

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

**A report by**

**Refugee Women's Resource Project**

**Asylum Aid**

**Edition 3  
September 2002**



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## Acknowledgements

This edition of the report was written by Clare Palmer, Researcher at Asylum Aid's Refugee Women's Resource Project (RWRP), with the assistance of Bethany Collier, other Asylum Aid staff and members of the RWRP Advisory Committee. It is an addition to the previous reports of September 2001 and March 2002.

We would particularly like to thank Elizabeth Dubicka, Alasdair Mackenzie and Steve Symonds for their support and assistance. We also gratefully acknowledge the help of RWRP volunteer Kau Belleh.

We are very grateful to the following for providing information and commentary on the report: Sheri Laizer, Professor Shahrzad Mojab, Nazaneen Rashid, Sawsan Salim, Stephanie Schwandner-Sievers and Moni Shrestha.

The RWRP and Asylum Aid are funded by the Community Fund, the Joseph Rowntree Charitable Trust, Womankind Worldwide, Association of London Government, the Nuffield Foundation, Clifford Chance, Doughty Street Chambers, Two Garden Court Chambers, 11 King's Bench Walk Chambers and many charitable trusts. We apologise for not mentioning all funders and supporters individually and gratefully acknowledge the support of them all.

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## Explanatory note

This publication is the third edition of the report *Refugee Women and Domestic Violence: Country Studies*, published by RWRP in September 2001 and March 2002. Those reports examined the situation in 7 countries – Albania, Bosnia & Herzegovina, China, Colombia, Democratic Republic of Congo, 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 – Iraqi Kurdistan and Kosovo – as well as updates on 4 of the 7 previous country reports. Information to update the remaining three could not be accessed in the time available. It is intended that the updates be inserted (as Appendix B or C) after the appropriate initial report.

For ease of reference, sections of the reports which may be particularly useful have been highlighted in bold.

Copies of the first two editions of the report, combined in a ring binder, can be obtained from RWRP at the address on the previous page at £10 each. Alternatively, the reports can be downloaded from our website.

Refugee Women's Resource Project  
March 2002





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# IRAQI KURDISTAN

## 1. Introduction

### 1.1 Political background

The 5.2 million Kurds in Iraq make up approximately 30 per cent of the population. Of these, approximately 3.5 million live in the Kurdish-controlled area. The Kurdish population as a whole numbers over 31 million people, of whom about 22 million live in the region of Kurdistan that covers parts of Turkey, Iran, Syria, Iraq and the republics of the former Soviet Union, and the Kurdish people are the largest nation in the world without a state.<sup>1</sup>

The area presently known as Iraqi Kurdistan<sup>2</sup> consists of most of the territory of the three northern governorates of Iraq: Duhok, Erbil and Sulaymaniah<sup>3</sup>. It is currently governed by two separate Kurdish-controlled administrations headed by the Patriotic Union of Kurdistan (PUK) (Sulaymaniah) and the Kurdish Democratic Party (KDP) (Erbil and Duhok). Islamist groups such as IMIK (Islamic Movement of Iraqi Kurdistan) and others retain control in the Halabja area. See section 4.1 for more information on territorial control by various factions.

#### 1.1.1 Events leading to Kurdish control

Kurdish groups' long struggle for independence had resulted in an agreement on autonomy for the region in 1970, extended by another in 1974, which were never fully implemented, although the area was at times designated an 'autonomous region'. During the 1980s, a considerable amount of Northern Iraq became the front line in the war between Iraq and Iran. There was a complete emptying of the population from most of the areas close to the border with Iran. A continuous Kurdish defiance of the Iraqi central government and support to Iran culminated with the genocide known as the "Anfal" operations which took place between 1987 and 1989.<sup>4</sup>

*The Anfal was a special operation of genocide bureaucratically engineered from 1987 to 1989 by the Ba'ath Party<sup>5</sup> against the Kurds of Northern Iraq. Key areas of the Kurdish Autonomous Region were designated as targets of the Anfal. These vast areas comprising Kurdish towns and villages with populations of as many as 70,000 people per town were systematically destroyed by the military employing methods such as burning, bulldozing and bombing. The*

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<sup>1</sup> See Nezan, Kendal, 'The Kurds: Current Position and Historical Background' in Kreyenbroek, Philip & Allison, Christine (eds) (1996), *Kurdish Culture and Identity*, London, Zed Books

<sup>2</sup> Also known as Northern Iraq, Kurdish Autonomous Area (KAA) or Kurdish Autonomous Region (KAR)

<sup>3</sup> Note: the various sources quoted in this report use different transcriptions of Kurdish placenames. RWRP has taken spellings as used by US State Department as its model, but no endorsement of any particular spelling is implied

<sup>4</sup> For more detailed information, see McDowall, David (1996), *A modern history of the Kurds*, London, I. B. Tauris

<sup>5</sup> Party of Saddam Hussein's government of Iraq

*inhabitants were subjected to mass evacuations, deportation, imprisonment, execution ('disappearance') and, in some cases, mass extermination by a combination of conventional and chemical warfare. In the course of the Anfal, an estimated 182,000 Kurds were murdered by the various agencies within the Ba-ath Party's command structure including the security forces, intelligence departments, special commandos, the army, police and chemical weapons units.*<sup>6</sup>

The largest Kurdish uprising took place immediately after the Gulf War in 1991. 95 per cent of Kurdish territory was taken within the first week of the uprising by the *peshmergas* (Kurdish fighters) and the armed Kurdish masses, their weapons seized from captured Iraqi bases. The return of Saddam's army from the Kuwait war zone however meant that cities were retaken by the government and the uprising finally collapsed, with an estimated 1.55 million Kurds fleeing their homes to the mountainous border areas near Iran and Turkey. By late March 1991, almost half of the population had become refugees.

### **1.1.2 Formation of the 'safe haven'**

The response of Western leaders to the plight of the refugees stranded in the mountains led on the 5<sup>th</sup> April to the UN Security Council passing Resolution 688 which called for the formation of a 'safe haven' in the north of Iraq for the Kurds. The US ordered 3,500 troops into the area to provide humanitarian assistance.

The US, the UK and France then established a "no-fly zone" in the North, originally to protect coalition military operations in the area. France withdrew from northern "no-fly" enforcement at the end of 1996.

The Kurdistan Front, consisting of the various Kurdish political groupings, continued to negotiate with Saddam Hussein over autonomy for several months. However, negotiations broke down in October 1991. Following this,

*"Saddam recalled his men [a few remaining police and soldiers], imposed an embargo on Kurdistan in addition to the UN sanctions<sup>7</sup>, and tried to starve out civil servants and teachers by cutting the payment of wages to the region. At the same time, he reduced petrol supplies to one-quarter of the usual amount. The Kurdish economy suffered an enormous blow, bringing misery on ordinary Kurds"<sup>8</sup>*

In May 1992 elections were held for a parliament for Iraqi Kurdistan, resulting in an equal balance between the two main parties, the KDP and the PUK. However, historical conflicts surfaced again and the parties fought from 1994

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<sup>6</sup> Laizer, Sheri (1996), *Martyrs, Traitors and Patriots: Kurdistan after the Gulf War*, London, Zed Books, pp 1-2

<sup>7</sup> Economic sanctions had been imposed by the UN on Iraq's invasion of Kuwait in 1990, and were refined in Resolution 687 on 3/4/91 after Iraq's forced withdrawal (Source: Save the Children UK et al (2002), *Iraq Sanctions: Humanitarian Implications and Options for the Future*, available at <http://www.globalpolicy.org/security/sanction/iraq1/2002/paper.htm>)

<sup>8</sup> Laizer, Sheri (1996), op. cit. p 46

up until the Washington Agreement on power-sharing (as yet not implemented) was reached in 1998.<sup>9</sup>

This is summarised by the US State Department in its 2002 report:

*The Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK) have controlled most areas in the three northern provinces of Erbil, Duhok, and Sulaymaniah since the Government withdrew its military forces and civilian administrative personnel from the area after the 1991 Kurdish uprising. The KDP and the PUK fought one another from 1994 through 1997. In September 1998, they agreed to unify their separate administrations and to hold new elections in July 1999. The cease-fire has held; however, reunification measures have not been implemented. The PUK held municipal elections in February 2000 and the KDP held municipal elections in May, the first elections held in the Kurdish-controlled areas since 1992.<sup>10</sup>*

The Kurdish Regional Government (KRG) operates in the KDP-controlled area only. It describes its structure and role as follows:

*The KRG is the authority that rules over much of the liberated area of Iraqi Kurdistan. Its domain includes the provinces of Erbil and Duhok with the city of Erbil as its capital. In its present form, the KRG is comprised of the Cabinet, first formed in September 1996, and the Kurdish Parliament, which was elected in May 1992.*

*The Cabinet, in addition to the Prime Minister and his deputy, consists of 15 ministries and five ministers without portfolio. It is a broadly-based coalition government, that in addition to the ruling Kurdistan Democratic Party, has members from the Iraqi Communist Party, the Assyrian Movement, the Independent Work Party of Kurdistan, the Islamic Union as well as independents.*

*The Cabinet, through its ministries and departments, implements programs that provide social services and rebuild the region's infrastructure.*

*Erbil, the capital, is the seat of both the Parliament and the Council of Ministers. The Kurdish Parliament, popularly elected in May 1992, constitutes the functioning legislative branch of the KRG. The Council of Ministers (a KDP-designated Prime Minister, along with his deputy and the rest of the cabinet) is the executive branch of the KRG. This branch administers the region, implements the laws passed by the Parliament and maintains law and order among the population. In its fiscal policy, the Council is accountable to the Parliament through the execution of an annual budget. The Council's administration and*

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<sup>9</sup> For more details on the conflicts, see Laizer, Sheri (1996) op. cit.

<sup>10</sup> US Department of State (2002), *Country Reports on Human Rights Practices, 2001: Iraq*, Bureau of Democracy, Human Rights and Labour, available at <http://www.state.gov/g/drl/rls/hrrpt/2001/nea/8257.htm>

*governing authority extends over the people and territory of the two provinces of Erbil and Duhok with a population of approximately two million.*<sup>11</sup>

### **1.1.3 Current developments: Re-unification measures**

The KRG reported on its website on 6 August 2002 that an agreement has been reached between the KDP and PUK on a joint Iraqi Kurdistan parliament:

*On Tuesday, August 6, 2002, KDP and PUK politburo members met in Koisinjaq to discuss outstanding issues related to the Washington Agreement. Concerning the Parliament, both parties have agreed that the name "Iraqi Kurdistan National Assembly" will remain the same. The next term for the Parliament to sit will be a transitional. They reaffirmed that the seats for the transitional term will be as follows: 51 seats for KDP, 49 for PUK, and 5 for Assyrians, in accordance with the results of the election in May 1992. A date for the first session has been agreed on but not yet announced, although there is an agreement not to postpone it. KDP and PUK will each open party branch offices in Sulaimaniyah and Erbil respectively. High-level meetings between the parties will continue to work out other details and resolve remaining issues.*<sup>12</sup>

### **1.1.4 Threat of military intervention in Iraq**

Uncertainties over the future of Iraq due to the threat of war have involved the Kurdish administrations in negotiations with the US government and plans for a possible federal state of Iraq.

The Guardian reported in July 2002 that the Kurdish Democratic Party (KDP) has drawn up a draft constitution for a post-Saddam state:

*The plan, detailed in a document seen by the Guardian, would divide Iraq into two federal regions - an Arab region covering the centre and south of Iraq, and an Iraqi Kurdistan region to the north. Each region would have its own assembly and president, but Baghdad would maintain control of internal security and a federal army.*

*The document is being seen as an attempt by opposition forces in Iraq to forge a local solution to the problem of governing the country should the current regime fall or be removed.*

...

*The constitution's commitment to a "a republican, democratic, parliamentary, pluralistic system" for Iraq also represents a desire to head off any US thoughts about replacing the current dictator in Baghdad with another one.*

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<sup>11</sup> Information from Kurdistan Regional Government website at [Hhttp://www.krg.org/about/background.asp](http://www.krg.org/about/background.asp)H

<sup>12</sup> Kurdistan Regional Government (2002) *Agreement reached on full parliament sitting*, available at [Hhttp://www.krg.org/news/roundups/aug02/news\\_aug02.asp](http://www.krg.org/news/roundups/aug02/news_aug02.asp)H

*The draft constitution was drawn up by the Kurdistan Democratic party, led by Massoud Barzani, one of the two main Kurdish groups controlling the self-rule area in northern Iraq.*

...

*Under the plan, each region would have its own constitution and president, and would establish a parliament, freely elected in a secret ballot.*

*A federal assembly would sit in Baghdad, where a president, elected for a five-year term (and able to serve a maximum of two terms), would preside over a council of ministers accountable to parliament.*

*In Baghdad, the federal authorities would have the power to declare war and make peace, decide foreign policy and diplomatic representation, sign international treaties and agreements, set general economic strategy, preside over the country's oil wealth and its nuclear energy programme, and issue federal legislation.*

*But the regional administration in Kurdistan, which would have the oil-rich city of Kirkuk as its capital, would also have wide-ranging powers at its disposal, including taxation and initiating international relations.*

*The most influential anti-Saddam alliance, the KDP, the Patriotic Union of Kurdistan, the Supreme Council for the Islamic Revolution in Iraq (representing the majority Shia community) and the Iraqi National Accord are to discuss the plan when they meet US officials in Europe later this summer.*<sup>13</sup>

## **1.2 Human rights practice**

Although commentators do not criticise human rights practice in Iraqi Kurdistan as strongly as that in the government-controlled areas, some abuses are still reported. Amnesty International's report for 2001 states:

*A number of bombs exploded at offices of the UN and international non-governmental organizations in Kurdistan, resulting in considerable material damage. Kurdish officials blamed the Iraqi security services for these bomb attacks.*

*In September many members of the Islamic Unity Movement in Kurdistan, whose stronghold is the Halabja area, broke away to set up a new Islamist group called Jund al-Islam (Soldiers of Islam). The new group immediately declared a "holy war" against non-Islamist parties and heavy fighting broke out between its members and PUK forces sent to the Halabja area. Dozens were killed on both sides. Armed forces of Jund al-Islam reportedly beheaded and mutilated a number of PUK prisoners in Kheli Hama village. Further fighting gave PUK forces control of Halabja and drove Jund al-Islam fighters into the mountains near the Iran-Iraq border.*

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<sup>13</sup> Howard, Michael, The Guardian, 10 July 2002, *Dissident blueprint gathers support*, available at <http://www.guardian.co.uk/Iraq/Story/0,2763,752574,00.html>

*The PUK issued a general amnesty in October for members of Jund al-Islam, urging them to return under the authority of the regional government. The amnesty did not include those responsible for the assassination of Faranso Hariri (see below) and the massacre at Kheli Hama village.<sup>14</sup>*

In the same report, Amnesty also mentions several politically motivated arrests in both PUK and KDP- controlled areas, and an assassination, allegedly by armed Islamists, and two abductions, also by armed Islamist groups.

The US State Department notes:

*Iraqi Kurdish regional officials reported in 2000 that prisons in the three northern provinces were open to the International Committee for the Red Cross (ICRC) and other international monitors. According to the ICRC, regular and consistent improvement in conditions was observed on their weekly prison visits to declared prisons. However, both the PUK and the KDP reportedly maintain private, undeclared prisons, and both groups reportedly deny access to ICRC officials. There were reports that authorities of both the PUK and KDP tortured detainees and prisoners.<sup>15</sup>*

### **1.3 Iraqi Kurdistan and international legal instruments**

**As it is not an independent state, Iraqi Kurdistan is unable to ratify international legal instruments.**

**The Republic of Iraq ratified the Convention on the Elimination of All Forms of Discrimination Against Women in 1986: however, it entered reservations on various articles, with reference to *Shari'a* (Islamic law), namely Article 2 on the abolition of existing laws which discriminate against women, Article 9 on equal rights to nationality, Article 15 on the equality of men and women before the law and Article 16 on equal rights in marriage and family relations.<sup>16</sup>**

**Iraq has also ratified the International Covenant on Economic, Social and Cultural Rights (CESCR), the International Covenant on Civil and Political Rights (CCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), and the Convention on the Rights of the Child (CRC).<sup>17</sup>**

However, the US State Department notes:

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<sup>14</sup> Amnesty International, *Annual Report 2002, Iraq*, available at [Hhttp://web.amnesty.org/web/ar2002.nsf/mde/iraq!OpenH](http://web.amnesty.org/web/ar2002.nsf/mde/iraq!OpenH)

<sup>15</sup> US Department of State (2002), op. cit.

<sup>16</sup> See Connors, Jane, 'The Women's Convention in the Muslim World' in Yamani, Mai (ed.) (1996), *Feminism and Islam: Legal and Literary Perspectives*, London, University of London / Ithaca Press.

<sup>17</sup> See Office of the United Nations High Commissioner for Human Rights, *Status of Ratifications of the Principal International Human Rights Treaties*, available at [Hhttp://www.unhchr.ch/pdf/report.pdf](http://www.unhchr.ch/pdf/report.pdf)

***In November the U.N. Commission on Human Rights and the U.N. General Assembly issued a report that noted "with dismay" the lack of improvement in the situation of human rights in Iraq. The report strongly criticized the "systematic, widespread, and extremely grave violations of human rights" and of international humanitarian law by the Government, which it stated resulted in "all-pervasive repression and oppression sustained by broad-based discrimination and widespread terror." The report called on the Government to fulfill its obligations under international human rights treaties.***

*For the ninth consecutive year, the Commission called on the U.N. Secretary General to send human rights monitors to "help in the independent verification of reports on the human rights situation in Iraq." The U.N. Subcommittee on Prevention of Discrimination and Protection of Minorities made a similar request. The Government continued to ignore these requests.*

***The Government operates an official human rights group that routinely denies allegations of abuses.***<sup>18</sup>

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

### **1.4.1 Women's position in Kurdish society**

Dr Shahrzad Mojab, Associate Professor in the Department of Adult Education, Community Development, and Counselling Psychology at the Ontario Institute for Studies in Education of the University of Toronto<sup>19</sup>, notes:

*My research clearly shows that Kurdish society, in spite of considerable progress toward modernisation, continues to hold onto the traditional, patriarchal relations of domination where **women's rights are regulated by a complex web of cultures, religion, and nationalist practices. These regulations include moral regulations as well as women's rights of divorce, marriage, inheritance, and custody.** Women have been assigned a dual role in this patriarchal nationalist project. **They are both the 'honour' of the nation, representing its cultural and linguistic purity, and the 'shame' of the nation, when they deviate from the rules. As such Kurdish women are expected to remain loyal to the nation, her own family, and the family of her husband.***

.....  
***The patriarchal regime in Kurdistan has been experiencing much tension. It is going through a transition period full of conflicts and contradictions. Women feel the brunt of these pressures and***

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<sup>18</sup> US Department of State (2002), op. cit.

<sup>19</sup> Professor Mojab has written several articles on Kurdish women and is the editor of *Women of A Non-State Nation: The Kurds*, 2001, Mazda Publishers, Costa Mesa, California) and co-editor with Amir Hassanpour of *In Search of Kurdish Women: A Multilingual Bibliography* (forthcoming) Westport, CT.: Greenwood Press.



***tensions. Self-immolation, a very rare practice before the 1970s, is now extensive. Much of it occurs because these women have no hope, no support, and no shelter. The whole world turns against them. Every thing, the husband, the dominant religion (Islam), relatives, culture, language, and law turn the world into unsafe place for women; this is especially true in Iran and Iraq.***<sup>20</sup>

Susan McDonald<sup>21</sup>, in her essay entitled 'Kurdish Women and Self-Determination: A Feminist Approach to International Law', describes the ways in which Kurdish women's struggle for equality has been subsumed by the nationalist agenda both in Iraqi Kurdistan and other Kurdish regions. She notes the "lack of independence of women's organisations" in Iraqi Kurdistan, and continues:

*Formal women's organisations do not exist outside the political arena and women for the most part have been excluded from political discussion and decisions. The military and political agenda has co-opted any opportunities for social change. In particular, the Kurdistan Women's Union (Yeketi Afretani Kurdistan) (KWU) is linked to the KDP and the Women's Union of Kurdistan (Yeketi Jinanii Kurdistan) is linked to the PUK.*

...

*Equality is a fundamental human right and the Kurdish Parliament's refusal to address issues such as polygamy, inheritance, divorce rights, and violence against women is a clear abrogation of their international legal responsibilities.*

*At the same time, the nationalist movement has created momentum and space for women's liberation as women move beyond their traditional roles. The movement could provide the framework for women to advance their equality within Kurdish society and give them control of their issues.*

*Yet the goals of equality are themselves being undermined or subjugated to the goals of autonomy.*<sup>22</sup>

#### **1.4.2 Violations acknowledged by KRG ministers**

**The Council of Ministers of the KRG (KDP-controlled area) has recently agreed to forward measures proposed by women's rights activists and others to the National Assembly for consideration, acknowledging the "gross violations" of women's human rights currently taking place:**

*At a Council of Ministers meeting chaired by Prime Minister Nechirvan Barzani, discussion focused on women's issues. "Although we live in*

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<sup>20</sup> Mojab, Shahrzad (2002), correspondence

<sup>21</sup> McDonald is a lawyer working in the area of international law and human rights with a PhD from the University of Toronto.

<sup>22</sup> McDonald, Susan, 'Kurdish Women and Self-Determination: A Feminist Approach to International Law' in Mojab, Shahrzad (ed.) (2001) *Women of a Non-State Nation: the Kurds*, Costa Mesa, California, Mazda Publishers, pp 150-151

*the 21st century and our social life here has improved considerably, unfortunately, still a culture of violating basic human rights prevails especially towards women who make up half of the society. Kurdish society, customs and traditions as well as our religion should not be allowed to be used as an excuse to perpetrate gross violations of human rights.”*

*Ministers reviewed some of the practices that require attention:*

*Forcing marriages, affecting both sexes but more often women  
Exchanging of women between families for marriage purposes,  
Promising very young boys and girls to other families for future marriages  
Allowing marriages between much older men and younger women  
Honour killing.  
Revenge killings or blood feuds*

*....*

*The Council decided to endorse proposed legislative changes based on recommendations from a Parliamentary Committee. The proposed legislative changes will be put before the Iraqi Kurdistan National Assembly for a vote.*

*The **proposed legislative changes** will safeguard women’s rights and prohibit the above-mentioned activities that should have no place in a modern society.<sup>23</sup>*

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<sup>23</sup> Birayeti Newspaper, August 5, 2002 *Council of Ministers Unanimously Agrees to Forward Proposed Legislation Upholding Women’s Rights to the Iraqi Kurdistan National Assembly* available at [http://www.krg.org/news/roundups/aug02/news\\_aug02.asp](http://www.krg.org/news/roundups/aug02/news_aug02.asp)

## 2. Domestic violence

### 2.1 Abuse of women widespread but under-reported

Domestic violence in all its forms occurs throughout Iraqi Kurdistan, as in all other countries and regions, but there is a lack of information on prevalence.

The US State Department notes in its report for Iraq as a whole:

***Domestic violence against women occurs but little is known about its extent. Such abuse customarily is addressed within the tightly knit family structure. There is no public discussion of the subject, and no statistics are published. Spousal violence constitutes grounds for divorce and may be prosecuted; however, suits brought on such charges reportedly are rare.***<sup>24</sup>

Sheri Laizer<sup>25</sup> provides the following information gained from her visits to Iraqi Kurdistan, which highlights some attitudes which give rise to domestic violence and the closed nature of society, which makes it very difficult for women to escape the situation:

*Between 1991-1998 I worked regularly in Iraqi Kurdistan, mainly filming news and documentary programmes for Western broadcasters. During this period I travelled with all male film crews or else alone, undertaking the assignments on a lone cameraperson basis. My female gender gave me access to Iraqi Kurdish women in a way that the socio-cultural taboos pertaining to their culture prevented the male crew members from enjoying.*

*I found that generally unmarried and married women were very eager to speak with me about their lives, their expectations and their suffering as I came from the world outside that to which they were confined.*

*I stayed in the family home of married women living with the groom's father's family and with members of several of these families' extended families, developing in depth relationships as I returned to the area several times each year and would again go to visit those I knew as a mark of respect as also of gratitude for past hospitality and assistance.*

*The families I stayed with were generally those who were well-educated, politicised pro-Kurdish families with a background of long years of the fathers and grandfathers having struggled for Kurdish rights in Iraq.*

*Most of the women I spoke with within the age group of 25-50 had received a good education in Iraq. Some worked as doctors, nurses,*

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

<sup>25</sup> Sheri Laizer is a Middle East specialist, writer and broadcast journalist, with extensive knowledge of Iraqi Kurdistan through visits and research, and author of numerous articles and 4 books on Middle East issues. For more information, see her *Generic Report on Northern Iraq*, details in footnote 41 below

*medical outreach workers to the villages, pharmacists, and others as teachers and engineers or after the 1991 uprising in the changed environment, as aid workers.*

*Again, most of the women, despite their education had been the subject of arranged marriages between their family and the family of the father's brothers. Most were in cousin marriages. In some cases, more than one daughter of family B had married more than one uncle's son of family B. There were also marriages within the maternal line. This made the community extremely tightly knit and provided little chance for a woman not content with her situation to either express her feelings to anyone or to gain support as the family would unite against any discontent woman, labelling her as a troublemaker. She was expected to get on with the task of supporting her mother in law in the household, or if she lived in a house of her own with her husband and children, to administer the domestic affairs of the house, attend to the children and provide for her husband's guests, rarely taking part in social gatherings where men were present unless it was a family gathering, or a public occasion such as an engagement, wedding, party political event or cultural event for the community, such as a concert.*

*Women confided to me frequently of difficulties between themselves and their husbands. Many had known their husbands throughout their childhoods and, while some gladly accepted an arranged marriage with their cousins, others had perhaps either had the experience of falling in love with a person outside the family and had cherished hopes of someday marrying this person only to find the suitor rejected by their father and male relatives, or had little real understanding of what a marriage actually involved, finding later that the husband was not as he had appeared from the outside.*

*It is common for relations between men and women betrothed to one another by their families to deteriorate after the courtship period when the marriage has been consummated. If the man in question is conservative and traditional in outlook he may seek to confine the woman's freedom more than she had anticipated before the marriage when he was on his best behaviour in seeking to secure her hand.*

*Conservative husbands tended to seek to keep their wives physically in the home as much as possible. Some were stopped from going out to work after they were married. There was constant pressure upon such women to bear many sons for the husband. If a woman bore daughter after daughter the husband, and sometimes his mother, would grow harsh towards the woman in question and on occasion encouraged the husband to consider marrying a second wife and bringing her into his home alongside the first wife. Domestic violence was also likely to arise out of such circumstances where the husband was displeased with his wife.*

*The family and the wider society turned a blind eye to wife beating. Many conservative members of the community justified it as "punishment" or "discipline" and labelled the woman wayward, not sufficiently subservient to her husband's needs and wishes, or treated her as a burden on the household if she showed any sign of complaint with her lot.*

*Some women with gynaecological difficulties were quickly ostracised and without sympathy if a first child was not born to a newly married couple within the first year, or at best, the first two years. A woman could not choose to say she wished to work or to put off having children. Being married meant having children. Any obstinacy on the woman's part in this regard, or physical difficulties could also lead to her becoming the victim of domestic violence.*

*Male jealousy played a big part in the problem. Some women liked to continue to see their female friends. Husbands may oppose this on the basis that their wife was in another man's house and would come into contact with other men. He could beat his wife for such an action and accuse her of looking at other men, or worse, of infidelity if there was ever any talk of his wife being seen talking with another man, not her relative and not elderly or a child.*

*Any murmur of indiscretion or infidelity could quickly accelerate beyond domestic violence into an honour killing. In some cases, even of Iraqi Kurds living in Europe, the rumour of an extra-marital liaison was all it took to give rise to honour killings.*

*When women spoke together they would often seek to laugh their troubles off, some dismissing the fact that their husbands regularly beat them, reciting various patriarchal proverbs in Kurdish, often those in which a woman was compared to a donkey and the disciplining of the donkey that which should also apply to the woman.*

*In serious cases, the woman felt trapped and largely helpless. To leave the husband and the home was equivalent to leaving the entire community and becoming an outcast. For this reason, unless a woman felt that her very life was at stake she tended to "bear her lot" until the last possible moment, suffering in silence. Conventions very much forbade that she should complain of ill treatment outside the home or that her children should hear her complain against their father. Sons were encouraged to support their fathers against their mothers and deny their natural sympathies if the mother was "unfit."*

*The younger generation of women appear outwardly more liberated, particularly those living in Sulaimania, but such freedom is cosmetic rather than inherent. These young women may wear jeans, tight dresses, be very made-up and walk in girl groups on the streets, but they must within their culture go no further than a kiss, a little "light petting", or again, a bad reputation may ensure that no family send*

*mediators to ask for the girl's hand. There are few unmarried mothers. Pregnant girls are still more likely to commit suicide, given the honour ethic and the notions of shame, than deliver a child out of wedlock.*

*In Kurdish, the word "girl" fully implies that she is a virgin. The word "woman", the reverse. It is used quite specifically. Thus, an unmarried woman of 30 may still be referred to as a "girl" to show that she is still regarded as "pure" and therefore suitable for marriage. Should such not be proven to be the case after marriage, (except in the West where the Kurdish community has largely become more liberal, more tolerant, and where women have greater opportunity for finding external support), she may be cast out, returned to her male relatives, or killed.<sup>26</sup>*

### **2.1.1 Women turn to suicide to escape abuse**

The Independent Women's Organisation of Kurdistan (IWO) and others have reported extensively on the large numbers of women who have killed themselves, often by self-immolation, after suffering years of abuse within the family. These deaths illustrate the isolation and lack of recourse to any protection experienced by women experiencing abuse. A few of the 59 incidents documented by the IWO from 1991 to 1998 are noted below.

