions, which, once it came into operation, dealt with the training of personnel, including support for the provision of equipment and management and information systems. As a result, the number of commissions increased from two in 1990 to 180 in 1994 for the whole country. **This programme was transferred to ICBF when the 1994-1998 Government entered office, but unfortunately it has lost its initial impetus and has ceased to be implemented. At present, there is no national body supervising the family commissions.**”<sup>88</sup>*

The CEDAW report also acknowledges, in its list of problems hindering progress, **“The shortage of human and financial resources preventing the proper functioning of the family commissions”**.<sup>89</sup>

The Committee also expressed concern over this in its concluding comments, stating

***“the family commissions do not have the necessary human or financial resources to carry out their mandate and there is no systematic supervision of their work by the relevant government body. As a result, efforts to help victims are inadequate. The Committee stresses that, since a human rights issue is involved, it is the Government's responsibility to act to reduce violence against women, investigate cases and give treatment and support to the victims of violence.***

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<sup>87</sup> CEDAW Concluding Observations, op. cit. para. 366

<sup>88</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit. (ICBF is the Colombian Institute of Family Welfare)

<sup>89</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

*“The Committee recommends that effective measures be taken to ensure compliance with the law and that due attention be paid to the family commissions to enable them to carry out their functions”.*<sup>90</sup>

While legal provisions exist for protection and support of women affected by domestic violence, **the adequacy of that protection in reality is questionable.**

*“The law provides that as a temporary measure, judges can order housing for victims of domestic violence in half-way houses or shelters. Such orders, however, rarely occur because few shelters exist and most of these cater principally to minors. The shelters are usually administered by NGOs without government aid.”*<sup>91</sup>

International Women’s Rights Action Watch reports that

***“While the law represents a positive development, the practical effects have been negligible. NGOs report that violence and its consequences are the main cause of deaths of women 15-44 years old. They charge that the government has not followed through on its commitments to address the problem. According to Profamilia, this is a result of the lack of free or low-cost legal assistance, as well as the lack of government-sponsored shelters for battered women”.***<sup>92</sup>

The US State Department report examined services provided by the Colombian Institute of Family Welfare (ICBF), stating

***“The ICBF conducted programs and provided refuge and counseling for victims of spousal abuse; however, the level and amount of these services were dwarfed by the magnitude of the problem. For example, ICBF’s 530 family ombudsmen handle approximately 1,160 cases per year”.***<sup>93</sup>

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<sup>90</sup> CEDAW Concluding Observations, op. cit. para. 373-374

<sup>91</sup> CRLP, (1999) op. cit. p.20

<sup>92</sup> IWRAW, (1997) op. cit.

<sup>93</sup> US Department of State, (2002) op. cit.



## 5. The situation of separated or divorced women

### 5.1 The consequences of conflict and internal displacement

The armed conflict within Colombia has a substantial impact on a widespread area of the country. The US State Department reported in 2000

*“The FARC and the ELN, along with other smaller groups, exercised a significant degree of territorial influence and initiated armed action in nearly 1,000 of the country’s 1,085 municipalities during the year, which was approximately the same level as in 1999”.*<sup>94</sup>

The conflict has resulted in large numbers of internally displaced people. Human Rights Watch stated

***“Forced displacement continued to increase, with at least 300,000 Colombians reported displaced in 2001, the highest number ever in a single year”.***<sup>95</sup>

The UN Representative of the Secretary-General on internally displaced persons said in a report on Colombia in 2000

***“...displacement in Colombia is not merely incidental to the armed conflict but is also a deliberate strategy of war. Indeed, rarely is there direct confrontation among armed groups (that is, the paramilitaries, guerrilla groups, and the armed forces/police). Rather, these armed groups attempt to settle their scores by attacking civilians suspected of being associated with the “other” side, and they do so with such severity as to leave those whose physical security is threatened with no choice but to flee.***

***“Yet, the threats to physical security which the displaced flee to escape often only follow them into the communities in which they seek refuge. The very fact of having fled typically only heightens suspicions of allegiance with a particular armed actor and intensifies the risk of being targeted. Stigmatized and fearing for their lives, many of the displaced seek safety in anonymity, attempting to blend into the communities of urban poor. Having abandoned their homes, property and livelihood for conditions of destitution and continued insecurity, they constitute an extremely vulnerable segment of society. At the same time, displaced persons have begun to organize to defend their rights, but the leaders of their organizations and those of the local non-governmental organizations who try to help them are increasingly being targeted and killed by armed groups”.***<sup>96</sup>

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<sup>94</sup> US Department of State, (2001) op. cit.

<sup>95</sup> Human Rights Watch, (2002a) op. cit.

<sup>96</sup> Report of the Representative of the Secretary-General on Internally Displaced Persons, (2000) *Profiles in displacement: Follow-up mission to Colombia*, UN Doc. E/CN.4/2000/83/Add.1, Available at: [www.unhcr.ch](http://www.unhcr.ch), para. 2-3

**Often people are displaced more than once and the internally displaced are some of the poorest in the country.**

*“Patterns of flight continue to be predominantly from rural to urban areas. Moreover, in a phenomenon known as “intra-urban displacement”, displacement to urban areas tends to occur incrementally, as continued threats to their physical security and inadequate responses to their assistance needs compel the displaced to flee from smaller cities to increasingly larger centres. A large number ultimately make their way to Bogotá... Within the cities, **the displaced tend to be concentrated in the slums and shanty towns, where they find themselves among the poorest of the urban poor**”.*<sup>97</sup>

**Internal displacement has a disproportionately severe impact on women in Colombia.** The Representative of the Secretary-General on internally displaced persons noted that

*“**Women and children continue to make up the vast majority – approximately 80 per cent - of the displaced. Some 58 percent of the internally displaced are women while 55 per cent are under 18 years of age... An estimated 36 to 39 per cent of displaced households are headed by women**”.*<sup>98</sup>

The IACHR reported that

*“...data compiled by the Office of the Human Rights Ombudsman reveals that: **approximately 34,125 Colombian women are the heads of an equal number of homes displaced by the violence, with the responsibility of feeding, educating, and raising more than 170,000 boys and girls, and 74.60% of them are widows or were abandoned during the process of displacement.**”*<sup>99</sup>

In its concluding comments the Committee stated that it

*“...notes with concern the persistence of widespread violence as a result of the armed conflict in the country. **Women are the principal victims and there are tens of thousands of displaced women and female heads of household who lack the resources needed for their survival in a situation in which they are called upon to assume greater responsibilities, both reproductive and productive, towards their families and communities**”.*<sup>100</sup>

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<sup>97</sup> Report of the Representative of the Secretary-General on Internally Displaced Persons, (2000) op. cit. para. 33

<sup>98</sup> Report of the Representative of the Secretary-General on Internally Displaced Persons, (2000) op. cit. para. 32

<sup>99</sup> IACHR, (1999) op. cit. Chapter XII, para. 36

<sup>100</sup> CEDAW Concluding Observations, op. cit. para. 358

## 5.2 Discrimination

### 5.2.1 Introduction

The Government report to CEDAW highlighted, as a factor impeding the implementation of the Convention

*“The persistence of moral prejudices against the various ways in which the institution of the family is now organized, despite the fact that the Constitution recognizes and protects such arrangements in Colombian society”.*<sup>101</sup>

**This discrimination for reasons of family situation occurs on a number of different fronts, against de facto marriages, civil as opposed to religious marriages and against the internally displaced. It also has a more severe impact on women.**

### 5.2.2 De facto marriages

The State report to CEDAW noted that, in 1990

*“...legal recognition was accorded to de facto marriages, which had previously given rise to economic discrimination between men and women, and legislation was introduced to regulate the property of a man and woman living permanently together by establishing their equality of rights with respect to property acquired during the union”.*<sup>102</sup>

However, despite the equality of marriage and de facto partnerships in law, the report also stated

***“Discriminatory attitudes persist in practice towards couples who decide to live in a de facto marriage; such discrimination has a greater impact on the women and their children owing to the traditional culture which supports legal marriage and persecutes them for “immoral behaviour” when they decide to form natural unions”.***<sup>103</sup>

### 5.2.3 Marriage and divorce

By law, marriage must be entered into with the full consent of the couple. Under the age of 18, permission must be given by the parents of the couple. The minimum age of marriage is 14 for boys and 12 for girls.<sup>104</sup> Forms of marriage are civil marriages or religious marriages. Since 1991, these forms have had equal status in law (see section 5.3 for further details). However, the CLADEM report stated **that the strong influence of Catholicism means that religious marriages are “given a higher value” than civil marriages.** This results in greater difficulties for women wishing to dissolve religious marriages for reasons of *“conjugal violence, irresponsibility, infidelity, or any*

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<sup>101</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

<sup>102</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

<sup>103</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

<sup>104</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

*other cause, since as a sacrament, the Church maintains it cannot be dissolved*".<sup>105</sup>

**Discrimination exists against divorced and separated women.** In an Australian case, a divorced woman stated that in Colombian male-dominated society, **a single mother was a target for many types of harassment, including sexual violence.** She stated that single mothers are seen by men as *"simple to get"*, and gave examples of occasions where she could not get a job because she refused sexual relations with the employer. The court accepted that single mothers suffer discrimination in Colombia; however, on the facts of the case did not accept that the discrimination suffered amounted to persecution.<sup>106</sup>

#### **5.2.4 Internally displaced persons**

There is discrimination against internally displaced persons in many aspects of everyday life. **The mere fact of being displaced "tends to heighten suspicions of their sympathies towards one party to the conflict or another and thereby to intensify their risk of being targeted"**.<sup>107</sup> **Many women suffer this discrimination on two fronts, firstly because they are internally displaced and secondly as single or separated women.** As already stated, 36-39% of internally displaced households have a woman head.

Law 387 states that the Government is to provide three months of humanitarian assistance to the displaced; however, in practice large numbers do not receive assistance.<sup>108</sup> To access Government assistance, internally displaced persons must have "certification" documents. This is problematic for a number of reasons. Firstly, owing to suspicion of the displaced, many are afraid to request certification and admit to being displaced. Secondly, the process of receiving certification may require the displaced to provide identification documents that were lost during flight or do not exist. **Women are disproportionately disadvantaged by the requirement of certification.** The report on Colombia by the Special Representative on internally displaced persons stated

***"According to official figures, only 17.64 per cent of internally displaced women possess some sort of personal documentation, compared with 60 per cent of men"***.<sup>109</sup>

**This has a severe impact on the ability of displaced women to access the limited humanitarian assistance available from the Government and**

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<sup>105</sup> CLADEM, (1998) op. cit. p.54

<sup>106</sup> Refugee Review Tribunal, (1998a) RRT Reference: N97/18553, 20 October 1998, Sydney, Australia, Available at: [www.austlii.edu.au/au/cases/cth/rrt](http://www.austlii.edu.au/au/cases/cth/rrt)

<sup>107</sup> Report of the Representative of the Secretary-General on Internally Displaced Persons, (2000) op. cit. para. 73

<sup>108</sup> Report of the Representative of the Secretary-General on Internally Displaced Persons, (2000) op. cit. para 79. In 1997 only 54% of internally displaced persons received some form of assistance.

<sup>109</sup> Report of the Representative of the Secretary-General on Internally Displaced Persons, (2000) op. cit. para 81



could have especially serious consequences for displaced women who are head of household.<sup>110</sup>

### 5.3 The consequences of divorce

Divorce has been available for civil marriages since 1976 and for religious marriages since the law was amended in 1992. The State report to CEDAW noted

*“The grounds for divorce apply equally for men and women, and they were expanded to include the common consent of the spouses and their de facto physical separation for more than two years.*

***“However, the spouses are required to act through intermediaries in divorce proceedings; this increases the costs and makes access to justice more difficult, especially for poor couples.”<sup>111</sup>***

The report also stated that

*“...although the number of divorce petitions has increased since the new law came into force, this does not mean more conflict in the family but simply that a legal solution has been found to the previous situation of de facto separations, especially in the case of Catholic marriage.*

...

*“In fact, the commonest ground for divorce is de facto physical separation for more than two years, and 70 per cent of the petitions are for divorce by common consent, indicating that a large majority of couples prefer an amicable and pacific agreement, which had been impossible before the new legislation came into force.”<sup>112</sup>*

However, CLADEM highlighted that

*“...many couples start a litigious process with the purpose of obtaining divorce and when they get to the part of “conciliation” demanded by law, this process changes from litigious into “an agreement”, so as to overcome paperwork and decrease costs.”<sup>113</sup>*

Overwhelmingly, the mother gets custody of the children after a divorce. According to the State report to CEDAW

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<sup>110</sup> See section 5.5 for more detailed information on the economic situation of internally displaced women.

<sup>111</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

<sup>112</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

<sup>113</sup> CLADEM, (1998) op. cit. p.59

***“82 per cent of the minor children of divorced couples are entrusted to the care of their mother, as against only 14 per cent entrusted to the father and four per cent to some other person”.***<sup>114</sup>

## **5.4 Property rights**

The State report to CEDAW described the legal rights of women to property

***“...the law assigns the management of the household jointly to the husband and wife. Both may freely administer and dispose of their property, and in the event of termination of their cohabitation each is assigned half of the assets and liabilities of the marriage”.***<sup>115</sup>

**However**, the reality of the situation does not equal the legal provisions.

***“Even though the law established equal rights for the members of the couple, most of the real estate goods are in charge of men, and it is they who administrate them and dispose of them, even against the woman’s will”.***<sup>116</sup>

**In 1996 a law was introduced with the aim of providing women with more protection in property matters.**

*“Law 258 of 1996 stipulates, for the purposes of protecting the family home, that immovable property used as the family home may be alienated or encumbered only with the consent by signature of both spouses. The purpose of this legislation is to protect women, since for them the home constitutes an area of family stability. Therefore, the legislation has a positive effect by preventing a man from disposing of the home unilaterally and without considering the position of his wife.*

*“However, it must be remembered that there are increasing numbers of women heads of household, and that in such cases this measure creates difficulties precisely because the woman is head of the household owing to the abdication of his responsibilities by her husband or companion, who would reap the benefit of the law. In such an eventuality, if a woman wishes to dispose of the property she may take legal proceedings to have its designation as the family home revoked”.*<sup>117</sup>

This **only** applies to the family home and **not** to other property thereby the law does

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<sup>114</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

<sup>115</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

<sup>116</sup> CLADEM, (1998) op. cit. p.58

<sup>117</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

***“...not solve the problem of insolvency and bad investing of the family’s goods by the husband in detriment of his wife, since the double signature is requested only in real estate destined to family housing”.***<sup>118</sup>

Legally, since 1990,

*“...the economic situation of a woman living permanently with a man is equal to that of a married woman since she is entitled to half of the property of the de facto marriage in the event of its dissolution or the death of her companion”.*<sup>119</sup>

CLADEM noted that

*“...for the effect of this law it is necessary to prove the de facto union and that a judge declare its existence, so that the liquidation of goods can be performed. In marriage, the civil register proves its existence”.*<sup>120</sup>

## **5.5 Economic security**

### **5.5.1 Economic consequences of divorce or separation**

As stated in previous sections discrimination against women affects their economic situation. **Women receive significantly lower wages than men, their employment tends to be concentrated in “traditional” spheres and at lower levels of influence and the unemployment rate for women is higher than that of men. This, combined with additional discrimination associated with societal attitudes towards marital breakdown, leaves divorced or separated women in a disadvantaged economic position.**

The CLADEM report quoted statistics giving the overall percentage of households headed by a woman as 25%. When looking only at poorer homes, this figure rises to 36%.<sup>121</sup>

As already stated, following divorce, women get custody of the children in 82% of cases. Theoretically, after divorce, the economic burden of supporting the children should be shared between both parents. However, the State report to CEDAW noted

*“...that the husbands frequently fail to comply with the order and move away from the home because they do not have custody of the children or have set up another home, and **that consequently the wives end up bearing the whole cost of maintaining and caring for the family.** They also pointed out that sometimes the weight of this burden leads a wife to accept a reconciliation against her will, a new and hasty relationship, or a situation which impairs her self-esteem. This prompts*

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<sup>118</sup> CLADEM, (1998) op. cit. p.58

<sup>119</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

<sup>120</sup> CLADEM, (1998) op. cit. p.56

<sup>121</sup> CLADEM, (1998) op. cit. p.61

*the conclusion that it is the men who retain power and control over the relationship by controlling the economic situation”.*<sup>122</sup>

The report also highlighted, as one of the difficulties impeding the implementation of the Convention,

*“The lack of effective machinery to enforce court decisions, in particular with respect to maintenance and family visits”.*<sup>123</sup>

### **5.5.2 Economic consequences of internal displacement**

**This situation of economic insecurity would be exacerbated if a woman were to return, not to her original place of residence, but to a part of Colombia where she would then be internally displaced.**

The UN Representative on internally displaced persons reported that

***“For the displaced, the search for work is further complicated by the stigma and suspicion associated with their situation and their frequent lack of education and urban job skills. The type of income-generating activities in which internally displaced persons engage tend to be low-paying, temporary jobs with few or little social benefits such as construction work for men and domestic work for women. Sexual abuse suffered by housemaids is considered to be widespread. Street vending of items such as food, trinkets or housewares is common among the displaced but brings only meagre earnings. Large numbers of displaced women and young girls reportedly find that they have no alternative but to resort to prostitution”.***<sup>124</sup>

For internally displaced women left with sole responsibility for their family, the lack of opportunities for employment in order for them to meet their subsistence needs has a devastating impact on their standard of living and the lives of their children.

The report of the UN representative on internally displaced persons stated

***“Internally displaced women noted health needs as among their main concerns. Without certification, they face difficulties in accessing public health-care services and even with it they report facing discrimination on account of their being displaced. Only 20 per cent of displaced children have access to medical assistance.***

...

***“Those displaced also noted that even when they have access to medical attention, they lack the money to buy medication.”***<sup>125</sup>

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<sup>122</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

<sup>123</sup> CEDAW, (1997) *Fourth Periodic Report*, op. cit.

<sup>124</sup> Report of the Representative of the Secretary-General on Internally Displaced Persons, (2000) op. cit. para. 94

<sup>125</sup> Report of the Representative of the Secretary-General on Internally Displaced Persons, (2000) op. cit. para. 86-87

The exclusion of internally displaced women from employment opportunities has adverse consequences for their family's future, often forcing their children to contribute to family survival instead of attending school.

