

# CONTENTS

<b>TIIVISTELMÄ .....</b>	<b>V</b>
<b>ABBREVIATIONS.....</b>	<b>X</b>
<b>1 INTRODUCTION.....</b>	<b>1</b>
1.1    DEFINING AND CONTEXTUALISING HONOUR KILLINGS .....	4
1.2    WHY ‘HONOUR KILLINGS’? SOME TERMINOLOGICAL REMARKS AS TO HONOUR AND PASSION .....	9
1.3    AIM AND STRUCTURE OF THE STUDY.....	13
<b>2 STATE RESPONSES TO HONOUR KILLINGS .....</b>	<b>15</b>
2.1    LEGISLATION, LAW ENFORCEMENT AND ADJUDICATION RELEVANT TO HONOUR KILLINGS.....	15
2.1.1 Codified means for mitigating penalties in honour killing cases.....	16
2.1.1.1 Discriminatory provisions relating to provocation and extenuating circumstances.....	16
2.1.1.2 The Qisas and Diyat Ordinance of Pakistan .....	19
2.1.2 Discriminatory application of general provocation and extenuating circumstances provisions .....	21
2.1.3 Honour killings and the impact of culture, traditions and customs on justice systems .....	23
2.1.3.1 The ‘cultural defence’ .....	23
2.1.3.2 Tribal justice systems: Pakistan and Palestine.....	26
2.1.4 Problems relating to law enforcement .....	29
2.1.5 Debates on legal reform: Pakistan and Jordan.....	30
2.2    GOVERNMENT STATEMENTS CONCERNING HONOUR KILLINGS .....	33
2.2.1 Turkey .....	33
2.2.2 Lebanon.....	34
2.2.3 Jordan.....	34
2.2.4 Egypt.....	35
2.2.5 Pakistan.....	36
2.3    STATE RESPONSES TO HONOUR KILLINGS – INITIAL CONCLUSIONS.....	38

<b>3</b>	<b>INTERNATIONAL ACCOUNTABILITY FOR HONOUR KILLINGS AS HUMAN RIGHTS VIOLATIONS.....</b>	<b>40</b>
3.1	INTRODUCTION .....	40
3.2	A POSITIVE OBLIGATION TO PROTECT THE RIGHT TO LIFE UNDER INTERNATIONAL LAW.....	45
3.2.1	The right to life and positive obligations under human rights treaties .....	45
3.2.1.1	Acts of private persons and the scope of positive obligations to ensure the right to life .....	46
3.2.1.2	Conclusions.....	52
3.2.2	A positive obligation to protect the right to life in customary international law?.....	53
3.2.3	Summary.....	58
3.3	ACCOUNTABILITY FOR HONOUR KILLINGS IN ACCORDANCE WITH THE PRINCIPLES OF NON-DISCRIMINATION AND EQUALITY .....	58
3.3.1	Discriminatory laws and application of laws relating to honour killings as discrimination .....	59
3.3.2	Honour killings as discrimination.....	62
3.3.2.1	Honour killings in the context of violence against women.....	62
3.3.2.2	Failure of the state to protect against, prevent or respond to honour killings as discrimination .....	64
3.3.3	Honour killings in migrant communities – a case of multiple discrimination?.....	68
3.3.4	Summary .....	71
3.4	WHERE TO TURN FOR REDRESS? ISSUES OF IMPLEMENTATION AND ENFORCEMENT .....	72
<b>4</b>	<b>HONOUR KILLINGS ON THE INTERNATIONAL HUMAN RIGHTS AGENDA .....</b>	<b>77</b>
4.1	MEASURES TO COMBAT HONOUR KILLINGS WITHIN THE UNITED NATIONS CHARTER BASED BODIES.....	77
4.1.1	UN General Assembly .....	77
4.1.2	UN Commission on Human Rights .....	79
4.1.2.1	Special Rapporteur on extrajudicial, summary or arbitrary executions .....	80

4.1.2.2 Special Rapporteur on violence against women, its causes and consequences.....	83
4.1.3 UN Sub-Commission on the Promotion and Protection of Human Rights	85
4.1.4 UN Commission on the Status of Women.....	85
4.2 HONOUR KILLING ON THE AGENDAS OF UNITED NATIONS HUMAN RIGHTS TREATY-MONITORING BODIES .....	85
4.2.1 Committee on the Elimination of Discrimination against Women.....	86
4.2.2 Committee on the Rights of the Child .....	87
4.2.3 Human Rights Committee.....	88
4.2.4 Committee on Economic, Social and Cultural Rights .....	88
4.3 HONOUR KILLINGS ON THE AGENDA OF UN SPECIALIZED AGENCIES.....	89
4.4 HONOUR KILLINGS ON THE EUROPEAN HUMAN RIGHTS ARENA.....	90
4.5 NGOs AND HONOUR KILLINGS.....	93
4.6 NO LONGER “ONLY A CRIME” .....	95
<b>5 HUMAN RIGHTS, CULTURE AND STRATEGIES TO ADDRESS HONOUR KILLINGS.....</b>	<b>97</b>
5.1 PERSPECTIVES ON HONOUR KILLINGS, CULTURE AND HUMAN RIGHTS .....	97
5.1.1 Impact of culture and the occurrence of honour killings .....	97
5.1.2 Multiculturalism and the limits of tolerance: respecting culture or individual human rights?.....	100
5.2 HUMAN RIGHTS ARGUMENTS AND THE ERADICATION OF HONOUR KILLINGS.....	104
5.2.1 Cultural relativism and feminist critiques of the human rights approach.....	104
5.2.2 What is the relevance of a human rights perspective to campaigning against honour killings? .....	108
5.2.3 Finding common ground – enhancing the legitimacy of the human rights approach.....	109
5.3 CONCLUSIONS.....	113
<b>6 GENERAL CONCLUSIONS AND RECOMMENDATIONS.....</b>	<b>115</b>
6.1 GENERAL CONCLUSIONS .....	115
6.2 RECOMMENDATIONS.....	116