*Many women in Iraqi Kurdistan suffer oppressed private lives to an extent that has hardly been recognised. A growing wave of tragic suicides has brought this issue to the front of the organisations conscious. In one month in 1997 there were six reported cases of suicides by women in towns in Iraqi Kurdistan. These deaths, generally 'burnings', were acts of self-immolation and the last means of protest and escape for many trapped and severely abused women.*

*Bahra Abdulkarim Barzingi was from the Islahi district of Sulaymaniya. In 1997 she attended seminars run by the Independent Organisation of Women against the wishes of her family. Bahra was a high school student, greatly praised by her teachers for her character and intelligence. Bahra had four sisters and four brothers. When her sisters were beaten, by her brothers and parents, Bahra would protest. She challenged the violence within her family and struggled for her rights, such as freedom of expression. She refused an arranged marriage to her cousin. Her outspoken independence caused her to be beaten and abused by her parents on a daily basis. On March 4<sup>th</sup> 1998, Bahra had an altercation with her father, which led to a beating. On the same day she set alight to herself. Bahra was eighteen when she died five days later in hospital. While critically ill in hospital she said she burned herself to be free of her family. Though she was told she would go to hell for saying such things, she insisted on speaking the truth.*

...

*125. On 21<sup>st</sup> January 1994 in the town of Kushtapa near Erbil a woman named Fawziya Mala Bakr committed suicide with a*

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<sup>26</sup> Laizer, Sheri, 23 September 2002, correspondence

*Kalashnikov because the husband whom she had been forced to marry was abusive to her.*

*132. On the 27<sup>th</sup> March 1995 in Ranya City a thirty-eight year old woman named Gula Kadir burned herself. She had been married for twelve years and did not bear children so her husband abused her everyday.*

*138. At the beginning of March 1995 in Mansouria camp in Dahok City a woman burned herself because her husband was abusive.*

*139. On the 13<sup>th</sup> June 1995 in the Mamostayan district of Sulaymaniya a woman named Rezan Jalal burned herself because of the abuse she got from her brother in-law and his wife who lived in the same house. She died after a few days.*

*140. On the 22<sup>nd</sup> August 1995 a woman named Pershing Abdulla Kusraw burned herself because of her abusive husband and died on the same day.*

*150. At the end of June 1997 in the Ali Kamal district of Sulaymaniya a thirty-four year old woman named Kanim Haji Ghafour burned herself because her husband and son were very abusive to her.*

*155. On the 22<sup>nd</sup> July 1997 in the Bakhtiyari district of Sulaymaniya a girl named Jwan Hassan burned herself because of bad treatment by her father and brothers. She died after four days.*

*156. On the 15<sup>th</sup> April 1997 in the Raniya camp a sixteen-year-old girl named Nergis Muhammad burned herself and died after two days. She committed suicide because of abusive relatives.*

*157. In the middle of July 1997 a girl named Shamam burned herself and died after she was beaten and tortured by her brother to the extent that her hands and legs were broken.*

*158. At the end of November 1997 in Sulaymaniya a woman named Rezan burned herself because of abuse by her husband. She had been married to him when she was thirteen years old for 10 thousand Iraqi Dinars.*

*170. In the middle of July 1994 in Soran City a woman named Nasrin burned her self. She was a mother of four and her husband beat her if she protested about how hard her work was or his rudeness.*

*171. At the beginning of July in the Diana suburbs a woman named Amina Said shot herself. She was forcibly married and her husband treated her badly. She had asked for a separation, but her husband refused.*

175. *In the Mamostayan district, opposite the Sheik Ahmed cemetery in Sulaymaniya a woman named Razaw burned herself and died after three days in hospital. She had been given to a man named Faris when she was seventeen years old. He was very abusive to Razaw and tried to marry a second woman on whom he spent all his money. When Razaw protested about the situation he beat her and broke her arm.*<sup>27</sup>

## 2.2 Honour crimes

Activists and commentators pay most attention to the particular form of domestic violence known as 'honour crimes'.

**The incidence of honour killings, the most extreme form of honour crimes, is said to have increased since 1991 when Kurdish parties took over the administration of the territory.**

Sheri Laizer gives the following background information on the roots and incidence of honour killings in Iraqi Kurdistan:

*In traditional Kurdish society, as in other patriarchal societies, the ruling male elite – whether secular or religious – restricts the development of female identity. Women are not encouraged to realise and express their own power and independence. Instead, a woman may be killed for exerting her will, for choosing a man to marry that the family has not selected – or of whom they disapprove – for having a love affair or sexual relationship, for eloping or being discovered in a compromising situation or for joining a political party. Punitive killings are carried out by a woman's father, husband, brothers or other male relatives. There is no trial, simply a death sentence, often brutally carried out.*

*Since the Kurdish uprising, more than one hundred women in south Kurdistan have been murdered by their fathers or male relatives on such grounds: Nigar Mohammad Haji Bapir was put to death in Raniya on 10 June 1992 by her father for wishing to marry a man of her own choosing. In Arbil, in August of the same year, three women were killed, the first by her father; the second, who was pregnant, was viciously attacked and killed; and the third was killed in Arbil's marketplace. In November of the same year, again in Arbil, at the Kawaskok Camp, another woman was killed by her father.*

...

**According to Dr Tahire Kocturk<sup>28</sup>, the strong need to control women can be traced to a phenomenon which is older than Islam, the honour ethic. This is based on the belief that women cannot be trusted to protect their chastity in the best interests of the**

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<sup>27</sup> Independent Women's Organisation of Kurdistan, Iraq (2000), *Catalogue of Horror in Iraqi Kurdistan*, available at Kurdish Media website, [Hhttp://www.kurdmedia.com/kwahk/r\\_km\\_womenshonourkilling.htm](http://www.kurdmedia.com/kwahk/r_km_womenshonourkilling.htm)H

<sup>28</sup> Kocturk, Tahire (1992) *A Matter of Honour: Experiences of Turkish Women Immigrants*, London, Zed Books



***patriarchal society. The duty is given to the male relatives of the women.***<sup>29</sup>

### **2.2.1 Prevalence of honour killings and recent political campaigning Conference: Honour Killings in Iraqi Kurdistan, June 2000, London**

This conference was organised by Kurdish Women Action Against Honour Killings (KWAHK), its aim being “*an attempt to open up a dialogue between the Kurdish community and their political parties in Kurdistan on the issue of honour killings and the wider question of the position of women in society.*”<sup>30</sup>

The main recommendations of the conference were as follows:

#### ***1. Legal Action***

*The Kurdish authorities are urged to make serious efforts to change the existing laws to ensure equality between men and women; to punish murderers of women; also to punish those who commit violence against women; the authorities in Kurdistan should also establish a committee to thoroughly investigate all outstanding murder cases that have been classified as honour killings.*

#### ***2. Preventive Action***

*This should consist of serious measures to prevent honour killings occurring together with all other kinds of violence and should be achieved through disseminating a culture of democracy and respect for human rights. The Kurdish authorities should seek to use education and the media, all political and civil bodies and organisations, to spread culture and educate people by means of a family educative programme.*

#### ***3. Protective Action***

*There needs to be a serious effort to establish shelters for women at risk of murder, medical and counselling facilities, rehabilitation centres for women victims of violence, along with police protection to ensure the liberty and physical safety of those women who are actively campaigning against honour killings and the traditional culture.*<sup>31</sup>

Dr Nazand Begikhani, of the Kurdish Cultural Centre Gender Group, gave some background to the recent campaigning:

*She [Dr Begikhani] stated that according to field researches carried out by women activists in Iraqi Kurdistan, more than 4,000 women have been killed since 1991. That means honour killing is a daily occurrence in Kurdistan. The phenomenon of honour killing has always existed in Kurdistan as in many other traditional patriarchal societies, but since 1991, its practice has increased. This is a tragic reality for the Kurds not only because of the increasing of the phenomenon, but because since 1991, this part of Kurdistan is under the control of the Kurds*

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<sup>29</sup> Laizer, Sheri (1996), op. cit., pp 161-162

<sup>30</sup> Morgan, David (2000), *Honour Killings in Iraqi Kurdistan: Seminar Report*, available at <http://www.kurdmedia.com/reports.asp?id=9H>

<sup>31</sup> Morgan, David (2000), op. cit.

*themselves. The practice emerged soon after the uprising of spring 1991 when men from Kurdish political parties started, in the name of national cause, killing those women suspected of collaboration with Baathist agents.*

*Honour killing has many political, social, religious and economic dimensions. The activities of political Islam in this part of Kurdistan might be seen as a major factor behind this practice. The failure of both the PUK and KDP in dealing with the issue of importance and their dogmatic and ambivalent politics towards the Islamic groups, created a convenient opportunity for the latter to emerge as an alternative. Preoccupied by their internal conflicts and enforcement of their militia forces, the KDP and PUK did not develop any real programme to address the social and economic decay caused by 30 years of Baathist violence. **Together with the increase in violence against women, women have mobilised both in Kurdistan and in the diaspora. Defending women's liberation and the victims of honour crimes has put the life of many women at risk; women activists themselves run the risk of being killed and accused of dishonouring their family.***

.....

***In 1992 there had been a petition signed by 30,000 women seeking changes in articles in the Civil and Penal Codes. Unfortunately, this appeal was ignored and since then the violations have worsened. In the face of the rising number of honour killing incidents neither the PUK nor the KDP made any serious attempts to halt the killings. The Kurdish women are dissatisfied by the way the Kurdish parties have, after 75 years of fighting against Iraqi rule for Kurdish rights, remained ready to apply the same Iraqi laws when they have a golden opportunity to establish new civil laws. It was only on the 12th April this year that PUK announced some changes in the law making it a capital offence in the Suleimanya region which the party administers.***<sup>32</sup>

### **2.2.2 Attitude of the PUK**

Dr Fuad Masum, member of the political bureau of the PUK, informed the audience of his party's views on the issue:

*He maintained that there were many examples of unjust treatment in society, that between rich and poor, men and women, the strong and the weak, and that the root cause was economic. He believed that women would remain second-class citizens as long as men remained responsible for the economic activities of the country. Traditionally, women were held to be lower down the social scale than men; for example, whenever a women was described in Iraq it was the norm to talk about her as "mother of....", thus she is not regarded as a full individual in her own right.*

...

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<sup>32</sup> Morgan, David (2000), op. cit.

*Although he regarded the law as an important factor, Dr Masum believed, however, that not every aspect of the family law needed to be overturned simply because the Ba'ath Party had implemented it and the phenomenon of honour killings would not be solved simply by changing the law; wider social and cultural questions were involved. Like its neighbouring countries, the society in Kurdistan did not value men and women equally; all family honour and shame rested on the women.*

....

*He then outlined the reasons for the changes in the law made by the PUK administration in Suleimaniya that had been introduced as recently as this April: it was a response to the increase in honour killings. He thought that the traditional honour reason which in certain respects was socially acceptable was now more often used as an excuse. The social context for the increase was the growing economic independence of women and the widespread disruption to the social system caused by war and upheaval.<sup>33</sup>*

### **2.2.3 Attitude of the KDP**

The KDP representative, Hoshyar Zebari, Director, International Relations Bureau of the KDP was asked why his party in Erbil had not made changes in the law similar to those made in Sulaymaniah and what was his party's policy towards the phenomenon.

*Mr Zebari maintained that the issue should not be regarded as one of competition between the two parties. The main challenge was to change attitudes and the tribal mentality that was strong in Kurdistan. He did not deny that honour killings existed but wanted to qualify the statistics and information cited so far by the campaign. He suggested that the figure of 4,000 killings was an exaggeration and should be revised. He thought that the campaign would be more successful if it made more contacts with women's organisations in Kurdistan. A political campaign would only lose public support. It was necessary to broaden the scope of the campaign to include all sectors of society, Kurdish social organisations and families should all contribute towards resolving the issue. He went on to point out that honour killings were not just a problem for Kurdish society, but existed in Arabic and other Islamic countries.*

*He thought that law was not therefore the main issue at stake. The roots of the problem lay in the time before a case came to court, due to bribes and interference in the legal process. The social conditions meant that the criminals themselves were victims of custom and pressures of the society because they were coerced into carrying out the crime to restore family honour. Many killings were put down to accidents with no reasons established as to why they had been killed. He stated that the KDP was strongly against this violation of human rights. He said that the problem involved political, legal, human rights,*

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<sup>33</sup> Morgan, David (2000), op. cit.

*social and Islamic factors; but even under Islamic law people did not have the right to take the law into their own hands and kill.*

*In answer to the question as to why the KDP had not yet changed the law, he said that the party believed that the law must be changed via Parliament. The party still considered itself operating in part of Iraq; Kurdistan had international protection, but not its own constitution and law. He said that the KDP had a legal committee examining the laws that should be revised and that they believed there was a need for far-reaching changes that would effect every family. However, the most important factor was to raise awareness and educate the people through schools, the media and other social organisations. He said that the women's campaign in Kurdistan was very active. There had been seminars and petitions to put pressure on the parties to apply equality, but he did not wish to respond directly to any of Dr Masum's comments.*

*He reiterated that the KDP was in sympathy with the women's groups and wanted to see change, but advised that in his party's view the most important factor for achieving success would be through developing contact with internal groups in Kurdistan. This would strengthen the campaign, whereas directing the campaign outside would not have the desired effect and influence.<sup>34</sup>*

It appears that the KDP is perhaps now bowing to pressure from women's groups to take the issue of honour crimes, amongst other violations of women's rights, more seriously (see Section 1.4). However in our view a strong conservative thread runs through the response detailed above.

#### **2.2.4 Honour killings occurring outside Iraqi Kurdistan**

The pervasiveness of attitudes to women as repositories of family honour is shown by the fact that women whose families have settled outside Kurdistan have also been victims of honour crimes. In a high-profile case, a young Kurdish-Swedish woman, Fadime Sahindal, studying in one of the universities in Sweden, was shot dead by her father, who confessed to the killing, claiming that she had shamed the family by rejecting arranged marriage, and for choosing her partner. She had also "shamed" the family in 1998 for a highly publicized court case against her father and brother who had threatened to kill her.<sup>35</sup>

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<sup>34</sup> Morgan, David (2000), op. cit.

<sup>35</sup> For more information, see Kurdish Media's report at [Hhttp://www.kurdmedia.com/kwahk/news\\_fadime.htm](http://www.kurdmedia.com/kwahk/news_fadime.htm)

### 3. Domestic violence and the law

#### 3.1 The legal system

Both the PUK- and the KDP-controlled local administrations maintain separate judicial systems, but continue to use the Iraqi legal codes<sup>36</sup>, which operate as follows:

*The legal system in Iraq can be considered a mixed system and is based on a combination of Shi'a and Sunni legal principals. The main sources of Iraqi law can be grouped into three categories: Islamic law, constitutional law, and legislation and statutory law. In addition, the Iraqi legal system utilizes some secondary sources such as usage, custom, and judicial precedents.*

...

*The Civil Code, first promulgated in Law No. 40 of 1951, was expressed in amended form in Law No. 36 of 1983. The Code of Civil Procedure first appeared in Law No. 89 of 1969 and was amended by Law No. 107 of 1979. Law No. 30 of 1984 articulates the principal Commercial Code, and the Criminal Code is contained in law No. 111 of 1969.<sup>37</sup>*

The law of Personal Status, Law No. 188/1959, based on the Shari'a (Islamic Law) covers matters relating to the personal status of Muslims such as family, marriage, divorce and inheritance.<sup>38</sup> Some changes were apparently made to laws on marriage and divorce by the Kurdistan National Assembly (KDP area) in June – August 2001<sup>39</sup>, however no detailed information is available at present.

#### 3.2 The law relating to honour crimes

Honour crimes are dealt with in Articles 130, 132, 405 and 406 of the Criminal (Penal) Code Law no. 111.

The PUK amended articles 130 and 132 in April 2000 after pressure from women's groups. However, Articles 405 and 406 are still in force, as noted below.

Dr Nouri Talabany, a legal expert and head of the Kurdish Human Rights Organisation, gave the following background to these articles and the amendments in August 2000:

*Articles 130 and 132 of the present-day Iraqi Penal Code, which is still enforceable in Kurdistan, still state that the penalty for killing a woman*

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<sup>36</sup> US Department of State (2002), op. cit.

<sup>37</sup> United Nations Portal On Governance in the Arab Region (POGAR), *Iraq: Judiciary*, available at <http://www.pogar.org/countries/iraq/judiciary.html>

<sup>38</sup> General Federation of Iraqi Women, *Personal Status Law*, Government of Iraq official site, [http://www.uruklink.net/women/ew2\\_3.htm](http://www.uruklink.net/women/ew2_3.htm)

<sup>39</sup> See Kurdistan Regional Government – UK Representation: <http://members.aol.com/krgsite/kurdreport1.html#Ligislative%20Amendments%20for%20Women%20and%20Children>

*should be reduced if the crime was committed for reasons of honour. In April, 2000, the PUK dominated Kurdish government in Sulaimania took a decision to abolish this distinction, which meant that, in future, no man would be given a reduced sentence for killing a woman; it would be assumed that he had committed this crime of his own volition, and that there were no mitigating circumstances. **But the courts remain obliged to enforce Articles 405 and 406 of the Iraqi Penal Code which lay down the penalty for a husband who kills his wife if he finds her in an adulterous situation.** There are, however, three conditions which must be met. Firstly, the killer must be the husband or a close relative of his; secondly, the wife must be witnessed in the act of adultery; thirdly, he must attempt to kill one, or both of them immediately. There must be no interval between the discovery of the adultery and the killing. In specifying the husband or a close relative of his, Iraqi law clearly discriminates against women as **a wife who finds her husband in a similar, adulterous situation and attempts to kill him, does not receive a reduced penalty.** This can be compared with French law, where both the husband and the wife would benefit from a reduction in their penalty.<sup>40</sup>*

See also sections 4.1 and 2.2 of this report for more information.

### **3.3 The law relating to other offences of domestic violence**

There is no information available to date on laws relating to non-honour-related crimes of domestic violence. One can presume that physical assaults could in theory be prosecuted under general laws on assault in the Criminal Code.

Rape is illegal under the Criminal Code.<sup>41</sup> No information is available on the legality or otherwise of rape within marriage.

The Kurdistan Regional Government reportedly agreed to pass various proposals on laws relating to women's rights, including marriage, to the National Assembly for consideration in August 2002, but exact details are not available (see Section 1.4). Domestic violence was not mentioned in the report.

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<sup>40</sup> Talbany, Dr Nouri (2000), *Honour Killing in Iraqi Kurdistan*, available at [Hhttp://www.kurdmedia.com/kwahk/r\\_Nouritalabany.htm](http://www.kurdmedia.com/kwahk/r_Nouritalabany.htm)

<sup>41</sup> Country Information and Policy Unit (2002) *Country Assessment: Iraq*, Section 5B: Human Rights: Specific Groups: Women, Home Office, available at [Hhttp://www.ind.homeoffice.gov.uk/default.asp?PagelD=179](http://www.ind.homeoffice.gov.uk/default.asp?PagelD=179)

## 4. The reality of seeking protection

### 4.1 The police and general security issues

It has been noted that domestic violence is seen as a private matter and one to be resolved within the family.<sup>42</sup> However if a woman were to approach the police for help, this would not be straightforward. The extracts below, from an in-depth 2002 report by Sheri Laizer on the current situation in Iraqi Kurdistan, demonstrate clearly how the individual's position in the social structure and the general lack of security and level of abuses combine to produce a lack of police protection. In particular this evidence dispels any assumptions about what is meant by "policing".

#### 9. *Social welfare, policing, security*

*i. Since 1989 I have travelled back and forth to northern Iraq observing, filming, interviewing and living amongst various Iraqi Kurdish families across northern Iraq. Some of these families were pro-Barzani and pro-KDP; others were pro-PUK, or supported the PUK's old foe, the Iraqi Communist Party. At the end of the day it would be quite right to say that loyalty to the family or the clan outweighs the sense of commitment to party ideology. Fidelity to a religious figurehead, the shaikh or agha as head of the tribe/clan, and governor therefore of people's hearts and minds is paramount in determining social relations. This social structure still affects every aspect of life in Iraqi Kurdistan today - friendships, marriage, business relations, political affiliations - it is loyalty in its most profound sense and the sense of identity it imparts is indistinguishable from one's sense of "belonging".*

*ii. The individual's position within the social structure stems from his family name and "honour" and affects his political standing. There is no social-welfare system separate from this system and the specific form of party politics it has given rise to. This in turn affects an individual's social and political potential and his or her security. No man or woman can "go it alone" as people can in the West. Cousin marriages remain common for the same reason of keeping power and security within the family. The community remains closely knit, turned in upon itself and at the same time retaining deep schisms between the different clans and modern-day factions into which the population divides.*

*iii. Because "policing" is a task accorded to functionaries of the party by each of the political parties respectively - and in some ways the role of policeman is an adaptation of the role of the peshmerga - there is no single "nationwide" police-force and no policing body independent of the parties. This means that the "police" carry the bias of their party into their function of*

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<sup>42</sup> See US Department of State (2002), op. cit.

***“policing” and it is this fundamental factor which leads to the abuses of individual rights, freedoms and the erosion of security of life. The “police” are not educated to the standards necessary for enforcement of law but resort to the methods of their predecessors in the Ba’ath Party - beating, torture, bribes, threats, wrongful detention and even execution. Ordinary people are afraid of falling into the hands of the “police”. Only those secure within the political parties would seek the “protection” of the party police - and this may also be sought in individual quarrels with rivals where the assistance of the police may be enlisted to coerce the opponent into submission. These forces are not therefore able to provide protection.***

**10. “Control” over parts of the territory by the various factions**

***i. “Control” over various parts of northern Iraq is maintained by the respective factions - the KDP, PUK, IMIK/IUM, and to a lesser extent the PKK - and this varies according to the fragile understandings reached between them on which basis they attempt to establish stability in the short term. There are no lasting guarantees beyond the short term peace between them and this by and large is maintained on a daily basis by the rule of the gun and the unreliable backing of the neighbouring powers and policies applied by the West.***

***ii. Deep gulfs exist between these groups, as I have attempted to describe, and these fall into religious, social and ideological divides. Because of this, a person who has serious problems - for example with the former IUM (former IMIK) - he or she could not expect to find safe harbour with the IUM’s rivals. Firstly, their personal or family conflict may serve to further exacerbate tensions between the factions and secondly, there is not a system in place capable of guaranteeing any individual security of life unless that individual has a powerful clan, party or movement behind him, or is wealthy enough to afford his own protection such as those like “Human Rights TV” station owner, Daoud Baghistani, in Dohuk.***

***iii. Individuals, and particularly the unaligned, the weak and the poor cannot get adequate protection from these fledgling “authorities”. There is no practical way to enforce it. The system in northern Iraq has not matured to such a level of social development or political “control” for this to be possible. The Kurdish Administration has not been equipped in such a way and most international efforts focused on the region have been with the aim of securing Kurdish co-operation with Allied policy towards Saddam Hussein, in seeking to prevent the KDP and PUK from further escalating the conflict between them, preventing internecine bloodshed***



*and hence also further mass exodus of internally displaced persons and refugees.*<sup>43</sup>

This report also illustrates the fact that control by a particular faction in an area cannot be assured in the long term.

Sawsan Salim of the Independent Women's Organisation of Kurdistan notes:

*When a woman goes to the police to complain of violence or threats, she is usually ignored or even blamed by the police for not respecting her husband or family. Such cases have been documented in The Woman Aid magazine. If a man complained to the police about a physical assault, action would be taken under the law.*<sup>44</sup>

## **4.2 The judicial and legal system**

### **4.2.1 Changes to the law on honour killings not put into practice**

It appears that the amendment of Articles 130 and 132 on honour killings mentioned above has not yet affected any cases in practice. An article on honour killing by Shahrzad Mojab and Amir Hassanpour published in February 2002 states:

***In dealing with the increasing incidence of honour killing, they [the two Kurdish administrations] adopted Iraqi law which did not criminalize honour killing, and was lenient on the punishment of killers. Faced with opposition from women, the two parties, especially KDP, have tried to justify honour killing as a Kurdish and Islamic tradition. In 2000, the Patriotic Union of Kurdistan issued two resolutions aimed at revoking Iraqi law, and criminalizing honour killing. The resolutions, which have the status of law in the absence of a legislative organ, have remained on paper in so far as the government has neither the will nor the power to enforce them.***

***If the KDP government has persistently ignored the demand for gender equality and for the criminalization of honour killing and the PUK government paid only lip service to them, they have both bowed to the demands of a handful of mullahs and their Iranian overlords. Kurdish mullahs, who never aspired to theocratic governance, now demand the Islamization of gender relations, and the subordination of Kurdish women according to the dictates of Islam. Financed and organized by the Iranian theocracy, some Kurdish Islamic groups aim at establishing a theocracy. Not surprising at all, Kurdish leaders who were secular before 1979, entertain Islam and Islamists.***<sup>45</sup>

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<sup>43</sup> Laizer, Sheri (2002), *Generic Report on Northern Iraq (updated January 2002)*, full report available from RWRP or Refugee Legal Centre External Information Service, tel. 020 7780 3288

<sup>44</sup> Salim, Sawsan, Independent Women's Organisation (2002), interview with RWRP. Email for further information: [HSawsan.s@ukonline.co.uk](mailto:HSawsan.s@ukonline.co.uk)

<sup>45</sup> Mojab, Shahrzad and Hassanpour, Amir (2002), *In Memory of Fadime Sahindal*

A report by UNHCR/ACCORD from 2000 also notes on the issue of enforcing PUK's changes in the law on honour killings:

*The question is whether Kurdish society will accept such a change in the law as it has been initiated by the PUK. If one passes a law which is not implementable, one loses the support of the people. The ruling parties in Northern Iraq cannot afford to lose the support of the local population as their future remains uncertain at least.*<sup>46</sup>

### 4.3 Other support services

There are a small number of women's NGOs trying to protect women. The Independent Women's Organisation (IWO) was set up in 1992. **It set up a shelter in Sulaymaniah for women in danger of honour killing in 1998. The shelter was closed down by the PUK in 2000 (see below) and has not re-opened.** Currently only two shelters exist, both in Sulaymaniah, and they can only accommodate a few women at a time. The IWO also protect a few women in safe houses in different areas of the country.