*“Particularly glaring is the fact, reported by the Defensoría del Pueblo and confirmed by local and international NGOs, **that only an estimated 15 per cent of internally displaced children receive some form of education.** This low attendance rate is due to a number of factors. Internally displaced families find that they are not able to afford the cost of books and uniforms; though the amount may be small - the figure of \$5 or \$10 was mentioned - this is money that they simply do not have. Another explanation is **that the desperate economic situation of the displaced compels a large number of displaced children to enter the informal labour market, including prostitution.** A further impediment is the lack of teachers, who, it was noted above, are among the targets of “political cleansing”. The discrimination that internally displaced persons face also deters children from attending school: one woman recounted that her son was told by his teacher ‘no wonder you are so stupid - you are a displaced’.”<sup>126</sup>*

Internally displaced persons are often put under indirect pressure to return to their original area, with little or no consideration given as to whether it is safe for them to do so. The report of the UN representative on internally displaced persons stated

*“Regarding durable solutions for the internally displaced, **it should be noted that the focus of government efforts to date has been on return, without adequate attention to the alternative of resettlement.** Indeed, law 387 limits its discussion of durable solutions to return. On the question of voluntariness, it must be noted that the internally displaced generally are not being directly forced to return. However, they often are subject to indirect pressure from the authorities in their host community or feel compelled to return out of sheer desperation stemming from the insufficient protection and assistance they receive, which leaves them feeling that they have no choice but to return. Furthermore, **in a number of cases internally displaced persons have been encouraged to return on the basis of assurances made by the authorities that their physical safety would be protected, only to discover, with tragic results, that this was not the case.***

...

*“The Representative was told of a number of cases where displaced communities had attempted to return to their places of origin, even though minimum conditions of security existed in these areas and the*

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<sup>126</sup> Report of the Representative of the Secretary-General on Internally Displaced Persons, (2000) op. cit. para. 91

*causes which had given rise to their displacement clearly had not been eliminated.*

...

*“Absent guarantees for their physical security, it is not uncommon for returning displaced persons to be displaced anew, a second, and sometimes a third time.”<sup>127</sup>*

The UN representative reported examples of 2 cases where displaced communities had returned to their original area and subsequently the leaders of the community were murdered by paramilitary groups as a warning to the rest of the community. The report stated

*“In both cases, the return processes had occurred in accordance with an agreement between the displaced and the Government which had committed itself in writing to guarantee the returnees’ safety.”<sup>128</sup>*

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<sup>127</sup> Report of the Representative of the Secretary-General on Internally Displaced Persons, (2000) op. cit. para. 98-99

<sup>128</sup> Report of the Representative of the Secretary-General on Internally Displaced Persons, (2000) op. cit. para 100

## 6 Case law

### 6.1 Australia

RRT Reference: V97/06529, 17 March 1998

The applicant was subjected to domestic violence by her husband. She approached the police on a number of occasions; however, they failed to take effective action to protect her. Subsequently she divorced and remarried. Her asylum claim was based on her persecution *“for reasons of her membership of a particular social group, that is, ‘women subjected to domestic violence in Colombia’”*. Her former husband continued to harass her; *“He had threatened her often and she believed that he would never leave her alone, even though she was no longer married to him and had been separated from him for years”*. By the time of the hearing, her second marriage had broken down.<sup>129</sup>

The adjudicator accepted that the treatment she had suffered amounted to persecution but stated that

*“The question of whether this was persecution for a Convention reason requires more debate. The leading Australian case on this vexed matter is that of Applicant A & Anor v MIEA & Anor, determined in the High Court on 24 February 1997. The Court observed that a particular social group may be “...a collection of persons who share a certain characteristic or element which unites them and enables them to be set apart from society at large. That is to say, not only must such persons exhibit some common element; the element must unite them, making those who share it a cognisable group within their society. Moreover the characteristic or element which unites the group cannot be a common fear of persecution. Rather the group must exist independently or, and not be defined by, the persecution.” (per Dawson J at 13 McHugh J at 38-39, Gummow J at 63-64)*

...

*“On some previous occasions, the Tribunal has determined that “women subject to domestic violence in X country” is a particular social group. That cannot stand in the light of the High Court judgement. The Court majority held that the element unifying the group cannot be a common fear of persecution. (see Dawson J at 13). This extracts subject to domestic violence’ from the particular social group as it is the domestic violence itself which is persecutory. This leaves variations on the group as women’, married women’ or women of X country’. There may be some countries where legislation or custom so defines women that they indeed do form a group. There are countries where women, by law, are not admitted to the political sphere and/or have no rights to property and self-identity. I am not satisfied that this is the case in Colombia. There are very real variations between women, based on class and wealth. Some women are more equal than others. Most*

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<sup>129</sup> Case summary by RWRP.

legislation applies equally to women as to men. Both vote in elections. The Constitution specifically prohibits discrimination based on race, sex, religion, disability, language or social status. (see US Country Reports, op. Cit. 1997) The Constitution also requires the authorities "to guarantee adequate and effective participation by women at decision making levels of public administration. Even prior to implementation of the 1991 Constitution, the law had provided women with extensive civil rights." (p.403)

"I accept the submission made by the Applicant that the reality often falls far below the constitutional promises. However, for the purposes of deciding whether the Applicant is a member of a particular social group, the existence of non-discriminatory laws and regulations must be taken into account. The customs which defined women differently from men have been legislatively diminished in Colombia to the extent that I am satisfied that women do not constitute a group as interpreted in the above extracts from the High Court's opinion in Applicant A. It is insufficient that they have sex and gender in common.

...

**"DECISION**

*The Tribunal affirms the decision not to grant a protection visa.*"<sup>130</sup>

## **6.2 New Zealand**

While the asylum claim in the following extract is not based on gender-related persecution or domestic violence, it shows that gender was a factor in the decision that an internal flight alternative (IFA) was not a reasonable possibility.

***"Well-founded fear - genuine fear - real chance test satisfied***

***Persecution - the appellant's father regularly provided money and food to the Revolutionary Armed Forces of Columbia (FARC) - on one occasion he was unable to satisfy FARC demands and two of the appellant's sons took additional supplies to the appellant's father's home for them - FARC burnt down the home of the appellant's father, killing the appellant's mother, sister and sons - the appellant and the remainder of her family are on a FARC blacklist - the appellant fears death at the hands of FARC***

***For reasons of - political opinion - imputed political opinion***

***Internal flight alternative - meaningful protection not accessible - relocation not reasonable given the appellant's age, gender, health, social vulnerability and family situation***

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<sup>130</sup> Refugee Review Tribunal, (1998) RRT Reference: V97/06529, 17 March 1998, Sydney, Australia, Available at: [www.austlii.edu.au/au/cases/cth/rrt](http://www.austlii.edu.au/au/cases/cth/rrt)



***Women - the appellant's gender was one factor supporting the Authorities determination that relocation was not reasonable***

***Medical report - psychiatric/psychological report - post-traumatic stress disorder - consistent with the appellant's account***

***Columbia - extensive discussion of country information - consistent with the appellant's account***

***Columbia – allowed***<sup>131</sup>

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<sup>131</sup> New Zealand Refugee Law, (1999), Refugee Appeal No. 71564/99, 14 October 1999, New Zealand, Available at: [www.refugee.org.nz](http://www.refugee.org.nz)



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## Appendix A

### Home Office Country Information and Policy Unit, October 2001: Country Assessment, Colombia

#### **"5B. Human Rights: Specific Groups**

##### **i) Women**

**B.1** The 1991 Colombian Constitution prohibits any form of discrimination against women and the authorities are required to "...guarantee adequate and effective participation by women at decision-making levels of public administration". However, discrimination persists in practice. Women in non-agricultural employment are paid 85% of what men in comparable employment are paid. The U.S. State Department Report for 1996 suggested that women applying for jobs must be able to demonstrate that they are better qualified than men for the same position if they are to be successful. A high proportion of those in very low paid jobs are women [3a].

**B.2** Rape and other violent crimes against women are common in Colombia and these offences are rarely prosecuted successfully. When prosecutions do proceed sentences for sexual abuse range from 6 months - 8 years, although these may be reduced as a result of 'good behaviour'. It must be noted, however, that police may not legally detain an individual for sex abuse unless it was committed in conjunction with other crimes. Until recently there was no provision for spousal abuse. In July 1996 a law was passed by President Samper (Law 294) relating to family violence. In this was a provision for action against acts of spousal sexual violence, introducing sentences of between 6 months and 2 years for offenders (section 25). [3a] Mistresses are not held to be protected under section 25, except in cases where the woman has had a child with the perpetrator. [20w] This law also allowed for immediate protection for victims of family violence from physical or psychological abuse, as well as for judicial authority to remove the abuser from the household. Protection under law 294 is extended from married couples or permanent partners (los conyuges o companeros permanentes), to male and female heads of household, regardless of whether or not they live in the same dwelling (el padre y madre de familia, aunque no convivan en un mismo hogar), to younger or older relatives, including adopted children, to all other persons who have become part of the family unit on a permanent basis (todas las demaas que de manera permanente se hallaren integrados a la unidad domestica). [3a,20w]

**B.3.** A 1997 law also made additional, substantial modifications to the Penal Code and introduced sentences of between 4 and 40 years for crimes against sexual freedom or human dignity, including: rape, sex with a minor, sexual abuse, induction into prostitution and child pornography. The law also repealed an old law that fully exonerated a rapist if he subsequently offered to marry the victim and she accepted. [3d]

...

##### **v) Freedom to Travel/ Internal Flight**

**C.32.** In general there are no restrictions on citizens' rights to travel either domestically or abroad. Travel may be restricted when police or military operations are in place in particular areas, however, and an outsider may only enter an Indian reserve by invitation [3b].

**C.33.** 5,000 Colombians crossed the border into Venezuela to escape the threat of paramilitary violence in North Santander, including a first wave of around 2,200 in one week in June 1999. Later that month, the Colombian and Venezuelan governments agreed to establish a joint mechanism to prevent and handle any future exodus. They are expected to establish the mechanism with the help of appropriate agencies, including international humanitarian organisations.[15r]

**C.34.** It was reported in July 1999 that, for the first time and because of the escalating violence and deepening financial crisis, wealthy and middle-class Colombians are exiting the country in large numbers. The US Embassy in Bogota was described as inundated with visa applications. An estimated 65,000 Colombians left the country in the first 4 months of 1999. **[15ad]**

### **Internal Flight**

**C.35.** Colombia's topography splits the country into very distinct regions and the people in this relatively sparsely populated country (31.4 per sq. km) are closely identified with those regions **[2a]**. Many of those deemed to have been displaced simply leave their plots and/or villages and do not register with the authorities or NGOs out of a combination of fear and ignorance. There are parts of Colombia that may continue to be considered relatively safe (where there are no coca, oil or banana interests), but an individual may come to adverse attention merely by moving from one area to another. There are occasions when internal flight might solve an individual's problems but people do live in a state of fear and some of them may feel that they have little choice but to leave the country **[7a]**.

**C.36.** The Colombian government has publicly recognised the gravity of the problem of displaced persons and is seeking solutions to it. However, it was reported on 29 November 1998 that almost a quarter of a million people were forced to flee their homes in the first nine months of 1998 to escape the political violence of Colombia's civil conflict. The report stated that this figure is equivalent to about 25 percent of the total number of displaced civilians officially reported in the last 10 years, making 1998 one of the worst years on record for internal refugees. The summary, which came from the independent Consultancy on Human Rights and Forced Displacement (Codhes), said that 241,312 people from 48,000 separate families had abandoned their homes by the end of September 1998. No comparison was given for the same period last year. It also claimed that Colombia's displaced people rarely live in refugee camps, except for brief periods immediately after leaving their homes, but stay with relatives elsewhere or flock to the shanty towns that ring Bogota and other large cities. **[3d]** The US State Department Report for 1998 stated that the total number of internally displaced citizens during 1995-98 probably exceeded 750,000. **[3d]**

**C.37.** Official and unofficial estimates of displaced people vary between 400,000 (official Colombian government estimate) to 1.6 million (various human rights organisations) on differing bases **[16b,31a]**. Between 8 million to 11.5 million people have relocated over past 40 years, with a large unspecified contingent moving because of violence **[16b,31a]**. A private monitoring group, the Consultancy for Human Rights and Displacement, have quoted figures for 1999 as 288,000 people displaced by armed groups, with guerrillas blamed for 28 percent of cases, and unknown groups responsible for a further 16 percent. **[11q]** The government estimate of the homeless is of 700,000 people **[16b]**.

**C.38.** The government operates a card scheme for benefits that is fully transferable around the country. However the UNHCR alleges that refugees are targeted on the basis of the card. They call for its abandonment and greater access for international organisations to assist in administering relief **[31a,31c]**. Likewise, refugee camps / organised areas are targeted as well, creating a flee to shanty towns - known as "rings of misery" - around large cities **[31a]**. The International Monetary Fund has reached an agreement with the government to alleviate the problem **[31e]**.

**C.39.** The UN World Food Program launched an appeal for internally displaced in Colombia, announced on 17 November and was due to start in February 2000, but has been delayed because lack of contributions. **[16bu]**.

**C.40.** On 11 August 2000, the UNHCR opened an office, its fourth, in Putumayo Department. The Colombian and US governments estimate that as many as 10,000



refugees may flow through Putumayo and Caqueta Departments once the push into southern Colombia commences. [17ft]

**C.41.** In June 2000, Amnesty international produced a report into the displaced communities of Uraba and Medio Atrato region. The report investigated the dynamics at the heart of Colombian displacements, citing the example of the community of San Jose de Apartado, a group of 32 villages in Apartado municipality, Antioquia Department, and the communities of the Medio Atrato. [4j]

**C.42.** Law 387 of 1997 is the legislation recognising the Colombian Government's responsibility to prevent forced displacement, and to provide protection for the forcibly displaced. The report argues that the laws are poorly [sic] implemented, and little provision is given to the displaced, e.g. only 20 percent of displaced children had access to medical assistance and only 15 percent were registered for schooling. [4j]

**C.43.** The number of people displaced in the year 2000 was placed officially on 24 January [sic] 2001 as 126,000. Independent agencies put the figure at around 300,000. Sixty percent of the displacements were attributed to the actions of the paramilitaries. [18p]

**C.44.** One commentator has suggested that the desplazados (the displaced) are a challenging issue for the security forces as much as the government. Firstly, the external flows of Colombians are causing border control problems, and secondly, the security forces are being obliged to reform to ensure sufficiency of protection is extended to displaced populations as NGOs increasingly point to lapses and failures of protection, citing the massacres of Mapiripan (July 1997), Barrancabermeja (May 1998), and La Gabarra-Tibu (August 1999). [8d]"



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# DEMOCRATIC REPUBLIC OF CONGO

## 1. Introduction

### 1.1 Political background

The Democratic Republic of Congo (DRC) remains in 2002 in a state of civil war, with less than half of the territory under government control, with millions of displaced persons and in the midst of a humanitarian crisis. Attempts to facilitate talks in South Africa between the warring parties (the 'Inter-Congolese Dialogue') were ongoing as at March 2002.<sup>1</sup>

The volcanic eruption in Goma in January 2002 added to the problems faced in the country, with 40% of the town destroyed and tens of thousands of people made homeless.<sup>2</sup>

Much of the reporting on the country focuses therefore on the conflict, political and humanitarian issues, and few studies have looked at the situation of women in particular, making specific information on the situation facing women experiencing domestic violence difficult to find. It is important to note that women's position in the DRC cannot be viewed apart from the broader political, social and economic context, which is by all accounts desperate for the majority of the population.

Human Rights Watch summarised political developments in 2001 as follows:

*"With the accession of Joseph Kabila as president of the Democratic Republic of Congo (DRC), hopes were raised in January for an end to the disastrous war that has cost more than two million lives. **During the four years of war, all parties routinely attacked civilians, killing, raping, and maiming thousands. Hundreds of thousands of civilians died of hunger, diseases, or exposure as a result of the war.** Belligerents this year implemented some terms of the 1999 Lusaka Accords meant to end the war: troops disengaged along the front lines, some Ugandan and Rwandan government soldiers returned home, some 1,500 Rwandan rebels laid down their arms, and United Nations troops (U.N. Organization Mission in Congo, MONUC) began monitoring compliance with the accord. But late in the year fighting still raged almost daily in the eastern provinces and the inter-Congolese dialogue among Congolese actors about the future of their country was suspended days after it began. The DRC government, supported by Zimbabwe, Angola, and Namibia, controlled the western half of the country. Rebel movements, the most important being the Congolese Rally for Democracy (RCD), backed by Rwanda, and RCD-Kisangani and the Movement for the Liberation of the Congo (MLC), both backed by Uganda, controlled the east. **The Congolese government and***

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<sup>1</sup> See United Nations Office for the Co-ordination of Humanitarian Affairs (OCHA), Integrated Regional Information Networks (IRIN) at [www.irinnews.org](http://www.irinnews.org) for up-to-date information

<sup>2</sup> BBC News On-Line, 23/1/02

[http://news.bbc.co.uk/1/hi/english/world/africa/newsid\\_1778000/1778107.stm](http://news.bbc.co.uk/1/hi/english/world/africa/newsid_1778000/1778107.stm)

**rebel authorities declared support for political openness and Kabila implemented some reforms, but all continued to limit dissent and harass and punish journalists and human rights defenders.**

[...]

**“President Kabila, chosen by consensus among leading domestic and foreign players rather than by any constitutional mechanism, inherited autocratic powers from his father, the late President Laurent-Desiré Kabila. According to Decree Law No. 3 of 1997, all executive, legislative, and judicial powers rest in his hands. Kabila promised human rights reforms but delivered relatively little. He did impose a moratorium on the execution of death sentences in March which was still in effect in late November and in May he began demobilizing child soldiers from the Congolese army. But the security agencies continued the numerous abuses for which they were notorious in the past.”<sup>3</sup>**

## **1.2 Human rights practice**

Widespread human rights abuses continue throughout the country, according to all reports found.

Amnesty International gives the following information in its 2001 report:

*“War continued to ravage the Democratic Republic of the Congo (DRC). Thousands of civilians were unlawfully killed and tens of thousands more, displaced from their homes and cut off from humanitarian aid within the DRC, were facing starvation by the end of 2000. Tens of thousands fled to neighbouring countries. Torture, including rape, was widespread. All sides used the war to justify the repression of political dissent and the imprisonment of opponents was routine. At least 35 executions were carried out by the DRC government. The armed opposition also carried out executions.*

[...]

***“Deliberate reprisals against the civilian population were a common reaction by all sides to military setbacks and many unarmed civilians were extrajudicially executed in revenge attacks. There were also many rapes. By the end of 2000 as many as two million civilians were internally displaced and unable to support themselves. Many were facing starvation.***

[...]