6.2.1 Short and middle term legal or judicial measures to be taken by governments.....	117
6.2.2 Protective and preventive measures to be taken by governments with a short and middle term perspective .....	119
6.2.3 Long term measures and strategies to prevent and eradicate honour killings.....	121
BIBLIOGRAPHY .....	123

## Tiivistelmä

*Tämä tutkimus pyrkii tarkastelemaan kunniamurhia ihmisoikeusloukkauksena sekä analysoimaan eri lähestymistapoja, joita voidaan käyttää jotta saavutetaan kansainvälinen vastuu kunniamurhista. Lisäksi tutkimus esittää katselmuksen niistä toimenpiteistä, joihin on kansainvälisellä tasolla ryhdytty kunniamurhiin liittyen, sekä valtioiden välisissä suhteissa että kansalaisjärjestötasolla. Tutkimus pyrkii myös ottamaan kantaa siihen, miten ihmisoikeusargumentit voivat olla hyödyksi kunniamurhien ehkäisemisessä sekä esittää suosituksia koskien tulevia ponnistuksia kunniamurhien ehkäisemiseksi ja lopettamiseksi, niin kansainvälisellä tasolla (esim. kansainvälisten ihmisoikeuselinten kautta) kuin kansallisella tasolla.*

Niin kutsutut kunniakoodit ovat tyypillisiä niille yhteiskunnille, joissa kunniamurhat ovat yleisiä.<sup>1</sup> Kunniakodeissa kunnia liittyy ulkopuolisten käsitykseen henkilöstä. Henkilön kunnia on riippuvainen muiden käytöksestä, jolloin muiden käytöstä on kontrolloitava. Varsinkin naisten kunniallinen tai häpeällinen käytös vaikuttavat miesten kunniaan. Tämäntapaista kunniakäsitystä leimaa ajatus oikeudesta kunnioitukseen. Yhteisöllä on velvollisuus kunnioittaa ihmistä niin kauan kuin hän seuraa kunniakoodia. Jos kunniakoodia rikotaan, kyseinen henkilö ja hänen perheensä menettävät kunniansa. Usein pelkät huhut tai luulot voivat häpäistä henkilön kunnian. Kunnian menetys on todellinen vasta jos/kun se tulee julkisuuteen. Siksi useimmat kunniamurhat tapahtuvat vasta, kun häpäisevä tieto tai käytös on tullut yleiseen tietoisuuteen. Tästä johtuen useimmat kunniamurhat tehdään julkisesti. Näin ollen kunniamurhia voidaan luonnehtia sellaisena perheväkivallan muotona, jossa naisen<sup>2</sup> miessukulaiset tappavat hänet, koska naisen nähdään häpäisseen perheensä kunnian. Koska miehen ja perheen kunnia henkilöityy naiseen ja erityisesti hänen neitsyyteensä ja siveyteensä on nainen tapettava kunnian palauttamiseksi. Kunniamurhiin syyllistytään myös erilaisten häpeällisten tapausten, kuten avioliiton ulkopuolisten suhteiden, raiskausten ja inestin peittelemiseksi. Naisia on myös tapettu kunnian nimissä, koska he ovat ilmaisseet toiveensa valita mieleisensä aviomies tai menneet naimisiin vastoin perheidensä toiveita, tai koska he ovat vaatineet avioeroa. Joskus syynä kunniamurhaan ovat enemmänkin pelko vallan, identiteetin tai miehisyysden

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<sup>1</sup> On tärkeää huomata että kunnia-käsitteen sisältö ja merkitys vaihtelee hyvinkin paljon eri kielten ja kulttuurien välillä.

menettämisestä johtuen ympäröivän yhteiskunnan muutoksista tai olosuhteista. Kunniamurhien sosiaalisen merkityksen onkin sanottu muuttuneen reaktiona yhteiskunnallisiin muutoksiin, muuttuneisiin käsityksiin kunniallisesta ja häpeällisestä käytöksestä sekä muuttuneisiin sukupuolirooleihin ja –tapoihin. Kun kunniamurhia tapahtuu maahanmuuttajayhteisöissä sellaisissa yhteiskunnissa, joissa kunniamurhia ei perinteisesti ole esiintynyt, on uhrin ”kunniaton” käyttäytyminen usein mukautumista ja sopeutumista valtaväestön kulttuuriin ja tapoihin, mitä on perheen mielestä mahdoton hyväksyä. On jopa sanottu että naisen on suurempi riski joutua kunniamurhan uhriksi joissain maahanmuuttajayhteisöissä, kuin niissä maissa joista kyseiset maahanmuuttajat tulevat.

Kunniamurhia, kuten mitään muutakaan väkivallan muotoa ei saa pelkistää kulttuurikysymykseksi. Kulttuuri on kuitenkin nähtävä osana sitä kontekstia, jossa kunniamurhat (kuten muukin väkivalta) tapahtuvat. Kulttuurisen taustan kyseenalaistaminen onkin keskeisessä osassa kunniamurhien ehkäisemisessä. Tämä tutkimus on muun muassa pyrkinyt etsimään vastausta kysymykseen, miten ihmisoikeusnäkökulma voisi olla hyödyksi tässä suhteessa. Tutkimus esittää että vaikka tiettyjä (mm. täytöntöönpanoon liittyviä) ongelmia esiintyy, ihmisoikeusnäkökulma voi olla hyvinkin hyödyllinen taistelussa kunniamurhia vastaan. Dialogien käyttäminen strategisena lähestymistapana ihmisoikeuksien kulttuurisen legitimitetin lisäämiseksi voi olla tehokas tapa edistää ihmisoikeuksia niissäkin kulttuureissa, joissa ihmisoikeuksiin suhtaudutaan varauksellisesti tai jopa vihamielisesti.