Mojab and Hassanpour state:

*The two Kurdish governments have opened more mosques than women's shelters. In fact, they have not initiated any women's shelters. Even worse, the PUK government launched an armed attack on a women's shelter operated by an opposition political party (the shelter operated by the Independent Women's Organization in Sulemani).*<sup>47</sup>

The US State Department report also reports the attack on the shelter:

*In July 2000, the PUK reportedly ordered all opposition groups to move their offices out of Sulaymaniah's city center following a number of bombings; the IWCP<sup>48</sup> reportedly refused to move. PUK security forces subsequently killed at least six IWCP members and arrested several others at an IWCP office in Sulaymaniah. PUK forces also killed several IWCP members who were inside a car. **In connection with this dispute, the PUK closed the IWCP-affiliated Independent Women's Organization and the Women's Protection Center in July 2000 and detained temporarily 12 women who had been staying at an abused women's shelter within the Center. The PUK announced that it would investigate the security forces' actions; however, no information was available by year's end.***<sup>49</sup>

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Thoughts on the Struggle Against "Honour Killing", available at [http://www.kurdmedia.com/kwahk/fadime\\_hassanpur.htm](http://www.kurdmedia.com/kwahk/fadime_hassanpur.htm)

<sup>46</sup> UNHCR/ACCORD (2000), 6<sup>th</sup> European Country of Origin Information Seminar, Vienna, 13-14 November 2000 – Final report

<sup>47</sup> Mojab, Shahrzad and Hassanpour, Amir (2002), op. cit.

<sup>48</sup> Iraqi Worker's Communist Party

<sup>49</sup> US Department of State (2002), op. cit.

The following is from an interview by RWRP with Sawsan Salim, Representative in Britain of the IWO, Kurdistan, held on 6 August 2002. This information illustrates not only the dangers facing women from family members but also the unwillingness of the state to provide protection, and in fact its collusion in the abuse in many cases.

### ***Attitudes to violence against women***

*Domestic violence consisting of physical, mental and sexual abuse of a woman by her husband does occur. For example, a case published in Yaksani<sup>50</sup> described a woman who was killed by her husband because her children had eaten some tomatoes he had brought home in the time of sanctions and hunger.*

*The attitude of the state and society to crimes of honour i.e. that violence against and murder of women are condoned, means that other forms of violence against women are also tolerated. The law, religion and the state give rights to a woman's father, brother or husband to do anything he wants to her.*

*Over 5000 women were killed or pressurised to commit suicide for reasons of honour in 1991 – 2001 and no prosecutions have occurred for any of these crimes.*

### ***Personal Status Law***

*IWO presented their alternative to the Personal Status Law to the PUK in 1999. Although the PUK did amend an article relating to honour killing in April 2000, they accused the IWO of asking for complete equality for women, which was contrary to culture and religion. IWO also presented their alternative Personal Status Law to the KDP in February 2001. No response was received.*

### ***Cases of women helped by the IWO***

*Mohabad Abdullah was killed by a significant man in the PUK after she refused to marry him. He kidnapped, abused and killed her in 1998. Two years later he kidnapped and abused two of her sisters and killed one of them. The IWO took up Mohabad's case and the case was brought to court. The court found 9 pieces of evidence against the killer, however he was released without a conviction.*

*B.S. was raped at the age of 14 by the brother of her stepmother. Suffering pain when at school, she went to the hospital where a doctor found out she was pregnant. He recommended an abortion and notified her family, who planned to kill her for bringing shame upon the family. The doctor called on the IWO to protect the woman after her abortion. She was sent to a youth offenders' institution for 3 months. The IWO housed her in a shelter when she left the institution, but do not know where she is now.*

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<sup>50</sup> Newsletter of Independent Women's Organisation, published in Kurdish

*Parwin, a woman who had been mentally and emotionally abused by her husband, who collaborated with her father in her ill treatment so that she had nowhere to turn, eventually killed him in 1999. She was prosecuted under Article 409 which carries the death sentence.*

*Roonak Hamar Sharif married against the wishes of her husband's family. She worked outside the home and they disapproved. The husband's family wanted her to divorce him, but she refused. They then killed her husband. Roonak stayed in hiding for a year, then remarried. The first husband's family accused her and her second husband of murdering the first husband. The couple went to the police for help, but the court sent them both to prison for 3 months. The family killed the second husband in front of the court; Roonak escaped. She went to the police for help but they refused, saying it was a family problem. She went into hiding and the IWO placed her in a shelter.*

*L.K. was a married woman whose husband worked abroad. She had an affair with another man. Her husband's family threatened to kill her and took her to the police. She was sentenced to a year's imprisonment for adultery, from March 1997 to March 1998. When she was released IWO took her to a refuge for protection.*

*Kazhal Kheder was a 26-year-old woman from the Ranieh district who was accused of adultery by her male relatives. The family reported her to the mullah and she was sentenced to execution; however as she was pregnant, her sentence was delayed until the birth of her baby. Not wanting to wait, her family cut off her nose as a punishment and she was taken to hospital. The IWO helped her leave hospital and escape to Syria and eventually to Canada. IWO is aware of two more women from the same district whose noses were cut off by their families as punishment.*

### ***IWO and its services***

*IWO is funded by donations from people in Kurdistan through its Campaign to Defend the Rights of Women in Kurdistan and is also supported by the Iraqi Workers' Communist Party of Kurdistan. It does not receive any government support.*

*IWO's shelter in Suleymania was closed by the PUK on 14 July 2000 and has not reopened. Since then they have continued to support women whose lives are in danger by accommodating them in various safe houses in different areas of Kurdistan, including in Erbil, part of the KDP-controlled area. In 1999-2000 they supported 397 women. They documented 107 suicides, 9 cases of rape, 76 of threats, 7 of mutilation, 19 murders and 12 attempted murders. One month after the shelter was closed down, Nasreen Aziz was killed by her brother, who commented that now there was no shelter no one would come after him.*

*IWO operated a 24-hour telephone helpline until their shelter was shut down in 2000. Some women are helped by advice only, perhaps including liaising with other family members to get support for the woman, if her life is not in danger. If death threats have been made, IWO will accommodate the woman for as long as necessary in a safe house and try to work with solicitors to resolve the case. Some women have stayed as long as four years.*

### **Other shelters**

*Noah Centre, Suleymania*

*This is run by Medico, a German-funded organisation. It houses women fleeing violence who are suffering mental health problems. The government have put pressure on the organisation to be taken over by the local hospital, but the management committee wish to remain independent.*

*Aram Shelter, Suleymania*

*This is run by the Kurdistan Women's Union, who are linked with the PUK. Although IWO supports the aims of the shelter to protect women, it feels that its methods, through its linkage with the government, are not helpful to women.<sup>51</sup>*

### **Aram Shelter**

The Aram shelter in Sulaymaniah was set up in 1998 by the Committee of the Kurdish Disaster Fund in London, with the support of the UK's Department for International Development (DfID) and the Women's Union of Kurdistan (linked to the PUK), in order to protect women in danger of honour killings. Its aims are to provide temporary shelter, legal advice, counselling and support services and to lobby for changes in law and society for abused women. Only women whose lives are in danger can be admitted to the shelter, which can only accommodate 20 women at one time. Others are helped on the same day and may be able to return to their families after negotiations. 12 armed female guards provide security. The shelter provides financial support for court costs and a solicitor represents women in court, as in Iraqi Kurdistan legal aid is not available for civil cases. The solicitor also mediates with family members and tribal leaders. The staff at the shelter have been subjected to verbal abuse.

95% of the 61 women referred up to February 2002 were fleeing from forced marriages. The women had been abused by husbands, brothers, parents and parents-in-law. 45% were fleeing from attempted murder and 30% from death threats. Most women suffered depression and other psychological problems due to the trauma they had experienced. Some women accommodated at the shelter have obtained a divorce and been able to marry a person of their choice. Others have got their independently chosen marriages legally recognised. The families of other women have signed legally binding contracts guaranteeing their safety. Two women, however, one with two

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<sup>51</sup> Salim, Sawsan, Independent Women's Organisation (2002), interview with RWRP, op. cit.

children, remain in the shelter under sentence of death by family members. Their only hope is to be able to leave the country.<sup>52</sup>

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<sup>52</sup> Information summarised from Rashid, Nazaneen (2002), *The Aram Shelter for Women in Sulaimaniya: A Sociological Analysis of Shelter in the Kurdish Context*, paper presented at the Conference on Women, Violence and the Politics of Mobilising Resistance: The Case of Kurdish Women organised by International Kurdish Women Studies Network, Kurdish Women Action Against Honour Killing and Institute Kurde de Paris, February 2002

## 5. The situation of separated or divorced women

### 5.1 Marriage and the consequences of divorce

Dr Shahrzad Mojab describes the following cultural traditions:

*In marriage as in other areas, Kurdish society is not homogeneous; there are rural-urban differences, social class differences, and regional, religious and linguistic diversity. Despite the diversity, one can claim that certain traditions and cultural practices remain the same. Marriage and divorce are among such practices. Pre-arranged marriages continue to be practiced in both urban and rural areas. Elders in the family negotiate the terms of marriage contract. Certain specifications for men such as wealth, family reputation, education, and more recently, living abroad are highly favored by the woman's family.*

*An important feature of marriage in a traditional society such as Kurdistan is its permanency. There is a saying that women enter their husband's house in a white gown and leave in the white shroud. This testifies to the permanency and sanctity of the marriage institution. Once there is a request for a 'girl's hand' by a family, the name of that family remains on the woman and no one else will ask for her hand. As soon as the marriage contract is agreed upon by both parties, abrogating it is socially unacceptable. As the process of confirming the marriage contract makes progress, through elaborated multi-ceremonies, it becomes more difficult to step out of it. **While divorce rates may be going up, divorce continues to be a taboo, a practice socially unacceptable. It taints the woman's reputation, and further affects the social status of the family. A home with a woman 'divorcee' is not a lucky place for unmarried woman to visit. A divorced woman is considered 'second hand', a less desirable object.***

*These social-cultural norms make it even more difficult for a woman to return back home from unsuccessful marriage. Living in the West makes it even more difficult for the woman to find sympathy among her kin. She will be most 'unwanted' as a 'returnee' which has a very negative connotation. In other words, it means a commodity which has been tested and now is being rejected.*

*Life among the Kurdish community in the West is not smooth for a divorced woman. First, the community acts like the family and attempts to mediate the relationship and, then, if it is not successful, it is the woman who will be banished. I am aware of a case in Europe where a husband retaliated against his ex-wife by throwing acid on her face.<sup>53</sup>*

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<sup>53</sup> Mojab, Shahrzad and Hassanpour, Amir (2002), op. cit.

Sheri Laizer describes the upbringing of Kurdish girls and society's expectations of married women:

***From early childhood, young Kurdish girls, like girls in other Middle Eastern and Judaeo-Christian societies, are taught to feel ashamed of their bodies and told that a woman must submit to her husband, and must not show too obvious an outward pleasure in the act of physical love (despite the Quran's emphasis that a woman has the right to sexual gratification and that failure of a husband to provide that gratification is sufficient ground for divorce). She is repressed and confused. Often she is neither able, nor permitted, to ask about her body or about sexual matters, nor to express herself freely. She is restricted from learning to experience life and human relationships in their subtlety and complexity in the way that a boy can, lest she be labelled a whore and dishonour the men in her community.***

***Women are made to feel psychologically inferior because they are not encouraged to be self-reliant, to believe in their own abilities, or to strive for success in some professional or vocational field as a priority over or alternative to marriage. For a woman, marriage ought to be the first priority; a woman's raison d'être. But to defend his own honour and reputation a man may renounce or shame his partner, even in front of the community, with impunity. He can divorce his partner if she fails to live up to his expectations as a virtuous wife, a good mother and housekeeper. He may bring a second wife into the home, or as many as four wives, under Islamic law.***

...

***For a woman in Kurdish society to remain unmarried is tantamount to being rejected by the community as not good enough, not beautiful enough or too old. 'Too old' can be anything over 25. Worst of all three is to be 'not good enough', morally unfit, a woman of 'experience'. In keeping with the custom of most patriarchal societies, it is unacceptable for a woman to have more than one partner except in the case of the death of a first husband, where it is considered appropriate for a woman to remarry. Even so, many women choose not to do so lest they jeopardise their reputations, and hence their honour.<sup>54</sup>***

Sawsan Salim of IWO highlights the dangers for women in divorce, whether they have sought divorce themselves or been divorced by their husbands:

***If a woman fleeing honour killing who had left the country was returned, she would be killed, as she would still be seen as bringing shame upon the family. A divorced woman has to go back to her father or brother, or commit suicide. Many women do commit suicide. For example,***

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<sup>54</sup> Laizer, Sheri (1996), op. cit., pp 163-164



*between January and September 2001 IWO documented 221 cases of female suicide at Suleyman Hospital.*

*Sobhieh Abdullah Nader, a British citizen who lived in the UK and worked at the Kurdish Information Centre, asked for a divorce from her husband. When she visited family in Kurdistan she was shot at, but survived. One month later, driving with her husband, she was shot again and killed by men with machine guns. Her family had evidence that the husband had planned her murder but he was never charged. He now lives freely in London.*

*IWO has assisted 4 women originally living in Belgium, the Netherlands, Germany and the UK who feared being sent back to Kurdistan after divorce. In all cases they feared being persecuted or killed by relatives as they would consider that a divorced woman must be at fault and would bring shame on the family.*

*Even if a woman is working she cannot easily live alone, especially with young children. Her family would not allow it. There is no social provision, no benefits or housing provided for a woman in this situation.<sup>55</sup>*

## **5.2 Economic security**

### **5.2.1 Effects of UN sanctions**

All areas of Iraq including the Kurdish-controlled area have been badly hit by the UN-imposed sanctions. Save the Children published a report in January 2002 on household economies and food security in Northern Iraq (Iraqi Kurdistan) in which it warns of a potential humanitarian crisis, partly exacerbated by the effects of the 'Oil for Food' Programme:

*The UN sanctions imposed upon the GOI<sup>56</sup> led to a complete embargo on goods and products entering or leaving Iraq, including oil. The American and British governments additionally strengthened the security of the north, as well as the Shi'ite region in the south of Iraq by establishing 'no-fly zones'.*

*Northern Iraq found itself under a double embargo: the external blockade controlled by the UN and an internal blockade from the GOI, introduced in 1991. These punitive actions profoundly damaged the northern economy by depriving it of fuel, raw materials, manufactured goods and terminating funding for the government employees, who made up almost half of the workforce.*

*From 1991-1995 evidence was amassing on the scale of the humanitarian problem in Iraq. In July 1993 the FAO/WFP reported that large numbers of Iraqis had food intakes lower than those of the populations in the disaster stricken African countries.*

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<sup>55</sup> Salim, Sawsan (2002), op. cit.

<sup>56</sup> Government of Iraq

### *Security Council Resolution*

*In April 1995 SCR986 was adopted, introducing what is now known as the 'Oil for Food' (OFF) programme. Iraq was initially allowed to sell \$2 billion worth of oil in a six-month period. The North was allocated 13% of the revenues and the Centre/South 54% for the purchase of humanitarian supplies, food and medicine. The SCR986 Programme consists of a universal ration containing wheat-flour, rice, oil, sugar and tea which is distributed by the GOI in the Centre/South and the UN WFP in the North.*

...

*Most of the very poor live in the households of widows, the disabled and the elderly, living in towns and collectives. They are entirely reliant on the WFP food ration and have virtually no other access to income, with the exception of casual labour and internal gifts from their respective communities.*

.....

*In addition to the 20% in extreme poverty, 40% of the total population of Northern Iraq is living in poverty. There is a slight increase in income of US \$250 to \$300 ppha. Income is generated from agricultural production, agricultural and casual labour, regular low-paid employment and access to small amounts of often rented land (1 to 4 donums).*

### **CONCLUSIONS:**

***Most households are extremely vulnerable to external shocks, including unplanned changes in the sanctions system***

*The poorest population makes up 60% of the total population of Northern Iraq. It is extremely vulnerable to external 'shocks'. These shocks include droughts, price increases, external or internal conflict, and natural disasters. They also include any unplanned changes to the ration system created by UN Security Council Resolution 986. They have little (if any) capacity to expand to other coping strategies and economic activities.*

***Many poor people are reliant on the economic activity of the richest groups, and are vulnerable to changes in their income.***

*Approximately 60% of the urban population (the poor and the very poor) rely on the better off wealth group for their income. There is a high level of potential vulnerability for them and by extension the whole community. If there were some kind of shock which reduced the income of the rich, they would tend to rely on their own production and their assets and stop employing others, reducing gifts/zakat etc., which would have a considerable knock-on effect on the poorer wealth groups.*

***The sanctions and ration regime created by the UN Security Council has undermined and distorted markets and livelihoods and destroyed normal economic life for the vast majority.***

*Before SCR986, Northern Iraq was able to respond to its extreme isolation by developing an agricultural economy. SCR986, which was implemented in 1997, played havoc with those markets. It crippled the*

*self-initiative and hindered the promotion of self-reliance of the population.*

***The rations system instituted by UN Security Council Resolution 986 has created unprecedented levels of dependency.***

*Sanctions have undoubtedly impoverished the Iraqi population: the SCR986 Programme, however, has not overcome that impoverishment, but rather has raised dependency to internationally unprecedented levels. In the many near-destitute households, up to 90% of food comes from the SCR986 ration.*

***Poor people could not afford to feed themselves if the SCR986 ration was suddenly removed***

*If one could put a value on the food portion of the SCR986 ration, using current prices, the monthly ration would cost just below \$20 per family per month. Almost half of the village populations and 65% of the urban populations do not have the ability even to afford the food in the monthly ration. In the worst cases, some households were using 53% of income to buy 7% of food needs – these households could not exist if the ration were taken away. After four and a half years of SCR986 at least half of the population of Iraqi-Kurdistan is so poor that the people would have no way of affording basic food, required for an active and healthy life.*

***SCR986 rations have destroyed the livelihoods of most people, and diminished their capability to develop new livelihoods***

*Chronic poverty is embedded and to a certain degree entrenched – methods of support have eroded almost completely. Asset bases that could have been used to support households through periods of economic change and shock were depleted by the impoverishing and comprehensive sanctions system that preceded SCR986. While the SCR986 system has kept people alive, it has undermined the production and market systems necessary for people to grow food to eat or find work to pay for food. The SCR986 embargo on Iraqi trade undermines people's capability to use foreign trade to develop economic self sufficiency.*

***The SCR986 ration system has facilitated state domination of food supply***

*Before the Iraqi wars of the 1980s and 1990s, the GOI played a dominant role in Iraqi food markets. Oil profits enhanced the GOI's economic detachment from Iraqi society. Oil profits also allowed the GOI to develop a food distribution system based on subsidised imports, rather than developing local agricultural production and markets. The embargo on Iraq that began in 1990 had a devastating effect on Iraqi nutrition because the population had become accustomed to cheap imported food. But in Northern Iraq, the pre-SCR986 embargo allowed for some development of agricultural production in a fertile mountain zone. SCR986 relief rations have allowed the GOI to reassert its dominance over food systems, and seriously undermined the development of sustainable agriculture in Northern Iraq. Although rations in Kurdistan are distributed by the UN's World Food Programme (WFP), the GOI is responsible for importing most staples and milling flour. That means the GOI is able to control the content of the ration;*

*carbohydrate staples and tea and sugar instead of protein – both in Northern Iraq as well as in the south. Fixed rations inhibit the WFP's ability to target rations at vulnerable groups. In Northern Iraq, the ration undermines the agricultural market, and reduces the price of some staples to below production cost, helping to create an internationally unprecedented level of dependency. Dependency rates, and GOI dominance of food systems, are probably even greater in the territory directly administered by the GOI.<sup>57</sup>*

Referring to Iraq as a whole, Sabah Al Mukhtar notes:

*Iraq, which was one of the wealthy countries in the world, is now, as a result of the UN embargo, described by the UN as having:*

*The prevalence of the commonly recognised pre-famine indicators such as exorbitant prices, the collapse of private income, soaring unemployment, drastically reduced food intakes, large scale depletion of personal assets, high morbidity levels, escalating crime rates and rapidly increasing numbers of destitute people.*

*More than 70 per cent of the country's population is unemployed; UN agencies confirm that Iraq loses more than 5,000 babies every month; its economy and currency has collapsed; lawyers cannot afford to live; courts have no judges.....parents can no longer send their children to school. Hospitals have no drugs, nurses or equipment.<sup>58</sup>*

### **5.2.2 Vulnerability of women without male relatives**

Sheri Laizer describes the situation of the so-called Barzani widows, women whose husbands and sons, members of the Barzani tribe, were among the 8,000 men forcibly removed from the camps where the community had been sent by Saddam Hussein in 1978. The Iraqi government has never provided an official account of the fate of these men and boys. **To the immeasurable trauma of the 'disappearances' has been added the difficulties of surviving as unsupported women. This account demonstrates attitudes and structures which would add to the vulnerability of any female-headed household:**

*Left without men to work for them, the widows' economic circumstances are extremely harsh, as the men customarily bring in the income. These women and their unmarried daughters are sometimes exploited by outsiders. Some have been forced into prostitution in the towns near their camps to obtain the money to survive. Those who fall pregnant find themselves in a desperate situation. Morally ostracised,*

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<sup>57</sup> Save the Children (2002), *Understanding Kurdish Livelihoods in Northern Iraq: Final Report*, available at

[Hhttp://www.savethechildren.org.uk/pressrels/PDFS/Kurdish\\_Livelihoods.pdf](http://www.savethechildren.org.uk/pressrels/PDFS/Kurdish_Livelihoods.pdf)

<sup>58</sup> Al Mukhtar, Sabah, 'The Rule of Law in Iraq: Does It Exist?' in Cotran, Eugene & Yamani, Mai (eds.) (2000), *The Rule of Law in the Middle East and the Islamic World: Human Rights and the Judicial Process*, London, I.B. Tauris, p 80

*they are viewed as having brought further shame and suffering upon the extended community. With a bankrupt Kurdistan, mass unemployment and no social security system, it is no small matter to provide for thousands of Barzani widows.*

*Barzan women living in Qushtapa camp, Arbil, who had suffered the consequences of having relationships with men outside the tribe, or outside marriage, told one correspondent in summer 1993: 'Many women believe that in such circumstances killing is the only way to purge what they call 'unclean hearts'. A doctor working in Qushtapa says he knows of at least twenty such incidents in the past few years.'* **Women are still being murdered by their families for 'sexual impropriety'. Females are not permitted by the society to stray into compromising relations.**<sup>59</sup>

### 5.3 Access to health services

The World Health Organisation has been involved in rebuilding health services including water treatment, training of professionals, distribution of drugs and building new hospitals in Iraqi Kurdistan after the decimation of years of war. A report in 2000 in which they planned to review the health needs of the region noted for example:

*Sulaimaniyah city (population approximately 700,000) has a number of hospitals, including teaching, general, paediatric and maternity hospitals, and almost 1000 beds. But these facilities are fragmented and have suffered substantial damage and neglect over the years of conflict.*

...

*The majority of nurses in the Northern Governorates currently function at a very low level, partly due to lack of human and material resources for training, but also because there is little respect or appreciation of what nursing means for patient care.*

*Often, say nursing tutors, higher standard students are prevented from using what they have learned since there is no difference in the job descriptions of nurses with intermediate or preparatory [training] who are less able and those with institute or higher level training.*<sup>60</sup>

The International Committee of the Red Cross and Red Crescent Societies noted in its 2001 report:

*In Iraq, the ICRC continued to focus its attention on the problems in humanitarian terms still outstanding after two international conflicts, now aggravated by 11 years of trade sanctions. Assistance programmes continued to rehabilitate infrastructure in the areas of water and sanitation, primary health care, prosthetics/*

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<sup>59</sup> Laizer, Sheri (1996), op. cit., pp 166-167

<sup>60</sup> World Health Organisation (2000), *Health Update Iraq*, 24 November 2000, available at [Hhttp://www.who.int/disasters/repo/628.doc](http://www.who.int/disasters/repo/628.doc)H

*orthotics, and psychiatry...*

*The ICRC's position regarding the impact of the economic sanctions remained unchanged. The mechanisms set up to alleviate hardship, such as the oil-for-food programme, and the work of humanitarian organizations have had a favourable effect, but are nowhere near enough to enable the Iraqi civilian population to cope with their daily problems.<sup>61</sup>*

In a separate report on their work in 2000-2001, ICRC noted that

*The ICRC's goal in northern Iraq is that internally displaced persons and rural communities in particular should have access to water and benefit from sanitary conditions in accordance with WHO standards. The focus is therefore on basic infrastructure such as water-supply systems and sewage-evacuation networks requiring either maintenance work or emergency repairs. An important criterion for new projects in 2001 will be, apart from the humanitarian needs, that for some reason they cannot be carried out under the oil-for-food programme.<sup>62</sup>*

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<sup>61</sup> International Committee of Red Cross and Red Crescent Societies (ICRC) (2002), *Annual Report 2001*, available at [Hhttp://www.icrc.org/Web/eng/siteeng0.nsf/html/5CJAS8!OpenH](http://www.icrc.org/Web/eng/siteeng0.nsf/html/5CJAS8!OpenH)

<sup>62</sup> ICRC, *ICRC activities on behalf of Iraqi civilians 2000-2001*, available at [Hhttp://www.icrc.org/Web/eng/siteeng0.nsf/html/57JR3C?OpenDocument&style=custo\\_finalH](http://www.icrc.org/Web/eng/siteeng0.nsf/html/57JR3C?OpenDocument&style=custo_finalH)

## 6. Case law

### 6.1 United Kingdom

There appear to be no recent cases at Tribunal level involving women from Iraqi Kurdistan. However a male applicant fleeing honour killing recently won his asylum appeal **before the Adjudicator**, as follows:

#### **Rashid v. SSHD, Appeal No. HX/03907/2002**

The appellant fled persecution in the Kurdish Autonomous Area of Iraq by the Islamic Movement of Iraqi Kurdistan (IMIK), the Democratic Party of Kurdistan (KDP) and the Patriotic Union of Kurdistan (PUK). He was being persecuted because of his relationship with his girlfriend. His girlfriend's family did not accept the marriage proposal from him and told his Uncle Baker that she had been promised to someone else. The appellant's girlfriend was a member of the Sehany tribe, which is a powerful tribe within Kurdish Iraq. Sewa was then married to a man who had been chosen for her by her family. The appellant stated that around a week after her marriage he visited her in her home and was caught there by her husband. As a direct result of this Sewa was murdered.