*“Areas under government control*

*Political prisoners*

***A law passed in 1999, which effectively amounted to a ban on opposition parties, led to the imprisonment of prisoners of conscience and the repression of political activity. A presidential amnesty for political prisoners announced in February led to the***

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<sup>3</sup> Human Rights Watch (2002), *World Report 2002*, New York, available at <http://hrw.org/wr2k2/africa3.html>

**release of some 300 detainees from Kinshasa's central prison, the Centre pénitentiaire et de rééducation de Kinshasa (CPRK). However, some individuals who should have benefited remained in detention. Others were rearrested soon after their release and other politically motivated arrests continued throughout 2000.**

*“Torture and ill-treatment*

*Torture and ill-treatment continued to be widespread in unofficial detention centres run by the security services, where detainees were almost invariably held incommunicado. Beatings, including whippings administered with cordelettes (belts), were particularly common. Psychological torture was also frequent, with many detainees being threatened with death and some subjected to mock executions.*

*“Conditions in many detention centres were appalling and constituted cruel, inhuman and degrading treatment. Detainees were routinely refused medical care. Some detainees died as a result of torture.*

*“Unlawful killings*

*Unarmed civilians were reportedly killed by government forces as a result either of direct attacks or of indiscriminate bombings. However, it was often difficult to obtain independent confirmation of incidents in conflict zones.*

**“Areas controlled by opposition groups and foreign forces**

***The RCD factions and their foreign allies were responsible for widespread abuses in eastern DRC, in particular the unlawful killing of civilians, arbitrary arrests, unlawful detention and torture, including rape (see Rwanda and Uganda entries). Such abuses were often committed in response to attacks by armed groups opposed to the RCD-Goma, which included the Rwandese interahamwe and ex-FAR (former Rwandese government army), Congolese armed groups known as the mayi-mayi, and Burundian, mainly Hutu, armed groups. All of these groups were responsible for grave human rights abuses.***

*“Torture/ill-treatment*

*There was widespread torture, including rape, of detainees held in RCD-Goma custody.”<sup>4</sup>*

It was also noted that the government established the Ministry of Human Rights in July 1998 to protect the freedom of all citizens, but in the same year **the government announced a new policy requiring all NGOs to be vetted by the authorities (who would register them and certify their good standing)**. In fact only a few NGOs had been certified and many Congolese

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<sup>4</sup> Amnesty International (2001), *Report 2001: Congo (Democratic Republic of the)*, London, Amnesty International, available at <http://www.web.amnesty.org/web/ar2001.nsf/webafrcountries/CONGO+democratic+republic?OpenDocument>

human rights workers had since fled to neighbouring countries. **All media releasing news on human rights had been silenced.**<sup>5</sup>

Human Rights Watch notes continued concerns regarding the Military Order Court:

***“Kabila's promises to limit the powers of the abusive Court of Military Order brought no reform by late October. In November 2000, the court found former presidential security adviser Anselme Masasu and eight of his subordinates guilty of conspiracy and ordered their execution, a sentence which was carried out before the moratorium mentioned above<sup>6</sup>. In September 2001, in Katanga province, the court sentenced eight people to death and eighteen others to between five and twenty years imprisonment on charges of plotting to overthrow the government. All were said to have been tortured and to have had no legal counsel before the trial. There is no appeal to decisions by this court.”<sup>7</sup>***

A report by the United Nations (UN) Special Rapporteur, August 2001, summarises the situation as follows:

***“The various wars, especially the one started by Rwanda and Uganda in 1998, continue to leave a trail of thousands of dead and wounded, burnt-out homes, orphans and, especially, poverty in a country with tremendous mineral and agricultural wealth. The Democratic Republic of the Congo currently ranks 142nd out of 152 on the Human Development Index of the United Nations Development Programme (UNDP).***

*“Congoese throughout the country feel humiliated and abandoned, and those under foreign occupation are living in terror and insecurity.*

[...]

***“There has been no improvement in the situation of women and children.”<sup>8</sup>***

### **1.3 Democratic Republic of Congo and international legal instruments**

The Democratic Republic of Congo is a party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Covenant on Economic, Social and Cultural Rights (CESCR), the

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<sup>5</sup> United Nations (2000a), Committee on the Elimination of Discrimination Against Women, *Conflict in Democratic Republic of Congo Key Element of Anti-Discrimination Committee Discussion*. Press Release WOM/1163 – 20000125, available at Reliefweb, [www.reliefweb.int/w/Rwb.nsf/s/BDC061AB414A97E9C1256720034BE80](http://www.reliefweb.int/w/Rwb.nsf/s/BDC061AB414A97E9C1256720034BE80)

<sup>6</sup> Kabila imposed a moratorium on executions of the death sentence in March 2001.

<sup>7</sup> Human Rights Watch (2002), op. cit.

<sup>8</sup> United Nations (2001a), *Situation of human rights in the Democratic Republic of the Congo*, Report to the General Assembly, 31 August 2001, A/56/327 (E/CN.4/2001/40/Add.1, sect. IV), Geneva, available at [www.un.org](http://www.un.org)



International Covenant on Civil and Political Rights (CCPR) and its First Optional Protocol, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention Against Torture (CAT), and the Convention on the Rights of the Child (CRC). **However, many reports due to be submitted to the supervising committees remained outstanding at December 2001.**<sup>9</sup>

## **1.4 Women's human rights**

### **1.4.1 Lack of rights in a male-dominated society**

**The Democratic Republic of Congo has historically been a patriarchal society.** Jennifer Langer notes in her recent publication of testimonies of refugee women, whilst commenting that these practices varied according to tribe or region:

***"In the past, marriages were arranged and often the girl was married at or before puberty. The Bakua Lolonji who are Baluba of Kasai, stipulated that a girl had to be a virgin on marriage and in that case her mother was rewarded with a goat. There were two systems: the main one being the patriarchal custom in which the children belonged to the father. The matriarchal custom, in which they belonged to the mother, was prevalent in the West of Congo. In both cases, the woman was totally powerless. Where the children belonged to the mother, their uncle had total power over his sister's children and the uncle still plays an important role in his nieces' lives, mostly in terms of their marriages. This is beginning to disappear in the capital but is unchanged in the villages. The woman always had to sacrifice herself to the demands of her husband. In the countryside the woman was often treated like a slave and had to work ten hours a day to provide for her family. She had to sell produce to pay for her children's studies and clothes. If her children were unsuccessful, the mother would be blamed. Fidelity was non-existent with women finding out that their husband had perhaps four additional children with another woman. A man often had four or five partners in addition to his wife. Divorce was practically impossible. If life became unbearable for the woman, she left the marital home but her parents would not provide support as they were ashamed. In terms of the inheritance, males, not females, were the beneficiaries. On the death of her husband, the widow was ill-treated by her in-laws who forced her to cry continually and if she did not do so, they exposed her to the sun semi-naked. After the funeral, she was evicted and her possessions confiscated. The widow was expected to marry one of her brothers-in-law."***<sup>10</sup>

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<sup>9</sup> United Nations (2001b), *For the Record*, available at [www.un.org/fortherecord2001](http://www.un.org/fortherecord2001)

<sup>10</sup> Langer, Jennifer (2002), ed., 'Women in the Conflict in the Democratic Republic of Congo', in *Crossing the Border: Voices of Refugee and Exiled Women*, Nottingham, Five Leaves.

#### 1.4.2 Current concerns

Recent observers have also raised concerns on women's rights. The UN Committee on the Elimination of Discrimination Against Women considered the reports submitted by the DRC government on the implementation of CEDAW<sup>11</sup> at meetings in January and February 2000. They raised many criticisms including the following:

*"The principal areas of concern identified by the Committee included: remaining discriminatory provisions in the Family Code, the Penal Code and the Labour Code; inadequate resources for the national machinery and the Ministry of Social Affairs and the Family to implement their plan of action; the persistence of traditional customs and practices (e.g. dowry, polygamy, forced marriage, female genital mutilation); reports of women being raped, assaulted or severely tortured during the war; the situation of refugee and displaced women suffering from the consequences of war, and the psychological and mental trauma experienced by women and girls as a result of the forced conscription of children; the extent of prostitution, often resulting from poverty, and particularly prostitution of girls; the under-representation of women in political life and in the country's governing bodies, including those of the judicial system.*

*"Other concerns identified by the Committee were: the low rate of school enrolment of girls, their high drop-out rate and the high female illiteracy rate, especially in rural areas; de jure and de facto discrimination against women with regard to the right to work; the requirement of the husband's authorisation of a wife's paid employment and reduction of pay during maternity leave; the high rates of maternal and infant mortality, the low rate of contraceptive use, particularly in rural areas; the decline in health services; the situation of rural women; the acceptance in rural areas of customs and beliefs that prevent women from inheriting or gaining ownership of land and property; food taboos, which are not only detrimental to the health of women, especially mothers, but also have serious consequences for the health of future generations."<sup>12</sup>*

The UN Special Rapporteur stated in his report of February 2001 with regard to the government-controlled area:

*"The situation of women remained unchanged in 2000. The employment and education situation described in earlier reports has deteriorated even further as a result of the war.*

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<sup>11</sup> The UN Convention on the Elimination of Discrimination Against Women

<sup>12</sup> United Nations (2000b), Committee on the Elimination of Discrimination Against Women, *Reports to Treaty Bodies, meetings to consider the initial, second and third periodic reports for DR Congo (CEDAW/C/ZAR/1, 2 and 2/Add.1 and Corr.1, and CEDAW/C/COD/1)* : UN For the Record Volume 2, Geneva, available at [www.un.org](http://www.un.org)

***“Women have an 8 per cent rate of infection with the human immunodeficiency virus (HIV) owing to poverty, according to some sources. In the past year alone, some 20,000 new cases have been reported. This tragedy is caused not only by a lack of education, but also, and especially, by sexual contact, often under duress, with Rwandan and Ugandan soldiers, whose countries have a high rate of infection with acquired immunodeficiency syndrome (AIDS).***

***“Even though women are included in the Cabinet, the Government practices discrimination. [...] Only 24 of the 300 members appointed to the Constituent and Legislative Assembly are women.”<sup>13</sup>***

As for areas controlled by RCD forces, the same report notes:

***“The best known case of an attack on women is the incident that took place at Mwenga, where 15 women were buried alive after having been burned. Other cases include the detention of feminist activists (PAIF); the rape and beating of secondary school students who were detained for insisting that their examinations were valid in the Democratic Republic of the Congo; and repeated instances of rape of women detainees, particularly in “Chien méchant”<sup>14</sup>. Those who resist are generally beaten. Rapes by Ugandan soldiers have also been reported in Butembo, especially in Kihinga, Ruenda, Isango, Mutiri, Mukuna and Butalirya districts.”<sup>15</sup>***

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<sup>13</sup> United Nations (2001c), *Report on the situation of human rights in the Democratic Republic of the Congo*, Garreton, Roberto, Special Rapporteur, E/CN.4/2001/40, Economic and Social Council, Commission on Human Rights, 1 February 2001, available at [www.unhcr.ch/huridocda/huridoca.nsf/](http://www.unhcr.ch/huridocda/huridoca.nsf/)

<sup>14</sup> The police stations known as “Chien méchant” (“Vicious Dog”) and “Bureau II” have been identified as the main centres of torture in Goma (Source: United Nations (2001c))

<sup>15</sup> United Nations (2001c), op. cit.



## 2. Domestic violence

Domestic violence is known to be common but underreported.

The 2002 U.S. State Department report notes:

***“Domestic violence against women, including rape, is common, but there are no known government or NGO statistics on the extent of this violence. The police rarely intervened in domestic disputes. Rape is a crime, but the press rarely reported incidents of violence against women or children. Press reports of rape generally appear only if it occurs in conjunction with another crime or if the crime allegedly was committed by Rwandan, Ugandan, or Burundian troops in rebel-controlled areas of the country.”***<sup>16</sup>

The UN Human Rights Committee commented in 1999 that, according to a report presented to them by the World Organisation Against Torture,

***“In Maniema, a village in the Democratic Republic of the Congo, 80% of women suffered violence from their husbands.***

...  
***“The report [by World Organisation Against Torture] is based on a survey of 78 countries.... The report examines “state-condoned violence” against women, including imprisonment and torture. Egypt, Sudan and the Democratic Republic of the Congo were singled out for criticism in these areas.”***<sup>17</sup>

A report by the UN Office for the Coordination of Humanitarian Affairs (OCHA) published in March 2001 states:

***“The UNICEF and the ministry of social and family affairs survey carried out in 1999 revealed that women are still victim [sic] of violence namely: forced abortions, marital authorization to work or travel, forced prostitution, rapes, assault and grievous bodily harm.”***<sup>18</sup>

The DRC government representative who presented reports to the UN CEDAW committee in 2000 stated that:

***“Whether violence against women takes the form of wife-beating, rape, genital mutilation or the image of women in the media,***

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<sup>16</sup> U.S. Department of State (2002), *2001 Country Reports on Human Rights Practices: Democratic Republic of Congo*, Washington, Bureau of Democracy, Human Rights and Labor, available at [www.state.gov/g/drl/rls/hrrpt/2001/af/8322.htm](http://www.state.gov/g/drl/rls/hrrpt/2001/af/8322.htm)

<sup>17</sup> UN Human Rights Committee, 1999, commenting on Benninger-Budel, Carin and Lacroix, Anne-Laurence (1999), *Violence against Women: A Report*, World Organisation Against Torture, available at [www.omct.org](http://www.omct.org)

<sup>18</sup> United Nations (2001d), Office for the Co-ordination of Humanitarian Affairs (OCHA), *Women Facing War in Congo*, Dossou, Sylvie, Information officer, OCHA – Kinshasa, available at [www.reliefweb.int/ocha\\_ol/index.html](http://www.reliefweb.int/ocha_ol/index.html)

**women victims of violence often do not report it to the authorities unless there is extensive physical injury.**

*“The report says legal clinics are places where female victims of violence can tell their stories and receive counselling and psychotherapy. Some 418 people were registered and heard by experts over a period of close to one month. **Those hearings revealed that violence arose in connection with matters of inheritance, divorce, polygamy, refusal to acknowledge paternity, alcoholism, dowry, lack of family communications, abuse of marital authority, interference by in-laws, management of the family budget and the weight of taboos and tradition.**”<sup>19</sup>*

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<sup>19</sup> United Nations (2000a), Committee on the Elimination of Discrimination Against Women, op. cit.

## 3. Domestic violence and the law

### 3.1 Legal provisions

**The law does not address the issue of domestic violence.** There is no specific legislation relating to it, either in the Penal Code or the Family Code. Articles 46, 47 and 48 of the Penal Code relate to general offences of assault and battery, but **assault in the context of a family or intimate relationship is not mentioned.**<sup>20</sup> **Neither is there any reference to other types of violence such as verbal or psychological abuse.**

### 3.2 Rape

**Rape is an offence under articles 169 and 170 of the Penal Code. It is not apparent whether rape in marriage is considered to be an offence. There is no mention of other types of sexual abuse.**<sup>21</sup>

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<sup>20</sup> Takizala, Alexis, Lawyer, and Viviane Rumbu Mayand, Barrister, Court of Appeal, and member of human rights NGO Centre des Droits de l'Homme et du Droit Humanitaire, Lubumbashi, DRC: Correspondence with author, January 2002.

<sup>21</sup> Takizala, Alexis (2002), op. cit.





## 4. The reality of seeking protection

### 4.1 The response of the police and the courts to cases of domestic violence

According to legal sources in DRC, a victim of domestic violence who seeks the help of the police or the law cannot get her case heard, either due to the financial power of the perpetrator, or due to the so-called right of correction which custom affords to a husband over his wife.<sup>22</sup>

The police rarely intervene in household disputes or cases of domestic violence, and the tendency of the courts is to shelve the victim's complaint if she agrees to return to the marital home and to be compensated by the offending spouse according to custom. The courts barely even require a husband to take care of his wife when injuries have occurred.<sup>23</sup>

### 4.2 The judicial and legal system

#### 4.2.1 The judiciary – dysfunctional and corrupt

The U.S. State Department report comments:

*“The law provides for an independent judiciary; however, in practice the judiciary was not independent of the executive branch, which manipulated it during the year. The Government failed to establish mechanisms to ensure the independence of the judiciary; a judicial reform decree, reportedly awaiting presidential approval since 1997, still had not been promulgated by year's end. The judiciary was ineffective and corrupt. The civil judiciary, including lower courts, appellate courts, the Supreme Court, and the Court of State Security, largely was dysfunctional. Military courts continued to try both military and civilian defendants.*

*“Civil and criminal codes are based on Belgian and customary law. The legal code provides for the right to a speedy public trial, the presumption of innocence, and legal counsel at all stages of proceedings; however, the Government did not respect these rights in practice. Defendants have the right to appeal in all cases except those involving national security, armed robbery, and smuggling, all of which are adjudicated in theory by the Court of State Security, and except those cases adjudicated by the special military tribunals, whose jurisdiction is ill defined. The law provides for court-appointed counsel*

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<sup>22</sup> Takizala, Alexis (2002), op. cit. Original text in French: “Une victime de la violence domestique qui a recours à la police, voire même à la justice, peut ne pas faire entendre sa cause soit à cause du pouvoir financier de l'auteur de la violence, soit en vertu du soi-disant droit de correction que la coutume reconnaît au mari à l'endroit de la femme.”

<sup>23</sup> Takizala, Alexis (2002), op. cit. Original text in French: “La police intervient rarement dans les querelles de ménage ou violence domestique ; et la tendance dans les parquets c'est de classer sans suite la plainte de la victime si celle-ci consent à regagner le toit conjugal et à être indemnisée par l'époux offensant selon les règles de la coutume. C'est à peine si l'on recommande au mari de faire soigner sa femme en cas de blessures.”

*at state expense in capital cases, in all proceedings before the Supreme Court, and in other cases when requested by the court. In practice the Government did not respect fully these provisions. **Corruption remained pervasive, particularly among magistrates, who were paid very poorly and only intermittently, and who also were trained poorly.** The system remained hobbled by major shortages of personnel, supplies, and infrastructure.  
[...]*

*In the territories occupied by the various rebel factions, particularly the RCD/Goma, the system of justice essentially remained nonfunctional. Judges and other public servants were not paid their salaries. There were credible reports of judges accepting bribes in return for favorable decisions.<sup>24</sup>*

#### **4.2.2 Discrimination against women enshrined in the law**

In addition to the above-mentioned serious flaws in the operation of the judicial system, **the law in general is weighted against women.**

The U.S. State Department comments:

***“Women are required by law to obtain their spouse's permission before engaging in routine legal transactions, such as selling or renting real estate, opening a bank account, accepting employment, or applying for a passport.”<sup>25</sup>***

The UN's CEDAW Committee noted among its concerns:

***“discriminatory provisions in the Family Code, the Penal Code and the Labour Code [...] de jure and de facto discrimination against women with regard to the right to work; the requirement of the husband's authorisation of a wife's paid employment and reduction of pay during maternity leave”<sup>26</sup>***

#### **4.3 Difficulties in reporting rape and sexual violence**

In their report on rape by members of the armed forces in DRC, covered in detail in Section 5, Amnesty International notes attitudes to women who have experienced sexual violence, which would make it very difficult for a woman raped in a situation of domestic violence to pursue a complaint:

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<sup>24</sup> U.S. Department of State (2002), op. cit.

<sup>25</sup> U.S. Department of State (2002), op. cit.

<sup>26</sup> United Nations (2000b), Committee on the Elimination of Discrimination Against Women, op. cit.