Ihmisoikeuksien tarkoituksena on perinteisesti ymmärretty yksilöiden suojeleminen valtion (tai sen eri toimijoiden) tekemiä loukkauksia vastaan. Tämän vuoksi ei-valtiollisten tekijöiden, kuten yksityishenkilöiden, tekemiä rikoksia ja muita väärinkäytöksiä, kuten perheväkivaltaa, ei olla nähty sellaisena ihmisoikeusloukkauksena, josta valtio olisi vastuussa. Valtiovastuun tulkinta on kuitenkin muuttunut paljon viime vuosikymmenen aikana ja nykyään hyväksytään yleisesti, että valtioiden on ryhdyttävä asianmukaisiin toimenpiteisiin (*exercise due diligence*) estääkseen, vähentääkseen ja poistaakseen yksityistä syrjintää, väkivaltaa ja muita vahingollisia tekoja ja ovat siten kansainvälisesti vastuussa yksityishenkilöiden

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<sup>2</sup> Useimmiten kunniamurhien uhrin ovat naisia mutta joskus myös miehiä on tapetaan kunniasyistä.

teoista, jos eivät ole toimineet ehkäistäkseen kyseisiä loukkauksia tai vastatakseen niihin. Kunniamurhat, kuten muut yksityishenkilöiden tekemät loukkaukset ovat siis ihmisoikeuskysymyksiä silloin, kun valtio lainsäädännön puutteen, tehokkaan lainvalvonnan puutteen tai muun seikan takia on laiminlyönyt velvollisuutensa suojella kansalaistensa oikeuksia. Näin ollen tutkimus pyrkii esimerkkien kautta kuvaamaan sellaisia tilanteita, joissa valtion, lainsäädännön tai poliisin, tuomioistuinten tai muiden viranomaisten toiminnan vuoksi voidaan pitää vastuussa suojelun puutteesta kunniamurhatapauksissa. Esimerkkinä lainsäädännöstä johtuvasta suojelun puutteesta voidaan mainita sellaiset selkeästi syrjivät lait, joissa vaimon tai muun naissukulaisen uskottomuus tai ”siveettömyys” nähdään ”lieventävänä asianhaarana”, johon vain miehet voivat vedota. Toisaalta, vaikka lainsäädäntö sinänsä ei ole syrjivää, tuomioistuinten käytäntö johtaa joissain maissa tilanteeseen, jossa kunniamurhatapauksissa annetaan hyvin lieviä rangaistuksia koska uhrin (kunniatonta) käytöstä pidetään ”oikeuttamattomana” tai ”vaarallisena” tekona, joka oikeuttaa rangaistuksen lieventämiseen (esim. Jordanian rikoslain 98 artiklan tulkinta). Joskus myös sellaiset tapaukset, joissa epäillyn kulttuuri- tai etninen tausta nähdään eräänä tyypisenä lieventävänä asianhaarana (lähinnä Yhdysvalloissa käytetty nk. *cultural defence*) voivat johtaa tilanteeseen, jossa kunniamurhasta epäilty jää jopa rangaistuksetta.

Tässä tutkimuksessa kunniamurhia on ihmisoikeuskysymyksenä lähestytty kahdesta eri näkökulmasta, yhtäältä korostaen valtioiden velvollisuutta suojella oikeutta elämään ja toisaalta tarkastellen kunniamurhia syrjinnän vastaisen kiellon ja tasa-arvo periaatteen loukkauksena. Kunniamurhien voidaan tietysti nähdä loukkaavan myös muita ihmisoikeuksia. Varsinkin kidutuksen ja muun epäinhimillisen kohtelun kieltä ja palautuskieltoperiaate on otettava huomioon esim. turvapaikanhakijoiden käännytystapauksissa, jos on todennäköistä että nainen joutuu kunniamurhan uhriksi kotimaassaan. Tutkimus esittää, että kaikki tärkeimmät ihmisoikeussopimukset sisältävät sellaisia positiivisia elementtejä, jotka velvoittavat valtiot suojelemaan kansalaistensa oikeutta elämään vastoin yksityishenkilöiden tekemiä loukkauksia. Nämä positiiviset velvoitteet pitävät sisällään mm. velvoitteen säätää lakeja, jotka tehokkaasti suojaavat oikeutta elämään, valtion velvollisuuden (mahdollisuuksien mukaan) ehkäistä teot, jotka loukkaisivat oikeutta elämään, tehokkaasti tutkia kyseiset teot mikäli niitä tapahtuu, asettaa epäillyt syytteeseen sekä rangaista syylliset. Valtion

tulee myös välittää tietoa ja neuvoja tällaisten loukkausten ehkäisemiseksi. Syrjintäkieltoa ja tasa-arvo periaatetta loukkaavina kunniamurhia on tässä tutkimuksessa tarkasteltu kahdesta eri näkökulmasta: Ensinnäkin, lainsäädäntö tai lakien tulkinta voi olla syrjivää. Toiseksi, kunniamurhat voidaan sinänsä nähdä kiellettyinä syrjinnän muotona jos valtio on laiminlyönyt velvollisuutensa estää ja poistaa kyseinen syrjintä (ts. kunniamurhat) tai jos valtio laiminlyö velvollisuutensa soveltaa syrjimättömyys- ja tasavertaisuusperiaatetta suhteessa muihin ihmisoikeusvelvoitteisiinsa.