Mr. Rashid's representative argued that the appellant's fear of persecution was from IMIK and the relatives of his former girlfriend. This is regarded as an honour killing and there is no willingness or ability by any authorities in the Kurdish Autonomous Areas to give protection to the appellant in these circumstances.

The adjudicator noted:

*The fact that the appellant's girlfriend Sewa has been murdered throws a great deal of light on this appellant's claim. In fact this appellant will be murdered for his perceived adultery and/or adulterous relationship with his deceased girlfriend. In this respect the appellant is a member of a particular social group. That is adulterers within the Kurdish Autonomous Area. Not only will he not be afforded protection by the authorities but, as can be seen from his evidence, the authorities are likely to actively help those intending to kill him.*

Both the appellant's asylum and human rights claims were allowed.<sup>63</sup>

#### **Issue of possibility of returns to Iraqi Kurdistan**

The Home Office does not currently have any means of returning failed applicants. A recent case before the High Court adds further information on the issue:

In Hwez and Khadir [2002] EWHC 1597 (Admin), Crane J has given Iraqi Kurds seeking Exceptional Leave to Enter/Remain in the United Kingdom despite losing appeals before the Immigration Appellate Authority the means

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<sup>63</sup> Rashid v. SSHD, Appeal No. HX/03907/2002, Adjudicator Mr P. R de Haney, 20 March 2002, summary RWRP

to challenge Home Office decision-making that leaves them in an unacceptable limbo. Mr Hwez is still in the appeal system and the High Court decided that he should see that through before inviting the Home Office to consider his position outside of the Rules. Mr Khadir, however, is at the end of the line. He asked for ELE and this was refused in May 2002. The High Court quashed that decision, and the Home Office must reconsider Mr Khadir's request.

The heart of the issue is the current impossibility of returning anyone to the Kurdish Autonomous Area; the part of Northern Iraq under the control of Kurdish parties (principally the PUK and KDP). It is accepted that it is unsafe to send Kurds to any other area of Iraq. The Home Office says it is 'exploring options' but it has been saying this for well over a year, and there is no indication that such explorations are getting anywhere. As Crane J notes in his judgment, end of line Iraqi Kurds are eligible for hard cases support, which is only suitable for a temporary situation. Since the Home Office can give no indication of whether, still less when, it may be possible to return Iraqi Kurds, it is not appropriate to describe the situation as temporary.

It may be that the Home Office have information that demonstrates safe returns, forced or voluntary, are or will become possible. If that is so, Mr Khadir will doubtless be refused ELE. If not, unless the Home Office seek to overturn Crane J's judgment, Iraqi Kurds at the end of the line should be granted ELE/R until such time as the Home Office find a means to return them to the KAA. Also, those still in the appeal system may benefit from his indication that "*in view of the lapse of time*" consideration should be given to granting Mr Hwez permission to work.<sup>64</sup>

### **Azad Gardi v. SSHD [2002] EWCA Civ 750**

This case, that of an Iraqi Kurd who had lived in the Kurdish Autonomous Region (KAR), did not succeed on its facts; however the Court of Appeal questioned the idea that the KDP and the PUK could be perceived as a state, offering an alternative to state protection. They clearly distinguished the KDP and PUK from UNMIK and K-FOR in Kosovo. Lord Justice Keene stated that had it been necessary to decide the 'protection test' issue i.e. whether the appellant was unable or unwilling to avail himself "of the protection of that country" which was a reference to the earlier phrase "the country of his nationality", he would have been inclined to find in favour of the appellant. This was because KAR, unlike the UNMIK regime in Kosovo, did not meet the recognised criterion that the protection had to be that of an entity which was capable of granting nationality to a person in a form recognised internationally, as emphasised by Professor Hathaway and Foster.<sup>65</sup>

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<sup>64</sup> Note by Steve Symonds, Asylum Aid

<sup>65</sup> Azad Gardi v. SSHD [2002] EWCA Civ 750, Court of Appeal, Lord Justice Ward, Lord Justice Keane and Sir Martin Nourse, 24 May 2002, summarised from Immigration Law Update, Vol 5 No 12, 17 June 2002, Immigration Advisory Service



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## Appendix A

### Home Office Country Assessment: Iraq, April 2002

#### Women

5.60 The Government states that it is committed to equality for women, who make up approximately 20 percent of the work force. It has enacted laws to protect women from exploitation in the workplace and from sexual harassment; to permit women to join the regular army, Popular Army, and police forces; and to equalise women's rights in divorce, land ownership, taxation, and suffrage. It is difficult to determine the extent to which these protections are afforded in practice. Women are not allowed to travel outside the country alone.[2f]

5.61 The Iraqi Government has stated that women constitute 48.7 per cent of Iraq's total population, and that like all other Iraqi citizens, have suffered the adverse effects of the embargo in the form of a drop in income, rapidly escalating prices and a sinking level of food and health security. The Government claims that it is committed to equality for women, who make up about 20 percent of the work force. It has enacted laws to protect women from exploitation in the workplace and from sexual harassment; to permit women to join the regular army, Popular Army, and police forces; to require education for girls; and to equalise women's rights in divorce, land ownership, taxation, and suffrage. It is difficult to determine to what extent these protections are afforded in practice. However, reports indicate that the application of these laws has declined as Iraq's political and economic crisis persists. A large number of Iraqi women have been forced to abandon working life by resigning or retiring from jobs and are denied the opportunity to participate in public life. [2c][16][17]

5.62 The Iraqi Government has also claimed the embargo has an adverse impact on women's physical and mental health with a shortage of food, medicines and essential humanitarian needs. It has been claimed that 73 per cent of women suffered from anaemia and the maternal mortality rate had risen from 36 per 1,000 to 120 per 1,000. [16][17]

5.63 Although the Government has stated that women have suffered because of the embargo, the Special Rapporteur, human rights organisations, and opposition groups continued to receive numerous reports of women suffering severe psychological trauma after they were raped in custody. The security forces allegedly raped women captured during the Anfal campaign and during the occupation of Kuwait. The Government has never acknowledged these reports of rape or conducted any investigation. Although the Government made a variety of announcements against rape and other violent crimes throughout 1997, it took no action against those who committed this abuse. [2b]

5.64 The Special Rapporteur also noted that there is an unusually high percentage of women in the Kurdish areas, caused by the disappearances of tens of thousands of Kurdish men during the Anfal Campaign. The Special Rapporteur reported that the widows, daughters, and mothers of the Anfal Campaign victims are economically dependent on their relatives or villages because they may not inherit the property or assets of their missing family members. [2c]

5.65 Domestic violence against women occurs but little is known about its extent. Such abuse customarily is addressed within the tightly knit family structure. There is no public discussion of the subject, and no statistics are published. Spousal violence constitutes grounds for divorce and criminal charges; however, suits brought on these charges are believed to be rare. Men who kill female family members for "immoral deeds" may receive immunity from prosecution for such "honour crimes" under a 1990 law. [2d] There are widespread reports of an increase in honour killings throughout northern Iraq [24]. However, the PUK declared in April 2000 that "honour crime" immunity would not apply in the area under its control.[2e]

5.66 On 22 June 1999 the Iraq Revolutionary Council issued Decree 101 banning the detention of women accused of manslaughter during the investigation and trial stages until a decision or sentence is issued in the case. Based on paragraph (A) of section 42 of the Constitution, the revolutionary council decreed the following;

1. *It shall be impermissible to detain women accused of manslaughter during the investigation and trial stages until a decision or sentence is issued in the case.*
2. *The victim's hospitalisation or death because of attempted manslaughter shall not prevent the release of the accused on bail during the investigation or trial of the case until a decision or sentence is issued in the case.* [3m]

5.67 In October 2000 security forces reportedly beheaded a number of women suspected of prostitution and some men suspected of facilitating or covering up such activities. Security agents reportedly decapitated numerous women and men in front of their family members. The victim's heads were displayed in front of their homes for several days. Thirty of the victims' names reportedly were published, including three doctors and one medical assistant.[2e]

5.68 Rape is prohibited by law; however, security forces rape family members of persons in the opposition as a punishment. No information is available regarding the frequency or severity of rape in society.[2f]

5.69 In April 2000, the PUK declared that immunity would not be given for honour crimes in the area under its control. Several active women's organisations operate in the Kurd-controlled regions in the north. In September the KDP began admitting women into the police academy in preparation for the planned integration of women into the police force.[2f]

5.70 Looking for differences in the situation of women between northern Iraq and the Government controlled areas, it is more common for women living in rural areas to fall victim to ill-treatment and honour killings, while this is less a concern in big cities, like Baghdad and its surroundings. In northern Iraq Sulaymaniyah people are known to be quite liberal whereas the Arbil and Dohuk regions are very conservative areas. [26][35]<sup>66</sup>

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<sup>66</sup> Country Information and Policy Unit (2002), op. cit.



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# KOSOVO

## 1. Introduction

### 1.1 Political background

Kosovo<sup>1</sup> previously enjoyed a degree of autonomy as a province of Yugoslavia. In 1989 Slobodan Milosevic imposed direct rule from Belgrade, and the repression that followed created growing resentment among Kosovo's ethnic Albanian majority who account for well over 80% of its two million inhabitants.

A police crackdown in 1998 triggered an uprising among the ethnic Albanians. Further acts of brutality against Albanian civilians led to a NATO military campaign that forced the withdrawal of Yugoslav and Serbian forces from the province.<sup>2</sup>

The United Nations Interim Administration in Kosovo (UNMIK) has been governing the province since June 1999, pursuant to U.N. Security Council Resolution 1244. This resolution recognized the continuing sovereignty of the Federal Republic of Yugoslavia (Yugoslavia) over Kosovo but called for "substantial autonomy and meaningful self-administration." Security has been provided by a NATO-led peacekeeping force, known as K-FOR.

UNMIK is currently in the process of transferring powers to the new government of Kosovo.

General elections were held in November 2001, but an agreement by the three main parties, which are all ethnic Albanian, on the choice of President and Prime Minister and the structure of a coalition government was not reached until February 2002.

These decisions were ratified and the remaining members of the government were elected in March 2002 and officially sworn in on 12 June. Ibrahim Rugova, head of the Democratic League of Kosovo (LDK) was elected President, and Dr. Bajram Rexhepi of the Democratic Party of Kosovo (PDK) was elected Prime Minister.<sup>3</sup>

The largest number of the 120 seats in the Assembly are held by the LDK. The PDK, which grew from the ranks of the Kosovo Liberation Army, came second in the elections. The third most significant party is the Alliance for the Future of Kosovo (AAK). 10 seats were reserved for Serbs; they won an

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<sup>1</sup> Note on place names: in the sources quoted, in general Albanian names are used, sometimes with their Serbian equivalents. RWRP uses Albanian place names except in the case of Kosovo (Albanian: Kosova) as Kosovo is the spelling used by United Nations.

<sup>2</sup> For detailed information on recent political events, see for example *Europa World Year Book 2001, Volume II, Yugoslavia*, London, Europa Publications

<sup>3</sup> UNMIK (2002a), *Kosovo Provisional Self- Government Formed*, at <http://www.unmikonline.org/press/2002/pressr/pr699.htm>



additional 12. Another 10 were reserved for the other ethnic minorities, mostly Roma, Turks and Bosniaks, in addition to the 2 that they won.

## 1.2 UNMIK – mandate and progress

The following is taken from UNMIK's website:

*UNMIK was born on 10 June 1999 when the Security Council in [resolution 1244](#) authorized the Secretary-General to establish in the war-ravaged province of Kosovo an interim civilian administration led by the United Nations under which its people could progressively enjoy substantial autonomy.*

*In particular, resolution 1244 has called upon UNMIK to:*

- perform basic civilian administrative functions;*
- promote the establishment of substantial autonomy and self-government in Kosovo;*
- facilitate a political process to determine Kosovo's future status;*
- coordinate humanitarian and disaster relief of all international agencies;*
- support the reconstruction of key infrastructure;*
- maintain civil law and order;*
- promote human rights; and*
- assure the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo.*

*Working closely with Kosovo's leaders and people, the mission performs the whole spectrum of essential administrative functions and services covering such areas as health and education, banking and finance, post and telecommunications, and law and order. In January 2000, Joint Interim Administrative Departments were created; in October 2000, local elections took place in Kosovo's 30 Municipalities; in May 2001, the new Constitutional Framework of Kosovo was adopted. Province-wide elections will take place in November 2001.<sup>4</sup>*

The head of the United Nations Mission in Kosovo is currently Special Representative of the Secretary General (SRSG) Michael Steiner, appointed in February 2002.

Steiner claimed there was “*much to be proud of*” on the third anniversary of UNMIK and KFOR's arrival in Kosovo, as well as acknowledging much work remains to be done “*to ensure security and human rights for all minorities*”<sup>5</sup>.

The International Crisis Group (ICG), in its report of June 2002, comments that UNMIK control is far from complete, and in fact in certain areas, notably north Mitrovica, UNMIK has failed to establish the rule of law and many

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<sup>4</sup> UNMIK, *Main Tasks: Kosovo*, at [H <http://www.unmikonline.org/intro.htm>](http://www.unmikonline.org/intro.htm) H

<sup>5</sup> Steiner, Michael (12/6/02), *SRSG statement to press on 3rd Anniversary of UNMIK & KFOR's arrival* UNMIK Press release UNMIK/PR/753, available at [H<http://www.unmikonline.org/press/2002/pressr/pr753.htm>](http://www.unmikonline.org/press/2002/pressr/pr753.htm)H

aspects of the administration are controlled by Serbia.<sup>6</sup> Mitrovica, in the north of Kosovo, has a minority Serb population of 12,000 among its 100,000 inhabitants, and has been a flashpoint for confrontation ever since UNMIK and KFOR entered Kosovo in June 1999, according to their report:

*On 8 April 2002, UNMIK police officers came under grenade and sniper attack in north Mitrovica. Many international officials see this as merely the latest episode in a cycle of violence that has gripped the city since the UN assumed responsibility for Kosovo in June 1999, but “not an extraordinary incident”. Indeed some UNMIK representatives argue that the situation in Mitrovica is slowly improving. The number and intensity of violent incidents have declined, and UNMIK opened a community office in the north of the city in 2002.*

*While there has been an incremental improvement, the attack against the police – the worst violence against UNMIK personnel since the inception of the mission – clearly indicates that only five months before the municipal elections, UNMIK and KFOR have not fulfilled their mandate in the city. They have not established a safe and secure environment, the rule of law or a meaningful civil administration. While provisional institutions of self-government are being built elsewhere in Kosovo, including in the neighbouring Serb-dominated municipalities of Zubin Potok, Zvecan and Leposavic, north Mitrovica defies UNMIK’s efforts. Belgrade’s writ extends to this part of the city – parallel institutions still function, and their staff report to and are funded by Belgrade.*

*Many maintain that Kosovo’s final constitutional status has to be decided before the Mitrovica problem can be resolved. However, the events in the North signal that the fight to determine the final status of Kosovo is underway, and its battleground is Mitrovica. The goal of the Albanians is to unify Kosovo, while Belgrade uses every available means to maintain its grip on the North with the intention of partitioning the province.*

*Such a partition, brought about through violence and the threat of violence, would have an extremely destabilising impact on Kosovo and the wider region. While ICG has argued that the time is ripe to initiate final status discussions, UNMIK’s failure to establish its authority in the North firmly could foreclose options for final status by staking out a de facto partition.*

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<sup>6</sup> According to Stephanie Schwander-Sievers, this paragraph focusses the problem too much on a single area - Mitrovica - only, and looks only at the Serb and not the Albanian parallel structures which exist elsewhere. Schwandner-Sievers is Nash Fellow for Albanian Studies at the School of Slavonic and East European Studies, University College London and runs the Albanian Studies Programme. She is a social anthropologist with a fieldwork track record of more than ten years both in Albania and Kosovo, and has researched and published on Albanian local politics and traditions including a special interest in gender issues and violence.

Steiner acknowledged the problems in Mitrovica in his speech to the new National Assembly in May 2002:

*Mitrovica: we all agree that the current situation is unacceptable. The truth is that I have inherited this situation. I agree that the situation cannot stay at it is and I share your frustration about the situation in Mitrovica and in the north.*

...

*I accept in reality we have not yet achieved what we want to achieve in Mitrovica. It took us 44 years to reunite Germany – we never gave up and we achieved it in the end.*

*We will achieve it here, and it will take much less time than in Germany. And I would like to stress one thing here: there will be no partition of Kosovo and no return to the status quo ante of 1999.<sup>7</sup>*

## **1.3 Human rights practice**

### **1.3.1 Legacy of the conflict and UNMIK's administration**

We highlight below some features of the current administration in Kosovo that may be too readily overlooked. These concerns are raised by the United Nations Development Group (UNDG) in its comprehensive study of Kosovo carried out in 2001. On human rights, the report noted:

*There are a number of human rights issues which remain of concern in Kosovo despite the Peace settlement. There are the well-documented cases of serious human rights abuses being continually monitored and addressed such as enforced disappearances, international crimes against humanity, prisoners, use of landmines, burning of houses and property, and treatment of detainees. There are some additional development concerns to be addressed such as the rights of minority ethnic groups and of women, policing, organized crime, food issues, property disputes and the legal system.*

....

*The political vacuum left behind by the recent conflict situation has been a tremendous breeding ground for organized crime. This issue significantly cuts across such social development sectors as gender, population, health and education. Trafficking of women and children, for example, is a growing problem in the region as well as is a number of other issues regarding the safety of individuals and their property.*

*The past ten years in particular have called to question the legitimacy and impartiality of institutions of government, authority and upholding of the law. There is little confidence in existing structures, for example, for adequately addressing legitimate disputes and seeking effective remedies, and such a system is desperately needed. Related to this is the need for a truly independent and fair legal system, especially*

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<sup>7</sup> Steiner, Michael (9/5/02), *Address to the Kosovo Assembly*, UNMIK Press Release UNMIK/PR/732, available at <http://www.unmikonline.org/press/2002/pressr/pr732.htm>

*regarding property disputes, and the means to resolve issues according to genuine merit. Similarly, although a new police force will inevitably be young and inexperienced, it is important for such institutions of power and authority to regain the trust of the Kosovo people that was lost owing to rights abuses under the previous regime. Women remain especially vulnerable to human rights violations in terms of domestic violence, prostitution and vulnerability to eviction from their homes.<sup>8</sup>*

The Kosovo Ombudsperson, in his Second Annual Report of July 2002 which covers the first complete year of activity of the Ombudsperson Institution in Kosovo, is critical of the human rights record of UNMIK, detailing various failures to uphold human rights standards:

*The human rights situation in Kosovo is distinct from the human rights situation in other parts of post-conflict Yugoslavia, in part due to the unique role of the United Nations Mission in Kosovo (UNMIK) as the surrogate state. As the state, however, UNMIK is not structured according to democratic principles, does not function in accordance with the rule of law, and does not respect important international human rights norms. The people of Kosovo are therefore deprived of protection of their basic rights and freedoms three years after the end of the conflict by the very entity set up to guarantee them.*

*On its establishment as the surrogate state in Kosovo, in 1999, UNMIK gave no cognizance to one of the founding principles of democracy, the separation of governmental powers. Amongst the earliest actions of the Special Representative of the Secretary-General of the United Nations (SRSG) was the promulgation of an UNMIK Regulation vesting total executive and legislative powers in himself. In the same Regulation, he also accorded himself administrative authority over the judiciary. The SRSG can and does act outside the bounds of judicial control to restrict or deny fundamental human rights to individuals in Kosovo. For example, he has exercised this power to remove individuals from electoral lists (See p. 18) and to override the decision of international judges and international prosecutors to release certain individuals from detention (See pp. 11-15). The effects of the failure of the SRSG to respect the principle of the separation of powers continues to have extremely negative ramifications for the rule of law and human rights in the territory.*

***Since the establishment of the United Nations regime in Kosovo, UNMIK has both perpetuated and created obstacles to the full protection of human rights, issuing Regulations granting themselves and the international military presence (KFOR) total immunity from legal process in Kosovo, removing decision-making authority over important civil rights from the courts and***

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<sup>8</sup> United Nations Development Group (2001), *Kosovo Common Assessment*, p 35, Prishtine, Kosovo, available at [Hhttp://www.kosovo.undp.org/mainframe/publications/Kos\\_Com\\_Ass\\_publicat.pdf](http://www.kosovo.undp.org/mainframe/publications/Kos_Com_Ass_publicat.pdf)

**placing it in administrative bodies under the direct control of UNMIK, and pursuing similar courses of action that serve to eliminate or severely restrict the rights of individuals from Kosovo. The applicable law is often unclear, with UNMIK Regulations and subsidiary legal acts declared as the supreme law of the land, prevailing over any domestic laws in force. Whatever law a court in Kosovo may apply is of little importance, however, as UNMIK will choose whether or not to permit the execution of any resulting judgment. It has refused to do so, for instance, in a case relating to a job recruitment conducted under direct UNMIK control and authority (see pp. 20-21).**

#### *Lack of Respect for the Rule of Law*

**Residents of Kosovo must overcome a number of obstacles in order to exercise their human rights and fundamental freedoms. One of the foremost of these obstacles is the lack of legal protection prevailing in the province, stemming in large part from the inaccessibility and the lack of clarity in the applicable law.**

*An early UNMIK Regulation provided that all UNMIK Regulations would be published in English, Albanian and Serbian. Three years later, important UNMIK Regulations remain in English only, although efforts have been made to accelerate translations into Albanian and Serbian. Delays in publishing laws considered by UNMIK to be in force remain a problem, even in the event that publication on the internet can be considered adequate where a large proportion of the population does not have access to computer services. **As noted above, the complex structure of the applicable law causes confusion in the population and the courts. The confusion is exacerbated by the inclusion in many UNMIK Regulations of a provision declaring that the new Regulation supersedes 'any existing law with which it is inconsistent', often in Regulations that are written in quite general terms. Administrative Directives are used as tools for repairing gaps in UNMIK Regulations, leaving the applicable law unclear even to those intended to implement it. International standards governing lawfulness thus continue to be flouted, as the 'applicable law' remains inaccessible and unforeseeable and fails to protect individuals against arbitrary action by the state.***

*Certain categories of human rights complaints have been entirely removed from the jurisdiction of the courts and placed under the control of administrative authorities operating under UNMIK control. Their decisions cannot be appealed to any judicial body. In some circumstances, however, UNMIK and KFOR have at least nominally recognised that individuals who have suffered an injury caused by UNMIK or KFOR should be able to ask for compensation or damages. The response has been to establish various types of 'commissions' or 'claims offices' under the auspices of UNMIK and/or KFOR, through which individuals may theoretically claim such damages or*

*compensation. However, virtually no information is publicly available about the existence, mechanisms or procedures of these commissions or claims offices. To date, no information has been publicised about the number of claims settled or compensation or damages awarded by any of them.*

*Individuals in Kosovo have been detained without any judicial decision or control, either by the SRSG or by the Commander of KFOR, both of whom exercise total power in this regard. Recommendations by the Ombudsperson and others that the legal regime governing detentions be returned to judicial authority and control, in accordance with all relevant international human rights standards, have been ignored (see pp. 11-15). In any event, Regulation 2000/38 does not permit the Ombudsperson to exercise any authority to address KFOR regarding their parallel unlawful practices in this regard.*

*Kosovo has one of the highest concentrations of military and police personnel in the world, some estimates placing the figure as high as one soldier or police officer for every forty residents of Kosovo. Extensive international resources have been dedicated to the recruitment and training of local police and a large number of international police remain on the United Nations payroll as well. However, this vast international presence has failed to investigate or to prosecute serious crimes, from murder to organised criminal activity (See pp. 22-24).<sup>9</sup>*

### **1.3.2 The situation of minorities**

The US State Department notes in its report for 2001:

*Although the high level of retaliatory anti-Serb violence that followed Yugoslavia's 1999 withdrawal dropped significantly, ethnically motivated violence and crime continued to affect minorities. Serbs, Roma, and other minorities were victims of murder, kidnaping, assault, and property crimes, especially arson. Observers attributed the drop in violent crime to increased CIVPOL and KPS efficiency, the lessening of tensions with the passage of time, and the fact that Serbs and Roma drastically restricted their movements (see Section 2.d.).*

*Serbs and Roma who did not leave when Yugoslav forces withdrew lived primarily in enclaves, except for the Serbs in the north of the province, where Serbs and Albanians effectively partitioned Mitrovica. Serbs lived largely in the northern Kosovo municipalities of Leposavic/Leposaviq, Zubin Potok, and Zvecan, in the northern part of Mitrovica, and in scattered enclaves under KFOR protection elsewhere. KFOR and UNMIK provided security to these enclaves, settlements, and camps, and escorted minority members who left their residence*

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<sup>9</sup> Ombudsperson Institution in Kosovo (2002), *Second Annual Report, 2001-2002*, Kosovo, available at <http://www.ombudspersonkosovo.org/doc/spec%20reps/Final%202%20Annual%20Report%202002%2010-07-02%20English.docH>

areas as well as convoys of private Serb vehicles. The UNHCR transferred responsibility to UNMIK for providing buses to transport Serbs in larger numbers between enclaves and into Serbia to take care of personal business (see Section 1.f.).

*In April 2000, the Interim Administrative Council (IAC) endorsed a Declaration and Platform for Joint Action, under which key Albanian Kosovar leaders visited those areas where local Albanians and Roma were trying to establish more cooperative interethnic relations, thus encouraging a climate conducive to the return of those who fled the province earlier. Nonetheless little progress was made in resettlement of Roma, Ashkali, and Egyptians; Roma continued to experience difficulty in obtaining freedom of movement (see Section 1.f.).*

*In Mitrovica Serb and Albanian Kosovars harassed each other and restricted each other's freedom of movement (see Section 2.d.). After Serbian forces withdrew in 1999, many ethnic Serbs from throughout Kosovo fled to Mitrovica and occupied homes, including those belonging to ethnic Albanians in the northern part of that town. Ethnic Albanians who sought to return to their homes in the north were subject to violence and intimidation by ethnic Serbs, and about 1,500 who live in the northern section of town reported repeated harassment. Serbs in the northern part of the city continued to seize Albanian property resulting in numerous illegal house occupations. At the same time, ethnic Serbs, including some who owned property there, were unable to move freely in the southern part of the town without similar harassment from ethnic Albanians.<sup>10</sup>*

The report by the Kosovo Ombudsperson notes:

*The situation of residents of Kosovo who are not of Albanian ethnicity remains very difficult. Many, in particular Serbs and Roma remain isolated in ghettos and face great danger should they venture out of those ghettos without armed international escorts. Their extremely restricted freedom of movement has serious repercussions on all aspects of normal life – access to employment, medical care, schools, and public services generally. The provision of public utilities (electricity, water, etc.) to these ghettos is at a much lower standard than to the rest of the population.*

*With respect to the return of those displaced in connection with the conflict, and in particular members of non-Albanian communities forced to leave Kosovo at its conclusion, the physical and economic security situation still renders sustained returns a distant goal. In the meantime, internally displaced persons in Serbia proper are living in dire conditions that are exacerbated by their uncertain legal status.*

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<sup>10</sup> US Department of State (2002), *Country Reports on Human Rights Practices 2001: Yugoslavia*, Bureau of Democracy, Human Rights and Labor, available at [Hhttp://www.state.gov/g/drl/rls/hrrpt/2001/eur/8369.htm#ksH](http://www.state.gov/g/drl/rls/hrrpt/2001/eur/8369.htm#ksH)

## 1.4 Kosovo and international legal instruments

As it is not yet an independent state, Kosovo is unable to sign international treaties. However UNMIK Regulation 1999/24 binds government officials to abide by the provisions of international human rights law and conventions.