***“Investigations into cases of rape are extremely difficult particularly because of the social stigma associated with it. In many cases, women are reluctant to report rape because they may be abandoned by their husbands or they may even be accused of having been targeted because of their loose morals.”<sup>27</sup>***

## **4.4 Other support services**

### **4.4.1 The role of Non-Governmental Organisations (NGOs)**

**There is no mention in any of the sources consulted of any refuges or shelters for abused women.** This is in contrast to the fact that various countries which generally may lack services for women, do have (limited) shelter provision, including Grenada, Malaysia and Mongolia. Algeria, Angola and Benin are listed among others who have some support services for women experiencing domestic violence, according to the UN report on state responses to violence against women in the family. No information was provided for the study by either the DRC government or any NGOs and the country was therefore not included in the report.<sup>28</sup>

**There are a number of NGOs in DRC active in the field of combating violence against women, mainly providing legal advice and running awareness-raising campaigns; however they appear to carry out their work under difficult conditions and there is evidence of harassment from state officials.**

**Human Rights Watch in its 2000 report notes attacks on women’s groups as part of widespread attacks on civil society.** In 1999 RCD officials cancelled a previously authorised march against violence towards women in South Kivu, and prevented one of the organisers from leaving the country, accusing her of inciting women to revolt. In 2000, after she had given radio interviews about plans for a similar march, officials threatened her employers with the closure of their organisation unless they dismissed her, and she was duly sacked from her job. One of her fellow activists was interrogated by police and accused of “*preparing genocide*” with the activities planned.<sup>29</sup>

**PAIF (Promotion and Support for Feminine Initiatives), an NGO based in Goma, which works for women’s legal rights, ran a year-long Campaign Against Violence Against Women in 2000. However, in January 2000 Immaculee Birhahka, President, and the PAIF vice-president were**

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<sup>27</sup> Amnesty International (2001c), *Democratic Republic of Congo: Torture: a weapon of war against unarmed civilians* AI Index: AFR 62/012/2001, London, Amnesty International, available at [www.amnesty.org](http://www.amnesty.org)

<sup>28</sup> United Nations (2001e), *Report of the Special Rapporteur on violence against women, its causes and consequences: Violence against women in the family*, Coomaraswamy, Radhika E/CN.4/1999/68, Economic and Social Council, Commission on Human Rights, 10 March 1999, available at [www.unhcr.ch/huridocda/huridoca.nsf/](http://www.unhcr.ch/huridocda/huridoca.nsf/)

<sup>29</sup> Human Rights Watch (2000) *World Report 2000, Democratic Republic of Congo*, Chapter V, ‘Civil Society Under Attack’ New York, Human Rights Watch, available at [www.hrw.org](http://www.hrw.org)

arrested and tortured. They were subjected to continual harassment after their release.<sup>30</sup>

The UN Special Rapporteur noted that in the government-controlled area:

***“Women’s organizations have lost their voice to a parastatal group known as the Regroupement des femmes congolaises (REFECO); in addition, women human rights activists have been arrested (Jeanine Mukanirwa was arrested in December [2000]).”***<sup>31</sup>

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<sup>30</sup> Unitarian Universalist Service Committee (2001), report on their website at [www.uusc.org/alerts/recent/index\\_frames.html?congo.html](http://www.uusc.org/alerts/recent/index_frames.html?congo.html) . Unitarian Universalist Service Committee is a nonsectarian organization that promotes human rights and social justice worldwide

<sup>31</sup> United Nations (2001c), op. cit.

## 5. The situation of separated and divorced women

### 5.1 The viability of 'internal flight'

The information presented in this section of the report, as well as that contained in Section 1, would be relevant in any consideration of whether internal flight would be an option for a woman fleeing domestic violence in DRC. The civil war, related violence and human rights abuses in both government-controlled and foreign-occupied territories, coupled with the huge numbers of displaced persons and the humanitarian crisis, are factors that would need to be taken into account in such a case.

**The huge problems faced by the majority of the population can only be exacerbated by the discrimination and isolation that would face a single woman who attempted to move to another part of the country after experiencing domestic violence.** These problems would only be in addition to those women generally experience in the light of overall discrimination against women as outlined above. Leaving the threat of further violence aside, given the evidence in this report, it seems clear that the likelihood of her finding employment and adequate living conditions would be small.

### 5.2 Risk of violence including sexual violence

#### 5.2.1 General risk of rape

A single woman who was returned to DRC, or attempted to move to another part of the country, might be particularly vulnerable to suffering rape and sexual violence. The U.S. State Department notes the following:

*"The significant risk of rape, sometimes perpetrated by uniformed men, restricted freedom of movement at night for women in some neighborhoods. Groups of citizens implemented neighborhood watch programs, but **women in some parts of Kinshasa and Lubumbashi did not leave their homes at night due to fear of attack.**"<sup>32</sup>*

#### 5.2.2 Rape by members of the armed forces

Again, a single woman may be subject to greater risk of assault by either government or non-government soldiers. Amnesty International's report from 2001 clearly shows the high incidences of such abuses.

*"2.4 Rape by government soldiers*

***Many women have been subjected to rape and other forms of sexual violence by members of the security forces. However, rape is thought to be seriously under-reported. Investigations into cases of rape are extremely difficult particularly because of the social stigma associated with it. In many cases, women are reluctant to report rape because they may be abandoned by their husbands or they may even be accused of having been targeted because of their loose morals. In a number of cases women who have been raped***

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<sup>32</sup> U.S. State Department (2002), op. cit.

*are stigmatized as likely to have contracted HIV and hence shunned by those who get to know about the rape. Fear of stigma and reprisals usually leads women to request that their identities are not revealed in public reports such as this one.*

***“Several days after the arrest of Jean-Calvin Kandolo<sup>33</sup> [...], two soldiers staying in his home raped a girl who had gone there to visit his younger brother, Papy Kandolo. The girl reported the abuse to the commanders at the GLM who took no action to investigate the rape and bring the perpetrators to justice.***

***“Numerous cases of rape by military recruits reportedly took place in areas around N’djili airport near Kinshasa in early 2000. Among the victims was a woman who was abducted by three recruits near Tata Raphael stadium on 16 February. A woman friend found with her was also reportedly gang-raped. In the nearby village of Dingi Dingi a woman was raped by soldiers on 20 February 2000. Her husband was reportedly severely beaten during the rape.***

*“4.2 Rape and other forms of sexual violence by armed opposition groups*

***“Rape, particularly of girls and women of all ages has been extensively used by armed opposition groups and foreign government forces supporting them in eastern and other parts of the DRC.***

***“Rape has effectively been used as a weapon of war against sections of the population that are known for or suspected of supporting their opponents, including by humiliating them. Women and girls of all ages are the most vulnerable to this form of torture, but it is also used by the armed groups as a reprisal against their male opponents, as well as a demonstration of their military superiority over their opponents who are shown to be unable to protect the women.***

***“Many human rights defenders told Amnesty International delegates that sexual violence included other acts of torture. The torture also included in some cases hot pepper being put in the woman’s genitals. In a number of cases women were shot in the genitals after being gang-raped. A woman in Fizi, South-Kivu, was one such victim and she had to spend as long as five months in hospital and underwent as many as five operations to treat her extensive injuries.***

***“A woman member of the immigration security service in Goma, was reportedly raped by Bureau Deux (“B2” - military intelligence unit) guards after she had been arrested on 9 April 2000 in connection with possession of tracts critical of the RCD-Goma. She was arrested***

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<sup>33</sup> Kandolo was an alleged assassin of President Kabila

together with two workers of the electricity company. She and her co-detainees were whipped daily while being held incommunicado.

*“Mayi-mayi and Rwandese Hutu insurgents too have carried out numerous rapes and other forms of sexual violence. For example, an insurgent group known as Tamwara reportedly terrorized villages in Masisi, North-Kivu, by raping women. The perpetrators reportedly pierced holes in women’s external genitalia and cut their breasts.*

*“In April 2000 Rwandese Hutu insurgents attacked villages in Masisi and raped women. In one case a woman was reportedly raped by nine men in front of her children. After the rape her husband abandoned her.*

*“A 28-year-old woman and her 14-year-old daughter were raped on 1 September 2000 by soldiers speaking Kinyarwanda . In a desperate effort to protect her daughter she told the attackers to rape her and not her daughter, but the soldiers raped both of them. Her mother too was raped. After the rape, Munyere was abandoned by her husband.*

*“Some of the victims were killed after they were raped by RCD combatants. A 35-year-old woman and four other women were gang-raped on 15 May 1999 by as many as 10 combatants each. Three of the women, Saniya Kaota, 55, Monique Kwabo and Magdalene Marko, 60, were shot and then killed with machetes. The 35-year-old woman and another woman were unable to walk after the attack and were taken to a dispensary by their relatives to be treated for their injuries. In many cases of rape the victims could only tell that the perpetrators were armed but could not identify which armed group they belonged to. For example, Amnesty International met with a victim who told them that in Kashebere territory of North-Kivu, an estimated 50 soldiers attacked a village at 5am, but said that the events took place so rapidly that she could not recognize the soldiers. The victim told Amnesty International that she and four of her friends were taken into a bush and raped. She said that each woman was raped by as many as 10 men and that after the rape three of the women were killed. The two others remained in the village.*

*“She told Amnesty International: “We were unable to walk after our ordeal. Our families took us to a dispensary to be cared for. After that we travelled on foot to Goma, where we live in extreme poverty. Until now we haven’t had a medical examination to see whether we have AIDS. It was the RCD-Goma who were surrounding the village. Three of the women were shot and then finished off with machete blows.”*

***“As in many cases of torture mentioned above, most cases of rape have not been investigated and the perpetrators remain unpunished. The climate of fear and the social stigma surrounding rape is such that many women feel unable to report the abuse to their relatives or even to human rights organizations.***

*As awareness of rape as a punishable human rights abuse has increased, a few women are becoming brave enough to testify. However, the victims generally request not to be named to reduce the possibility of reprisals and to protect themselves from the stigma.”<sup>34</sup>*

The UN Special Rapporteur on Violence Against Women noted the following in 2001:

***“All of the armed forces fighting in the three-year war in the Democratic Republic of the Congo have committed serious abuses against women and frequently targeted women for rape and other sexual violence. Armed groups, in particular Hutu rebels, have used rape systematically against civilians. Some women and girls are held as sexual slaves. There have also been reports that detained men, women and children have been subjected to sexual violence.***

***“The Special Rapporteur received reports of dozens of cases of rape and other human rights violations against women in areas controlled by the Goma-based Congolese Rally for Democracy (Rassemblement congolais pour la démocratie, RCD) and its Rwandan allies. In one particularly gruesome incident, in September 1999, RCD soldiers reportedly beat, stripped and raped five women in the village of Mwenga who had been detained reportedly because an RCD soldier’s wife accused them of sorcery. The soldiers then put hot pepper in the women’s vaginas, put them in a pit and buried them alive. Between April and July 1999, 115 rapes by combatants were registered in just the two regions of Katana and Kalehe in South Kivu. Thirty rapes were reported during the 5 April 1999 attack on Bulindi and Maitu. Since April 2000, over 40 women have been held hostage by Mai Mai armed groups in Shabunda, South Kivu, and are believed to be at great risk of sexual violence.***

***“The Special Rapporteur on the human rights situation in the Democratic Republic of the Congo also reported that he had received many reports that rape, even of girls, still occurs in prisons and during military operations in the country. The Special Rapporteur noted specific charges of rape by Congolese Armed Forces soldiers as they fled from Equateur in the beginning of 1999. He also received reports of rape of women in Kabamba, Katana, Lwege, Karinsimbi and Kalehe, and by Ugandan soldiers in towns in Orientale province.”<sup>35</sup>***

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<sup>34</sup> Amnesty International (2001c), op. cit.

<sup>35</sup> United Nations (2001f), *Report of the Special Rapporteur on violence against women, its causes and consequences: Violence against women perpetrated and/or condoned by the State during times of armed conflict (1997-2000)*, Coomaraswamy, Radhika E/CN.4/2001/73, Economic and Social Council, Commission on Human Rights, 23 January 2001, available at [www.unhcr.ch/huridocda/huridoca.nsf/](http://www.unhcr.ch/huridocda/huridoca.nsf/)



### 5.2.2 Health consequences of rape

Oxfam note the additional possible serious health consequences of sexual violence:

*“Human rights organisations have also registered many cases of soldiers raping women. **In addition to mental and physical injury and the risk of pregnancy, rape victims are particularly vulnerable to contracting HIV because body tissues are more likely to be torn.** There are six foreign armies fighting on Congolese soil, and on average, soldiers’ rates of infection can be up to four times higher than those of civilians. **HIV infection rates vary from 50 per cent of Angolan soldiers to 80 per cent of Zimbabwean soldiers.**”*

*“Bernadette Mulelebwe, the Director of Christian Aid’s partner Fondation Femme Plus, told of a woman who came to her office in Kinshasa. ‘She came here from the east with her children. She had been raped six times – at six checkpoints she had been raped. Now she is HIV-positive and her little daughter is also infected. How many other women have been in that situation?’”<sup>36</sup>*

### 5.3 The consequences of divorce

Little information is available on societal attitudes to divorced women; however **it has been noted that severe consequences of divorce emanate from both national and customary law.** The U.S. State Department comments:

*“The law permits a widow to inherit her husband’s property, to control her own property, and to receive a property settlement in the event of divorce. In practice sometimes consistent with customary law, women are denied these rights. **Widows commonly are stripped of all possessions--as well as their dependent children--by the deceased husband’s family.** Human rights groups and church organizations are working to combat this custom, but **there generally is no government intervention or legal recourse available.** In addition women often do not realize that they can improve their legal claims by obtaining official documents that declare them to be married legally to a man. Women also are denied custody of their children in divorce cases, but they retain the right to visit them. Polygyny is practiced, although it is illegal. Father-child relationships resulting from polygynous unions are recognized legally, but only the first wife is recognized legally as a spouse.”<sup>37</sup>*

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<sup>36</sup> Oxfam (2001), *No End in Sight: The Human Tragedy of the Conflict in the Democratic Republic of Congo*, Oxford, Oxfam, available at [www.oxfam.org.uk](http://www.oxfam.org.uk)

<sup>37</sup> U.S. Department of State (2002), op. cit.

## 5.4 Property rights

Little information is available on women's property rights. However, the UN's CEDAW Committee, in their consideration of the progress of women's rights in DRC, criticised

***“the acceptance in rural areas of customs and beliefs that prevent women from inheriting or gaining ownership of land and property”***<sup>38</sup>

In fact, according to the U.S. State Department, **property rights for women are limited under the law and not just by “customs and beliefs”**. These restrictions are not restricted to women in rural areas only:

***“Women are required by law to obtain their spouse's permission before engaging in routine legal transactions, such as selling or renting real estate, opening a bank account, accepting employment, or applying for a passport.”***<sup>39</sup>

Property rights after divorce are mentioned in section 5.3 above.

## 5.5 Economic security

### 5.5.1 A country in crisis

Oxfam's report of August 2001 describes the catastrophic situation for the Congolese people:

*“The humanitarian crisis in the DRC has been described as one of the worst in the world. The fighting has led to appalling levels of hunger, disease, and death, and to countless abuses of human rights. More than two million people are internally displaced, most of whom are in eastern DRC. They have sought refuge with friends, family, or strangers, straining resources to such an extent that many of their hosts are also dragged into abject poverty.*

***“Women and children bear a disproportionate burden of suffering in emergency situations. Among the displaced are a large number of children, many of whom are separated from their families. The crumbling state infrastructure in health and other sectors has been completely unable to cope with the growing suffering of the population.”***<sup>40</sup>

The United Nations Special Rapporteur stated in his report of February 2001:

*“The war has had a catastrophic impact on the country, which has been destroyed. Over half the Congolese have been affected by it. All*

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<sup>38</sup> United Nations (2000b), Committee on the Elimination of Discrimination Against Women, op. cit.

<sup>39</sup> U.S. Department of State (2002), op. cit.

<sup>40</sup> Oxfam (2001), op. cit.

**public moneys are being diverted to the war effort. There have been terrible epidemics. Only 9 per cent of all health districts have refrigerators for keeping medicines. In Kinshasa, 70 per cent of its 7 million inhabitants have less than a dollar a day to feed themselves. Cultivation is at a standstill, reducing the food supply to such an extent that 17 per cent of the population (16 million people) are undernourished, according to a report by the Secretary-General. The number of shégués (street children) has risen alarmingly.**<sup>41</sup>

The U.S. State Department report for 2001 states:

*“The country's economy is dominated by subsistence agriculture, a large informal sector, and widespread barter; most sectors of the economy continued to decline. Production and incomes continued to fall. Annual per capita national income for the population of approximately 52 million remained at less than \$100 (32,000 Congolese francs). **Physical infrastructure was in serious disrepair, financial institutions remained in a state of collapse, and public education and health deteriorated.** The ongoing restriction on commercial travel on the Congo River during the year negatively impacted the economy. **The insolvent public sector could not provide even basic public services.** External economic assistance remained limited, and the State's revenues from diamond exports, its leading source of foreign exchange, declined.”*<sup>42</sup>

A report by the International Crisis Group in December 2000 describes the extremely harsh conditions in the country:

*“The pulverisation of the Congo has created a humanitarian tragedy in the country. The International Rescue Committee, an American NGO, estimated in a May report that the conflict had caused 1.7 million deaths by either direct or indirect means. Of these, some 200,000 were killed in fighting; the rest died as a result of malnutrition and disease.*

[...]

*“**Up to 2 million persons have been displaced by the conflict, including an estimated half million in the first six months of 2000 alone.** A quarter of a million have fled to neighbouring countries as refugees. In addition, refugees from other conflicts such as Angola (18,000 in October 2000 alone) have fled into the DRC. A FAO mission to the remote central Maniema region estimated that **68 per cent of the population had been forced to flee their homes at some point since August 1998, and that 110,000 were still hiding in the forest.** Displaced populations are utterly destitute.*

[...]

*“**Finally, the entire population has suffered a reduced access to both health care and education – creating the conditions for long-***

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<sup>41</sup> United Nations (2001c), op. cit.

<sup>42</sup> U.S. Department of State (2002), op. cit.