Voidaan siis sanoa, että kansainväliset ihmisoikeusnormit tarjoavat vakiintuneet puitteet kunniamurhien käsittelemiseksi ihmisoikeusloukkauksina. Silti, vaikka useimmat kansainväliset ihmisoikeuselimet ovat maininneet kunniamurhat ihmisoikeusongelmana käsitellessään valtioiden määräaikaisraportteja sekä yleisissä suosituksissaan, tähän mennessä yhtäkään kunniamurhatapausta ei ole käsitelty kansainvälisissä ihmisoikeuselimissä henkilökohtaisten valitusten tasolla. Syitä tähän on monia, esim. monet sellaiset maat, joissa kunniamurhia tapahtuu eivät ole ratifioineet kyseisiä sopimuksia tai niitä (valinnaisia) instrumentteja, jotka valtuuttavat yksityishenkilöiden valitukset. Lisäksi varsinkin naisten oikeuksien sopimuksen tehoa heikentää se, että monet valtiot, joissa kunniamurhat ovat vaikea ongelma ovat tehneet siihen liittyessään hyvinkin kattavia varauksia.

Täytäntöönpanoon liittyvistä ongelmista riippumatta kunniamurhat on otettu osaksi kansainvälistä ihmisoikeusagendaa, johtuen etenkin kansalaisjärjestöjen ponnisteluista mutta osittain myös lisääntyneestä mediahuomiosta ja järkyttyneistä reaktioista länsimaissa viime vuosina tapahtuneisiin kunniamurhiin. Kunniamurhista ihmisoikeuskysymyksinä on keskusteltu niin YK:n yleiskokouksessa kuin ihmisoikeustoimikunnassakin. Varsinkin ihmisoikeustoimikunnan laittomien teloitusten sekä naisiin kohdistuvan väkivallan erityisraportoijien työn merkitys kansainvälisen tietoisuuden lisäämiseksi kunniamurhista on ollut huomattava. Eurooppalaisella tasolla kunniamurhia on käsitelty niin Euroopan Unionin kuin Euroopan neuvoston puitteissa. Etenkin kansallisten kansalaisjärjestöjen rooli on ollut ratkaiseva kunniamurhatapausten raportoinnin suhteen. Voidaankin sanoa, että kunniamurhat ovat tänä päivänä oikeutetusti vakiintunut osa kansainvälistä ihmisoikeusagendaa.

## **Abbreviations**

ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
CAT	Convention against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
CHR	Commission on Human Rights
CRC	Convention on the Rights of the Child
ECHR	European Convention on Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
EU	European Union
GA	General Assembly
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
NGO	Non-governmental Organization
UDHR	Universal Declaration of Human Rights
UN	United Nations

# 1 Introduction

In January 2002 in Uppsala, Sweden, 26-year old Fadime Sahindal was shot dead by her father because he could not approve of her independent lifestyle. Fadime's family was conservative and her father wanted Fadime and her sisters to marry Kurds. Fadime's father and brother had repeatedly threatened to kill her because of the shame they thought she inflicted upon them and she brought a highly publicised court case against them in 1998. Fadime's father was given a suspended sentence and a fine for the threats, while the then 17-year-old brother, whose threats were considered most serious, was sentenced to probation for one year. Four years later Fadime's father shot his daughter in the presence of Fadime's sisters and mother. Fadime's father confessed the murder and was arrested subsequently. He was convicted for murder and was sentenced to lifetime imprisonment.<sup>3</sup>

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Shahida Mohammed of Manchester, UK, was stabbed to death by her father in February 2002 after he discovered her 'secret' boyfriend. Her father, Faqir Mohammed, was a strict Muslim who had planned to send his daughters to Pakistan for arranged marriages. Shahida's sister witnessed the murder and testified against her father in court. Mr. Mohammed received a lifetime prison sentence.<sup>4</sup> Rukhsana Naz, a pregnant mother of two, was strangled to death by her brother, while her mother held her down, because of the shame that she had brought on the family by having a sexual relationship outside marriage. Rukhsana's brother and mother were convicted for murder in May 1999 and sentenced to life imprisonment.<sup>5</sup>

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<sup>3</sup> Fadime's father withdrew the confession later. The Appeal Court of *Svea hovrätt* upheld the judgment on appeal (31 May 2002). See, e.g., reports on the Swedish national broadcasting company's website: [www.svt.se/nyheter](http://www.svt.se/nyheter), 22 Jan. 2002 and 3 April 2002 and *Hufvudstadsbladet* 1 June 2002.

<sup>4</sup> See, <http://news.bbc.co.uk/1/hi/uk/england/1827623.stm>, 18.2.2002 and <http://news.bbc.co.uk/1/hi/uk/england/1804707.stm>, 6.2.2002.

<sup>5</sup> Amnesty International, *Pakistan: Honour killings of girls and women*, 1999, ASA 33/18/99 (hereafter Amnesty 1999a), 4 and *R v. Shakeela Naz*, Court of Appeal, England, 23 March 2000.