## 1.5 Women's human rights

The United Nations Development Programme notes the following inequalities for women in Kosovo in its 2001 report:

*The Kosovo Constitutional Framework proclaims that all inhabitants of Kosovo enjoy internationally accepted standards of human rights in full equality and without any form of discrimination, and that all tenets described in the international Convention for Elimination of All Types of Discrimination against Women are also observed in Kosovo. In practice, however, various types of gender-based inequality and discrimination against women do exist.*

*Analysis summarized in Chapter 1 (see Fig.1.6) shows that although Kosovan women enjoy a longer estimated life expectancy at birth, they are in general less active in the economy and on average attain lower levels of education. In addition, Kosovan women are less equally represented in the judicial system and other areas of public and private sector activity. No women, for example, were appointed as Ministers when the new government was formed in 2002.*

*This situation is in part explained by some elements of traditional Kosovo's life that dictate a woman's primary responsibilities should center around the raising of children and other family-oriented and domestic activities. In order to lessen levels of discrimination against women and create an environment that provides equal opportunities for development for both men and women, several measures should be taken in cooperation with both the international community and Kosovan society. These include:*

- Education campaigns to promote the concept of gender equality and raise awareness of latent and overt forms of discrimination against women;*
- Training designed to mainstream gender equality principles into institutional capacity building;*
- Gender review of all major policy and planning documents;*
- Additional affirmative action programs, such as ongoing recruitment of women into the local police force and a minimum 33% quota for women representation in local and parliamentary elections;*
- Introduction of policies designed to increase the involvement of women in all fields and levels of educational, technological, and cultural endeavor; and*
- Professional training for women to assume positions of leadership and management.*

The US State Department report gives the following information on women's status:



*Women traditionally do not share status equal to men, and relatively few women obtain upper level management positions in commerce or government, although there is no legal restriction on their doing so. Traditional patriarchal ideas of gender roles, which hold that women should be subservient to the male members of their families, continued to subject women to discrimination. In some rural areas, women often have little effective right to control property and children. Women widowed by the war risked losing custody of their children due to an Albanian custom requiring children to be given to the deceased father's family. While legally women and men have equal rights to inherit property, it is customary that family property passes to men only. Particularly in rural areas, when a man dies, his widow often is returned to her birth family and his family assumes his land, leaving the widow without property.*

.....

*UNMIK Regulation 1999/24 binds government officials to abide by the provisions of international human rights law and conventions, but that requirement has not yet benefited women's lives in rural areas.*<sup>11</sup>

### **1.5.1 Trafficking**

The US State Department notes:

*Regulation 2001/4 specifically prohibits trafficking in persons and trafficking was a serious and growing problem. The province was mainly a destination point, but also a transit point for women and girls trafficked for the purpose of prostitution. Police and the IOM agree that although there is little data, the problem is probably large.*

*The majority of trafficked women were from Moldova, Ukraine, Bulgaria, and Romania, and to a lesser extent from Kazakhstan, Belarus, and Albania. Security authorities also reported that women and girls were smuggled through Kosovo to Macedonia, Albania, and Italy. There were several kidnappings and disappearances of young women who subsequently were not located. Some local sources believed that these women were the victims of traffickers in some cases, although there is no clear evidence that this was the case. Traffickers into the province are reportedly linked to organized crime, rather than with employment agencies or marriage brokers. Evidence suggested that trafficking in women was an example of a coordinated effort between ethnic Serbs and Albanians, like other areas of organized crime. Women were recruited to work in cleaning jobs and are abducted and forced into prostitution. Trafficked victims work in Kosovo's sex industry, primarily in brothels and nightclubs. While some women were aware that they would enter the sex industry, they were not aware that they effectively would be imprisoned and unable to earn money. Trafficking victims reported that they were subject to physical violence, rape, denial of access to health care, and confiscation of their*

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<sup>11</sup> US Department of State (2002), op. cit.

*passports. According to the IOM, the presence of a large international community has contributed to the increase in the number of brothels that are involved in trafficking, but women rescued from the brothels often report that the majority of their clientele was local.*

*Since nothing in the applicable law, as defined by UNMIK Regulation 1999/24, provided an effective legal framework under which to address trafficking, during the year a Kosovar/international working group drafted a Regulation on the Prohibition of Trafficking in Persons in Kosovo, making the offense a crime punishable by from 2 to 20 years in prison, and providing for victim assistance. UNMIK promulgated the Regulation, 2001/4, in January.*

*UNMIK actively investigates cases of trafficking and UNMIK police raided several brothels and nightclubs throughout the year all over Kosovo. However, to date, lack of a witness protection program and inadequate training for judicial personnel resulted in only a few convictions under the regulation. In addition because prostitution is punishable under provincial law, women often were afraid to report their traffickers due to fear of arrest. During the year, four CIVPOL officers were arrested for complicity in trafficking or prostitution during the year; all were expelled or voluntarily returned home. In July a man in Prizren with arrests for trafficking prior to the promulgation of the regulation was arrested for continuing to operate a brothel where trafficked women worked; he was convicted under the regulation and sentenced to prison. In October police detained five persons entering Kosovo near Podujevo/Podujeve: three trafficked women were accompanied by their captors, a Serb and an Albanian. The Trafficking and Prostitution Investigations Unit (TPIU) has registered 1,028 foreign women who have been questioned at least once by police. According to the TPIU, there were 52 charges of trafficking against suspects during the year. As of October, according to the OSCE's Legal Systems Monitoring Unit, 21 cases were in some stage of court proceedings. Of these trials were held in 8, with sentences ranging from 5 months to 6 years.*

*The OSCE has been involved in integrating trafficking into other work on organized crime and in gathering data, working on legislative review and data-gathering initiatives within the framework of the Stability Pact Trafficking Task Force. The IOM launched an awareness campaign directed at UNMIK, KFOR, and local men who purchase the services of women who were most likely to be trafficking victims, and ran an information campaign targeted at potential trafficking victims in Kosovo, using print and broadcast media. The IOM also offers free office skills courses at their employment assistance office, which approximately 300 women have attended, including 170 minorities.*

*UNMIK does not provide any official residency status to victims. Those who do not accept assistance from IOM generally are released, but if they continue to work as prostitutes, they are subject to rearrest, short*

*jail sentences, and deportation. Some women who were trafficked have been jailed or made the subject of deportation orders by local judges. According to the police, when a woman is picked up in a raid, she is assumed to be a victims and is offered shelter and repatriation assistance. If she accepts, she is transferred to IOM. If she refuses, she is generally released if this is a first contact. Prostitutes who are not trafficking victims are also allowed to go with a warning if this is their first contact with the police. Prostitution is, however, a misdemeanor (subject to a 30-day sentence), and local judges have sentenced women, including those who were trafficked but refused repatriation, to jail. Moreover, judges have issued deportation orders against some women for lack of proper documentation.*

## 2. Domestic violence

### 2.1 A background to violence against women

The United Nations Development Group's 2001 report notes:

*Violence against women is widespread in Kosovo. According to a recent UNIFEM assessment, 23 per cent of women reported domestic violence. Rape in Kosovo during the war, trafficking, sexual slavery and prostitution are serious issues affecting women.*

***Violence against women must be addressed in the context of women's human rights rather than merely as a welfare issue. Awareness raising and education on the issue are fundamental to bring attitudinal changes in society. But equally important are stricter laws, legal procedures must be revised, and police, health care staff and judges need training on how to deal with violence against women as a violation of human rights. A regulation on 'Trafficking in Women' is needed<sup>12</sup>, shelters for women are required, and women's groups working against violence and trafficking in women, need capacity building support.***

The UNIFEM assessment referred to above was carried out by Rachel Wareham, who gives the following background on the issue:

*"It is impossible to write about any type of violence in Kosovo without reference to the war and conflict of the past years. Kosovo was, in fact, a place of which few people outside of former Yugoslavia had knowledge until the massacres in Drenica in 1998. Since then news and media coverage has tended to concentrate on issues of ethnic violence and has generally been unable to take into account complexity or diversity.*

*Since the arrival of the UN in 1999, emphasis by outsiders has been on reconciliation. The massacres, rapes, forced expulsions, random killings of civilians so well documented by OSCE and others, are now being pushed to the back of many minds and displaced by current crimes. Kosovar Albanians are being predominantly blamed for inciting ethnic violence whilst at the same time Kosovar Albanians in northern Mitrovica catalogue numerous occasions when the KFOR has failed to protect them against Serbian attackers. Despite the impression in the media of one-sided (Kosovar Albanian led) violence, post conflict violence has led to deaths of almost equal numbers of Albanians and Serbs in Kosovo. And, many killings are not inter-ethnic, but amongst people of the same ethnicity.*

*The researcher's analysis is that in Kosovo Albanian culture, in common with many traditional societies, the meaning and legitimacy for violence are regulated. Unmeditated violence is equated with loss of*

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<sup>12</sup> Note: this was promulgated in 2001 as UNMIK Regulation 2001/4

control which is equated with loss of power whereas restraint is connected with moral authority. Men who lack restraint either verbally or physically (for example through public displays of drunkenness) lose status in the community. Premeditated violence is accepted when it is related to retribution, which is considered an expression of justice, not to be taken lightly. Reconciliation between men is valued highly.

*Traditionally Kosovo society was constructed in ways which appear to have minimized the amount of physical mistreatment men used towards women because structural control ensured women were very constrained. **Women gained status, moral authority, and respect as mothers. Women could lose all of these through any public act which discloses independence or scorn for their natal and later, marital family. But the combination of ethnic cleansing, war, and then the governance of Kosovo by an international force has fractured a tight-knit society. Times such as after a war, when structures are weakened and traditions and communities have been disrupted, are likely to see an increase in physical violence against women, as women move into roles previously closed to them.***<sup>13</sup>

The US State Department in its report for 2001 notes:

***Violence against women, including rape and a high level of domestic violence, remained a serious and persistent problem. Applicable criminal law, as defined by UNMIK regulation, is incomplete in addressing both domestic violence and sexual crimes. There are no governmental agencies dedicated to coping with family violence. Several domestic and international NGO's pursued activities to assist women, but they were constrained by a tradition of silence about domestic violence, sexual abuse, and rape. In Kosovo's traditionally male-dominated society, domestic abuse of women is culturally acceptable. Credible sources reported that violence against women increased in the post-conflict period. Few victims of spousal abuse ever file complaints with the authorities. The Kosovo Police Service School, charged with training the KPS, included segments on domestic violence and rape in its curriculum. In October UNMIK commended six KPS officers for their part in preventing a gang rape and arresting its would-be perpetrators.***

***Rape is underreported significantly due to the cultural stigma attached to victims and their families. Tradition prevents much discussion of the topic of rape among ethnic Albanians, since the act is seen as dishonoring the entire family. The frequent use of rape by Yugoslav and Serbian forces and the KLA in the summer of 1999 has heightened the profile of rape as a form of war crime (see***

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<sup>13</sup> Wareham, Rachel (2000), *No Safe Place: An Assessment of Violence Against Women in Kosovo*, UNIFEM, pp 24-25

*Section 1.c.), but few individual women have come forward publicly. During the year, police registered over 103 rapes and rape attempts in the province, an increase in the number of reported cases over the previous year. However, there is credible anecdotal evidence, supported by customary practice, that rape is underreported significantly.*<sup>14</sup>

The International Crisis Group published a report in September 2002 on the state of the justice system in Kosovo. The report did not provide a gendered analysis of the situation. However, almost in passing, in a section describing progress made by UNMIK in prosecuting crimes, it noted:

*All major offences, with the exception of rape, dramatically declined in 2002.*<sup>15</sup>

This perhaps illustrates both the way in which general improvements in the rule of law and levels of crime do not necessarily mean improvements for women, and also the low priority that violence against women is given by the authorities in Kosovo.

## **2.2 Prevalence data**

The information below is taken from the report by Rachel Wareham mentioned above.

*Significant findings which can be clearly extrapolated from the responses:*

*OF THE WOMEN WHO DISCLOSED PHYSICAL VIOLENCE  
BY A PARTNER OR FAMILY MEMBER:*

### *1. PREVALENCE OF DOMESTIC VIOLENCE:*

*23 per cent of all 213 women who completed questionnaires disclosed they had experienced physical violence by a partner or other family member.*

*18 per cent of all women who completed questionnaires reported rape by a partner (husband or boy friend) or family member such as uncle, cousin, nephew.*

*The data indicates that disclosure rates of domestic violence are very similar to those in other studies in Western Europe and North America.*

*It should be kept in mind that in many countries and places, under reporting of domestic violence is common. It reflects fears such as of reprisals, publicity, damage to a woman's reputation, lack of trust in institutions and authorities.*

### *2. OCCURRENCE OF VIOLENCE BY AGE GROUP:*

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<sup>14</sup> US Department of State (2002), op. cit.

<sup>15</sup> International Crisis Group (2002), *Finding the Balance: the Scales of Justice in Kosovo*, ICG Balkans Report No. 134, Pristina/Brussels, ICG, p 6, available at [Hhttp://www.crisisweb.org/projects/showreport.cfm?reportid=772](http://www.crisisweb.org/projects/showreport.cfm?reportid=772)H

*The average age of the total sample who completed questionnaires was 28.5 years.*

*25 per cent of the total sample were between 35 and 54 years old.*

*The sample was biased towards older women most likely to be married.*

*The average age of women who reported experiencing domestic violence (23 per cent of the total sample) was 32 years.*

*42 per cent of the women who disclosed experiencing violence were between 35 and 54 years old.*

*The data indicates that mature women are most likely to report experiencing domestic violence.*

### **3. MARITAL STATUS:**

*Of all women who disclosed experiencing violence (23 per cent of the total sample), 40 per cent were married and 40 per cent were single (unmarried, widowed, separated, divorced), the remainder 20 per cent did not respond.*

***The data indicates no obvious relationship between marital status and vulnerability to violence, in fact both married and single women appear to be equally vulnerable.***

### **4. RURAL/URBAN DIFFERENCES:**

*Of all women who disclosed experiencing violence (23 per cent of the total sample), 65 per cent were from urban areas.*

*Whereas 49 per cent of the total sample were from urban areas.*

*The data indicates that violence appears to be more prevalent in urban society.*

### **5. FAMILY MEMBERS:**

*Of all women who disclosed experiencing violence (23 per cent of the total sample), 50 per cent of all urban women and 14 per cent of all rural women were maltreated by a family member other than their partner (husband or boy friend). This included fathers, uncles, nephews, brothers. In a few cases perpetrators were females such as mother in laws, mothers.*

*The data indicates that there are higher levels of violence by family members other than a husband, in urban communities.*

### **6. FIRST INCIDENCE OF VIOLENCE:**

*Of all women who disclosed experiencing violence, 44 per cent of women experienced violence for the first time in 1998 or 1999. 2 per cent of women experienced violence for the first time in 2000. 2 per cent did not respond to this question.*

*The remaining 54 per cent had first experienced domestic violence from 1980 to 1998.*

*The data indicates that a connection can be made between the increase in conflict in Kosovo in 1998, and a rise in domestic violence.*

*The findings indicate that domestic violence is not a new phenomenon in Kosovo but that it appears to have increased since the conflict.*

*Possible explanations for this are: increased acceptability of violence as a way to solve problems, the break down of tight family and social structures, a general rise in instability and uncertainty, the increased sense of powerlessness amongst the community, decreased income in many families as workers sending back remittances from abroad are returned by governments, general levels of unemployment, increased inequalities in society.*

#### **7. RAPE BY KNOWN MEN:**

*18 per cent of the whole sample of 213 respondents reported rape by known Albanian men: 53 per cent of women who had been raped by partner (husband or boy friend) or family member, were married, and 26 per cent were single, 21 per cent were widowed or separated (it is not clear from this category if the rape/s took place before widowhood or separation or after).*

***Rape by a husband is currently exempt from legal prosecution under laws of Federal Republic of Yugoslavia, and laws of Serbia, and laws of the Autonomous Province of Kosovo. It is interesting therefore that women disclosed rape by their husbands and boy friends, and this contradicts the general belief that women in Kosovo do not understand forced sexual activity by husband or boy friend as 'rape'.***

#### **8. ALCOHOL & VIOLENCE:**

*Of all women who disclosed experiencing violence (23 per cent of the total sample), 51 per cent reported that their abusers had an alcohol problem; of these 72 per cent are urban men.*

*The data indicates that alcoholism is a contributing factor in violence.*

#### **9. CHILDREN & MISTREATMENT:**

*35 per cent of women who experienced domestic violence (23 per cent of the total sample) violence said that children in their family are also subjected to physical mistreatment, whereas 53 per cent of women said children in their families were exposed to no physical or emotional mistreatment. The remaining 12 per cent did not respond to this question.*

*The data indicates that violence against children and against women do not always occur together.*

#### **10. WHERE WOMEN GO FOR HELP:**

***Of all women who disclosed experiencing violence (23 per cent of the total sample), 54 per cent of urban and 7 per cent of rural women had not talked with anyone about the violence.***

***The data indicates that urban women are less likely to seek support.***

***Of all women who disclosed experiencing violence, 12 per cent of women had not sought help related to the violence. 32 per cent of women had sought help from their family, whereas only 9 per cent***



**sought help from a friend. Those approached in the family included father and brothers. It is assumed from discussions that in cases where the father or brother/s are the abusers, no one is approached. There was no significant response concerning help from institutions, local groups, international organizations. The data indicates that women are most likely to seek help related to the problem of violence from family members.**

*37 per cent of women had not talked with anyone explicitly about their experience of violence. 40 per cent of all women had talked with a friend about the problem, 14 per cent had talked with family members, the remaining 9 per cent did not reply to the question.*

*It seems, if this figure is compared with the one in the above paragraph, that women do not associate 'talking' with 'helping'.*

*The data indicates that women are most likely to talk explicitly with a friend.*

*Of all women in the total sample 49 per cent of women would use a place for help if it existed, 33 per cent maybe would use a place, 14 per cent would definitely not, the remaining 4 % did not reply to the question.*

*It seems therefore that services would be used if they were developed in a culturally sensitive and user-friendly manner which requires wide consultation with women."<sup>16</sup>*

In the light of these findings we feel that careful consideration should be given to the issue of women's safety within the home, and an assumption ought not to be made that a woman could return to her family for protection.

Karina Vasilevska, a local activist working on a campaign to set up a shelter in the Mitrovica region, notes:

*Starting with January 2002 there have been over 40 domestic violence and 5 sexual assault cases reported to the Police Stations in Vushtrri/Vucitrn, Skenderaj/Srbica and South Mitrovica/Kosovska Mitrovica. The numbers in reality are much higher because the proper reporting system was not introduced until later this year and oftentimes gender based violence cases are reported as assault cases or are unreported because of the cultural attitudes within society and the police. In comparison "Jeta e Gruas", a woman's human rights NGO in Skenderaj/Srbica, deals with an average of 4 – 6 domestic violence cases per week. Center for Protection of Women and Children served around 2150 cases of domestic violence Kosovo wide in 2001.*

***Many of the women, victims of gender-based violence, are afraid to acknowledge their status, as there is no safe place, where they and their children can go afterwards.<sup>17</sup>***

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<sup>16</sup> Wareham, Rachel (2000), op. cit., pp 33-35

<sup>17</sup> Vasilevska, Karina (2002), paper entitled *Project: Shelter for Women who are Victims of Gender Based Violence in Mitrovica/Kosovska Mitrovica Region*, available from RWRP

### 3. Domestic violence and the law

#### 3.1 The legal system in Kosovo

The judicial system is defined by UNMIK Regulation 1999/24. This Regulation recognizes four sources of legislation in force in Kosovo:

- Laws observed in Kosovo prior to March 1989
- Laws passed in Kosovo between March 1989 and December 1999, in cases where they fill a legislative gaps in laws set prior to March 1989, and are consistent with human rights standards
- New UNMIK Regulations promulgated by the SRSG since 1999
- Other international standards providing for and protecting basic human rights.<sup>18</sup>

#### 3.2 The law relating to domestic violence

It appears that currently offences of domestic violence are charged under general laws covering crimes such as physical assaults. A 2002 report by the Organisation for Security and Co-operation in Europe (OSCE) on the criminal justice system in Kosovo indicates that perpetrators of acts of domestic violence involving physical assaults may be charged under minor offence law with “endangering the security.” They note that other charges such as “second degree” light bodily injury where a weapon is used, which requires a public prosecution, or “grave bodily injury” would be more appropriate in such cases.

Rape by a husband is currently exempt from legal prosecution under laws of Federal Republic of Yugoslavia, and laws of Serbia, and laws of the Autonomous Province of Kosovo.<sup>19</sup>

According to a UNMIK press release of November 2000, UNMIK, OSCE, Kosovo women's groups, lawyers and professors from the Kosovo Faculty of Law have been involved in drafting a Regulation on the Prohibition against Domestic Violence.<sup>20</sup> **However, it appears that this regulation has not yet been promulgated, as it does not feature on the complete list of regulations on UNMIK’s website which is updated up to August 2002.<sup>21</sup> The proceedings of the conference on violence against women held in July 2002 (see Section 4) confirm this lack of progress, as they include a recommendation that this regulation, along with other laws, be enforced.**

See Section 4 for information on the adequacy, or otherwise, of current legal remedies.

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<sup>18</sup> Source: UNMIK Regulation 1999/24, *On the Law Applicable in Kosovo*, available at [Hhttp://www.unmikonline.org/regulations/1999/reg24-99.htm](http://www.unmikonline.org/regulations/1999/reg24-99.htm)H

<sup>19</sup> Wareham, Rachel (2000), op. cit., pp 33-35, and Organisation for Security and Co-operation in Europe (OSCE) Mission in Kosovo, Department of Human Rights and Rule of Law (2002), *Kosovo, Review of the Criminal Justice System, September 2001-February 2002*, pp 19-20, available at [Hhttp://www.osce.org/kosovo/documents/reports/justice/H](http://www.osce.org/kosovo/documents/reports/justice/H)

<sup>20</sup> UNMIK (24/11/00) *International Day to Oppose Violence Against Women*, UNMIK Press Release UNMIK/PR/24, available at

[Hhttp://www.unmikonline.org/press/2000/pressr/pr24.htm](http://www.unmikonline.org/press/2000/pressr/pr24.htm)H

<sup>21</sup> See UNMIK Official Gazette at [Hhttp://www.unmikonline.org/regulations/index.htm](http://www.unmikonline.org/regulations/index.htm)H

## 4. The reality of seeking protection

### 4.1 The police and security forces

The Organisation for Security and Co-operation in Europe (OSCE) makes 6-monthly reports on the criminal justice system in Kosovo. In its April 2002 report it notes with concern the response of the police to complaints of rape:

#### *Sexual Violence*

*OSCE welcomes any initiative to create a specialised police investigation response to sexual violence cases. Over the course of the previous LSMS<sup>22</sup> reports, OSCE has highlighted the need for coherent policy regarding the treatment of rape victims. The need for a consistent police response and protocol is highlighted by the example of a memorandum attached to a regionally-based protocol written to investigators by the Gjilan/Gnjilane Regional "Criminal Investigations Division, (CID)" dated 31 October 2001. The memorandum states: "It is been my observation that very few of the reported rapes are in fact actually that. Most of them, it seems, are afterthoughts of the women who had consensual sex and now must face her family. As you know, in this culture, premarital sex is forbidden, bringing shame to the women and fear of reprisal from her family. We, as Impartial Investigators, must investigate each case and come to a conclusion as to what, if any, crime has been committed and report the facts of the case. This may not satisfy the victim or her family but that is an issue we cannot be concerned with." The attached protocol goes on to instruct investigators to provide rape exams and collection of forensic evidence only "if the investigator believes, that in fact a rape has occurred" and states that "if the investigators feels that this is not a forcible, true rape case, he will advise the victim and the family of his beliefs and explain why he believes this."*

***These views, expressed by UNMIK police investigators, are alarming. Such a written policy implies that police investigators should start from the presumption that a rape allegation is false and that a forensic exam is not necessary to determine, in part, the truth of the allegation. The creation of a specialised police investigation unit and a coherent, centralised police policy on sexual violence may assist in ensuring that such prejudices do not influence the conduct of police towards possible victims of sexual violence.***

***Although OSCE welcomes the creation of the Special Victims/Domestic Violence Unit to assist in the provision of a sensitive response to such victims, the Unit has been hampered by a lack of resources and interference from regional command structures. Enhanced political support, resources and staffing of this Unit to work***

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<sup>22</sup> Legal Systems Monitoring System, part of the Department of Human Rights and Rule of Law of the Organisation for Security and Co-operation in Europe (OSCE)

*closely with specialised sexual violence investigators is also needed to improve law enforcement's response to victims.*

*The lack of a standardised police policy concerning rape victims and specialised expertise within the police is one part of the broader issue of overall failure to respond to issues of sexual violence. In order to address holistically the needs of sexual violence victims, the OSCE Victim Advocacy and Support Section initiated a Working Group, which involves UNMIK Police Special Victims/ Domestic Violence Unit, KPSS, DOJ, the Forensic Institute, and the newly created Medical Examiners Office among others.<sup>23</sup>*

The US State Department notes sexual and other assaults by police and security forces, which may have an influence on a woman considering reporting domestic violence:

*There were sporadic but unspecified reports of the use of excessive force by KFOR and CIVPOL<sup>24</sup> during arrests. Some of the CIVPOL forces sexually assaulted women. In July CIVPOL arrested a member of the international police corps for sexual assault, and in August a CIVPOL officer stationed in Mitrovica was arrested on allegations of sexual assault. Four CIVPOL officers also have been arrested for complicity in trafficking or prostitution during the year; all were expelled or voluntarily returned home (see Section 6.f.). In September 2000, military authorities disciplined nine members of a KFOR unit, including four officers, following an investigation into allegations of excessive force, beating of suspects, and sexual assault on women at checkpoints and while on patrol.*

Rachel Wareham also notes problems with international forces:

*Cases are cited where KFOR, UN, CIVPOL and other internationally run institutions failed to offer adequate protection to women:*

*'There was a case in upper Malishevë, and I've been to try and help the children. Before the war the man beat his wife so badly and hung her up so that her feet went black. Earlier he had been beaten in prison in Serbia and he was repeating what was done to him. She left after he first beat her, but then was convinced by a committee in the community to return because of the children. He was arrested by KFOR because he badly beat his sister and his mother. But all they did was disarm him and then let him go. We were surprised.' Activist, Liria Women's Group, Gjilan.*

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<sup>23</sup> Organisation for Security and Co-operation in Europe (OSCE) Mission in Kosovo, Department of Human Rights and Rule of Law (2002), *Kosovo, Review of the Criminal Justice System, September 2001-February 2002*, pp 19-20, available at <http://www.osce.org/kosovo/documents/reports/justice/H>

<sup>24</sup> UNMIK's multinational, civilian police corps

*'Two months ago the troops changed. And since then there's been no cooperation, either with UN Police or KFOR. We had one case when a woman was being badly abused at home, and she left the kids with us (for safe keeping). We informed CIVPOL, no one came. Its like this in most cases, they don't respond. They just write on pieces of paper.'*  
KPC, Vushtrri.<sup>25</sup>

## **4.2 The judicial and legal system**

### **4.2.1 The independence of the judiciary**

The US State Department notes:

*The law provided for an independent judiciary; however, the legacy of ethnic conflict and Yugoslav oppression was an obstacle to judicial independence, and some judges and prosecutors reportedly were subject to outside pressure, particularly in cases with an ethnic element.*<sup>26</sup>

### **4.2.2 Gender inequality in the judicial system**

The United Nations Development Group's 2002 report states on the judicial system:

*The Kosovan judicial system is characterized by a lack of gender equality. Women staff only 19% of Kosovo's courts and public attorney offices, and only 6.7% in Kosovo's Chamber of Lawyers. Women head only three criminal and one municipal court [Norma, 2001]. In smaller communities, where at times there are no women in judicial positions, the percentage of women judges and prosecutors is lower than in larger centers.*<sup>27</sup>

### **4.2.3 The criminal justice system and victims of sexual violence**

**In the section on rape and other sexually related offences in their report of September 2001, OSCE notes ongoing concerns on the treatment of victims of sexual violence, which have not been addressed:**

*LSMS continues to monitor sexual violence cases and a whole chapter has been dedicated to this topic in the previous LSMS review of the criminal justice system.*<sup>28</sup> *Unfortunately, there have not been any substantial positive developments since then. Instead, the issues identified at that time as major problems at police or court level have still dominated the approach of the judiciary to the sexual violence offences and its victims.*

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<sup>25</sup> Wareham, Rachel (2000), op. cit. p 41

<sup>26</sup> US Department of State (2002), op. cit.