*term impoverishment, spread of disease and even the perpetuation of the conflict for a younger, unschooled generation.”<sup>43</sup>*

### **5.5.2 Internal displacement**

The large number of people who have been forced to flee their homes adds to the pressure on scarce resources and leaves women and children particularly vulnerable. Oxfam’s report states:

*“The most recent conflict has led to large-scale population movements within the DRC and over the borders into neighbouring countries. In March 2001, there were an estimated 2,040,000 internally displaced people (IDPs) within the DRC – an increase of 240,000 since November 2000. According to the Office for the Co-ordination of Humanitarian Affairs (OCHA), the war in the DRC has created the highest number of IDPs ever registered in Africa in the context of a single conflict.*

*“Approximately 1.6 million of the total number of internally displaced people are in rebel-held areas, and approximately one million are currently located in North and South Kivu, a figure that has risen from 400,000 in mid-1999. It is estimated that four-fifths of families in rural areas of the Kivus have been displaced at least once during the past five years, sometimes to less than a kilometre from their homes.*

*“Less than half the internally displaced people have access to direct relief assistance, which means that more than one million people are displaced with no kind of external assistance or support.*

***“Displacement presents a number of protection concerns, especially for the most vulnerable members of the population. In conflict settings, a large percentage of displaced people are typically women and children. With the loss of large segments of the male population to the armed forces, between 60 and 80 per cent of the displaced population in areas such as Maniema, Kalonge, Bunyakiri, and Shabunda is reported to be made up of women-headed households. Of particular concern for children is separation from their families during flight, placing them at greater risk of exploitation and abuse. In the DRC, separation and abandonment of children during flight has led to dramatic increases in the number of street children in all urban areas, including those which had previously not known such problems, such as Lubumbashi. In a conflict which has exploited thousands of children as soldiers, separation also dramatically increases the risk of recruitment into armed groups – not necessarily only by force, but by presenting what may appear to be the only viable economic option in which children can ‘voluntarily’ participate. There is no discrimination in the risk that separation poses for children in the DRC conflict. There were round-ups of street***

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<sup>43</sup> International Crisis Group (2000) Scramble for the Congo: Anatomy of an Ugly War Africa Report 26, pp 67 – 68 available at [www.icg.org](http://www.icg.org).

children in 2000, and recruitment drives in Kinshasa in 1998 attracting an estimated 6,000 children seeking an income. In addition, the Interahamwe incorporated an estimated 8,000 Hutu children left behind by their refugee parents in 1996-97.

*“Humanitarian agencies have noted that most displaced people have tended to remain close to their areas of origin, usually in nearby forests, and were relatively easy to find and provide with whatever assistance was available. However, since 2000, changes in the frontline and in the strategy of armed groups, particularly militias, have caused changes in the patterns of displacement, driving people much further from their areas of origin, and making their identification and the provision of assistance far more complicated. The majority of displaced people in the DRC do not reside in camps but take refuge with families or friends in other villages or towns. In many places, villages have doubled or tripled in size, placing a great burden on host communities. The host community in many areas has become as impoverished and destitute as the displaced. One of the most vulnerable groups of people includes those who have taken refuge in the dense forests, especially around Shabunda, Ituri, and along the Bokungu-Ikela axis in Equateur. These people are often from towns or villages, and are totally unequipped for life in such harsh conditions. Forced to eat wild plants and attempt to cultivate, they have no access to medical services or clothes. They are usually in a very poor physical state but are often too embarrassed to seek assistance, even when it is within reach.”<sup>44</sup>*

### **5.5.3 Food shortages**

Food shortages, both in rural and urban areas, are giving rise to great concern among agencies working in DRC. Oxfam’s report published in January 2002 states:

*“A recent Food and Agriculture Organisation (FAO) report shows how the proportion of undernourished people has grown from 35 per cent in 1990-92 to 64 per cent in 1997-99, making the DRC the world’s poorest country in this respect. In 2001, the Office for the Coordination of Humanitarian Affairs (OCHA) identified 16 million people as having the most critical food needs. People in parts of the country which used to provide food for export, such as areas of the Kivus and Ituri, are now wracked by hunger. Severe malnutrition rates as high as 25 per cent have been recorded in some of these areas.”<sup>45</sup>*

The International Crisis Group states:

*“Economic conditions have worsened due to the conflict, even for populations that have not been displaced. Normal trade routes have been cut or disrupted by battle lines..... As a result, markets have*

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<sup>44</sup> Oxfam (2001), op. cit.

<sup>45</sup> Oxfam (2002), Poverty in the Midst of Wealth: the Democratic Republic of Congo, Briefing Paper no. 12, Oxford, Oxfam UK.

collapsed for food surplus areas, while food prices have skyrocketed in food deficit areas.

*“The World Food Program estimates that approximately 16 million – one third of the DRC population - are affected by food shortages, with two million of these facing ‘critical’ shortages.*

*[...]*

*“A novel characteristic of DRC’s humanitarian disaster is the prospect of urban famine and suffering in the capital, Kinshasa – which is one of Sub-Saharan Africa’s largest cities with a population of 4.5 to six million. .... UNDP reported in mid-2000 that the food supply to the capital was 100,000 tons below the pre-war level. In 1999, the agency estimated that food supply was 400,000 tons, or 30 per cent, below pre-war levels – which were still regarded as significantly below adequate. Other estimates of the situation are less dire. But even if food is present in the market, the recent 53 per cent depreciation in the official value of the FC [Franc Congolais], as well as the annualized inflation rate of 298.6 per cent, combine to put its price out of reach of the average Congolese household.”<sup>46</sup>*

#### **5.5.4 Access to safe water**

Oxfam’s report states:

*“The DRC has enormous water reserves, and the Congo River has the potential to produce enough hydro-electric power to supply the whole of southern Africa. Yet the majority of its own population lack access to clean drinking water. Water-related disease, in addition to poor hygiene and sanitation, is one of the main causes of illness in the DRC. In 1999, UNICEF estimated that in the DRC as a whole, only 45 per cent of the population had access to safe drinking water. In rural areas, the percentage was thought to be as low as 26 per cent. These percentages are expected to be substantially lower today.”<sup>47</sup>*

Lack of access to clean water has a particular impact on women and girls:

***“In addition to health problems, the time required to walk to a water source or to queue at a busy water point has a significant impact on women and children, particularly girls, who are responsible for collecting water for the household’s daily needs. Time spent performing this task takes women away from caring for the family or carrying out income-generating activities, and **takes girls away from school.** In Kisenso, a poor area of Kinshasa, urban families spend two and a half hours each day collecting water. Furthermore, the amount that they collect is insufficient to maintain adequate hygiene standards in addition to that needed for drinking and cooking.”<sup>48</sup>***

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<sup>46</sup> International Crisis Group (2000) op. cit.

<sup>47</sup> Oxfam (2001), op. cit.

<sup>48</sup> Oxfam (2001), op. cit.

### 5.5.5 Lack of health care

Poor access to health care for the majority of the population is one of the major concerns raised by aid agencies. Oxfam's report states:

*"Poor diets, difficult living conditions, and the collapse of routine vaccination programmes have weakened people, especially children, to such an extent that measles, whooping cough, and bubonic plague have re-emerged as major threats. There are 2000 doctors for a population of 50 million people, and a maternal mortality rate which is one of the worst in the world. Sixty-five per cent of the population has no access to safe water, and 40 per cent of primary school-age children have no access to education. In addition, **there are approximately 400,000 internally displaced children. One in five children die before they are five years old.**"<sup>49</sup>*

Their report of the previous year states:

*"In government-held areas, the share of central government expenditure allocated to the health sector is less than one per cent – and has been barely more than this since Independence in 1960.<sup>50</sup> As a result, the health system has always been run as a 'private' service, with patients required to pay. In areas under RCD control, there is no budget for health services. Additional support to the 307 Health Zones into which the country is divided comes mainly from churches and other organisations. However, in 2000, 100 Health Zones received no external assistance, either from the government or from outside agencies. In addition, there is a severe lack of human resources. In 1998 there were only 2056 doctors for a population of 50 million people, and of these, 930 were in Kinshasa."<sup>51</sup>*

*"The increase in poverty has meant that a high percentage of people cannot afford essential medicines. On the outskirts of Kisangani, the staff at the Segama health centre estimate that only 40 per cent of the population can afford to pay the US\$0.15 consultation fee. Of these, only one in four can afford US\$0.11 to buy the medicines that are prescribed. As a result, many people resort to trying to treat themselves, which can have disastrous consequences. In Kimbanseke, a poor commune in Kinshasa, four per cent of the population is deaf, significantly higher than the international average of two per cent. One of the reasons is abusive self-medication of drugs such as the antibiotic*

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<sup>49</sup> Oxfam (2002), op. cit.

<sup>50</sup> The World Health Organisation gives a figure of 0.1% for 1997 (Source: World Health Report 2001, available at [www.who.int/whr/2001/archives/2000/en/pdf/StatisticalAnnex.pdf](http://www.who.int/whr/2001/archives/2000/en/pdf/StatisticalAnnex.pdf) . The UK government's expenditure on healthcare in 1999/2000 was 14.3% of the total government budget (source: Jones, Robert, 'UK Healthcare: Some International Comparisons' in British Economy Survey, Volume 30 no. 1, Section 9, Autumn 2000, available at [www.statsed.co.uk/bes/bes\\_autumn2000/vol\\_index.htm](http://www.statsed.co.uk/bes/bes_autumn2000/vol_index.htm))

<sup>51</sup> The UK has 33,200 doctors (2002 figures) for a population of approximately 60 million (source: National Statistics at [www.statistics.gov.uk/nsbase/ukinfigs/](http://www.statistics.gov.uk/nsbase/ukinfigs/) )

**called gentamycine. Rather than spend money on going to a health centre, people buy the drug in local pharmacies or the market and treat themselves. Incorrect use of the drug can cause deafness.**

*“Health Infrastructure*

***One of the main problems with the health system is its infrastructure. The complete lack of investment has resulted in hospitals, clinics, and health posts falling into an increasingly dilapidated state. Many lack essential medical equipment, sanitation, and even clean water. This is true in major towns as well as in the more remote rural areas. The hospitals and health centres are often places where disease is spread.***

*“In Mbuji Mayi, where Oxfam GB is currently rehabilitating health centres and providing clean water, many hospitals lack the most basic hygiene requirements. There are no washing facilities, latrines, septic tanks, or incinerators. Roofs and ceilings are falling down, walls are cracked, termites have destroyed carpentry, and the buildings are inhabited by rats and birds. The Miabi rural hospital, which serves 45,000 people, receives only one or two new cases a day, partly because of the unbearable smell caused by bats living in the roof. In Bas Congo, the hospital in Ngidinga is reduced to collecting rainwater, because REGIDESO no longer provides water to the town. In Gombe Matadi, the hospital relies on unprotected springs a kilometre away. In Ituri (Province Oriental), 15 health centres serving a population of more than 120,000 people have no access to water at all.*

*“In rebel-held areas the situation is even worse, because a large number of the medical facilities in areas which were already under-resourced have also suffered war damage. In Masisi (North Kivu), 40 per cent of all health infrastructure has been destroyed, including the hospital in Mweso which was gutted and used by soldiers. In the Djugu territory in Ituri, many health centres were completely destroyed as the inter-ethnic war raged through its towns. All that now remains is rubble, medical staff having fled or been killed. In rebel-held parts of Kabinda Health Zone (Kasai Oriental), the disengagement of warring parties in March has allowed medical staff from health outposts to reach the town for the first time in more than a year. They reported that in 12 areas only one of the health centres has any medicine, and the rest are not functioning at all. Many have been looted, and have little or no essential equipment.”<sup>52</sup>*

### **5.5.6 Maternity services**

These problems impact particularly on women. Oxfam’s report notes serious concerns on women’s health services:

***“The conflict has caused a large increase in the numbers of women who can not get adequate health care when they deliver,***

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<sup>52</sup> Oxfam (2001), op. cit.



*many of whom die at home. In Rethy (Ituri), maternal mortality rose from 50/100,000 live births in 1997 to 905/100,000 in 1999, indicating that many mothers get to hospital in difficulties owing to prolonged labour. In the Kivus in 2001, the rates are as high as 3000/100,000 live births.*

*“This problem is by no means confined to rural areas and to the east of the country. A study on maternal mortality in Kinshasa published in June 2001 found that the rate during 2000 was 1393/100,000 live births (representing 20 deaths per day), and that the main cause of death (31 per cent) was haemorrhaging. The cost of travel, in addition to the hospital fees upon arrival, often prevent women from seeking assistance unless a serious problem occurs, at which point it can be too late for relatives to find enough money to pay the fees and purchase the necessary medicines.”<sup>53</sup>*

### **5.5.7 Humanitarian situation unlikely to improve**

As seen above, all sources mentioned concur on the gravity of the situation for the Congolese people. However, sufficient aid is not currently forthcoming and the situation looks unlikely to improve in the foreseeable future, as stated in Oxfam’s report:

*“Despite these indicators, [poverty, food shortages, healthcare etc mentioned above] the UN Consolidated Appeal (CAP) in 2001 received only 60 per cent of requirements; key sectors of health and education were grossly under-resourced. [...] While there have been some notable increases in assistance from some donors, these remain modest and are in no way commensurate with the level of need in a country the size of Western Europe. An unacceptably wide gap persists between the level of need and the response of the international community.*

*“Action is also needed to improve co-ordination of humanitarian response and to improve access. While access has improved somewhat in the west (and contributing therefore to the larger CAP), access remains a serious constraint in the east due to insecurity and poor infrastructure.”<sup>54</sup>*

### **5.5.8 The economic position of a single woman**

From the information above, it is clear that survival is a struggle for the population in general. **A woman on her own would be in an even more difficult situation; the U.S. State Department’s description of women’s position in the labour market clearly shows the difficulty a single woman would have in earning a living:**

*“Women are relegated to a secondary role in society. They constitute the majority of primary agricultural laborers and small-scale*

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<sup>53</sup> Oxfam (2001), op. cit.

<sup>54</sup> Oxfam (2002), op. cit.

*traders and almost exclusively are responsible for child rearing. In the nontraditional sector, women commonly receive less pay for comparable work. Only rarely do they occupy positions of authority or high responsibility. Women also tend to receive less education than men.*<sup>55</sup>

The same report also notes women being forced into prostitution for economic reasons:

*“Prostitution is not a crime (except for children under the age of 14), and there has been an increase in prostitution due to poor economic conditions. Women sometimes are forced into prostitution by their families out of economic necessity. There was no information available as to the extent of prostitution in the country.”*<sup>56</sup>

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<sup>55</sup> U.S. Department of State (2002), op. cit.

<sup>56</sup> U.S. Department of State (2002), op. cit.

## 6. Case law

### 6.1 UK

Two positive decisions by the UK's Immigration Appeal Tribunal, although not cases of women who had suffered domestic violence, highlighted respectively the likelihood that those returned from overseas would be held in immigration detention, and that ill-treatment, including sexual abuse, in detention is common.

**It could be argued therefore that any woman returned to DRC would be at risk of detention and therefore by definition at risk of rape or sexual abuse.**

#### ***Mamie Ekima Bokaki (00/TH/00843)***

Immigration Appeal Tribunal

Mr. M. Shrimpton (Chair), Mr. A. Jeevanjee, Mr. A. A. Lloyd, JP

16 March 2000

This appeal was by a woman from DRC who had been detained for political reasons and had escaped from detention. **The Tribunal accepted that “at the present day there is a realistic possibility that the Appellant would be further detained and ill-treated. There is more than a realistic possibility that if the Appellant were to be detained, the ill-treatment would include sexual abuse.”<sup>57</sup>**

#### ***Andre Bashiya ([2002]UKIAT00186)***

Immigration Appeal Tribunal

Mr. K Drabu (Chair), Mr. C Thursby, Mr. T S Culver

21 January 2002

In this case, the Home Office was appealing against a previous decision in the respondent's favour by an Adjudicator. Mr Bashiya was represented by Asylum Aid's appeals caseworker, who presented evidence that **“the government of the DRC has established a policy of migratory detention centres in which all returned asylum seekers would be placed with the goal of identifying the underground networks of migration.”<sup>58</sup>** The Tribunal agreed with the decision of the Adjudicator who had allowed the original appeal on both refugee and human rights grounds, and dismissed the Home Office appeal.

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<sup>57</sup> Appeal No: HX7300196 (00/TH/00843). Source: Electronic Immigration Network (EIN), [www.ein.org.uk](http://www.ein.org.uk)

<sup>58</sup> Appeal No: CC-09828-01([2002]UKIAT00186). Source: Electronic Immigration Network (EIN), [www.ein.org.uk](http://www.ein.org.uk)

## 6.2 USA

The Centre for Gender and Refugee Studies at the University of California reports a case where a woman from DRC gained protection under the Convention Against Torture.

### The case of D.K.

*“Ms. K- is from the capital city of Kinshasa in the Democratic Republic of Congo (formerly Zaire). She is 50 years old and has been in INS detention since March of 1998. She married her husband, an officer in former President Mobutu’s military, in 1974, at the age of 25. They have four children together, the youngest of which is eight years old. Throughout their marriage, Ms. K-’s husband exerted complete control over her and, in 1988, forced Ms. K- to quit her job as a bank secretary. In 1991, her husband ordered her to have an abortion six months into her pregnancy and was only able to avoid having to comply because the doctor said it would threaten her life to abort at that point in the pregnancy.*

*“In 1995, Ms. K-’s husband shot a colleague but, through his connections to then ruler Mobutu’s family, he was able to escape prosecution. After this incident her husband became emboldened in his abuse against Ms. K-. He began physically abusing her on a regular basis. He would kick her and beat her, often in front of their children. Ms. K-’s husband repeatedly raped her, inflicting her with infections and sexually transmitted diseases. He frequently threatened to kill her with his gun. During one particularly violent incident, Ms. K-’s husband knocked out her tooth, dislocated her jaw, and punched her in the eye so hard that she required stitches. At her asylum hearing, she testified she had undergone surgery on her left eye and due to the physical abuse by her husband had problems with her nose, neck, head, spinal column, hip, and foot. Finally in 1998 her husband beat, punched, and kicked her so badly she lost consciousness.*

*“Ms. K- knew it was futile to go to the police for help not only because of her husband’s connections to Mobutu’s family, but also because, as she testified at her hearing: “women are nothing” in the Congo. Under Congolese law a married woman is considered legally incompetent. A woman cannot obtain a divorce without her husband’s consent. A married woman cannot obtain a job, open a bank account, or rent an apartment without her husband’s written permission. **According to the U.S. State Department’s Democratic Republic of the Congo (DROC) - Formerly Zaire: Profile of Asylum Claims & Country Conditions (March 1998), as quoted by the Immigration Judge: “Domestic violence, including rape and beatings, is widespread but rarely reported. The problem is handled within the extended family and only in the most extreme instances is the matter brought to the police. There are no provisions under the law for spousal battery. There are no crisis centers or hotlines. The***

***problem of violence against women is largely ignored by the general population and the media."***

*"After the beating in January of 1998, Ms. K- went into hiding and then fled to the United States in search of a safe haven from her husband. In March of 1998, she arrived at the airport in the United States and promptly expressed her need for asylum protection. [The immigration judge, in her written decision](#), said she believed Ms. K-'s story and characterized the abuse she suffered as "atrocities," but nevertheless denied her application for asylum. On appeal, the Board of Immigration Appeals (BIA) acknowledged that Ms. K-'s husband had "committed brutal and deplorable acts of domestic violence against her." They extended their sympathy to her, but also [denied her asylum](#). The BIA found that Ms. K-'s case was controlled by its decision in [Matter of R-A-](#) and quickly dismissed her appeal. In so doing, the Board never even considered Third Circuit case law, in which gender itself has been previously found to constitute a particular social group for purposes of asylum.*