In April 1999 29-year old Samia Sarwar was shot dead in Lahore, Pakistan, apparently because of her attempt to divorce a severely abusive husband, which was seen as bringing shame on the family. Samia had fled her home a month earlier to seek refuge in a women's shelter. Her mother's car driver shot her on the request of her mother in the presence of her lawyers. A police report was filed but no one has yet been arrested for the murder.<sup>6</sup>

In March 1999 16 year-old Lal Jamilla Mandokhel was reportedly raped by a junior clerk in the local government department of agriculture in Parachinar, the North West Frontier Province of Pakistan. The mentally handicapped girl's uncle filed a complaint about the rape with the police. The police took her to protective custody but subsequently handed her over to her tribe. A *jirga*, tribal council, decided that the girl had brought shame on her tribe and that the defiled honour could only be restored by her death. Lal Jamilla was shot dead in front of a tribal gathering.<sup>7</sup> In Pakistan 300-1000 women are killed in the name of honour every year.<sup>8</sup>

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In Jordan, an average of 25-40 women are killed each year in the name of honour and honour protection is the motive for 55% of the cases of violence against women in Jordan.<sup>9</sup> Approximately 26% of all crimes in Jordan are honour crimes.<sup>10</sup> In a recent

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<sup>6</sup> Amnesty 1999a, *supra* n. 3, 7-8.

<sup>7</sup> *Ibid.*, 8.

<sup>8</sup> Estimates are varying. In 2002 461 women were killed for reasons of honour in the provinces on Sindh and Punjab alone. *BBC News World edition*, <http://news.bbc.co.uk>, 11 Dec. 2002, 'Rise in Pakistan 'honour killings'', quoting a new report by the Human Rights Commission on Pakistan. See also Dawn, Editorial, *These savage murders*, [www.dawn.com](http://www.dawn.com), 1 June 2000, citing a report of the Human Rights Commission of Pakistan (HRCP); *Amnesty International, Pakistan: violence against women in the name of honour*, ASA 33/17/99 (hereafter Amnesty 1999b), 6, citing HRCP data from 1998; and *Extrajudicial, summary or arbitrary executions – Report of the Special Rapporteur*, UN doc. E/CN.4/2000/3, (Report 2000) para. 79.

<sup>9</sup> The figures vary, some state that 25-30 women fall victims of honour killings yearly, see G. Rahhal, *Crimes of honour*, Session C-Pa 4d, IAOS, Statistique, Développements et Droits de l'Homme, Montreux, 4-8.9.2000, 4, while others say that about 4 women are killed every month in the name of honour, see *Women in the Middle East-Bulletin*, No. 2, June 2002, quoting the head of Jordan National Institute of Forensic Medecine, Homen Hadidi. See also G. Humeidan & V. Habash, *Crimes of honour*, [www.ecouncil.ac.cr/about/contrib/women/youth/english/honour1.htm](http://www.ecouncil.ac.cr/about/contrib/women/youth/english/honour1.htm), site visited 6 May 2002, reporting that police records in Jordan indicate that over the past 10 years an average of 28 young women are killed in the name of honour. See also statement by the Representative of Jordan, Commission on Human Rights, *Summary Record of the 32<sup>nd</sup> Meeting*, 6 May 2000, UN doc. UN doc. E/CN.4/2000/SR.32 (3 Oct. 2000), para. 1.

case a 24 year-old woman was found stabbed to death and burned in the Jordan valley. She had reportedly been killed by her brothers because she allegedly allowed her younger sister to meet her lover in her house. Her brothers later confessed killing their sister in the name of family honour. The younger sister is kept in jail in protective custody.<sup>11</sup> In another case a 30-year old man served a six-month prison term for stabbing his younger sister to death for reasons of family honour. The charges of premeditated murder were reduced to misdemeanour by the Criminal Court because of the victim's "unlawful and dangerous acts", as stipulated by Article 98 of the Jordanian Criminal Code.<sup>12</sup>

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In 1980 there were reportedly over 700 cases in Sao Paulo alone of men killing female companions and claiming 'the legitimate defence of honour.'<sup>13</sup> In Brazil the so-called 'legitimate defence of honour' was responsible for a substantial amount of acquittals of men who had killed their wives until 1991. In 1988 Joao Lopes stabbed his wife and her lover to death after she had left him to be with her lover. In the subsequent trial the defence argued that Joao had acted in the legitimate defence of his honour and the jury acquitted him of the murders. On appeal the Supreme Court dismissed the principle of *legitima defesa da honra* and held that murder never is legitimate response to adultery. However, despite this decision, the lower court to which the case had been returned on remand, acquitted Joao Lopes. Also other lower courts have occasionally applied the 'legitimate defence of honour' despite the Supreme Court ruling.<sup>14</sup>

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<sup>10</sup> F. Faqir, 'Intrafamily femicide in defence of honour: the case of Jordan', *Vo. 22 Third World Quarterly No. 1 [2001]*, 65, 70 and G. Humeidan & V. Habash, *Crimes of honour*, [www.ecouncil.ac.cr/about/contrib/women/youth/english/honour1.htm](http://www.ecouncil.ac.cr/about/contrib/women/youth/english/honour1.htm), site visited 6 Aug. 2002.

<sup>11</sup> *Women in the Middle East-Bulletin*, No. 2, June 2002.

<sup>12</sup> *Jordan Times*, 20.1.2003, '30-year-old man receives 6 months for killing sister', by Rana Hussein, [www.amanjordan.com](http://www.amanjordan.com). Site visited 17.2.2003.

<sup>13</sup> M. Spatz, 'A "lesser" crime: a comparative study of legal defences for men who kill their wives', *24 Colum. J.L. & Soc. Probs. [1991]*, 597, 618.

<sup>14</sup> Decision of the *Superior Tribunal da Justica*, in the case of Joao Lopes, 11.3.1991. See, L.S. Nelson, 'The defence of honour: is it still honored in Brazil?', *11 Wisconsin International Law Journal [1993]*, 531, 533, 536-7; and L. Linhares Barsted & J. Hermann, 'Legal doctrine and the gender issue in Brazil', *7 Am. U.J. Gender Soc. Pol'y & L. [1998/1999]*, 235, 235.