<sup>27</sup> United Nations Development Programme (UNDP) (2002), *Human Development Report – Kosovo 2002: Building Bridges to a Better Future*, p 40, Prishtine, Kosovo, available at [Hwww.kosovo.undp.org](http://www.kosovo.undp.org)H

<sup>28</sup> See Organisation for Security and Co-operation in Europe (OSCE) Mission in Kosovo, Department of Human Rights and Rule of Law (2001a), *Kosovo, Review of the Criminal Justice System, September 2000 – February 2001*, available at [Hhttp://www.osce.org/kosovo/documents/reports/justice/H](http://www.osce.org/kosovo/documents/reports/justice/H)

...

*Whereas in many areas of the criminal justice system developments have been documented, particular concerns related to this area of sexual violence have not been addressed.*

#### **4.2.4 Forensic and medical legal services for victims of sexual violence**

OSCE highlights the lack of effectiveness of forensic services for victims of sexual violence, which have a serious effect on a victim's ability to obtain protection:

##### *Forensic Analysis in Cases of Sexual Violence*

*LSMS continues to have serious concerns over the conduct of forensic examinations of victims of sexual assault and domestic violence currently being carried out by the Prishtinë/Priština Institute of Forensic Medicine. The lack of proper forensic evidence in rape and other sexual assault cases compromises the ability of the police and courts to investigate and prosecute cases, thus impacting directly on the victims' ability to obtain an effective legal protection.*

*Apart from the low quality of the forensic reports, LSMS is also concerned with examples of forensic examinations that are simply not carried out. Normally, forensic doctors are obliged to work from 0800 to 1700hrs, Monday to Friday. However it has become standard practice for the majority of doctors at the Forensic Institute to cease work at 1300hrs. In response to concerns raised by OSCE, ADoJ and UNMIK Police over the institute's failure to provide timely examinations of rape and other assault victims, a "call-out" roster was established in May 2001, enabling forensic doctors to be contacted outside "normal" working hours.*

*However, the call-out system does not function effectively as illustrated in a number of cases, where forensic doctors have refused to respond to police "call-outs" to examine victims. As a result, investigations and prosecutions in rape cases have been compromised through the inability of the police to obtain adequate forensic evidence. At the same time, the psychological state of the victim, as well as the victim's willingness to co-operate with the police in pursuing a prosecution, is undoubtedly affected by the indifference shown by forensic doctors during her initial exposure to the investigative and judicial process. On 9 July 2001, in a memorandum addressed to the Supreme, District and Municipal Courts, ADoJ, UNMIK Police and the OSCE, the Forensic Institute stated that the examination of rape victims should be conducted "within 24 hours", and that "one of the forensic experts shall always be available to conduct this kind of examination." However, despite this explicit commitment, forensic doctors continue to refuse to co-operate in the examination of rape victims.*

*On three occasions (25 March, 5 April and 6 July 2001) the Prishtinë/Priština Regional Serious Crime Squad (RSCS) escorted rape complainants to the Forensic Institute to request a forensic*

*examination. In all these instances, the “on-call” doctor was not present or reachable, and even when reachable he refused to perform the evaluation. Consequently no forensic examination took place.*

*On 10 July 2001 at 0930hrs UNMIK police escorted a rape complainant to the Prishtinë/Priština Forensic Institute. The forensic doctors were in a staff meeting. They were informed of the presence of the victim, but did not break off the meeting in order to attend to her. The victim was therefore forced to wait 90 minutes before being examined. The examination, when it finally took place, lasted no more than 5 minutes. The examining doctor, on completing the examination, reportedly stated to the police that she had not been raped and therefore there was no point in writing a report. Only after an argument between the police and the forensic pathologist, the latter agreed to prepare a report.*

*On 22 August 2001, having been refused treatment the previous evening by the Department of Gynaecology at Prishtinë/Priština Hospital, a rape complainant was taken to the Forensic Institute by UNMIK Police. According to police, the doctor was uncooperative and, without carrying out a forensic examination of any kind, ordered that the victim be admitted to the neuro-psychiatric Clinic in Prishtinë/Priština. The Police Officers asked to speak to the doctor in charge of the Forensic Unit, who, on arrival, refused to assist in any way. The victim was not properly examined until 27 August, by which time the value of the forensic evidence obtained was minimal.*

*The OSCE is currently involved in a capacity building project at the forensic institute. This project intends to promote the development of effective sexual assault examination procedures, which are in compliance with international standards and norms. The maintenance of such standards depends on the long-term development of the personal and professional integrity of the forensic doctors working at the institute. However, it will also depend on the establishment of effective internal control and disciplinary mechanisms to address the continuing failure to provide an appropriate and effective forensic service.*

#### **4.2.5 Biased attitudes in the judiciary and lack of victim advocacy**

In the same report, OSCE note the following:

***Whereas the issue of improper forensic analysis and evidence gathering has also a logistical dimension and the shortcomings might arise from precarious infrastructure and resources of police investigators and forensic teams, the biased attitude of some of the judges and prosecutors towards sexual violence victims and the lack of victim advocacy are purely substantive aspects of the manner in which the justice system is administered in Kosovo at this time.***

**Conduct suggesting bias [against] victims of sexual offences at all levels of the judiciary has been identified previously, but significant improvements have not been identified.** Instead, LSMS has observed that victims of sexual offences may still face irony, sarcasm or lack of consideration from the prosecutors, defence counsels or judges' part. Rape trials often remain imbued with ironical remarks on how the victim felt during the sexual intercourse, in which "position" was she raped, how hard did she scream, etc. In some cases, prejudices and preconceived opinions about rape cases have been openly expressed during court hearings by either judges from the panel or other principals. Often it appears that rapes are still perceived as fabricated cases, which the victims use in order to pressure a marriage. Another prejudice often illustrated through the prosecution of these cases is that as long as the victim's virginity was not intact at the time of the sexual abuse, than the guilt of the defendant is somehow mitigated and sometimes even excused. In almost all rape cases monitored by LSMS, judges have asked the victim whether she was a virgin at the time of the rape, whether she had a boyfriend and if so how many of them.

One of the most disturbing examples was the reaction of a judge from Prishtinë/Priština who, upon the request of the victim in a rape case to withdraw the charges brought against the defendants, shouted in open court: "I knew from the very beginning that this was not a rape!" Such a reaction indicates that the judge ruled on the case with the preconceived idea that the victim's allegations were not true and that was only a matter of time before she came to admit it.

Greater efforts should be made to change this mentality, even if it means initiating disciplinary actions. The creation of the JIU within ADoJ may also, by surveying and investigating the conduct of the judges and prosecutors, provide the latter with an impetus for voluntarily adjusting their attitudes through self-discipline. Where self-discipline does not work out, swift investigations and disciplinary actions should be undertaken. However, this is yet to be seen.<sup>29</sup>

#### **4.2.6 Cases of intra-familial (domestic) violence)**

OSCE's LSMS monitored cases of intra-familial violence in 2000. They noted the following problems:

*The outcome in the cases monitored by LSMS is that victims of violence within the family, both women and children, are left without a remedy or protection, in that the criminal conduct against them remains either completely unpunished or inadequately punished. Consequently, victims are often placed in the position where it is necessary to return to homes in which criminal conduct is further perpetrated against them.*

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<sup>29</sup> Organisation for Security and Co-operation in Europe (OSCE) Mission in Kosovo, Department of Human Rights and Rule of Law (2001b), *Kosovo, Review of the Criminal Justice System, March 2001 – August 2001*, pp 62-65, available at [Hhttp://www.osce.org/kosovo/documents/reports/justice/H](http://www.osce.org/kosovo/documents/reports/justice/H)



*A fair judicial response to these cases requires urgent development of social services and support mechanisms to ensure that the victims' rights are protected and structures are in place to sustain women's welfare in cases of family break-up. It appears that one of the most severe problems in the conduct of these cases presently is that the state administered agency which is supposed to provide assistance in cases involving intrafamilial violence and child protection, the Centres for Social Work under the Department of Health and Social Welfare, does not adequately function in this regard.*

.....

**(a) The law and prosecutions**

***Unlike the cases of sexual violence described in the last section, these cases involve criminal conduct within the family. Due to a complicated combination of many factors, including traditional bias against women, violence in the family is often not perceived as criminal, although the same acts between strangers would clearly constitute a criminal offence. There are three manifestations of this problem. First, the law may fail to criminalise acts between family members, for example the applicable law does not criminalise rape within the marital relationship. Second, the law may fail to criminalise such acts adequately. Third, the police, the prosecutors', and the courts' may fail to charge such acts under the law or may treat cases charged differently because they involve violence within families.***

***The inadequacies in the domestic law, such as the lack of legal mechanisms for the protection of victims from violence, have been identified and are being addressed by a working group on legislative review.***

*Due to the fact that the applicable law inadequately addresses this issue, it is difficult to identify cases of intentional undercharging of such offences. However, in one case, in December 2000, a husband admitted to the police that he had, in a drunken state, taken his wife by the hair and threw her out of the house where he stabbed her in the waist with a "butterfly" knife. He admitted that he thought his wife might be dead and he returned to the house. The next day he voluntarily went to UNMIK police to report the incident. The file was handed from the district court to the municipal court, as the district court public prosecutor refused to charge the husband with attempted murder. The public prosecutor of the municipal court, at the end of February 2001, requested an investigation based on the charge of "endangering the security." It would appear that, at least, a charge of "second degree" light bodily injury where a weapon is used, which requires a public prosecution, or "grave bodily injury" would be more appropriate in such a case.*

*In the cases monitored by LSMS, the primary problem is not the classification of the offence but that the courts and police are unable to*

*handle the multifaceted aspects of intra-familial violence. The lack of functioning social services severely impacts the ability of the courts and the police to effectively and appropriately investigate, prosecute and sentence perpetrators of intra-familial violence.*

*(b) Cases*

*In cases of domestic violence, women face the extremely difficult choice between dissolving the classically defined family unit or continuing to live with violence. Due to family or community pressure as well as insecurity, women may recant their statements or request that prosecutions be dropped. As there are no special employment programs for these women and a lack of social assistance and housing, women who desire to leave their husbands may understandably hesitate. There are very few shelters for women and children who are subject to domestic violence.*

*As a result of the lack of functioning social welfare institutions, the courts and the police have been playing inappropriate roles in these cases. KPS and international police officers as well as judges have been mediating cases involving domestic violence, either facilitating a reconciliation between the parties or admonishing the husband because the wife recants her statement. The roles of judge and police in dealing with these issues must be clearly defined. In none of the cases monitored have victims had a representative to protect their interests.*

*Minor Offences Court*

*The Pec/Peje municipal court of minor offences charged a husband with a minor offence for beating his wife. At the trial, the wife could barely walk into the courtroom and her face and hands were severely bruised as a result of the incident. The incident involved the husband coming home in the early morning drunk, beating his wife and threatening her with a knife which awoke their four children (two year old twins, and a six and nine year old). The husband slapped the nine-year old daughter in the mouth and sent her to the bathroom and she was so frightened that she wet her pants. After this, he threw the wife out of the house by her hair. The husband drove the wife around in his car at high speeds and then threw her out of the car and threatened to run her over. The wife stayed out all night with no clothes on until she returned home the next morning.*

*The husband admitted to beating the wife but denied beating her in the car. In his defence, he alleged that she had engaged in an extra-marital affair while they were living in Germany. The wife stated on a number of occasions that she could no longer live with her husband and that they had had "problems" over the past ten years. The wife requested custody of the children, but she stated she needed a place to live and some assistance to do this. At the time of the trial, the four children were living with the husband. The judge found the husband guilty and sentenced him to 30 days imprisonment although the judge expressed*

*concerns about the welfare of the children as they were staying with the father.*

*No further steps to resolve these issues ensued. LSMS observed that the KPS officer involved in the case was attempting to facilitate a reconciliation between the wife and her husband.*

*On appeal the High Court of Minor Offences modified the sentence to a fine of 400 DM (or thirteen days in prison in case of default) on the basis that the defendant, husband, lived with the victim, wife and they had four children and that the records reflected that the husband and wife had indeed reconciled. In the appeal, the defendant stated that he was back with his wife and that he would not repeat the offence. The trial testimony of the wife stating that she no longer wanted to live with her husband and that she was concerned about where she and her children would live appear not to have been known or taken into account by the appeal court. Within two months of this decision, the wife again reported to the police that her husband had beaten her while drunk and this had resulted in a fracture of her arm. A medical report confirmed the wife's serious injury. The husband was again charged under the minor offences law and was sentenced to forty days imprisonment. The wife has expressed her desire to the police to get a divorce.*

#### *Municipal court*

*A case in Prizren involves allegations by a wife that her husband has repeatedly mistreated her and beat their three children (aged three, six, and eight) with a belt. The first arrest of the husband was on 11 July 2000, four days after an incident when he punched his wife until she was unconscious and beat his children with a belt leaving injury marks all over their bodies. The husband was charged with "light bodily injury," but the charges were dropped as a result of the judge "admonishing" the husband. The wife apparently requested that her husband be released.*

*On 23 October 2000, the wife stated to UNMIK police that in the middle of the night, her husband had forced her to leave her home naked using a knife and had threatened to kill her. She also stated that this type of abuse had been occurring over the ten years of their marriage. The husband was re-arrested for the assault on his wife. On 31 October 2000, the wife went to the police and stated that she had forgiven her husband and requested that he be released from custody. On the same day, the husband was heard by an investigating judge. He confessed that he had beaten his wife and forced her to leave the apartment. He further explained that he was punishing his wife for speaking on the street with other men. There was no order of pre-trial detention.*

*According to the police, the wife withdrew her accusations because pressure from her family, including her brother who had told the victim*

*that she should obey her husband and not leave the house or speak to men on the street. Allegedly, the father of the victim supported the position that the victim should withdraw the accusation and allegedly a cousin of her husband had threatened her.*

*On 1 December 2000, the husband was found guilty of “endangering the security” and was sentenced by the municipal court to eight months imprisonment with a conditional release. The verdict of the court does not mention the previous charges against the husband when he was admonished.*

#### *District court*

*A case in the Pec/Peje district court involved a brother charged with the attempted murder of his sister after shooting her in the neck/shoulder at close range. The motive of the attack, testified to by the brother, was the fact that she had not married her fiancé, but had married another young man. He claimed that the action taken against his sister was his right under custom.*

*The sister/victim was informed that she did not have to testify by law, but she agreed to testify. However, she could not speak so the judge read her testimony from the investigation hearing into the record. She had stated that she did not want her brother to be punished by the court. The medical report of the victim stated that the injuries to her shoulder are permanent and that she will be unable to use her arm.*

*The only other person to testify was the victim's husband, who had been the victim in a related case tried in the same court. In this separate incident, the alleged fiancée of the girl and his brothers were charged with grave bodily injury and weapons possession after they had severely beaten the young husband. As a result of the incident, the husband spent approximately one month in the hospital. During those proceedings, the presiding judge asked the husband to reconcile with the defendant in open court. As a result, the defendants were only convicted of light bodily injury and some for weapons possession but they were given suspended sentences.*

*The brother who shot his sister in the connected case was found guilty of grave bodily injury and sentenced to six months imprisonment (including time in pre-trial detention).*

*He was released pending appeal. LSMS was informed that the President of the court had stated that the case was decided in this manner because it was a family issue and that the prosecutor and defence counsel had agreed on the sentence before the trial.<sup>30</sup>*

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<sup>30</sup> Organisation for Security and Co-operation in Europe (OSCE) Mission in Kosovo, Department of Human Rights and Rule of Law (2001a) op. cit., pp 69-73

## 4.3 Other support services

### 4.3.1 The role of NGOs

Rachel Wareham notes in her report 'No Safe Place: an Assessment of Violence against Women in Kosovo' mentioned above:

*"Kosovo women's groups have long been aware of the problem of violence against women by known men, particularly family members. The past external insecurity created by state violations meant that their work has tended to prioritize welfare and immediate physical needs. This has usually been combined with a long-term development approach expressed in action to tackle one of the key contributors to vulnerability – denial of education for girls. The situation has now changed and local groups no longer work under threat of arrest. However, they are now limited by new factors. For example, they are misconceived (along with certain state institutions) as agencies who implement donor's programs and 'do aid'. The 'post-conflict' environment in Kosovo which has led to a dramatically increased presence of various agencies, researchers, INGOs<sup>31</sup>, journalists has placed new and heightened demands on local groups which mean they have to increasingly look outwards and this affects their ability to concentrate on community based work."<sup>32</sup>*

The Centre for the Protection of Women and Children (CPWC) was set up in 1993 and provides support services and temporary accommodation to women who have experienced domestic violence and other women needing support. The main office is in Prishtine, and it has also opened nine field offices in Mitrovica, Skenderaj, Peje, Deçan, Gjakove, Rahovec, Malisheve, Suhareke and Kaçanik. Its only shelter, however, is in Prishtine. Its main activities are the provision of legal advice and representation and temporary shelter to women experiencing violence, psychological and social support, and health services and health education.

In 2001 CPWC provided assistance to 3072 women who had suffered violence, a 32% increase compared to the year 2000. Of these, 65% were cases of domestic violence, 16% serious crimes, 9% trafficking, 7% rape and 3% incest. 184 women were provided with temporary shelter during the year (a total of 600 nights of accommodation).

Beside the 184 accommodated cases at its shelter, CPWC offered legal protection to 483 other cases of domestic and other violence (kidnapping, rape, physical assaults, trafficking, prostitution etc). Out of all cases that were in need of direct assistance CPWC referred for social protection 1.922 cases, and offered legal protection to 667 cases (women and children).<sup>33</sup>

Local activist Karina Vasilevska notes:

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<sup>31</sup> International Non-Governmental Organisations

<sup>32</sup> Wareham, Rachel (2000) op. cit., p 18

<sup>33</sup> All the above information on CPWC comes from their website at [Hhttp://www.cpwc-qmgf.org/ENGLISH.htm](http://www.cpwc-qmgf.org/ENGLISH.htm)

*There are currently only two shelters for gender based violence victims: in Prishtine/Pristina (run by Center for Protection of Women and Children) and Gjakove/Djakovica (run by a local NGO). They accept cases from all of Kosovo and are currently filled up to their capacity.<sup>34</sup>*

#### **4.3.2 Lack of UNMIK and donor support for services**

A 2002 report on gender-based violence (GBV) in Kosovo by the Reproductive Health for Refugees Consortium noted that although some support services exist, co-ordination and funding is insufficient:

***UNMIK's DHSW [Department for Health and Social Work] has made little effort to work with the network of government-operated centers for social work around the issue of domestic violence or sexual assault.... Furthermore, UNICEF's nurse triage pilot program has not been comprehensively adopted by the DHSW, such that there is no government-based policy or plan to continue the triage services. And although the DHSW made a significant contribution to the "Rapid Response Pack to Cases of Domestic Violence" with its domestic violence protocol, the implementation of the protocol continues to be irregular and not well coordinated. Most co-ordination, in fact, is voluntary – based on the initiative of dedicated local and international organisations that have a priori embraced the issues of GBV. The government supports no multiagency or cross-sectoral coordination, which results in, on the one hand, limited local and national capacity for a comprehensive response to GBV and, on the other, an inevitable duplication of services.***

*Other limitations in GBV response include the province-wide lack of services for sexual assault survivors. Virtually all programming targets domestic violence or trafficking survivors, and only a limited amount of community education has focused on sexual violence. The culture of silence surrounding sexual violence remains, even though the local and international communities have introduced prevention and response activities to address other forms of GBV, and even though CIVPOL police reports suggest that sexual violence is an ongoing problem.*

*Relative to sexual violence, the issue of countertrafficking is well publicized and internationally supported, but programmatic funding remains erratic. IOM and the Prishtine-based shelter for trafficked victims have had difficulties securing financial support to continue their shelter. In all of Kosovo, only two other shelters exist for non-trafficked GBV survivors, with the capacity to serve a total of seventeen women and children. Although these shelters serve as models, they are not sufficient to serve the needs of a population of two million.*

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<sup>34</sup> Vasilevska, Karina (2002), op. cit.

*Nor do current services sufficiently address the needs of minority groups or men. Several of the activities listed above include minorities in their client population, but because many programs are run by Kosovar Albanians, the likelihood of segregated minority populations – Serbs and Roma – being able to access services is slim.*<sup>35</sup>

#### **4.3.3 Regional conference on violence against women**

In June – July 2002 a 3-day conference was held in Prishtine which was attended by NGOs, politicians, activists, donors and practitioners in various fields, entitled “Regional Conference on Violence against Women and Children in Kosova”.<sup>36</sup> The conference aimed to identify the position of women’s human rights in Kosovo within the framework of international conventions on human rights, to bring together women’s main concerns and to make recommendations to government, institutions and the media on how to introduce institutional changes in favour of reducing violence against women. Five panel discussions were held, one of which focussed on domestic violence. The panel noted the increasing level of domestic violence in Kosovo and its great impact on women, the family and society.

Among the panel’s many recommendations the following were directly related towards remedying the current lack of legal protection for women:

- *Institutions and social authorities, such as: police, judiciary, social and health services, media and religious institutions should increase their responsibilities and be more effective in the implementation of laws, in order to protect the victims of domestic violence and bring justice for them.*
- *UNMIK and other governing structures of Kosova should support professionally and financially the governmental and non-governmental [sic] bodies dealing with issues of domestic violence.*
- *Immediate acknowledgment of the domestic violence as a crime, by adopting the Criminal Code, Criminal Procedure Code and Draft Regulation on the Protection against Domestic Violence.*
- *Law enforcement agency should adopt measures for the promotion and protection of domestic violence victims by ensuring full investigations and prosecution of perpetrators of violence.*
- *Measures should be taken, in order to enable the competent authorities of law enforcement to execute the law and provide full and adequate access to the justice system for the victims [sic]*
- *Initiation of working groups by the responsible departments on the reformation of respective laws dealing directly with the position of women and children, such as: the law on marriage and family, inheritance law, law on property relations, with an emphasis on the*

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<sup>35</sup> Reproductive Health for Refugees Consortium, *If Not Now, When? Addressing Gender-based Violence in Refugee, Internally Displaced, and Post-Conflict Settings: A Global Overview*, New York, pp 97-98, available at [Hhttp://www.rhrc.org/resources/gbv/wc\\_gbvcontents.html](http://www.rhrc.org/resources/gbv/wc_gbvcontents.html)H

<sup>36</sup> For the full report, see Centre for Protection of Women and Children’s website at [Hhttp://www.cpwc-qmgf.org/conference.htm](http://www.cpwc-qmgf.org/conference.htm)H

*proper access for the victims of domestic violence, having in mind the traditional position of the victim in society;*

- *Institutional attainment of free legal assistance.*<sup>37</sup>

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<sup>37</sup> CONVENTION OF THE REGIONAL CONFERENCE, "Violence against women and children in Kosova", June-July 2002, report at Centre for Protection of Women and Children's website at [Hhttp://www.cpwc-qmgf.org/Recommandations.doc](http://www.cpwc-qmgf.org/Recommandations.doc)H



## 5. The situation of separated or divorced women

### 5.1 Poverty and economic insecurity after the conflict

The US State Department notes:

*A long history of targeted asset-stripping and mismanagement by Yugoslav Federal and Serbian authorities left the economy in poor condition even before armed conflict resulted in the massive destruction of property and economic enterprises.*

*Key industries before the conflict that have been closed include mining, metallurgy, and related manufacturing enterprises. The construction sector became the strongest economic sector in the post-conflict period. The agrarian sector improved but did not reach prewar levels. Unemployment among the predominantly ethnic Albanian population was estimated at 62 percent. Unemployment rates were much higher among Serb and other ethnic communities, although some Serbs continued to receive stipends or pensions from Yugoslavia. International organizations and donors continued their programs to improve the infrastructure and provide a regulatory climate conducive to enterprise and investment. However, the instability of the region, coupled with the destruction of property records, a still weak legal and regulatory framework, and uncertainty about Kosovo's future status, caused private capital investment to lag. The privatization of state enterprises stalled pending the resolution of significant property issues. Domestic energy generation capacity was estimated at approximately 50 percent of demand, and energy import arrangements remained uncertain. Remittances from abroad and foreign aid were important sources of national income. Significant criminal economic activity took place, especially in the fuel sector, and smuggling was widespread. International financial institutions estimated per capita gross domestic product at less than \$750 (1,500 DM), an increase over the immediate post-conflict period.<sup>38</sup>*

A more recent assessment of gross domestic product (GDP) was carried out by UNDG for their 2002 report. There is a great discrepancy between that of men and of women. Depending on which method of calculation is used, GDP was either \$428 for women and \$1400 for men, or \$1248 for women and \$4200 for men (if adjusted for the local cost of living). When men's and women's GDPs were amalgamated and combined with other factors to produce a Human Development Index, Kosovo ranked either after Vietnam and Indonesia or after Turkey.<sup>39</sup>

#### 5.1.1 High unemployment and lack of social assistance

The 2002 report by the Kosovo Ombudsperson states:

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<sup>38</sup> US Department of State (2002), op. cit.

<sup>39</sup> United Nations Development Programme (UNDP) (2002), op. cit., p 25

*Unemployment in Kosovo stands at 65%. The inadequate system of job security and the lack of protection against age discrimination in employment creates an imbalance with the rigid social assistance scheme established by UNMIK. **Both the international administration and the newly established local governmental bodies, the main form of public employment, provide only short term contracts. The relevant UNMIK Regulation on labour law specifically excludes these entities from the operation of the law, leaving the employees without any protection. Individuals over a certain age, but well below the statutory retirement age of 65, are often told that they are ‘too old’ for a given job. Others have been forcibly retired from their jobs at the age of 60. At the same time, the UNMIK social assistance regime generally considers that any household with a member between the ages of 18 and 65 is presumed to be ineligible for assistance, because that family member should be working. If a household has small children, when the youngest has a fifth birthday, the family is considered to no longer require social assistance. Families living in isolated communities, often with disabled members, will be considered ineligible for assistance if they own a car. There is extremely limited public transportation in Kosovo and the very few doctors do not normally make house calls.***<sup>40</sup>

## **5.2 Greater economic insecurity for women**

A divorced or separated woman would be particularly vulnerable due to gender-based discrimination in the economy and society. The UNDP's 2002 report states:

*As a result of disruptions caused by the conflict, as well as due to the still transitional nature of the post-conflict period, the high unemployment rate has become a major social and economic problem. Various sources estimate the current unemployment rate at about 50-55%, down from a high of 74% in the second half of 1999. This represents more than half of the able-bodied population (about 600 thousand inhabitants, or more than 25% of the overall population). **The unemployed - of which a large portion are female and/or young adults - are largely excluded from the benefits of development and reforms.***<sup>41</sup>

The same report notes that certain groups are “**excluded from the first stage of economic recovery in Kosovo**”, including “**Single-headed households, particularly widows and other single mothers who have no educational or professional training, and are therefore not qualified for formal employment.**”<sup>42</sup>

The report goes on to note:

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<sup>40</sup> Ombudsperson Institution in Kosovo (2002), op. cit.