*"Ms. K-'s case was remanded to the Immigration Judge for consideration of her claim under the Convention Against Torture (CAT). In August 2000, [the judge granted Ms. K- relief under CAT](#). The INS chose to appeal that decision; as of March 2001, that appeal remains pending at the BIA.*

*"After over two years and four months in INS detention, Ms. K- was released in August 2000 after she was granted CAT relief. Her appeal of the denial of asylum in her case remains pending at the Third Circuit Court of Appeals (March 2001)."<sup>59</sup>*

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<sup>59</sup> Centre for Gender and Refugee Studies (2001) *Ms. K's Story*, University of California Hastings, available at [www.uchastings.edu/cgrs/campaigns/k-.htm](http://www.uchastings.edu/cgrs/campaigns/k-.htm)



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## Appendix A

### A1 Home Office Country Information and Policy Unit, October 2001: Country Assessment, Democratic Republic of Congo (Excerpt)

#### ***“Women***

**5.49** *Many women suffer from domestic violence and rape but there are no known government or NGO statistics to verify this. The police rarely intervene in domestic disputes and the press rarely report incidences of violence against women. Women mainly work as agricultural labourers and small-scale traders. They are relegated to a secondary role and rarely occupy positions of authority or responsibility. The law discriminates against women in many areas of life. Women are required by law to obtain their husband's permission before selling or renting property, opening a bank account, accepting employment, or applying for a passport. Widows often have their possessions and their children taken from them with no legal recourse and women are denied custody of their children in divorce cases although they have the right to visit them. Polygyny is practiced although it is illegal. Father/child relationships resulting from polygynous unions are legally recognised but only the first wife is legally recognised as a spouse. Prostitution is not a crime and there has been an increase in prostitution due to poor economic conditions. Some women become prostitutes by their families due to economic necessity.*

**5.50** *Many women have been subjected to rape and other forms of sexual violence by members of the security forces. The incidence of rape is thought to be seriously under-reported. Investigations into cases of rape are extremely difficult particularly because of the social stigma associated with it. In many cases, women are reluctant to report rape because they may be abandoned by their husbands or they may even be accused of having been targeted because of their loose morals. In a number of cases, women who have been are stigmatised as likely to have contracted HIV and hence shunned by those who get to know about the rape. Fear of stigma and reprisals usually leads women to request that their identities are not revealed in public reports.”*

### A2 Home Office Country Information and Policy Unit, December 2001: Operational Guidance Note, Democratic Republic of Congo (Excerpt)

#### **“Granting of ELR**

*“There is no countrywide exceptional leave policy in operation in respect of DRC but the grant of 4 years ELR for humanitarian or compassionate reasons may be justified on a discretionary basis on individual cases.*

*“ELR can be granted to cases that come under the categories listed unless there are doubts about nationality:*

*“Individuals belonging to the Tutsi ethnic group who have had their applications for asylum rejected. (These would be the by-now rare cases where the claimant is a Tutsi but has not applied for asylum on the basis of Tutsi ethnicity)*

*“People who lived in rebel-held areas with no relatives or friends in Kinshasa or the Government-held area who could be expected to provide them with shelter and support if returned to the country*

*“Single women, especially with children, with no relatives and friends in Kinshasa or the government-held area who could be expected to provide them with shelter and support if returned to the country.”*



# ALBANIA

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# Albania

## Appendix B

### Update March 2002

#### 1.2 Human rights practice: Police conduct

Amnesty International reported further allegations of torture and ill-treatment of detainees and their families, including minors by police in their report of September 2001:

*“There were further allegations that police had tortured and ill-treated detainees. On the night of 20 to 21 January Azgan Haklaj, a local leader of the opposition Democratic Party in the northern district of Tropoja, was arrested at home and subsequently detained for investigation on charges of “taking part in illegal demonstrations” and “violence against property”. The charges, which he denied, related to a rally held in the town of Bajram Curri in November 2000 which escalated into violent clashes between armed men and police. During these the police station was attacked and one man (a civilian) was shot dead by police, and others wounded. On 22 January Azgan Haklaj filed a complaint alleging that masked police officers who had arrested him had beaten him with rifle butts, struck his wife and child, and had continued to beat and kick him while driving him to Tirana. A forensic medical report confirmed he had injuries consistent with these allegations. The Ministry of Public Order denied that his wife or child had been ill-treated, and stated that police officers had resorted to force only because he had violently resisted arrest. In early April his lawyer stated that he had only once been questioned in connection with his complaint, and claimed that no other investigation work had yet been undertaken by police or prosecutors.  
[...]*

*“In March 2001 an Albanian NGO, the Legal Clinic for Minors, stated that almost all of the 45 minors detained in custody or serving sentences which the Clinic had interviewed during the previous six months had been subjected to physical violence - beatings - in police stations.”<sup>1</sup>*

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<sup>1</sup> Amnesty International (2001), *Concerns in Europe January – June 2001*  
AI-index: EUR 01/003/2001, 01/09/2001, London, Amnesty International, available at <http://web.amnesty.org/ai.nsf/Index/EUR010032001>

## 1.4 Women's human rights

The 2002 U.S. State Department report comments:

*"Women*

*"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 to be, and are treated as, chattel. Under the kanun, a woman's duty is to serve her husband, and to be subordinate to him in all matters. The kanun has contributed significantly to attitudes in the region espousing the subordination of women.*

*"The law prohibits prostitution, but it was a problem. Trafficking in women for the purpose of sexual exploitation remained a serious problem.*

*"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; however, while women continued to gradually gain economic power this provision was not fully implemented. 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 their field of training. An increasing number of women continued to open shops and small businesses. Many women migrated along with men to Greece and Italy to seek employment.*

*"Various groups such as the Women's Center, the Family Planning Association, Useful to Albanian Women, the Independent Women's Forum, Women in Development, the Millennium Coalition, the Women's Advocacy Center, the Association of Women's Lawyers, Refleksione, and the three main human rights groups work to promote women's rights. Some of these groups have been successful in promoting public awareness regarding domestic violence and implementing programs to empower women; however, their ability to lobby the Government and other prominent individuals to institute actual change in government policies and practices remained negligible."<sup>2</sup>*

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<sup>2</sup> U.S. State Department (2002), *Country Reports on Human Rights Practices, 2001: Albania*, Washington, Bureau of Democracy, Human Rights and Labor, available at [www.state.gov/q/drl/rls/hrrpt/2001/eur/8219.htm](http://www.state.gov/q/drl/rls/hrrpt/2001/eur/8219.htm)



## 2. Domestic Violence

The US State Department report for 2002 notes

*“Violence against women and spousal abuse remained serious problems. In the country's traditionally male-dominated society, cultural acceptance and lax police response resulted 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 by the authorities or the public. In 1999 the Advice Center for Women and Girls, an NGO, conducted a poll which showed that 64 percent of women surveyed had experienced some form of physical, emotional, or sexual abuse. Later statistics were not available. The State Committee on Women and Children is the primary government agency that addresses the status of women; however, it is underfunded and lacks political influence.*

*“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 hot line that provides advice and counseling to women and girls.”<sup>3</sup>*

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<sup>3</sup> U.S. State Department (2002), op. cit.



# **BOSNIA AND HERZEGOVINA**

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# Bosnia and Herzegovina

## Appendix

### Update March 2002

#### 1.2 Human rights

Amnesty International reported concerns on political violence, minority returns and police ill-treatment in September 2001:

##### ***“Political violence***

*Throughout the period of review [January – June 2001], AI expressed concerns about the high incidence of politically and ethnically motivated violence, particularly that which targeted minority returnees in various parts of the country. In many cases the authorities failed to adequately investigate and prosecute the perpetrators of such attacks. In the majority of cases in the RS [Republika Srpska] impunity for return-related violence was the norm, especially in the eastern part of the entity. In Bratunac and Bijeljina (RS), the United Nations International Police Task Force (IPTF) Commissioner removed several police chiefs from their positions in respectively February and March, primarily for their failure to adequately respond to and investigate repeated incidents of ethnically-motivated violence.*

##### ***“Minority returns***

*Statistics compiled by international organizations again indicated a substantial rise in the return of private property and socially-owned apartments to their pre-war owners and occupants. Over 30,000 houses and flats were returned in the period under review, nearly two thirds of them in the Federation and the remainder in the RS and the autonomous Brcko district. In spite of this progress, many cases of violations of the right to return and disregard of property laws persisted. This was particularly true in respect of the so-called "floaters", people who were evicted from their property but stayed in their municipality throughout the war, of which reportedly some 400 remain in the larger RS towns of Banja Luka and Bijeljina.*

*“There was concern that donor funding for reconstruction did not keep pace with the increased interest in and speed of returns. The United Nations High Commission for Refugees (UNHCR) estimated in January that there was an urgent need for funding to reconstruct some 15,000 housing units belonging to returnees; by the end of June this number had risen to 22,000. A large part of reconstruction aid was also needed for people who had already returned to their pre-war communities on the principle of "funding follows return", and who were living in tent settlements or temporary accommodation awaiting the rebuilding of their destroyed homes.*

*“It remains difficult to assess how many of the reported returns proved to be sustainable, and how many returnees have succeeded in reintegrating in their pre-war communities. Discrimination on grounds of ethnicity in regaining employment and the enjoyment of other social and economical rights was a common occurrence throughout the country, impacting heavily on the feasibility of sustainable return and on the decisions of those still displaced whether to leave areas where members of their nationality held political and economic control.*

***“Investigations into ill-treatment by law enforcement officials***

*There were several allegations of police ill-treatment throughout the country. In addition, police reportedly failed to react adequately to violent attacks on citizens. For example the Helsinki Committee for Human Rights reported that in February, in the Una-Sana Canton, a member of the Federation Army and three others attacked and seriously injured the wife and children of a former supporter of Fikret Abdic (the war time de facto leader of that region), an attack apparently condoned by the local police.”<sup>1</sup>*

## **1.4 Women’s human rights**

The 2002 U.S. State Department report comments:

***“Women***

*“There is little legal discrimination against women, and women serve as judges, doctors, and professors; however, a male-dominated society continued to prevail in both entities, particularly in rural areas, and few women are in positions of real economic power or political power. Women have been discriminated against in the workplace in favor of demobilized soldiers. A small but increasing number of gender-related discrimination cases have been documented. Anecdotal accounts indicate that women and men generally receive equal pay for equal work at socially owned enterprises but not always at private businesses. Women are entitled to 12 months' maternity leave and may not be required to work more than 4 hours per day until a child is 3 years old. A woman with underage children may not be required to perform shift work. However, women in all parts of the country encountered problems with regard to the nonpayment of maternity leave allowances and the unwarranted dismissal of pregnant women and new mothers.*

*“The integration of women into the police force is uneven but has improved; there is substantial female representation in the Brcko*

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<sup>1</sup> Amnesty International (2001), *Concerns in Europe January – June 2001*, AI-index: EUR 01/003/2001, 01/09/2001, London, Amnesty International, available at <http://web.amnesty.org/ai.nsf/Index/EUR010032001>

*district and in police academy classes in both the RS and the Federation.”<sup>2</sup>*

## **2. Domestic violence**

The 2002 report by the US State Department addressed domestic violence, stating

*“Violence against women, including spousal abuse and rape, remained a widespread and underreported problem. A report by the International Helsinki Federation for Human Rights in 2000 estimated that approximately 30 percent of women in the country were 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, and laws in both the Federation and the RS prohibit rape. Spousal rape and spousal abuse also are illegal in the Federation and the RS. However, domestic violence usually was not reported to the authorities; a sense of shame reportedly prevented some victims of rape from coming forward to complain to authorities.*

*Although police received specialized training to handle cases of domestic violence, there were reports of police inaction in cases of domestic violence and sexual assault. On May 15, a Pale court convicted a man of three counts of causing bodily harm to his ex-wife. Over a 6-month period, the man had hit and kicked his wife, hit her in the head and damaged her eyes, and pushed her into a stove causing burns to her hands and legs. The judge ordered only a \$407 (900 KM) fine. Local police failed to actively pursue an investigation while the abuse was ongoing despite repeated complaints by the woman. The Pale Assistant Police Commander initially told IPTF human rights officers that the incidents happened "behind closed doors" so the police could not intervene. Centers for abused women were created in the District of Brcko, Bihac and Sarajevo based on the successful a model in Zenica in the Federation.*

*“Trafficking in women from Eastern Europe and the former Soviet Union for purposes of sexual exploitation was a serious and growing problem”<sup>3</sup>*

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<sup>2</sup> U.S. State Department (2002), *Country Reports on Human Rights Practices, 2001: Bosnia and Herzegovina*, Washington, Bureau of Democracy, Human Rights and Labor, available at [www.state.gov/g/drl/rls/hrrpt/2001/eur/8236.htm](http://www.state.gov/g/drl/rls/hrrpt/2001/eur/8236.htm)

<sup>3</sup> U.S. State Department (2002), op. cit.





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# People's Republic of China

## Appendix B

### Update March 2002

#### 1.4 Women's human rights

The 2002 U.S. State Department report comments:

*"Women*

*"There is no statute that outlaws sexual harassment in the workplace. 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. 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.*

*"The 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. 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. 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. 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.*

*“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. Women between the ages of 35 and 50 were the most affected, and the least likely to be retrained. In addition female employees are more likely to be required to take pay cuts when a plant or company is 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 increase 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.*

*“The law provides for equal pay for equal work. 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.*

*“According to the most recent figures, women made up approximately 70 percent of the country's illiterate population. A 1998 Asian Development Bank report estimated that 25 percent of all women are semi-literate or illiterate, compared with 10 percent of men; illiteracy in rural areas generally is higher. The Government's "Program for the Development of Chinese Women (1995-2000)" set as one of its goals the elimination of illiteracy among young and middle-aged women by the end of the century; however, this goal was not met.*

*“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), a far higher percentage than the country's claim to 22 percent of the world's population. 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 economic and social status of women is among the leading causes.

*“While the gap in the education levels of men and women is narrowing, men continue to constitute the majority of the relatively small percentage of the population that receives a university-level education. However, educators in the large cities have reported that there is a trend toward greater gender balance in universities. Some academics have reported that in some departments women are beginning to outnumber men—even in some graduate schools. Women with advanced degrees report an increase in discrimination in the hiring process as the job distribution system has opened up and become more competitive and market driven.”<sup>1</sup>*

## **2. Domestic Violence**

The US State Department report for 2002 noted

*“Violence against women is a significant problem. Violence against women can be prosecuted under the law. There is no national law specifically targeting domestic violence, although amendments to the Marriage Law, adopted in April, are aimed in part at providing protection against spousal abuse. NPC members claim that most of the 33 changes to the Marriage Law were designed to support the rights of women and children. In recognition of the seriousness of spousal abuse, 13 provinces and provincial level cities have passed legislation to address the problem. 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 2000 survey report by the All China Women's Federation (ACWF) found that violence occurs in 30 percent of families, with 80 percent of cases involving husbands abusing their wives. 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 survey found that domestic violence occurs at all socioeconomic levels. According to ACWF research, 40 percent of the complaints it fielded in 2000 involved family violence, and 60 percent of divorces were due to family violence. According to some experts, many women do not report*

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<sup>1</sup> U.S. State Department (2002), *Country Reports on Human Rights Practices, 2001: China*, Washington, Bureau of Democracy, Human Rights and Labor, available at [www.state.gov/g/drl/rls/hrrpt/2001/eap/8289.htm](http://www.state.gov/g/drl/rls/hrrpt/2001/eap/8289.htm)

*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 successfully were 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.*

[...]

*“Trafficking in women and children and the kidnaping and sale of women and children for purposes of prostitution and/or marriage are serious problems.”<sup>2</sup>*

### **3. Domestic violence and the law**

#### **3.3 Amendments to marriage law**

The newspaper China Daily reported at the end of 2001 on a judicial interpretation to the April 2001 amendments to the Marriage Law which further defined domestic violence:

*“The Supreme People's Court yesterday issued a judicial interpretation of the amendments to the Marriage Law in an effort to better protect the rights of innocent parties and to improve judges' handling of cases.*

....

*Yesterday's judicial interpretation said that beating, tying up, restricting personal freedom and other practices that lead to physical or mental harm are all forms of domestic violence.”<sup>3</sup>*

## **6. Case law**

### **6.1 Canada**

The following is an example of a successful case where the court accepted that State protection was not available.

CRDD TA0-03535

*“This claim was part of a group of similar claims which included a constitutional challenge based on section 15 of the Canadian Charter of Rights and Freedoms. The teenaged claimant based her claim on membership in a particular social group: female minors incapable of protecting themselves in abusive family situations. As a preliminary matter, the Minister's counsel sought unsuccessfully to have the interpreter replaced. The claimant was subjected to physical and*

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<sup>2</sup> U.S. State Department (2002), op. cit.