## 1.1 Defining and contextualising honour killings

Honour killings are a form of intra-family violence, where women, who are seen as the repositories of the man's or family's honour, and as such must guard their virginity and chastity, are killed, usually by their male relatives, because they are seen to have defiled the family's honour and must be killed in order to restore it. Usually women are the victims of honour killings but also men may be killed in the name of honour.<sup>15</sup> Honour killings originate in the ancient customs that have been incorporated into many cultures. According to such tribal custom the woman is the repository of her family's honour and honour is closely related to respect and standing in society.<sup>16</sup> For example, in Pakistan, women are seen to embody the honour of "the men to whom they belong". By being perceived as having entered into a 'illicit' relationship, or otherwise behaved in an 'inappropriate manner' they are seen as having defiled her guardian's and family's honour. A man's ability to protect his honour is judged by his family and neighbours. Therefore he must publicly demonstrate his power to safeguard his honour by killing those who have damaged it and thereby restore it. Consequently, honour killings are often performed openly, as, for example, in the cases of Samia Sarwar and Lal Jamilla Mandokhel, mentioned above.<sup>17</sup> Another motive for honour killings is covering up shameful incidents, such as extramarital relationships, rape, incest or other sexual abuse. For example, according to tribal principles of Palestinian society any such "scandals" must be concealed or mitigated

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<sup>15</sup> E.g., in Pakistan if a man's or family's honour has been defiled by a woman's alleged or real sexual behaviour is only partly restored by killing her (the so called *kari*, black woman). In order for the honour to be completely restored also the man involved in the relationship (*karo*, black man) has to be killed. However, since the *kari* must be killed first the *karo* often hears about it and manages to escape. See Amnesty 1999a, *supra* n. 3, 5.

<sup>16</sup> For instance, in Arab societies a man's ability to protect his female relatives' honour defines his social status and masculinity and his peers will view him as inferior if he cannot adequately protect a female relative's honour. R. A. Ruane, 'Murder in the name of honour: violence against women in Jordan and Pakistan', 14 *Emory Int'l L. Rev.* [2000], 1523, 1530-31; Amnesty 1999b, *supra* n. 6, 48, quoting Professor Riffat Hassan; K. C. Arnold, 'Are the perpetrators of honor killings getting away with murder? Article 340 of the Jordanian Penal Code analysed under the Convention on the Elimination of All Forms of Discrimination against Women', 16 *Am. U. Int'l L Rev* [2001], 1343, 1354.

<sup>17</sup> See Amnesty 1999a, *supra* n. 3, 4-5.

in accordance with the principles of *sutra* and *dabdabeh*, e.g., by means of forced marriage or ultimately, by killing the woman concerned.<sup>18</sup>

The understanding of what behaviour defiles honour varies and has become very loose in some societies.<sup>19</sup> Sometimes rumour, belief or insinuation are enough to defile honour.<sup>20</sup> As illustrated by the cases above honour killings take various forms and are committed for various different reasons. Honour killings are usually resorted to when a woman is believed to have engaged in a sexual relationship outside marriage.<sup>21</sup> Also rape victims may be killed in the name of honour – the consent or lack of it is seen as irrelevant to the question of lost honour.<sup>22</sup> Women have also reportedly been killed in the name of honour for expressing a desire to choose a spouse of their choice, marrying against the will of their families<sup>23</sup> and for demanding divorce from their husbands.<sup>24</sup> Furthermore, in some countries, most notably Pakistan, also so called fake honour killings are reported. The *kari-karo* tradition in certain areas of Pakistan<sup>25</sup> and the system of compensation to the man who has lost his honour provide opportunities to make money or to conceal other crimes. Some have even spoken about an ‘honour killing industry’.<sup>26</sup> For example, there are several reports about men who have killed other men for reasons not connected with honour issues and who subsequently killed a woman of their own family as an alleged *kari* in order frame the initial murder as an honour killing.<sup>27</sup> It has been argued that the ‘honour killings industry’ turns the honour code on its head and indicates its degeneration.<sup>28</sup>

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<sup>18</sup> N. Shalhoub-Kevorkian, *Mapping and Analyzing the Landscape of Femicide in Palestinian Society*, Report submitted to UNIFEM, January 2000, Section 4. See also Faqir, *supra* n. 8, 72.

<sup>19</sup> Amnesty 1999a, *supra* n. 3, 5.

<sup>20</sup> Ruane, *supra* n. 14, 1531.

<sup>21</sup> See Amnesty 1999b, *supra* n. 6, 9-16.

<sup>22</sup> *Ibid.*, 23-24 and Amnesty 1999a, *supra* n. 3, p. 8.

<sup>23</sup> See Amnesty 1999b, *supra* n. 6, 16-21.

<sup>24</sup> *Ibid.*, 21-23 and Amnesty 1999a, *supra* n. 3, 6-7

<sup>25</sup> See the short description of this tradition above, n. 13 and text.

<sup>26</sup> See Amnesty 1999b, *supra* n. 6, 24-26 and Amnesty 1999a, *supra* n. 3, 9.

<sup>27</sup> Amnesty 1999a, *supra* n. 3, 9-10.