<sup>41</sup> UNDP (2002), op. cit. p 70

<sup>42</sup> UNDP (2002), op. cit. p 71

*In addition to ethnic-related differences in economic participation, Kosovo's economy is also characterized by significant gender-based inequalities. Efforts to increase gender empowerment and equality are linked closely to issues of an economic nature, especially to income. For a variety of reasons, involving cultural traditions and overall social development, women are under-represented in Kosovo's economy.*

*Women occupy only an estimated 30% of all jobs in the marketplace. Economic participation levels are lowest for women in rural areas, where they comprise some 21% of the rural workforce. Representation in urban areas is higher at 37% of the overall urban workforce (see Table 4.3).*

*The economic sectors with the highest levels of women participation in the workforce are in the education and health-care sectors, at 21.0% and 22.8%, respectively (see Table 4.4). Although statistics are not available, the percentage of Kosovan women in international organizations is also significant. Women have the lowest percentage of workforce participation in agriculture (3.9%) and tourism (1.7%).*

*A discrepancy also exists between the proven potential of Kosovan women as successful entrepreneurs, and their actual economic involvement. According to official data, out of 19,227 private businesses registered as of September 2000, only 1,348 (or 7.2%) of them are owned by women. Interestingly, however, a majority of business-owners in the retail sector are women at roughly 63%. Also, several women's business associations have been formed. Nevertheless, despite some success stories, and the support of several international organizations, additional technical, financial and institutional support is needed if current levels of gender-based inequalities in the economy are to be reduced. Increased support for family businesses is of particular importance, especially in most rural areas where current economic opportunities for Kosovan women can be expanded considerably.<sup>43</sup>*

The UNDG's report notes:

*According to statistics from the period before 1989 the labour force participation of Kosovo women was low ranging from 20 to 21 per cent in the 1970s to 23 per cent in 1988. This is in striking contrast to women's labour force participation in other centrally planned economies, estimated in 1988 at 45-61 per cent, outstanding by international standards. More recently, unemployment rates have been estimated at 74.4 per cent (RIINVEST, 1999), and according to a recent UNIFEM assessment,<sup>12</sup> the unemployment rate is higher amongst women than men. Job opportunities for women are limited*

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<sup>43</sup> UNDP (2002), op. cit. p 73

and traditional, though many women are now starting their own businesses.

*Inequalities persist in access to economic opportunities and productive resources in terms of education and training, skills development, access to credit and markets and ownership of property and assets, which makes it difficult for women to enter and maintain continuity in the workforce.<sup>44</sup>*

The Helsinki Committee's report Women 2000 states:

## *2.2. Women and the Labour Market*

*Apart from successful businesses, women earn the most money when employed by the UN or NGOs. However, the income a woman earns only partly determines how much decision-making power she has over the income she generates in a strongly family-oriented society, where other family members, especially husbands, participate in decisions about how the family income is used.*

*An almost equal number of women over the age of 30 (48.4%) as under the age of 30 (51.6%) were engaged in paid employment outside the home. However, unmarried women demonstrated greater autonomy in decision-making than their married counterparts.*

...

*Often women themselves consider that having a job is a priority for men since they are the breadwinners; therefore women would not seek jobs when so many men are apparently unemployed. As such they are likely not [to be] conscious of discrimination. Discussions with various entrepreneurs within the above mentioned survey indicated that this "male priority" was indeed an issue. One Peja businessman queried, "why hire women when there are so many men that can work?" Another put it bluntly, saying "the way to help the women with work is to help the man so that he has a job. For men it is more important to work than for women."*

*At the same time, job discrimination against women occurs frequently because of their potential to become pregnant.*

*Regarding the principle of "equal pay for equal work", a preliminary translation of the 1984 Yugoslavian Labour Act makes no mention of wage equity. Local sources have stated that there was a government-established pay scale that guaranteed wage equity. However, although the equality of women and men was guaranteed under the Constitution and international conventions of Yugoslavia, there was not specific law to promise wage equity.*

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<sup>44</sup> United Nations Development Group (2001), *Kosovo Common Assessment*, p 54, Prishtine, Kosovo, available at [Hhttp://www.kosovo.undp.org/mainframe/publications/Kos\\_Com\\_Ass\\_publicat.pdf](http://www.kosovo.undp.org/mainframe/publications/Kos_Com_Ass_publicat.pdf)H

*Another equally important consideration is the degree to which women exercise decision-making power over the income that they earn. In Kosovo, family members strongly influence how married and unmarried women spend their income, with the exception of small personal purchases.*

....

*It is socially and culturally accepted that women work mainly at home and it is not uncommon for husbands or in-laws (women usually live with the husband's family) to object to women working outside of the home.<sup>45</sup>*

### **5.3 Property rights after divorce**

The Helsinki Committee's report Women 2000 states:

#### *2.3. Women and Property Rights*

*Legally, under former Yugoslav law, women were allowed to own anything that men could own, including real estate and cars. However, more respect is given to traditional customs where, outside of cities, in practice property is owned mainly by men, with an estimated 10% or less owned by women*

...

*Women are entitled to inherit land, own property and assets and exercise control over these assets. Nevertheless, in practice the situation is more complicated. As law expert Professor Gani Oruci observed, "the laws in terms of words are good but they are not applied because there are no instruments and mechanisms to implement and control them. So custom and traditional law is used." In terms of the land ownership of women, there was a fundamental gap in different women's understanding of the question. Some women responded that they owned land but when probed they conceded that it was family land and would pass to their brothers. Other women said that they did not own land, despite having previously discussed their agricultural activities on their family farm. Again, when queried further they explained that it was, or in the future would become, their brother's land. Married and widowed women spoke about land in terms of their husband's property. While legally women and men are equally entitled and guaranteed to inherit land/property, it is customary that family property passes to men only. "When women were asked why they would not demand their inheritance rights the answers were manifold but interlinked. They explained that they did not really need the land because they were living on (or once married would live on) their husband's property, that to demand the land would cause rifts in their family and they would not be able to return to their families in case of difficulties and that the land was actually so minimal that to split it up would give her very little at remarkable social risk." (From Women at Work Report by UNIFEM, P. 76) Thus, according to customary law, the sons in a family inherit the property of the parents, as their sisters are married off and after marriage they live with their husband's families. In*

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<sup>45</sup> International Helsinki Federation for Human Rights (2000), op. cit, p 510

*urban areas, particularly Prishtina, things are changing and it is common for a family to buy property for their daughters, or to open a business in a daughter's name, and also for young couples to live in their own apartment rather than sharing the apartment with the husband's parents.*

*Public debate about this issue is beginning to take place. In particular, women war widows who were left single with children are questioning their right to inherit their husband's land so that they can continue to parent their children. For example, the group DRITA, an NGO in Prishtina, raises this issue in discussions with women. "If a woman is widowed, particularly if young, it increases her vulnerability as her children are considered wards of the husband's family. Activists working with young widows in Prishtina report an alarming level of evictions."<sup>2</sup> This issue is very complex because not only land and property, but also children are all treated as if they are owned by the husband's family, and widows are not eligible to inherit ownership from their husbands. Often the only other alternative for widows who leave their in-laws willingly or not is for the widows to be returned to their birth families to perhaps remarry later, leaving the children with the deceased husband's family, at which time the children will have been orphaned by the deceased parent and abandoned by their mother.*

...  
*Under the Yugoslav civil law, which is not currently upheld by the new legal structures, spouses had equal rights to property acquired during the marriage. But in practice, it is commonly accepted that the husbands and not the wives inherit property from their families.*

*Property owned by a woman's birth family is inherited by her brothers, whereas the property owned by a woman's marital family is inherited by her husband and his brothers, [or her sons]. When a man dies, his widow is often returned to her birth family, and his family again assumes his land. His male children, however, are eligible to inherit his property. Of course there are exceptions to these traditions, mostly in urban areas.*

*In only one percent of divorce cases is the property distributed equitably between husband and wife. In many cases of divorce, where the wife experienced abuse or violence, she settles for just having her freedom, and does not pursue property ownership.<sup>46</sup>*

The Inter-Agency Sub-Group on Poverty in Kosovo, consisting of UN agencies, NGOs and UNMIK, produced a report in 2000 in which it describes some of the problems for female-headed households and also notes the dearth of information on their situation:

### ***Women in the Post-Conflict Situation***

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<sup>46</sup> International Helsinki Federation for Human Rights (2000), op. cit.

*There is very little information available on women in general and on poor women in particular, including female-headed households.*

*Sources that do speak about women in society do so in a sketchy manner. Since the conflict, concerns have been raised about the situation of war widows in relation to inheritance of their husbands' property. But the reality is that there were widows before the conflict and those widows face the same problems in relation to their right of access to their husbands' property. Women's rights to their husbands' property is formally a legal issue but in practice the expression of these rights is culturally determined. For example, in the Albanian culture, land belongs to the clans and an outsider cannot claim it. **Thus, when a man dies his land is inherited by his eldest son (even if the son is a minor) or by his brothers in the absence of a son as the wife is viewed as an outsider to the family.** This is typical of the Balkans (Mitterauer 1999). If the widow decides to stay with her in-laws (it is not uncommon in rural areas for a young widow to remarry one of her husband's brothers) her husband's land will be cultivated by one of the family members and she will receive the harvest. But if she moves out of her in-laws family she loses entitlement to her husband's property.*

*Although the typical Kosovo Albanian extended family is tight knit and self-supporting there are also widows from poor households for whom the question of inheritance and being absorbed in the larger extended family is not an option. In addition, Serb and Roma widows who have remained in the province are mainly isolated and are at risk of physical insecurity.*

*According to two sources (EWD 1999, Holland et al 1999), there are unknown numbers of widows who remain in Macedonian and Albanian camps. They are uncertain about coming back to Kosovo, as they may not have male relatives alive to repair their houses or to earn a living for them. In the patriarchal Muslim culture of the Albanian society, women do not take part in decision-making. The majority of rural women have few income generating skills because they have never worked outside the house. These women now face the responsibility of fending for themselves and their children while acquiring skills necessary for employment. There are also elderly widows who have been living in camps as their sons are abroad and they do not have male members to support their return to Kosovo.<sup>47</sup>*

## **5.4 Access to health services**

The UNDP in Kosovo has instituted a Hospitals Reconstruction Project (duration: 1/11/2001-30/11/2002) in order to address some of the inadequacies of the healthcare system. They note the following problems:

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<sup>47</sup> Inter-Agency Sub-Group on Poverty (2000), *Qualitative Poverty Assessment, Kosovo: Review of Secondary Materials*, Care International UK, available at [Hhttp://www.reliefweb.int/hcic/updates/secondary\\_data.pdf](http://www.reliefweb.int/hcic/updates/secondary_data.pdf)H

*The health sector in Kosovo has suffered from not only the physical destruction of violent conflict but from long-term under-investment in staff development and maintenance of physical infrastructure and equipment.*

*Currently each municipality has one health centre (health houses) to oversee a network of ambulanta (small primary health care services in the villages) and pharmacies. However, each Centre's diagnostic capabilities are limited and many cases must be referred to hospitals. There are 308 ambulanta in Kosovo, some 200 of which are operative. They suffer from old equipment (20 – 30 years), poor maintenance, and in some cases, lack of spare equipment parts. The physical infrastructure, even that which did not suffer from war damage, of health care provision in Kosovo is in extreme need of renovation. The second central area of concern to the rehabilitation strategy for the health sector is the dearth of qualified health care providers within the public system. Providing 2 million as a reference population, there are 78 physicians per 10,000 inhabitants – this is in comparison to approximately 300 or more in the majority of European countries, and 133 in the medium human development countries. Primary health care physicians are even scarcer at 38.75 per 10,000 inhabitants. For the past 10 years, Health Care Professionals have had little access to facilities for updating knowledge or changes in medical technology and effective practice.<sup>48</sup>*

The UNDP's 2002 report notes:

*In theory all Kosovans have free access to healthcare services; however, in practice this is often not the case. According to recent surveys [WB, 2001], the most common barrier to health-care access is the cost of the service: about 28% of those surveyed reported having had a medical problem at some time for which they did not seek treatment because they could not afford health-care. The same survey has shown that the most expensive item of expenditure for patients is pharmaceuticals required for treatment, as well as general expenses and "gifts" for medical personnel.<sup>49</sup>*

The UNDG report also comments on the poor state of health provision, particularly for women:

*There is no other territory in Europe today where the health and well being of the population is more threatened than in Kosovo. In recent years the province has suffered a nearly complete breakdown in its public health infrastructure, which is partly reflected in the health status of the Kosovo people. Basic health indicators are among the worst in Europe. Kosovo has, for example, among the highest fertility rates in Europe, but also accounts for Europe's highest levels of maternal and*

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<sup>48</sup> United Nations Development Programme, 23/7/02, *Project Summary, Hospitals Reconstruction Project* at [Hhttp://www.kosovo.undp.org/projects/projects\\_main.htm](http://www.kosovo.undp.org/projects/projects_main.htm)H

<sup>49</sup> UNDP (2002), op. cit. p 89



*infant mortality, both of which may have been aggravated by the refugee crisis.*

*Over the past decade there has been a progressive decrease in the economic status of Kosovo, which has led to decreased funding in the health sector. This decreased funding has led to a deterioration of the infrastructure of the health sector and to progressively lower salaries, in real terms, for health workers. In addition, there were ten years of exclusion of the majority of the Albanian population, both patients and providers, from the health care system, and the development of parallel systems of service provision and health care worker training.*

*Kosovo's health care system was based on the Semashko socialist model, dominated by large institutions and dependent on vertical organisation of services. It was criticised for being excessively bureaucratic, inefficient, and centralised as well as being relatively non-responsive to consumer or patient demand. For this reason, local capacity to design and manage programmes is limited. Kosovo's health care professionals, most of whom were forced out of the public health service over the past decade, suffer a gap in technical training and professional capacity.*

*The system has been dominated by doctors, with less emphasis on nursing and other key paramedical cadres. It relied on financing through a combination of social insurance, tax revenues, and, to a limited degree, out-of-pocket payments. Primary care was organised around specialist polyclinics. General practice was not comprehensive or well developed as a profession. Hospital capacity as measured by total number of beds was low by regional or European averages, but hospitals were felt to be large and relatively inefficient, with somewhat low utilisation and long lengths of stay. Specialist services were in two tiers, one for outpatient services and the other for hospital services, without good interaction between the two. Public health interventions were vertically organised and not well integrated with primary care services.*

.....

#### *Health of Women in Kosovo*

*Women's status remains very poor in Kosovo. One recent indication of the sex ratio at birth (1.15 according to a UNFPA/IOM study)<sup>10</sup> may be too high for natural population equilibrium. It suggests a possible boy preference leading to selective abortion practices.*

*A combination of low contraceptive prevalence and an average rate of 2.8 children per woman strongly suggests that abortion – which was legal up to 12 weeks of pregnancy, and up to 22 weeks for medical reasons – may be widely used for fertility control. A recent UNFPA/IOM study confirms that abortion is a common, under-reported practice; possibly as high as 50 abortions per 100 deliveries.*

*A recent UNFPA/IOM survey showed a median statistical result for maternal mortality as high as 509/100,000, which is comparable to that found in Africa and some countries in Asia (e.g. Laos). While this is considered by some to be extremely high, it does indicate that Kosovo ranks in the group of countries in greatest need.*

*Antenatal care is inadequate. As many as 30% of pregnant women never see a health care worker and only 30% benefit from at least 1-2 antenatal care visits, and only 25% of women in rural areas benefit from basic antenatal care. Home deliveries account for 20% of all births. With a rate of 35/1000 indicated in preliminary studies, infant mortality is the highest in Europe. The same studies give a rate of perinatal mortality (deaths below 1 month and stillbirths) at between 30 and 40/1000 during the same twenty-year period; in some hospitals it much higher.*

*Maternity wards need rehabilitation to offer safe and acceptable conditions of delivery. The maternity ward at Prizren, accounting for the second highest number of deliveries in Kosovo, requires especially extensive renovation. Provision of basic utilities, such as water, electricity and fuel for heating, is inadequate. Expenses for maintenance and repair of generators and medical equipment remain a major problem in all facilities.<sup>50</sup>*

#### **5.4.1 Mental health services**

Mental Disability Rights International (MDRI) has recently reported on the state of mental health services in Kosovo. They describe the provision as follows:

*Kosovo is divided into 30 municipalities, with Prishtina / Priština as the provincial capital. The existing system of mental health services is centralized, with service delivery occurring almost exclusively in the neuropsychiatric clinic in Prishtina University Hospital and the neuropsychiatric wards throughout Kosovo (in the municipalities of Mitrovica /Kosovska Mitrovica, Peja / Pe., Gjakova / Djakovica, and Prizren / Prizren), for a total of 276 neuro-psychiatric beds. There are also two institutional settings: the "Special Centre" at Shtime / Štimlje (with 285 beds), and the "Elderly Home" in Prishtina (with 165 beds). While the former was established for individuals with developmental disabilities and the latter for elders, both have also become long-term custodial facilities for people with psychiatric disabilities.*

....

*There has been a significant shortage of qualified mental health professionals to administer the existing system, due in part to the decade of professional marginalization under Serb rule. Psychiatry and neurology had historically been joint disciplines in the former republic of Yugoslavia, with most of the training in neuro-psychiatry taking place in Belgrade or Zagreb. Approximately 40 neuro-psychiatrists in the*

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<sup>50</sup> UNDG (2001), op. cit. p 48

*Kosovo region specialize in psychiatric disabilities.<sup>51</sup> Approximately 120 medical nurses work in neuro-psychiatry.<sup>52</sup> There are only five psychologists in the entire Kosovo region. This shortage is largely accounted for by the fact that there has never been a clinical psychology faculty in the region. There are also very few social workers, and most are not trained to work with mental disabilities.*

*Apart from Shtime (which is technically a “special institution” not part of the mental health system), psychiatric wards of general hospitals provide services to 276 people in Kosovo’s mental health system. In theory, psychiatric wards are supposed to provide assistance to individuals in need of acute psychiatric care. In practice, the majority of people on these wards are referred to as “chronic patients” who need long-term social support.<sup>53</sup>*

MDRI’s report criticises in the strongest terms the facilities for and treatment of people in Kosovo with psychiatric difficulties or mental disabilities. The summary below notes the major issues; further details are available in the full report.

*In Kosovo’s social care facilities and psychiatric wards, people are being illegally and improperly detained in institutions in violation of domestic and international law. Once detained, people are deprived of meaningful treatment and habilitation,<sup>54</sup> and they are subject to physical, sexual and psychological abuse. For the great majority of patients, life in Kosovo’s facilities is one of mind-numbing boredom and inactivity in an environment devoid of privacy and dignity. Despite internationally funded programs to fix up buildings at Shtime, staff is inadequate to provide basic cleanliness or hygiene. Many residents live in filth, surrounded by the smell of urine or feces. Medical and psychiatric care is inadequate and unsafe; a cursory review of medical records at Shtime shows that non-professional staff is authorized to administer powerful psychotropic medications without review by a psychiatrist for months or years.*

*MDRI received reports from international and Kosovar staff and patients about cases of sexual harassment, exploitation, rape, or other forms of violence at Shtime, Prishtina University Hospital, and the Elderly Home. Institution and UNMIK authorities have been informed*

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<sup>51</sup> According to the World Health Organization (WHO), there is one neuropsychiatrist per 57,270 inhabitants of Kosovo. With these neuro-psychiatrists dividing their time between the practices of neurology and psychiatry, this translates to one psychiatrist per 114,540 inhabitants, far short of the WHO standard of one psychiatrist per 10,000 inhabitants. (MDRI)

<sup>52</sup> With these nurses dividing their time between neurology and psychiatry services, WHO estimates that there is one psychiatric nurse per 37,500 inhabitants of Kosovo, significantly short of the WHO standard of one psychiatric nurse per 2,500 inhabitants. (MDRI)

<sup>53</sup> Mental Disability Rights International (MDRI) (2002), *Not on the Agenda: Human Rights for People with Mental Disabilities in Kosovo*, Washington, D.C., USA, MDRI p 17-18, available at [Hwww.mdri.org/webpages/KosovoReport.pdf](http://www.mdri.org/webpages/KosovoReport.pdf)H

<sup>54</sup> “Habilitation” is the term used to describe the services needed by people with intellectual disabilities (or developmental disabilities, such as mental retardation) to maintain basic self-care and living skills. (MDRI)

*about cases of abuse at Shtime, yet they have done nothing to remove known abusers from day-to-day contact with former victims. At Prishtina University Hospital, MDRI has received reports about sexual abuse of women by staff. There is no system at any institution MDRI visited to conduct independent investigations of abuses or to protect the privacy or safety of witnesses who may come forward. MDRI has encountered both staff and patients who are afraid to come forward with evidence about abuses they have experienced or observed.<sup>55</sup>*

#### **5.4.2 Vulnerability of women and trauma survivors**

MDRI's report highlights severe problems which might face a woman seeking help after domestic violence, or a woman who had been returned to Kosovo who wanted to access psychiatric services:

*Kosovo's social care facilities and psychiatric wards are not safe places. In addition to violating the rights of patients, the lack of protections against violence or sexual exploitation undermines the function of psychiatric wards as a safe places to assist people in need of acute mental health care. Given the widespread experience of trauma in the population of Kosovo – due to the history of human rights abuse, the experience of war, and the forced exile of much of the population – the lack of a safe place for people with mental disabilities can be particularly damaging. Individuals who have suffered from trauma can be easily “retraumatized” by the experience of violence or exposure to the risk of violence. Retraumatization can lead to great suffering and to the exacerbation of symptoms of posttraumatic stress. Staff at two psychiatric wards in Kosovo reported to MDRI that they are not equipped to provide specialized protection, counseling, or other services for people who have been subject to trauma.*

*The lack of protections in the mental health system is particularly serious for women. Women are especially susceptible to physical and sexual abuse within institutions in any country. In Kosovo, the experience of violence and trauma among women is particularly high since women were singled out for abuse and rape during the war. Women's groups in Kosovo also report high rates of domestic violence. Caught between abuse in the family and the risk of violence in psychiatric facilities, women with mental disabilities who experienced trauma may have nowhere to turn.*

*Following the war, there was a large influx of foreign aid to provide protection for women, trauma assistance, and mental health counseling in the community. While these programs may provide valuable services for the population as a whole, MDRI was not able to identify any community-based trauma programs that are especially designed to reach out to women with mental disabilities. Indeed, UNMIK informational material provided to MDRI states that some major internationally funded trauma programs were intended specifically to*

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<sup>55</sup> MDRI (2002), op. cit. pp 8 - 9

*exclude women with “mental disorders.” A US psychiatrist who studied trauma programs in Kosovo observed that when the programs were planned, it was almost universally assumed that people diagnosed with major mental disorders would be referred to the public mental health system. Despite this, groups such as the Center for Protection of Women and Children report that they are open to serving women with mental disabilities but they have limited resources to do so.*

*Unfortunately, the public mental health system has not established linkages to women’s shelters or trauma services in the community and does not assist people in obtaining such services upon discharge. MDRI investigators learned of one particularly troubling case during MDRI’s September 2000 visit to the Prishtina University Hospital psychiatric ward that exemplifies the lack of awareness or attention to trauma issues we observed. MDRI investigators interviewed a sixteen-year-old girl whose entire family (five brothers and sisters and both parents) had been killed during the war. As an orphan, she was put up with friends in her village and moved from home to home. Two weeks before MDRI’s visit, this young woman had been gang raped. Shamed by the rape, she had no place to go and police brought her to the psychiatric facility. The chief technician on the ward informed MDRI investigators that she had received no trauma counseling or assistance. The only treatment she received was a sedative. There were no plans for her return to the community. When MDRI investigators asked whether this woman could be referred to one of the many internationally funded trauma programs in Prishtina, the chief technician on the ward said that he was unaware of any such programs.<sup>56</sup>*

*The case of the sixteen-year-old girl is not unique. Another woman we interviewed at Prishtina University Psychiatric Hospital in May 2001 was also left without a needed referral to trauma assistance and protection in the community. This woman reported to MDRI that she was on the ward, in part, to escape her abusive husband. While she did not want to remain at the hospital, she said she was afraid to leave the ward to return home. She complained that no one on the psychiatric ward would listen to her tell of her fears about returning to her husband. Each time she returned home she would be beaten again by her husband, her psychiatric symptoms would return, and she would be readmitted to the psychiatric ward. She said that ward staff provided her with no assistance in finding an alternative place to stay or a way to receive help when she left the facility.*

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<sup>56</sup> A year later, MDRI investigators inquired about the status of this woman. Staff on the ward described the woman as “one of our success stories” because she had married a man they said was “visiting another patient on the ward.” According to ward staff, she periodically had conflict with this man and his family and had to return to the ward under such circumstances. This case reveals the lack of understanding by ward staff of the complexities -- and possible dangers -- faced by women who leave the institution and return to an unstable family situation. In another case, a mental health worker informed MDRI that he had arranged the marriage of a former patient. This woman later had to be assisted out of her home by police after she was subject to domestic abuse. (MDRI)

In the case below, highlighted by MDRI, a woman whose living situation was unstable due to domestic violence had observed abuse in Pristina General Hospital. Staff had warned her against speaking out and she did not dare to come forward as she feared that she would be in danger if she was readmitted due to further domestic violence.

*In May 2002, another former patient reported to MDRI that she had observed physical and sexual abuse, as well as sexual exploitation of women at Prishtina General Hospital. She is not able to come forward with this information unless she can obtain a safe, independent living arrangement in the community. She reported that she has been threatened by institution staff if she speaks out. This woman reports to MDRI that she is subject to domestic abuse at home and is in danger of being left homeless. Because her unstable living situation could lead her to being returned to the psychiatric institution, she feels she cannot risk upsetting staff at the institution.<sup>57</sup>*

Recent Immigration Appeal Tribunal determinations have highlighted the lack of medical facilities in Kosovo and particularly the non-availability of treatment for Post-Traumatic Stress Disorder (see Section 6).