<sup>3</sup> China Daily (2001), *Law on Marriage Clarified by Court*, 27 December 2001, available at [www1.chinadaily.com.cn/cndy/2001-12-27/49670.html](http://www1.chinadaily.com.cn/cndy/2001-12-27/49670.html)

*psychological abuse by her family and was sent to North America against her will. According to the documentary evidence, Chinese government policies encourage or tacitly accept human rights abuses against women and girls, China's population control policy depicts girls as problematic for families, and hundreds of millions of females suffer from domestic violence with no state agency or support system to turn to for help. The claimant's youth and gender rendered her vulnerable. She would be persecuted if she returned to China, and state protection would not be available to her. The Refugee Division considered the Guidelines concerning Women Refugee Claimants Fearing Gender-Related Persecution and the Guidelines concerning Child Refugee Claimants: Procedural and Evidentiary Issues. CRDD TA0-03535, Milliner, Okhovati, March 6, 2001 (reasons signed May 1, 2001)."*<sup>4</sup>

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<sup>4</sup> Reflex, (2001) Case CRDD TA0-03535, Issue 167 - March 6, 2001, Available at: [www.cisr.gc.ca/legal/reflex/articles/refugee/167/167-005\\_e.htm](http://www.cisr.gc.ca/legal/reflex/articles/refugee/167/167-005_e.htm)





# ISLAMIC REPUBLIC OF IRAN

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# Islamic Republic of Iran

## Appendix B

### Update March 2002

#### 1.3 Iran and international legal instruments

The Women's Committee of National Council of Resistance of Iran issued a statement in January 2002 on the bill being presented to the parliament on Iran becoming a party to the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Various conditions are attached to the proposed accession, which the Committee argue would negate its effectiveness; their view is that the proposed accession is a mere "propaganda ploy":

*"- Iranian Resistance condemns misogynous mullahs' deceptive move on Convention for Elimination of All Forms of Discrimination Against Women*

*"The government-run ISNA news agency reported that the Khatami cabinet has presented to the mullahs' Majlis "a bill on Iran becoming a state party to Convention for Elimination of All Forms of Discrimination Against Women (CEDAW)."*

*"The Foreign Ministry, which has drawn up the bill, has stated that the government's objective in acceding to CEDAW was "to confront and reduce the negative propaganda against the Islamic Republic of Iran," ISNA reported. The government has laid down two conditions for acceding to the convention: "the Islamic Republic of Iran will only regard as applicable those articles of the Convention that do not contradict Islam" and, secondly, "in case of disagreement on the implementation or alteration of the Convention, Iran will not be bound to follow the procedure for settling the dispute through arbitration or referring the matter to the International Court of Justice."*

*"Ms. Sarvnaz Chitsaz, Chair of the NCR's Women's Committee, described the Khatami cabinet's bill as "a new peak of demagoguery and deception by the misogynous mullahs ruling Iran" and said: "Since CEDAW came into force in 1981 as an official United Nations document, more than a hundred states have acceded to it, but the Khatami government is setting conditions for its accession that amount to a de facto rejection of the entire convention. This regime never had and does not have the capacity to recognize even the most rudimentary rights of women stipulated in CEDAW. The mullahs' bill only serves as a reminder of the misogynous and reactionary nature of this regime and is an affront to international covenants and conventions."*

*"Women's Committee chair added: "The mullahs claim that 'articles in the Convention contradict Islam' is nothing but a shameless bid to attribute their reactionary antipathy toward women's rights and freedom to Islam."*

*"She pointed out that the conditions set by Khatami and his associates mean that "even if it were ratified by the mullahs' Majlis and endorsed by the reactionary Council of Guardians, it would only serve as a propaganda ploy for the regime to evade mounting international pressures, particularly from organizations defending women's rights."*

*Mrs. Chitsaz said: "In the past four years, Khatami, as the head of Supreme Council for Cultural Revolution, personally opposed accession to CEDAW, but now is resorting to a threadbare ploy. It is no secret, however, that the mullahs' criminal record against women only worsened during Khatami's tenure, to the extent that the last report by the Special Representative of the United Nations Human Rights Commission to the General Assembly likened Iran to 'a prison for women.' During this period, 11 out of 17 persons stoned to death were women. Brutal pressures, inhuman discrimination and cruel punishments such as flogging, arrest and torture of women for not observing the mandatory dress code, sexual segregation in medical facilities, etc., are only a part of this shameful record."*

*"The extensive participation of women in popular uprisings, protest demonstrations and antigovernment strikes in recent months have clearly shown that the women of Iran detest this anti-human, misogynous regime in its entirety," Ms. Chitsaz said. "They only see the realization of their rights and freedom in the overthrow of the ruling religious dictatorship with all its criminal factions." <sup>1</sup>*

Amnesty International issued a report in December 2001 criticising Iran's continued violations of human rights which focussed on the legal system, in particular, and notes discriminatory laws including those relating to women's rights. Some relevant sections are reproduced below.

*"The Constitution of the Islamic Republic of Iran contains many important safeguards of rights and freedoms that are guaranteed in the international instruments to which Iran is a state party (see box), including those relating to freedom of expression and fair trial. These seek to ensure that all individuals enjoy the same rights under law, and the human dignity that follows from this.*

- *Human rights treaties that Iran has ratified: 1968 - International Convention on the Elimination of All Forms of Racial Discrimination*
- *1975 - International Covenant on Civil and Political Rights*

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<sup>1</sup> Women's Committee of National Council of Resistance of Iran (2002), *Iranian Women Brief# 49*, January 2002, available at AIWUSA-Association of Iranian Women-USA, [www.aiwusa.org/](http://www.aiwusa.org/)

- 1975 - *International Covenant on Economic, Social and Cultural Rights*
- 1976 - *Convention relating to the Status of Refugees*
- 1976 - *Protocol relating to the Status of Refugees*
- 1994 - *Convention on the Rights of the Child*

*“There is also a vigorous human rights debate in Iran's parliament, the Islamic Consultative Assembly (ICA), amongst members of the judiciary, non-governmental and professional bodies such as the Bar Association, and many newspapers.*

*“There are, however, issues of particular concern to Amnesty International regarding the implementation of international human rights safeguards, including in connection with freedom of expression and association and the administration of justice. The organization has repeatedly addressed the Iranian authorities on behalf of individual prisoners of conscience and people whose basic human rights appeared to be at risk, and has called for legislation to be reviewed and reforms to be implemented.*

....

*“Amnesty International's further concerns in Iran include prolonged and often incommunicado detention, torture and ill-treatment of prisoners, including the use of cruel, inhuman and degrading punishments such as flogging and amputation; impunity of state officials for human rights violations; the extensive use of the death penalty and its public implementation and discriminatory laws including those relating to women's rights.”<sup>2</sup>*

## **1.4 Women's human rights**

The 2002 U.S. State Department report comments:

*“Women*

*“Women have access to primary and advanced education; however, social and legal constraints limit their professional opportunities. In September 2000, the Majles approved a controversial bill to allow single women to travel abroad for graduate education. The Council of Guardians was considering the legislation at year's end. 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.*

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<sup>2</sup> Amnesty International (2001), *Iran: A legal system that fails to protect freedom of expression and association*, AI-index: MDE 13/045/2001, London, Amnesty International, available at [www.amnesty.org](http://www.amnesty.org)

*“According to the International Monetary Fund (IMF), there were 2 million women in the work force, of whom approximately 1.8 million were employed during the year. 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 required companies hiring women to 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. The authorities harass women if their dress or behavior is considered inappropriate, and women 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.*

*“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 adopted in 1967, that gave women increased rights in the 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 imbalance between the number of trained and licensed male and female physicians and specialists.”<sup>3</sup>*

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<sup>3</sup> U.S. State Department (2002), *Country Reports on Human Rights Practices, 2001: Iran*, Washington, Bureau of Democracy, Human Rights and Labor, available at [www.state.gov/g/drl/rls/hrrpt/2001/nea/8251.htm](http://www.state.gov/g/drl/rls/hrrpt/2001/nea/8251.htm)

## 2. Domestic violence

The US State Department 2002 report notes

*“Although spousal abuse and violence against women occurred, statistics regarding such abuse are not available publicly. Abuse in the family is considered a private matter and seldom is discussed publicly. Rape is illegal; however, the law rarely is enforced, and rape is a widespread problem. The Special Representative noted in his September 2000 report that media reporting on the situation of women has diminished, in part due to the closure of the reform-oriented press. [...]*

*“Prostitution is illegal. Information regarding the extent of the problem is not available.*

*“A girls' center in Karaj reportedly was involved in the trafficking of girls.[...]”<sup>4</sup>*

## 3. Domestic violence and the law

### 3.3 The civil code: marriage and divorce

The US State Department reported

*“In October 2000, the Parliament passed a bill to raise the legal age of marriage for women from 9 to 15. However, the Council of Guardians rejected the bill in November 2000 as contrary to Islamic law. Nonetheless, even under the 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 may 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. Women have the right to divorce, and the grounds on which a woman may seek a divorce include proving that her husband is addicted to drugs or that he has not supported her for extended periods. 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*

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<sup>4</sup> U.S. State Department (2002), *op. cit.*

*recognized a divorced woman's right to a share in the property that couples acquire during their marriage and to increased alimony rights. [...]*

*“Muslim women may not marry non-Muslim men. The testimony of a woman is worth only half that of a man in court [...]. A married woman must obtain the written consent of her husband before traveling outside the country”<sup>5</sup>*

## **5. The situation of separated or divorced women**

### **5.2.1 Custody of children**

The US State Department country report highlighted

*“Women who remarry are forced to give up to the child's father custody of children from earlier marriages. However, the law granted custody of minor children to the mother in certain divorce cases in which the father is proven unfit to care for the child, such as in cases in which the father suffers from drug addiction or has a criminal record. [...]<sup>6</sup>*

### **5.3 Economic security**

The 2002 report by the US State Department stated

*“In his August report, the UNSR reported that poverty severely impacts women and that there are about one million single-mother families, and that 29 percent of the families below the poverty line are single-mother families. In addition, 70 percent of the single mothers in rural areas are illiterate.”<sup>7</sup>*

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<sup>5</sup> U.S. State Department (2002), op. cit.

<sup>6</sup> U.S. State Department (2002), op. cit.

<sup>7</sup> U.S. State Department (2002), op. cit.



## 6. Case law

### 6.3 New Zealand

The following summary is from a successful case, whereby the applicant was granted refugee status.

*“Refugee Appeal No. 71427/99 (16 August 2000); [2000] NZAR 545*

*“[73] The appellant, a citizen of the Islamic Republic of Iran, had been regularly beaten by her husband, an officer in the Revolutionary Guards. Immediately after birth, her son had been given away without her knowledge and she was expelled from the family home. She believed her son had died at birth. In divorce proceedings she learnt that her son was alive but custody was awarded to her husband. After the divorce she was subjected by the former husband to a campaign of harassment, leading to a breakdown in her health. After a long struggle she was eventually awarded informal custody of the child, but on terms requiring her not to leave the child’s home town or Iran. If she broke these conditions or remarried, custody would be forfeited. Notwithstanding these requirements, the appellant subsequently entered into a temporary marriage. The former husband continued to harass the appellant but was initially unaware of her re-marriage. However, after discovering what had happened he went in search of the appellant and assaulted members of her family as well as her temporary husband. The appellant left Iran illegally, taking her son with her. Her refugee claim was based on the Convention grounds of religion, political opinion and membership of a particular social group.*

*“[74] The holdings were:*

*“1. The interpretive approach to be followed was that prescribed by Article 31 of the Vienna Convention on the Law of Treaties, 1969. That is, the interpretation must be in good faith. Second, the ordinary meaning of the words of the treaty are presumed to be the authentic representation of the parties’ intentions. Third, the ordinary meaning of the words is not to be determined in a vacuum removed from the context of the treaty or its object or purpose. Primacy is to be given to the written text of the Refugee Convention, but the context, object and purpose of the treaty must also be considered (paras [43] & [44]).*

*Golder v United Kingdom (1975) 1 EHRR 524, 544 (ECHR) and Applicant A v Minister for Immigration and Ethnic Affairs (1997) 190 CLR 225 (HCA) applied.*

*“2. The refugee scheme is surrogate or substitute protection, activated only upon failure of national protection. Given that refugee law ought to concern itself with actions which deny human dignity in any key way, persecution may be defined as the sustained or systemic violation of human rights demonstrative of a failure of state protection. Core norms of international human rights law may be relied upon to define forms of serious harm within the scope of persecution. The core human rights are those contained in the Universal Declaration of Human Rights, 1948, the International Covenant on Civil and Political Rights, 1966 and the International Covenant on Economic, Social and Cultural Rights, 1966, the Convention on the Elimination of All Forms of Racial Discrimination, 1966, the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 and the Convention on the Rights of the Child, 1989. The universality of these international human rights instruments will not permit social, cultural or religious practices in a country of origin from escaping assessment according to international human rights standards (paras [47] to [52]).*

*Canada (Attorney General) v Ward [1998] 2 SCR 689 (SC:Can) applied; R v Immigration Appeal Tribunal; Ex parte Shah [1999] 2 AC 629 (HL) and Horvath v Secretary of State for the Home Department [2000] 3 WLR 379 (HL) referred to.*

*“3. Various threats to human rights, in their cumulative effect, can deny human dignity in key ways and should properly be recognised as persecution for the purposes of the*

*Refugee Convention. The need to recognise the cumulative effect of threats to human rights is particularly important in the context of refugee claims based on discrimination. The determination whether the treatment feared in any particular case amounts to persecution will involve normative judgments going beyond mere fact-finding (para [53]).*

*Damouni v Minister for Immigration, Local Government and Ethnic Affairs (1989) 87 ALR 97, 101 applied.*

*“4. Discrimination per se is not enough to establish a case for refugee status. A distinction must be drawn between a breach of human rights and persecution. Not every breach of a refugee claimant’s human rights constitutes persecution. The intention of the drafters of the Convention was not to protect persons against any and all forms of even serious harm, but was rather to restrict refugee recognition to situations in which there was a risk of a type of injury that would be inconsistent with the basic duty of protection owed by a state to its own population. However, decision-makers should consciously strive both to recognise and to give proper weight to the impact of discriminatory measures on women (paras [54] and [55]).*

*“5. The Refugee Convention does not require that the state itself be the agent of harm. Persecution at the hands of “private” or non-state agents of persecution equally falls within the definition. There are four situations in which it can be said that there is a failure of state protection. First, persecution committed by the state; second, persecution condoned by the state; third, persecution tolerated by the state and fourth, persecution not condoned or not tolerated by the state but nevertheless present because the state either refuses or is unable to offer adequate protection (paras [56] to [60]).*

*Canada (Attorney General) v Ward [1993] 2 SCR 689 (SC:Can) applied. R v Immigration Appeal Tribunal; Ex parte Shah [1999] 2 AC 629 (HL) and Horvath v Secretary of State for the Home Department [2000] 3 WLR 379 (HL) referred to.*

*“6. The standard against which the sufficiency of state protection is to be measured is whether the protection available from the state will reduce the risk of serious harm to below the level of well-foundedness, or, as it is understood in New Zealand, to below the level of a real chance of serious harm. The duty of the state is not, however, to eliminate all risk of harm. We live in a highly imperfect world and hardship and suffering remains very much part of the human condition for perhaps the majority of humankind. (Paras [62] to [67])*

*Canada (Attorney General) v Ward [1993] 2 SCR 689 (SC:Can) applied. Horvath v Secretary of State for the Home Department [2000] 3 WLR 379 (HL) not followed.*

*“7. A finding of persecution can only be made if the facts establish both serious harm and an absence of state protection. Persecution = Serious Harm + The Failure of State Protection (paras [72] & [73]).*

*R v Immigration Appeal Tribunal; Ex parte Shah [1999] 2 AC 629 (HL) and Horvath v Secretary of State for the Home Department [2000] 3 WLR 379 (HL) applied.*

*“8. On the question of serious harm, the evidence established that the policy of gender discrimination and the enforcement of gender-based norms against women as a group in Iran was of a nature which permitted a finding of persecution in the sense of a sustained or systemic violation of basic human rights. On the question of failure of state protection, the evidence established that the state itself had put in place the very legislative framework which to a large measure was the source of the serious harm faced by the appellant. In addition, the state itself condoned, if not encouraged the “private” or domestic violence which comprised the balance of the serious harm faced by the appellant. The evidence also established that the state would fail to protect her should she return to Iran. On her return she would face both serious harm and a failure of state protection (paras [74] to [82]).*

*“9. On the facts, subject to the appellant being able to satisfy the nexus requirement, the religion and political opinion Convention grounds were directly applicable to her case (para [88]).*

*“10. While the Iranian laws on marriage, divorce and custody rights are designed, with supposed Islamic justification, to maintain political power, the overarching characteristic of the disenfranchised is their gender, that is the fact that they are women. Whether women are a particular social group as that term is understood in Article 1A(2) of the Refugee Convention depends on the application of agreed principles. First, the ambit of the social group ground of the definition must be evaluated on the basis of the basic principles underlying the Refugee Convention. International refugee law was meant to serve as a substitute for national protection where the latter was not provided. The Convention has built-in limitations to the obligations of signatory states which reflect the fact that the international community did not intend to offer a haven for all suffering individuals. Second, the particular social group category is limited by anti-discrimination notions inherent in civil and political rights. Third, the ejusdem generis approach developed in Re Acosta provides a good working rule in that it properly recognises that the persecution for reason for membership of a particular social group means persecution that is directed toward an individual who is a member of a group of persons all of whom share a common immutable characteristic. That characteristic must be either beyond the power of an individual to change, or so fundamental to individual identity or conscience that it ought not be required to be changed. What is excluded by this definition are groups defined by a characteristic which is changeable or from which disassociation is possible, so long as neither option requires renunciation of basic human rights. Fourth, while the social group ground is an open-ended category which does not admit of a finite list of applications, three possible categories can be identified, namely groups defined by an innate or unchangeable characteristic, groups whose members voluntarily associate for reasons so fundamental to their human dignity that they should not be forced to forsake the association and groups associated by a former voluntary status, unalterable due to its historical permanence. Fifth, the social group category is not an all encompassing category. Not every association bound by a common thread is included. Sixth, there can only be a particular social group if the group exists independently of, and is not defined by, the persecution. Seventh, cohesiveness is not a requirement for the existence of a particular social group. Finally, members of the group must share an internal defining characteristic. (paras [90] to [106]).*

*Canada (Attorney General) v Ward [1993] 2 SCR 689 (SC:Can); Applicant A v Minister for Immigration and Ethnic Affairs (1997) 190 CLR 225 at 252-253 (HCA) and R v Immigration Appeal Tribunal; Ex parte Shah [1999] 2 AC 629 (HL) applied.*

*“11. Applying these principles, it is indisputable that gender can be the defining characteristic of a social group and that women may be a particular social group (para [106]).*

*“12. The evidence relating to Iran establishes that the overarching characteristic of those fundamentally disenfranchised and marginalised by the state is the fact that they are women. This is a shared, immutable, internal defining characteristic. On the facts, the particular social group was women (para [108]).*

*“13. The words “for reasons of” in the refugee definition require a causal nexus between actual or perceived membership of the particular social group and the well-founded fear of persecution. It is not sufficient that a person be a member of a particular social group and also have a well-founded fear of persecution. The persecution must be feared for reason of the person’s membership or perceived membership of the particular social group (para [111]).*

*“14. Accepting that Persecution = Serious Harm + The Failure of State Protection, the nexus between the Convention reason and the persecution can be provided either by the serious harm limb or by the failure of the state protection limb. This means that if*

*a refugee claimant is at real risk of serious harm at the hands of a non-state agent (eg husband, partner or other non-state agent) for reasons unrelated to any of the Convention grounds, but the failure of state protection is for reason of a Convention ground, the nexus requirement is satisfied. Conversely, if the risk of harm by the non-state agent is Convention related, but the failure of state protection is not, the nexus requirement is still satisfied. In either case the persecution is for reason of the admitted Convention reason. This is because “persecution” is a construct of two separate but essential elements, namely risk of serious harm and failure of protection. Logically, if either of the two constitutive elements is “for reason of” a Convention ground, the summative construct is itself for reason of a Convention ground. (Para [112])*

*R v Immigration Appeal Tribunal; Ex parte Shah [1999] 2 AC 629 (HL) applied.*

*“15. It was therefore important in a case where there is more than one agent of persecution to examine separately, in relation to each agent, the cause of the risk of serious harm or, as the case may be, the failure of state protection, such failure being established if the anticipated response of the state does not bring the risk of harm to below a well-founded fear. (Para [113]).*

*“16. As to the feared serious harm at the hands of the husband, no nexus had been established in relation to the religion, political opinion and social group grounds. However, as to the feared serious harm at the hands of the state, the evidence clearly established that the appellant was at risk of serious harm at the hands of the state and because the state was totalitarian in nature, no state protection would be available to her. The reason why the appellant was exposed to serious harm and to lack of state protection both from the husband and from the state itself was because she is a woman. While the cloak under which this persecution would ostensibly take place was religion and political opinion, the overarching reason why she was at risk of persecution was because she is a woman. The social group category was therefore the primary Convention ground in relation to which a nexus had been established (paras [116] to [120]).”<sup>1</sup>*