<sup>28</sup> See Amnesty 1999b, *supra* n. 6, 26, quoting Pakistani journalist Nafisa Shah. So-called dowry deaths will be left out of the scope of this paper as the motive for these killings is usually not related to honour but to economic reasons. See, e.g., L. R. Pardee, ‘The dilemma of dowry deaths: Domestic disgrace of

Honour *crimes* are a wider category including honour killings but also other violence committed against women (battering, acid throwing, rape, etc.) in the name of honour. The following case from Pakistan may serve as a tragic example of an honour crime. An 18 year-old girl was gang-raped by four men after a local tribal council (*panchayat*) had ordered them to do so to punish the girl's family after her 11 year-old brother had been seen walking (unchaperoned) with a girl from a higher tribal caste because this was seen as an insult to the tribe's collective dignity. Reportedly the girl was dragged out of the public meeting by four men who then took her into a hut where they took turns in raping her while hundreds of people stood outside. Afterwards she was forced to walk home naked in front of hundreds of onlookers.<sup>29</sup> Honour crimes may be human rights violations in the same way as honour killings, but rape, for example, raises issues as to the prohibition against torture and inhuman treatment whereas honour killings are mainly right to life issues. As the material on the various forms of honour crimes is abundant, this paper will focus on the issue of honour killings in order to limit the paper. However, most considerations also apply to other crimes committed in the name of honour, and while the paper uses the term honour killings the reader is advised to bear mind the other types of honour crimes as well.

It has been argued that the social function of honour crimes has changed as a reaction to the changed society, changed perceptions of what is honourable and dishonourable behaviour and changed sexual practices.<sup>30</sup> There are also reports from Pakistan stating that the number of honour killings is increasing. No doubt, media coverage of honour killings has increased in recent years giving rise to increased numbers of reported crimes. However, reportedly, the actual number of crimes has risen as well, as has apparently the sense of righteousness manifested in the manner the killings are committed, publicly, in broad daylight.<sup>31</sup> Several reasons have been given for such an increase. One of the key factors is the Pakistani government's failure to take effective

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international human rights catastrophe?', *13 Arizona J of Int'l & Comp L. [1996]*, 491; A. Nangia, 'The tragedy of bride burning India: how should the law address it?', *22 Brooklyn J. Int'l L. [1997]*, 637.

<sup>29</sup> As reported in *Women's Asylum News*, Issue 23, July 2002, 7.

<sup>30</sup> L. Abu-Odeh, 'Crimes of honour and the construction of gender in Arab societies', in M. Yamani, *Feminism and Islam: Legal and literary perspectives*, New York University Press, 1996, 141-194; L. Abu-Odeh, 'Comparatively speaking: the "honor" of the "East" and the "passion" of the "West"', *Utah L Rev. [1997]*, 287, 288.

<sup>31</sup> See Amnesty 1999b, *supra* n. 6, 5, 32.

measures to end the practice of honour killings and the virtual impunity with which honour killings are committed. Other reasons that have been mentioned are weakening of the institutions of the state, corruption, economic decline, breakdown of agriculture, a high rate of unemployment and landlessness. Commentators have also argued that the crisis of the civil society in Pakistan has turned the population to look for alternative models, for example, in the traditional tribal customs. It has also been argued that due to the economic decline more women have been entering into the workforce, and men find it difficult to adapt to seeing women outside the traditional “four walls.” Many men resent the exposure of women to the outside world, and their increased self-confidence. At the same time particularly young women are increasingly more aware of their rights.<sup>32</sup> Similarly, in Palestine, tribal leaders reportedly perceive participation of women in work outside the home, women’s increased freedom and economic power as having contributed to changes in social roles, away from traditional Arab and Islamic values, and thus as the reason for moral decay. Tribal leaders have proposed that a return to traditional roles for men and women, prohibiting work for women outside the home, early marriage, polygamy and a prohibition of mixing of sexes would be the best way to prevent honour killings.<sup>33</sup> The increased occurrence of honour killings can thus be seen as a reactionary trend, or so-called “reactive culturalism”.<sup>34</sup> An additional aspect of the problem are honour killings that occur amongst immigrant communities in societies where honour killings traditionally do not exist. In these cases the dishonouring behaviour that the victims are guilty of is often adaptation to the culture of the majority which is seen as unacceptable by the woman’s family. It has even been claimed that the risk of becoming a victim of honour killing is higher in certain immigrant communities in the west than it is in the countries where those immigrants come from.<sup>35</sup>

Honour killings take place in many states, for example, the United Nations Special Rapporteur on extrajudicial, summary and arbitrary executions and the Special

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<sup>32</sup> *Ibid.*, 33-36.

<sup>33</sup> Shalhoub-Kevorkian, *supra* n. 16, s. 4. 31 women died in honour killings in the Palestinian territories in 2002, *Women in the Middle East Bulletin*, May 2003.

<sup>34</sup> See *infra* chapter 5, n. 428-30.

<sup>35</sup> N. Begikhani, ‘Alla som tiger är medskyldiga till mord’ [Everyone who is silent is an accomplice to murder], *Aftonbladet*, 13 March 2002.

Rapporteur on violence against women have received reports from Bangladesh, Brazil, Ecuador, Egypt, France, Germany, India, Iran, Israel, Italy, Jordan, Lebanon, Morocco, Pakistan, Syria, Sweden, Turkey, Uganda, the UK and Yemen.<sup>36</sup> Honour killings have also taken place in the USA and Australia.<sup>37</sup> It seems, however, that honour killings are most prevalent in the Middle East and South Asia. The reporting of the main human rights NGOs (Amnesty International, Human Rights Watch) is concentrated on Pakistan and Jordan. Also the research on honour killings has mainly focused on these two countries. National NGOs in countries such as Jordan, Israel, Pakistan and Turkey have been very active in their campaign against honour killings and some national NGOs have taken up honour killings elsewhere. As honour killings largely remain a private family affair, it is hard to obtain reliable official statistical data on honour killings and thus it is difficult to collect accurate data on the occurrence of honour killings in a given country. Therefore it must be emphasised that just because there are no reports on honour killings in a country, it does not mean that they do not occur. For example, reportedly around 400 women were killed for reasons of honour in Yemen in 1997,<sup>38</sup> indicating that honour killings are a serious problem; despite that, one rarely reads about honour killings in Yemen. Particularly, one must bear in mind that in certain very closed societies where NGOs are almost non-existent and where the (freedom of) press is very restricted, there are no bodies that would report cases of honour killings.