## **5.5 Education**

UNDG's 2001 report comments on the continuing problems in the provision of education:

### *Reconstruction/ Rehabilitation of Schools*

*Kosovo remains critically short of classrooms. Assessments done at the end of the war in 1999 indicated that approximately 800 out of an estimated 1,034 schools needed to be completely reconstructed or repaired. At the end of 2000, 213 schools were being repaired or reconstructed by NGOs and international organisations; and 74 schools, not yet funded, have already been identified by the municipalities for priority action in 2001.*

*Since there are an inadequate number of schools to meet the needs of children in Kosovo, classes have been organised in shifts – with each school providing up to three shifts per day. Nonetheless, classrooms are frequently over-crowded to the extent that some children are forced to remain outside until space becomes available. Information is not yet complete, but a UNICEF assessment of 365 schools found that at least 65 per cent lacked adequate water and sanitation facilities, creating a serious health risk not only for the children themselves but also for the surrounding communities.*

### *School Enrollment*

*Coverage of pre-school and early childhood education is extremely low. It is estimated that only 2.3% of the pre-school population is in any*

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<sup>57</sup> MDRI (2002), op. cit. pp 23 - 24

*form of pre-school. Systematic effort and investment is needed in order to rectify this situation, both from a demand as well as a supply point of view. Studies indicate that investment and support to the early childhood education sector dramatically improves children's ability to learn in later years, and may have an effect on later drop-out rates amongst older children and children from ethnic minorities.*

*According to a recent study conducted by IOM and UNFPA (see figure 10), 91.6% of children aged 7-14 attend primary school (91.0% for girls and 92.2% for boys). However, while attendance is relatively high in the early years of school, a significant percentage of children begin to drop out by the age of 13, especially girls. At the ages of 13 and 14, only 87.8% and 77.5% of girls attend school respectively. Similarly, only 78.1% of boys aged 14 attend school. The reasons for this high drop out rate are complex and as yet not well understood. Due to security concerns, parents appear to be reluctant to send girls to school once they need to travel longer distances to attend higher grades. The additional financial burden of paying for transportation also appears to be a significant reason for the high drop out rates*

#### *Reform of the Education System*

*The education system in Kosovo continues to be rebuilt. Education reform in Kosovo, both in terms of curriculum as well as teaching practices, is urgently required, both to ensure children's right to a quality education as well as to expand the level of participation in the formal school system.*

*Under the parallel system, most Kosovo-Albanian teachers were excluded from preservice and in-service training, and consequently, teaching skills have eroded considerably. Kosovo-Albanian teachers have been largely isolated from global developments in the field of education, and are therefore, unable to take advantage of new methodologies and practices. In addition, existing teaching practices are overly authoritarian – including the emphasis on out-dated methods such as rote learning – which have been linked to drop out rates from primary to secondary school of as high as 25 per cent.*

*No formal, unified curriculum exists for Kosovo, and the institutional and legal structure for the education system is under-developed. Kosovo Albanian children continue to be taught under a parallel curriculum while Serbian and Turkish children follow the Belgrade approved curriculum. The situation is particularly difficult for Kosovo Serbs in mixed villages and for Roma and Ashkalia children. Province-wide standards for assessment and evaluation of students are still being developed, with the long-term aim to produce a unified curriculum for Kosovo. While it is clear that the language of instruction in primary education is in the mother tongue, no clear policy has been developed on the use of a second language that could facilitate interethnic relationships.*

*Children in Kosovo have suffered from trauma as a result of years of conflict and war, and many teachers are not equipped to deal with the consequences of this trauma on learning achievement. With the new exposure of Kosovo youth to outside influences and risks, there is a greater need to focus on life-skills education in the curriculum in particular and the education system in general.*

.....

#### *Women and Education*

*Data is lacking on women's education in Kosovo. Although there are many well-educated women including in the sciences. In general women tend to have lower levels of education than men – 69% of men and only 46% of women reach secondary education level. Evidence suggests that large numbers of teenage women – particularly in rural villages – have never attended or completed secondary school.*

*There is a huge demand for training and education for women to enable them to join the workforce. During the period 1989-1999 a large number of young women dropped out of schools because of poverty, security reasons and lack of access to education. Illiteracy is still especially prevalent among women.<sup>58</sup>*

The UNDP's 2002 report states on gender inequalities in education:

*Both the Constitutional Framework and General Curriculum Framework recently formulated for Kosovo clearly affirm that no forms of discrimination, including those on the basis of sex, shall be permitted. Although it is difficult to measure the degree to which active forms of discrimination are contributing to levels of gender inequality in the education sector, based on available statistics it is clear that girls and women do not enjoy the same level of development in the areas of educational achievement, literacy, and employment in the education sector as do boys and men.*

*Enrolment rates for females aged 7 to 24 in primary, secondary and higher education are almost uniformly lower than for males (see Fig. 3.3.) The enrolment rate in primary schools for girls aged 12 to 14 is particularly lower than the rate for boys - 87% versus 95%. The proportion of girls who enroll in secondary education is also considerably lower than for boys - 54% versus 65%, respectively. The fact that fewer women go on to secondary school or go on to higher education also decreases their opportunities for future employment.*

*Although the findings of more comprehensive social research are not available, smaller studies [Riinvest, 2001] have shown that especially in rural areas, traditional social expectations are partially the cause for low enrolment and drop-out rates. Often, less importance is placed on the value of secondary and higher education for girls and young women, who are expected instead not to seek employment, but rather*

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<sup>58</sup> UNDG (2001), op. cit. p 30



*to perform more traditional roles with respect to childcare and other household duties. In addition, especially in the initial months of the post-conflict period, some parents were reluctant to allow their daughters to attend school due to security concerns. Another factor involves the expense of education, which may include books, supplies, room, board, and transportation. Given these costs, some families are forced to make choices between their children, and often place priority on funding the full education of sons over daughters.*

*There are also considerable gender imbalances in Kosovo in terms of literacy rates (see Fig. 3.4). Although the degree of inequality has decreased considerably over the past several decades - rates of illiteracy increase sharply for women over the age of forty, which are more than twice the rates for men in this same age bracket – ongoing discrepancies for all age groups give cause for concern. There is a strong correlation between illiteracy and school enrolment and drop-out rates.*

*....*

*Women are also under-represented in terms of employment in the education sector. Only around one-third of all teaching posts existing in all levels of education are occupied by women. The proportion of women to men is highest in pre-school education where women occupy 56% of posts. It is lowest at the level of higher education, where women occupy only 12% of posts. [KEC, 2000]. Although up-to-date statistics are not available, women are also under-represented in more senior administrative and managerial positions within educational structures.*

*Efforts to improve gender equality in the education sector require long-term planning that incorporates both general public awareness-raising programs designed to bring gender-related issues to the attention of policy-makers and the general public, as well as more targeted campaigns to address the causes of these gender imbalances. Additional gender studies are required that offer more comprehensive quantitative and qualitative analysis of these issues.*<sup>59</sup>

## **5.6 Returns and ‘internal flight’**

### **5.6.1 UNHCR Guidelines on returns to Kosovo**

UNHCR notes in its paper ‘UNHCR Position on the Continued Protection Needs of People from Kosovo’<sup>60</sup>, published in April 2002, serious problems, including threats to life and fundamental freedoms, that may face various individuals and groups if they were to be returned. Those vulnerable include, but are not limited to:

- Kosovo Albanians originating from areas where they constitute an ethnic minority

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<sup>59</sup> UNDP (2002), op. cit. pp 59-60

<sup>60</sup> Full paper available at <http://www.unhcr.ch/cgi-bin/texis/vtx/balkans-country?country=kosovo&display=protection>

- Kosovo Albanians in ethnically mixed marriages and persons of mixed ethnicity
- Kosovo Albanians perceived to have been associated with the Serbian regime after 1990
- Chronically ill persons whose condition requires specialised medical intervention of a type not yet available in Kosovo
- Persons with severe and chronic mental illness whose condition requires specialized medical intervention of a type not yet available in Kosovo
- Severely handicapped persons (including their caregivers) whose wellbeing depends on a specialised support system not yet available in Kosovo
- Unaccompanied elderly persons who have no relatives or any other form of societal support in Kosovo
- Separated children without relatives or caregivers in Kosovo, and for whom it is found not to be in the best interest to return to Kosovo
- Minority groups including Kosovo Serbs, Kosovo Roma, Ashkaelia and Egyptians, Kosovo Bosniaks and Kosovo Gorani

UNHCR also note in the paper that the conditions for internally displaced persons from Kosovo in Serbia and Montenegro lead them to conclude that internal relocation does not offer an adequate or reasonable alternative to international protection.

## 6. Case law

### 6.1 United Kingdom <sup>61</sup>

*Ylika Bushati* [2002] UKIAT 03625

*M* (01/TH/03623)

*Safete Kurshumliu* [2002] UKIAT 00857

The Immigration Appeal Tribunal has recently applied the Human Rights Convention in the context of Kosovar Albanian victims of rape. In August, in *Ylika Bushati* [2002] UKIAT 03625 the Tribunal concluded that the removal of a traumatised victim, raped by Serb soldiers in 1999, whose rape had been witnessed by others would constitute a disproportionate interference with her physical and moral integrity (Article 8). Relevant factors were the woman's likely stigmatisation if returned to Kosovo, her psychological vulnerability and the prospect of her having to relocate in Kosovo as a single woman with children. Removal was disproportionate even taking into account that there was "*no strong medical evidence identifying a real risk of retraumatisation (sic).*"

This positive determination draws upon and approves two earlier determinations of the Tribunal concerning rape victims from Kosovo. In *M* (01/TH/03623), the Tribunal concluded that the removal of a deeply traumatised woman, receiving regular and longstanding psychological therapy and in need of continued treatment, would be a disproportionate interference with her physical and moral integrity (Article 8). The Tribunal was impressed by the medical evidence demonstrating the severity of the woman's trauma and the likely detriment in removing her from her current therapy. The inadequacy of psychiatric services, and social stigma faced by rape victims, in Kosovo were further relevant factors.

In *Safete Kurshumliu* [2002] UKIAT 00857, the Tribunal provided an even stronger determination in concluding that the removal of a traumatised rape victim to Kosovo would be contrary to Article 3. She, her husband and their child would be ostracised and shunned and this would constitute inhuman and degrading treatment. This was so even though unlike *M* the woman was not receiving, nor likely to receive, any medical treatment in the UK. A helpful and thorough evaluation of the country evidence, including the stigma and social exclusion resulting from rape, is contained in this Tribunal's determination.

These determinations are all the more forceful for emanating from three differently constituted panels of the Immigration Appeal Tribunal. All place particular weight upon the assessment of the UNHCR identifying victims of sexual violence, who remain traumatised, as having continuing protection needs. Nevertheless, there are important differences of approach in these three determinations. The earliest *M*, which on its facts is arguably the most serious, was seemingly also the mostly grudgingly arrived at; whereas *Kurshumliu* appears least serious on its facts. It may be that the Tribunal preferred to avoid recounting too much of the distressing detail in the latter.

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<sup>61</sup> Full text of determinations available at Electronic Immigration Network, [Hwww.ein.org.uk](http://www.ein.org.uk)H

Another explanation, however, may be that any hesitancy on the part of the Tribunal in *M* is due to the fact that, at the time, this was a novel decision. Whatever is the case, however, the Tribunal has been consistently careful to stress the high thresholds involved in Human Rights Convention cases and it is unlikely that any of these women would have succeeded with their appeal without compelling medical evidence.<sup>62</sup>

*Fatmir Topali + Four* [2002] UKIAT 03550

The appellant had suffered torture at the hands of Serb police and his wife had been raped by Serbian youths. Both were now suffering from Post-Traumatic Stress Disorder (PTSD) and depression. The Tribunal found that the ill treatment they had suffered was of such severity as to bring them within the category of people from Kosovo in respect of whom UNHCR had urged states to continue to provide international protection. Looking at the totality of the evidence, the Tribunal found that the combination of the lack of proper medical facilities to treat the appellant and his wife together with the past trauma they had suffered, was such that to remove them to Kosovo would be inhumane and would be in breach of their human rights in respect of their physical and moral integrity under Article 8 of the European Convention on Human Rights. The Tribunal therefore allowed the appeal on that basis.<sup>63</sup>

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<sup>62</sup> Summaries by Steve Symonds, Asylum Aid

<sup>63</sup> Summarised by RWRP from *Immigration Law Update Vol. 5 No. 16*, 20 August 2002, Legal Research Unit, Immigration Advisory Service

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## Appendix A

### Home Office Country Assessment April 2002

#### Women

5.19 The ethnic Albanian community is strongly patriarchal and women are expected to be subservient to men. In rural areas women may have little ability to control their property and children. Women widowed by the war risk losing custody of their children due to an Albanian custom requiring children to be given to the deceased father's family. The widow is often returned to her own family, with her property passing to her husband's family.

5.20 Rape and a high level of domestic violence are serious problems. There is severe stigma attached to rape, which affects the victim's entire family and this leads to under reporting. It is culturally acceptable for men to beat their wives and such crimes also tend to go unreported.

5.21 In major towns, the presence of UNMIK and many NGOs has opened a large number of previously unavailable jobs to women. UNMIK police and the OSCE launched a campaign to recruit women for the Kosovo Police Service, where they make up 17-20% of the force. Women are also increasingly active in political and human rights organisations. Women are legally entitled to equal pay for equal work and are granted maternity leave for 1 year, with an additional 6 months available. There is a wide range of women's initiatives run by various organisations operating in Kosovo. [2] [56] [63]

5.22 UNMIK has determined that one third of candidates for the central elections should be women. Through the Office of Gender Affairs, UNMIK supports women representatives who are not currently in decision-making positions to make them part of the process by which legislation and policy are reviewed. The Office of Gender Affairs is also working to address concerns that women minority groups have insufficient access to employment, education, and medical facilities because of lack of freedom of movement. [109]

5.23 As noted above, Kosovo is a destination and transit point for trafficking of women for prostitution. [2]<sup>64</sup>

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<sup>64</sup> Country Information and Policy Unit, (2002), *Country Assessment, Kosovo: Section 5B: Human Rights, Specific Groups: Women*, Home Office, Immigration and Nationality Directorate, available at <http://www.ind.homeoffice.gov.uk/default.asp?PageId=2883H>



# BOSNIA AND HERZEGOVINA

## Appendix C: Update September 2002

### 1.4 Women's human rights

According to the Reproductive Health for Refugees Consortium, there has been a continued neglect of gender in policy especially in the early years of reconstruction of the new state to improve the status of women.

*Most policy and programme activities have been implemented by and for men such that the position of women in BiH<sup>1</sup> has deteriorated markedly since the early 1990s, with their problems still seen as marginal. This failure to recognise officially the needs of women flies in the face of the special impact the war has had on them. Apart from their well-documented exposure to GBV<sup>2</sup>, it is widely believed - though undocumented - that high numbers of women were widowed at war, contributing to a post-conflict sex ratio imbalance in which females average 55 percent of the population. A 1998 World Bank study estimated that women headed 16 to 20 percent of all households. Even so, property and inheritance rights still favour men; domicile reconstruction efforts have no special provisions for women; and the reproductive health services available to women are under utilized because of cultural norms and prohibitive fees. Employment is especially problematic for displaced, rural, middle-aged, and older women whose level of education and professional expertise are significantly lower than their male counterparts. Even in cases where women find work, their wages may be as much as 20 to 50 percent lower than those of men in comparable positions.<sup>3</sup>*

### 5.1 Discrimination

#### Treatment of returnees

Amnesty International has expressed serious concerns about the treatment of returnees to Bosnia, making it extremely difficult for refugees and internally displaced people to settle in. The annual report covering the period between January and December 2001 reported that:

*Refugees and internally displaced persons increasingly returned to their pre-war municipalities, including over 80,000 "minority returnees" whose ethnic group since the war formed a minority in their place of return. Tens of thousands of potential returnees were unable to gain access to their pre-war homes. In practice many returns were not*

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<sup>1</sup> Bosnia and Herzegovina

<sup>2</sup> Gender based violence

<sup>3</sup> The Reproductive Health for Refugees Consortium (2002), *If Not now, When? Addressing Gender – based Violence in Refugee, Internally Displaced, and Post Conflict Settings – A Global Overview*, available at [Hwww.rhrc.org](http://www.rhrc.org)H

*sustainable as returnees lacked physical security and suffered discrimination in access to employment, education and social welfare.*

*The failure to protect returnees and to investigate and prosecute attacks against them despite the available evidence and the extensive support provided by the local police and the International Police Task Force (IPTF) created a climate of impunity which discouraged others from returning.<sup>4</sup>*

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<sup>4</sup> Amnesty International (2002) *Annual report*, available at [www.amnesty.org/web/ar2002.nsf/eur/bosnia-herzegovina](http://www.amnesty.org/web/ar2002.nsf/eur/bosnia-herzegovina)

# DEMOCRATIC REPUBLIC OF CONGO

## Appendix B: Update September 2002

### 5.2 Risk of violence including sexual violence

Women's vulnerability to violence continues. Human Rights Watch published a report in June 2002 highlighting the use of sexual violence as a weapon of war in the conflict as well as rape and abuses of women by police, others in positions of power, and opportunistic criminals and bandits. The report contains detailed information on the incidence and aftermath of sexual violence and rape, individual and community responses and the response of the authorities, illustrating the lack of protection for women and urging action under international law.<sup>1</sup>

#### 5.5.5 Lack of health care

A report issued by Medecins Sans Frontieres in December 2001 gives information from studies done in 5 health zones in the country. They note the following:

*A large part of the population has no access to health care. In the two zones close to the front-line (Basankusu and Lisala), about three to four sick people out of ten have not consulted anyone outside the family (nurse, doctor, traditional healer, first-aid worker), mainly for financial reasons (consultations and medicines are too expensive for around three-quarters of them), but also because of the lack of available medicines and, to a lesser extent, because of transport problems. In addition, between a quarter and a half of those patients seeking consultation do not obtain the medicines prescribed or make do with an incomplete treatment. This is mainly due to the lack of financial means (over 80% of them) and, to a lesser extent, because of the lack of available medicines. The results in the zones less severely affected by the conflict are no more encouraging.*

*Taking all categories together, we can say that for four zones out of five, between 40% and 70% of sick people did not receive adequate access to health care (either they were unable to receive consultation, or they could not obtain the medicines prescribed or obtained only part of them). Although unable to calculate the poverty rates, the survey teams observed extreme poverty in these zones, with hardly any money circulating in rural areas (most households without bank notes, even in small denominations; children, and sometimes adults, completely naked; no salt; malnutrition problems, etc.). In addition, out of those who obtained all the medicines prescribed, still in the same zones, between a quarter and a half of them were unsatisfied with their*

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<sup>1</sup> Human Rights Watch (2002), *The War Within the War: Sexual Violence Against Women and Girls in Eastern Congo*, New York, HRW, available at [www.hrw.org](http://www.hrw.org)

*treatments, which leads us to suppose that they received fake medicines.*

*Different degrees of suffering within the population*

*The Congo is not homogenous. Although the population's access to health is catastrophic everywhere, it becomes increasingly difficult to measure the closer one gets to zones of violence. In the front-line zones, the indicators for mortality and access to health have reached alarming levels, in others zones they give rise to concern.<sup>2</sup>*

## **6. Case law**

### **Returns and internal flight alternative**

A November 2001 letter from a UNHCR representative describes their position on returns of failed asylum seekers to DRC, which confirms the decisions of the Immigration Appeal Tribunal cited in the previous edition of this report accepting that returned asylum seekers were likely to be detained:

*According to information available to UNHCR, agents of the security services frequently interrogate Congolese returning to Kinshasa from abroad, particularly those who are known to have sought asylum. UNHCR is aware of instances where interrogation at the Airport has been followed by arbitrary detention and serious ill treatment by DRC security agencies. If the returnee is not already known to the DRO authorities, there is a strong likelihood that were he to be returned to Kinshasa, his background would be revealed in the course of interrogation upon arrival.*

*As regards the 'internal relocation alternative', UNHCR's view is that generally speaking, conditions in the DRC do not make it a feasible option for rejected Congolese asylum seekers returned to the DRC against their will. Given that instability due to armed conflict is widespread and considering the severe difficulties of accessing many areas of the country, there are few if any stable, risk-free areas that would meet the standard for an alternative or safe location for persons at risk of persecution in any one part of the DRC. In this regard, an important consideration should be that many towns and villages in the DRC are populated by people of the same ethnic background. If people are compelled to settle in an environment which is not their own, they will not only be able to integrate, but would also put their lives and physical safety at risk, especially if there is ethnic animosity or suspicions of links with rebel groups in the place of settlement.<sup>3</sup>*

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<sup>2</sup> Medecins Sans Frontieres (2001), *Access to health and violence in Congo (DRC): results of five epidemiological surveys, December 2001*, p 3, available at [Hwww.msf.org](http://www.msf.org)

<sup>3</sup> Randhir Wanigasekara, Protection Intern, UNHCR, London, letter dated 20<sup>th</sup> November 2001 to Zohreh Neirizi, Devon Law Centre, re Returns to the DRC: full document available from Refugee Legal Centre External Information Service, tel 020 7780 3288

# IRAN

## Appendix C: Update September 2002

### 2. Domestic violence

The Association of Iranian Women highlighted a recent news story on extreme measures taken by some women experiencing domestic violence:

#### ***Some of Iran's suffering wives look to a new solution -- husband killing***

*The Associated Press July 2, 2002 TEHRAN, Iran --*

*Married at age 13 to a man 18 years her senior, Ferdows was the wife that Iranian society expected her to be: obedient, and silent, despite the beatings and humiliation.*

*But after 30 years of marriage, she had had enough. She arranged to have her husband, Hedayat, killed, authorities say.*

*Ferdows, who has been convicted of murder and sentenced to death, is one of at least 20 Tehran women accused of murdering their husbands since February. Initially, the reports of the slayings were largely unnoticed. That changed as the number rose and Iranians began to see the killings as signs of social stresses.*

*"Husband killing is a new phenomenon in Iran's male-dominated society. It means economic hardships and social crises are reaching a crisis point," said Mohammad Ahmadi, a sociologist.*

*He cited a number of problems in Iranian society that lead to frustration and desperation: forced marriages, philandering by husbands, impotence, poverty and no healthy entertainment in a country whose Islamic laws ban socializing between men and women who are not closely related.*

*Others blame restrictive divorce laws that leave women feeling murder is the only way out of a bad marriage.*

*In Ferdows case, she accused her husband of abuse.*

*"During 30 years of matrimonial life, Hedayat always beat me. He was a doubter and skeptical of everything and didn't trust me. He had made the life hell for me," Ferdows told authorities, who have identified her only by her first name.*

*Ferdows paid a man the equivalent of \$3,750 to stab her husband to death three years ago, prosecutors said. The crime wasn't exposed until this February, when police found her husband's remains in an abandoned building. She had told people her husband abandoned her.*

*Both Ferdows and the hit man were convicted and sentenced at a closed trial in April. Word of the outcome leaked out a few weeks ago.*

*The punishment for women who murder their husbands is death. Some have already been convicted and executed. Others are on death row and some are awaiting trial. They come from all social classes.*

*"Divorce is the first solution for women to get rid of an undesirable troubled life. But why did these women ignore this option and resort to*

something that carries the death sentence?" asked the monthly magazine *Zanan* (Women).

While Iranian men can divorce almost at will, a woman who wants a divorce must go through a legal battle that can take up to 20 years, said lawyer Sara Irani. Even then, she said, it might end with the woman failing to dissolve the marriage.

Under Iran's Islamic laws, a man is allowed to keep four wives at one time, a right not granted to women.

Even if a husband is having an affair, he can claim to have undertaken a "sigheh," or temporary marriage. It's a contract allowed under Iranian law that allows a man and woman to be "married" for any length of time they choose. Critics call it a form of legalized prostitution.

Nor does a wife trapped in a violent marriage have much recourse against her husband. "A woman has to bring four men witnesses confirming violence against her by her husband,"

Irani said. "How is a woman in Iran expected to keep four men in her bedroom to witness her husband beating her?"

Irani, who is also a writer on women's affairs, said that husband killing is the "outcome of humiliation and discrimination against women" and that the recent surge in cases should pressure the country's leaders to improve legal protection for women.

Ahmadi, the sociologist, said that in a country where there is virtually no sex education, unhappy marriages and domestic violence also can arise when husbands and wives don't know how to please each other. "Many couples don't have enjoyable sex," he said.

Abdosamad Khorramshahi, a lawyer, sees social changes contributing to the killings.

"Previously, we had a socially closed society. Women were not allowed even to get out of the home without the husband's permission. Now, things have changed. They are more outspoken and courageous. Women have become aware of their rights and are fighting for equality," he said.

According to official figures, 44,000 Iranians were divorced last year, a 12 percent increase from the previous year. At the same time, registered marriages were down 4.5 percent. <sup>1</sup>

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<sup>1</sup> Associated Press, July 2, 2002: *Some of Iran's suffering wives look to a new solution -- husband killing*, Tehran, Iran, AP, quoted in Association of Iranian Women's *Iranian Women Brief #56*, July 2002, available at [Hwww.aiwusa.org](http://www.aiwusa.org)H

# PAKISTAN

## Appendix C: Update September 2002

### 2.1 The extent of domestic violence

Violence against women has continued to escalate. Amnesty International reported in April 2002 that

*Domestic violence, which includes physical abuse, rape, acid throwing, burning and killing is widespread in Pakistan. Few women would complain under legal provisions relating to physical injury. For those who do take the step, police and the judiciary usually dismiss their complaints and send them back to their abusive husbands.*

*Very poor women, women from religious minorities and women bonded labourers are particularly vulnerable in the community and home.*

*According to the Pakistan Institute of Medical Sciences, over 90% of married women reported being kicked, slapped, beaten or sexually abused when husbands were dissatisfied by their cooking or cleaning, or when the women had 'failed' to bear a child or had given birth to a girl instead of a boy. Another organization stated that one woman is murdered and one woman is kidnapped in Pakistan every day.*

*On 22 October 2001, Sharif in village Goharpur, Sheikhpura district, Punjab province, ties his wife Shukria's wrists and ankles with rope, pored kerosene over her and with the help of his mother and sister set her on fire. The couple had been married for ten years. As they remained childless, Sharif wanted to marry another woman, but Shukria did not agree to it. Neighbours tried to rescue Shukria but she died shortly afterwards in hospital.*

*Women continue to die painful deaths in so-called "stove burn" accidents in the kitchen. HRCP estimates that less than 20% of deaths lead to arrests and most suspects are released within days.*

*Acid-throwing is on the increase. Acid burns do not usually kill, but result in hideous disfiguration and suffering, destruction of self-esteem, and confine women to the home. The government has done little to restrict the sale of acid or to punish those who use it to injure women.*

*Some women, both local and trafficked, are killed if they refuse to earn money in prostitution. Some are forced into prostitution by their husbands.<sup>1</sup>*

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<sup>1</sup> Amnesty International (2002) Press release: *Pakistan: Violence against women on the increase and still no protection*, available at <http://web.amnesty.org/ai.nsf/Index/ASA330082002?OpenDocument&of=COUNTRIES\PAKISTANH>.

## 2.4 Honour killing

Many women are still being killed in the name of 'honour' in Pakistan. Amnesty International notes:

*In January 2002, Jamal threw hand grenades into his father-in-law's house when his wife refused to return to him, killing five of her relatives and injuring eight.*

*The emergence of 'fake honour' killings is a worrying new trend. There is a pattern of men accusing their wives of being dishonourable with wealthy men purely for financial gain. The wife is declared 'kari' (black woman, one who brings shame) and is killed. The suspected man is made to pay off the husband and he is "pardoned".<sup>2</sup>*

## 4.2 The police

Amnesty International has recently expressed concern about the treatment of women in custody.

*Physical abuse of women in custody continues to be rife in Pakistan. Despite promises of police reform, police continue to use torture to intimidate, harass and humiliate detainees to extract money or information. Women are subjected to gender-specific abuses including sexual harassment, public undressing and parading and rape.<sup>3</sup>*

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Full report available at

[Hhttp://web.amnesty.org/ai.nsf/recent/ASA330062002?OpenDocumentH](http://web.amnesty.org/ai.nsf/recent/ASA330062002?OpenDocument)

<sup>2</sup> Amnesty International (2002), Press release, op. cit.

<sup>3</sup> Amnesty International (2002), Press release, op. cit.