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<sup>1</sup> Summary taken from: Auckland District Law Society Seminar, (2001) *Winning Immigration and Refugee Cases: Recent Case Law*, 26 February 2001, Available at: [www.refugee.org.nz/ADLS2.htm](http://www.refugee.org.nz/ADLS2.htm) Full text of the judgement is available from: Refugee Status Appeals Authority, (2000) *Refugee Appeal No. 71427/99*, Available at: [www.refugee.org.nz/Fulltext/71427-99.htm](http://www.refugee.org.nz/Fulltext/71427-99.htm)

# PAKISTAN

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# Pakistan

## Appendix B

### Update March 2002

#### 1.2 Human rights in Pakistan today

##### 1.2.1 Women

The 2002 U.S. State Department Report comments:

*“Women*

*“Significant barriers to the advancement of women begin at birth. In general female children are less valued and cared for than are male children. According to a U.N. study, girls receive less nourishment, health care, and education than do boys. In February 2000, 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 particularly is 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 83 percent of boys passing the same tests. In Baluchistan conditions are much worse, with only 2 percent of the province's women having received any formal education. Education activists have noted that many parents would like to educate their daughters; however, many parents reportedly chose not to send their daughters to school due to the poor quality of instruction and the lack of facilities.*

*“Although a small number of women study and teach in universities, postgraduate employment opportunities for women largely remain limited to teaching, medical services, and the law. Nevertheless an increasing number of women are entering the commercial and public sectors.*

*“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 accepted more readily.*

*Both civil and religious laws theoretically protect women's rights in cases of divorce, but many women are unaware of their rights, and often the laws are not observed. One NGO reported that legal literacy is constrained by the lack of laws printed into local languages. Judicial reforms begun in April with foreign funding included plans to publish laws in Urdu, which is understood by the majority of citizens; some laws had been published in Urdu as of year's end. 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 16 for females. However, the legal process is so complicated and lengthy that it can take years for the children to get maintenance.*

*“In inheritance cases women generally do not receive--or are pressed to surrender--the share of the inheritance they legally are due.*

*“In rural areas, the practice of a woman "marrying the Koran" still is accepted widely if the family cannot arrange a suitable marriage or wants to keep the family wealth intact. A woman "married to the Koran" is forbidden to have any contact with males over 14 years of age, including her immediate family members. Press reports indicate that the practice of buying and selling brides still occurs in parts of the NWFP and the Punjab.*

*“A special three-member bench of the Lahore High Court upheld in 1997 the federal Shariat Court's ruling that a Muslim woman can marry without the consent of her wali (guardian--usually her father). However, in practice social custom dictates that couples are to marry at the direction of family elders. When this custom is violated, especially across ethnic lines, violence against the couple may result, and the authorities generally fail to prosecute such cases vigorously.*

*“Civil marriages do not exist; marriages are performed and registered according to one's religion. Upon conversion to Islam, the marriages of Jewish or Christian men remain legal; however, upon conversion to Islam, the marriages of Jewish or Christian women, or of other non-Muslims, that were performed under the rites of the previous religion are considered dissolved (see Section 2.c.). Children born to Jewish or Christian women who convert to Islam after marriage are considered illegitimate only if their husbands do not also convert, and if women in*



*such cases do not separate from their husbands. Children of non-Muslim men who convert are not considered illegitimate.*

*“The value of women's testimony is not equal to that of a man's in certain court cases tried under the Hudood Ordinances or before a Federal Shariat Court (see Section 1.e.).”*

[...]

*“In December 2000, speakers at a seminar stated that large numbers of working women face discrimination and sexual harassment. Women routinely are denied equal opportunities for promotion, pay, and benefits. Additionally women in some sectors are denied days off and overtime benefits.*

*“Trafficking in women also is a serious problem (see Section 6.f.).*

[...]

*“Women's organizations operate primarily in urban centers. Many concentrate on educating women about existing legal rights. Other groups concentrate on providing legal aid to poor women in prison who may not be able to afford an attorney.*

*“During the year, the Government held elections and installed local governments where women compose one-third of the members. Federal Ministers, especially the Minister for Women's Development, have continued to speak out against “honor killings” at public seminars and symposiums. In late April, President Tarar issued an amendment ordinance to the citizenship law to enable women married to foreigners to claim citizenship for their children.”<sup>1</sup>*

## **2. Domestic violence**

### **2.1 The extent of domestic violence**

The US State Department, addressing domestic violence, reported that

*“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 Progressive Women's Organization (PWO) reported in 1999 that one out of every two women is the victim of mental or physical violence. 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*

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<sup>1</sup> U.S. State Department (2002), *Country Reports on Human Rights Practices, 2001: Pakistan*, Washington, Bureau of Democracy, Human Rights and Labor, available at [www.state.gov/g/drl/rls/hrrpt/2001/sa/8237.htm](http://www.state.gov/g/drl/rls/hrrpt/2001/sa/8237.htm)

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. While abusers may be charged with assault, cases rarely are filed. Police usually return battered women to their abusive family members. Women are reluctant to file charges because of societal mores that stigmatize divorce and make women economically and psychologically dependent on their relatives. Relatives also are reluctant to report abuse to protect the reputation of the family. There are no specific laws pertaining to domestic violence, except for the Qisas and Diyat ordinances (see Section 1.e.), which rarely are invoked and may privatize the crime. However, Qisas and Diyat 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.

*“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, 471 dowry deaths were reported, but according to one NGO, only 60 to 70 percent of such cases are reported. During 2000 593 burn cases were recorded in Lahore newspapers; cases were registered in 74 percent of these incidents but suspects were arrested in only 10 percent of the cases. Human rights monitors assert that many cases are not reported by hospitals and that, even when they are, the police are reluctant to investigate or file charges. Furthermore, human rights monitors agree that most "stove deaths" in fact are killings based upon a 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. By year's end, there was no progress in the 1998 case of Shahnaz, who died after her husband poured gasoline on her and set her on fire. The police registered a case against her husband and three in-laws. As of September 30, the husband and in-laws remained in custody after the court rejected their appeal for bail. Two new cases that were reported by an NGO during the year involved the deaths of Kausar of Tala Gang, District Chakwal, and Tahira of Simly Dam, District Islamabad.*

*A crisis center for women in distress was opened in 1988 by the Progress Women's Association (PWA) in Rawalpindi. After several years of lobbying the Government, in 1997 the Government opened a center in Islamabad with the assistance of the PWA and other 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 2000 the crisis center served 75 women. A second crisis center in Vehari, in southern Punjab, opened in 1998.*<sup>2</sup>

## **2.2 Rape and sexual violence**

The 2002 report by the US State Department noted

*"Rape is a pervasive 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. The law provides 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, commonly is 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.)."*<sup>3</sup>

## **2.4 "Honour" crimes**

The US State Department 2002 country report stated

*"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 PWO 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" (or adulterer/adulteress) in Sindh. More than 800 women were killed by family members in so-called "honor killings" during the year. In March 2000, women's rights activists told a local newspaper that the frequency of honor killings was on the rise. By the end of 2000, the PWO had collected data on 369 honor killings. The problem is believed to be even more extensive in rural Sindh. "Karo/kari" killings are common in rural Sindh and*

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<sup>2</sup> U.S. State Department (2002), op. cit.

<sup>3</sup> U.S. State Department (2002), op. cit.

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 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." The Government has failed to take action in honor killing cases, particularly when influential families are involved. Mehvish Miankhel, a member of an influential political family in Dera Ghazi Khan, allegedly was killed by her uncle in April. Her uncle had accused her of having an affair with the family's driver. A criminal complaint was filed against Miankhel's uncle, father, grandfather, two cousins, and two maternal uncles on July 7. All were granted prearrest bail and were not detained. In December 2000, Khalida was killed by her uncle and other relatives who accused her of having illicit relations with Momin Gorchani. Khalida's relatives also injured Momin's father and another one of his relatives. Police arrested one person in connection with the murder. In June 2000, a man from Yar Hussain in the NWFP allegedly killed his 20-year-old daughter, Mumlikat Bibi, while she was sleeping. The father reportedly opposed his daughter's efforts to choose a spouse without parental consent. AI also reported that if an accused adulteress is killed, and the adulterer manages to escape this fate, he may be required under the karo/kari tradition to compensate the family of the accused adulteress; sometimes, a woman from the adulterer's family is given compensation to repair the honor of the adulteress' family."<sup>4</sup>

### **3. Domestic violence and the law**

#### **3.2 The law and sexual violence**

In highlighting the difficulties facing women attempting to obtain justice following sexual violence, the US State Department reported that

*"According to a police official, in most rape cases the victims are pressured to drop charges because of the threat of Hudood adultery or fornication charges against them if they cannot prove the absence of consent. All consensual extramarital sexual relations are considered violations of the Hudood Ordinances, and carry Hadd (Koranic) or Tazir (secular) punishments (see Section 1.e.). Accordingly, if a woman cannot prove the absence of consent, there is a risk that she may be charged with a violation of the Hudood ordinances for fornication or adultery. The Hadd--or maximum punishment for this offense--is public flogging or stoning; however, for Hadd punishments to apply, especially stringent rules of evidence are followed. Hadd punishments are mandatory if evidentiary requirements are met; for sexual offenses, four adult male Muslims must witness the act or the alleged perpetrator*

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<sup>4</sup> U.S. State Department (2002), *op. cit.*

*must confess. For non-Muslims or in cases where all of the 4 male witnesses are not Muslim, the punishment is less severe. The testimony of four female witnesses, or that of the victim alone, is insufficient to impose Hadd punishments; therefore, even if a man rapes a woman in the presence of several women, he cannot be subjected to the Hadd punishment. If Hadd punishment requirements are not met, the accused may be sentenced to a lesser class of penalties (Tazir); in practice most rape cases are tried at this level. Under Tazir a rapist may be sentenced to up to 25 years in prison and 30 lashes. No Hadd punishment has been applied in the more than 20 years that the Hudood ordinances have been in force. For Tazir punishments, there is no distinction between Muslim and non-Muslim offenders.*

*“In 1998 approximately one-third of the women in jails in Lahore, Peshawar, and Mardan were awaiting trial for adultery; that percentage likely remains accurate. According to an HRCP lawyer, the Musharraf Government has brought fewer charges against women under the Hudood Ordinance than were brought in the past, and the courts have shown greater leniency toward women in their sentences and in the granting of bail. On August 1, a government official stated that the majority of women in prison were there on murder charges, and asserted that the number of cases filed under the Hudood Ordinances was exaggerated. In cases where a woman wishes to bring rape charges, she will have trouble bringing her attacker to justice. According to AI, men accused of rape sometimes are acquitted and released, while their victims are held on adultery charges.*

*“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 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). 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 abusive physically or verbally during these exams, especially in cases where a 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. 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 from the accused rapist to get the victim to drop a case; however, in other cases, police will request bribes from the victim to pursue the case against the accused rapist. 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.*

*“The Parliamentary 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. 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 destroyed. According to one human rights monitor, 80 percent of adultery related Hudood cases are filed without supporting evidence. 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. One NGO run by a prominent human rights activist reported that 262 women were on trial for adultery in Lahore as of May. An additional 33 were awaiting trial and 26 had been convicted under the Hudood Ordinances. At the end of 2000, 511 women were awaiting trial for adultery under the Hudood Ordinance in Lahore; 400 in Peshawar; and 300 in Mardan.*

*“Marital rape is not a crime. The Hudood Ordinances abolished punishment for raping one's wife. However, the Commission of Inquiry for women has recommended reinstating penalties for marital rape. Marriage registration (nikah) sometimes occurs years before a marriage is consummated (rukh sati). The nikah (unconsummated) marriage is regarded as a formal marital relationship, and thus a woman or girl cannot be raped by a man to whom her marriage is registered, even if the marriage has not yet been entered into formally. Maulvi Qari Mohammad Sharif, a cleric, was granted bail and pardoned by President Rafiq Tarar in late December 2000. Sharif had been convicted of marital rape and mutilating his wife in a highly publicized*

*case in 1994. Sentenced to 30 years imprisonment, the punishment was reduced on appeal to 10 years before he was released. Government officials declined to comment on the rationale for Sharif's pardon.*<sup>5</sup>

#### **4.4 Other support services**

Cassandra Balchin from Women Living Under Muslim Laws provided the following information regarding the protection available to women in government-run and private shelters.

Government-run shelters, called 'Darul Aman', must be distinguished from the small number of privately run shelters.

*"Conditions in the privately run shelters may not be perfect and the women are unable to move out for fear of attack but the government shelters are actually used as sub-jails where women are confined there by magistrates. Most often, if a young woman, especially under 18, leaves her home (natal or marital) and the court is trying to decide if she has the right to go where she wants to (either with a husband the family disapproves of or escape both her marriage and her natal family which put her in the bad marriage), the court will often send her off to a Darul Aman while the case is being heard."*

It is easy for the families of women living in the shelters, (both government-run and private) to orchestrate a demonstration and to attack the shelters. For example the father of a woman in the Dastak shelter used his connections to the religious parties to mobilise a demonstration to attack where his daughter was being sheltered.

*"Also, both in government run shelters and private shelters, women have very real reason to fear: in both instances, women have been killed while entering/leaving the shelters or in transit from a shelter to lawyer's offices."*<sup>6</sup>

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<sup>5</sup> U.S. State Department (2002), op. cit.

<sup>6</sup> Correspondence with Cassandra Balchin from Women Living Under Muslim Laws, (2001), see [www.wluml.org](http://www.wluml.org)

## 6. Case law

### 6.3 Australia

The following case, of a women fleeing domestic violence, is under consideration by the High Court of Australia. The facts of the case were

*“...that in Pakistan she was a target of domestic violence at the hands of her husband, and, to a more limited extent, of his family. The violence included slappings, beatings, which led to her hospitalisation, a threat to throw acid on her and a threat to kill her by setting fire to her. On one occasion, an attempt to set fire to her commenced when she was doused with petrol, an activity which stopped when a neighbour arrived in response to the screams of Ms Khawar and her children.”<sup>7</sup>*

She reported the violence to the police on four separate occasions. The first time, she was told that *“such incidents were occurring throughout the country and that they could do nothing about it”*. The second time, the police officer

*“...did not write down her story accurately and did not seem to take her seriously. When her husband returned home that evening with his brother, Tariq, he told her that he knew of the police report and warned her that the police could do nothing. He and Tariq then beat her so harshly that she had to be taken to hospital where she stayed for seven days.”*

On the third occasion the police officer wrote a *“grossly inaccurate”* account. The fourth occasion followed the attempt by her husband to set fire to her after he doused her with petrol. The police officer *“told her that women always tried to blame their husbands for problems of which they were the real cause and that she should sort out her “own work”.*” Following this incident she left Pakistan.<sup>8</sup>

In June 2001, the High Court granted leave to appeal the decision of the Federal Court.

*“MINISTER FOR IMMIGRATION AND MULTICULTURAL AFFAIRS v KHAWAR & ORS (S128/2001)  
Court appealed from: Full Court of the Federal Court of Australia  
Date of judgment: 23 August 2000  
Date of grant of special leave: 1 June 2001*

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<sup>7</sup> Federal Court of Australia (2000) *Minister For Immigration & Multicultural Affairs v Khawar* [2000] FCA 1130, 23 August 2000, Available at: [www.austlii.edu.au/au/cases/cth/federal\\_ct/2000/1130.html](http://www.austlii.edu.au/au/cases/cth/federal_ct/2000/1130.html)

<sup>8</sup> Facts of the case summarised by RWRP from the hearing in the Federal Court of Australia (2000) op. cit.



*"Mrs Khawar ("the Respondent") and her three children are Pakistani citizens who arrived in Australia on 17 June 1997. On 16 September 1997 they applied for Protection Visas. The Respondent claimed that she was the target of domestic violence at the hands of her husband, his brother and to a limited extent, their family. She claimed that she went to the Pakistani police on four occasions and on each occasion the authorities took no action against her husband. On 4 February 1998 a departmental delegate refused her application, as did the Refugee Review Tribunal ("RRT") on 11 January 1999. The RRT found that the conduct that the Respondent feared was not for reasons of her membership of any particular social group, nor was it for any other Convention related reason. It found that the Respondent's problems were related solely to the fact that she married her husband against the wishes of her husband's family.*

*"On 5 November 1999 Branson J set aside the RRT's decision and on 23 August 2000 the Full Federal Court (Mathews and Lindgren JJ, Hill J dissenting) dismissed an appeal by the Minister. The majority found that the critical issue was; "whether the RRT erred in its view that the absence of state protection for any particular group of which Mrs Khawar might have been a member was, as the RRT considered, irrelevant to the causal link demanded by the words 'for reasons of' in the Convention definition of 'refugee'." The majority answered that question affirmatively, firstly by finding that the state's conduct constituted persecution and secondly, by finding that the combination of the husband's conduct and the state's conduct also constituted persecution.*

*"Justice Hill however found that there was no causal link between the persecutory conduct and the Respondent's membership of a social group. This was because mere inaction by a state could not, without more, constitute persecution. As a corollary, his Honour found that the only possible relevant social group, Pakistani women with abusive alcoholic husbands, was defined by reference to the persecutory conduct itself.*

*"The grounds of appeal are:*

- The majority erred in law in holding that persecution may consist of the effect of the conduct of two or more persons, only one of whom may be moved by a Convention reason.*
- The majority erred in law in holding that the RRT in the circumstances of the case erred by reaching a conclusion on the question of whether the Respondent's fear of persecution was for reason of her membership of a particular social group without first identifying such a group, if any, of which she was a member.*
- The majority erred in law by holding that a state's systemic failure to protect the members of a particular social group who were subject to domestic violence could constitute persecution 'by reason of' the victim's membership of the group, even though the perpetrator of*

*the violence was not motivated by a Convention reason to inflict the violence.*

- *The majority erred by holding that the causal nexus required by the words 'by reason of' could be established if domestic violence, perpetrated for a non-Convention reason, was inflicted in the knowledge that state protection would not be provided to the victim by reason of her membership of a particular social group.*
- *The majority ought to have held that the primary judge erred in finding that the RRT had erred in law in the manner comprehended by section 476(1)(e) of the Migration Act 1958.*<sup>9</sup>

The case was heard by the High Court on 13 November 2001. To date, the judgement is not available.<sup>10</sup>

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<sup>9</sup> High Court of Australia, (2001) *Minister for Immigration and Multicultural Affairs v Khawar & Ors* (S128/2001), 1 June 2001, Available at:

[www.hcourt.gov.au/registry/matters/matters\\_nov2001.htm](http://www.hcourt.gov.au/registry/matters/matters_nov2001.htm)

<sup>10</sup> High Court of Australia Bulletin 2002, No.1, as at 25 February 2002, Available at:

[www.austlii.edu.au/au/other/hca/bulletin/hcab0201.html#internal18](http://www.austlii.edu.au/au/other/hca/bulletin/hcab0201.html#internal18)