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<sup>36</sup> In addition, the Special Rapporteur on Extrajudicial executions received reports of women being killed “in the name of morality” during her mission to Afghanistan in 2002. *Report of the UN Special Rapporteur on extrajudicial, summary and arbitrary executions*, UN doc. E/CN.4/2000/3, 25 Jan. 2000, para. 79, *Report of the UN Special Rapporteur on extrajudicial, summary and arbitrary executions, Mission to Afghanistan*, UN doc. E/CN.4/2003/3/Add.4, 3 Feb. 2003, para. 42 and *Report of the UN Special Rapporteur on violence against women, its causes and consequences*, UN doc. E/CN.4/2002/83, 31 Jan. 2002, para. 21.

<sup>37</sup> See, *State of Missouri v. Maria Isa*, [1993] 850 S.W.2d 876, Supreme Court of Missouri, USA and *Barca v R*, [1975] 133 C.L.R. 82, High Court, Sydney and Melbourne, Australia and *R v. Dincer*, [1983] 1 V.R. 460, Supreme Court Victoria, Australia. Case summaries taken from *CIMEL/Interights Bibliography on Crimes of Honour*.

<sup>38</sup> U. Wikan, *For Ærens Skyld* [For the sake of honour], Universitetsforlaget, 2003, 91.

## 1.2 Why 'honour killings'? Some terminological remarks as to honour and passion

When speaking about 'honour' we must remember that understanding of the word 'honour' may vary from culture to culture, from language to language. Also, in the international discussion on honour killings various terms have been used to describe these crimes. Among these are "crimes committed in the name of honour"<sup>39</sup> and "killings committed in the name of passion or in the name of honour".<sup>40</sup> Therefore, when discussing 'honour killings' as a violation of international human rights law it must be established what is meant by the term honour and what the implications of use of such terms are. Even though crimes of passion and crimes of honour are put together in the same category of human rights abuses in certain UN resolutions, these crimes do differ. The point where they differ is the rationale of the crime and the underlying perceptions of honour and passion.

As noted above, the understanding of honour varies from culture to culture and language to language. For example, according to Cambridge Advanced Learners Dictionary the English word 'honour' stands for a "quality that combines respect, pride and honesty." In the traditional Greek mountain communities honour referred in some contexts to pride, respect or esteem, and in others honour indicated certain qualities on which the reputation of a group or an individual depends, and more specifically honour referred to the sexual virtue of a woman. Honour expressed the idea of worth, whether this was an economic value or social worth and integrity.<sup>41</sup> In the Turkish language honour has many meanings ranging from a quality derived from achieved status (*seref*) and generosity towards others (*izzet*) to certain physical and

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<sup>39</sup> UN GA *res* 55/66, Working towards the elimination of crimes against women committed in the name of honour, 4 Dec. 2000, UN doc. A/RES/55/66; UN GA *res* 57/179, Working towards the elimination of crimes against women committed in the name of honour, 18 Dec. 2002, UN doc. A/RES/57/179.

<sup>40</sup> E.g., UN CHR *res* 2001/45, UN doc. E/CN.4/2001/45, 23 April 2001, para. 7.

<sup>41</sup> J. K. Campbell, *Honour and Family Patronage*, Clarendon Press, 1964, 268-69. In Pakistan, honour is traditionally also closely linked to the possession and control of desirable commodities, such as land. Honour (*ghairat*) is linked to status (*izzat*) and status again is based on wealth and property. See, Amnesty 1999b, *supra* n. 6, 11.

moral qualities that women ought to have (*namus*).<sup>42</sup> Honour has been and still is a gendered term both in western and non-western cultures. Further, the honour (or rather *shame*) of women and the loss of such honour implicate the honour of men. For example, the principle of honour in the traditional Greek mountain communities included qualities that distinguished between the ideal moral character of men and women; the manliness of men and the sexual shame of women. If a woman was dishonoured, ‘soiled’, she marked with her dishonour all those who were close to her through kinship or marriage.<sup>43</sup> Honour and shame can be seen as parallel concepts, honour being masculine, shame feminine; not opposites.<sup>44</sup> Also the Turkish understanding of honour distinguishes between words for the term honour that are gender neutral in application, or that apply only to women (*namus*) or men (*seref*).<sup>45</sup> Honour can be described as a *collective* understanding of the relationship of several men towards one woman, where the men are obliged to defend their public image of their masculinity which in turn is embodied in the chastity and virginity of the woman. The societies where honour killings occur are characterised by the existence of codes of honour, that is, sets of rules that specify what is and what is not honour. In accordance with such rules honour can both be won and lost. It is the idea that honour can be *lost* that is central in the rationale behind honour killings. In codes of honour, honour relates to the outside world’s view of a person, a person’s reputation. A person’s honour is dependant on the behaviour of others and that behaviour must therefore be controlled. Honour is about a *right* to respect, in the sense of claim for respect. The community has a duty to respect a person, so far as the code of honour is followed. If the code of honour is breached, the person (and his family) loses his honour. The lost honour becomes a reality only when it is made *public*. Consequently, honour killings are highly unlikely unless the transgression becomes known in the

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<sup>42</sup> A. Sev’er & G. Yurdakul, ‘Culture of honor, culture of change’, 7 *Violence Against Women* 9 [2001], 964, 971-72. See also N. Shalhoub-Kevorkian, ‘The politics of disclosing female sexual abuse: A case study of Palestinian society’, 23 *Child Abuse & Neglect* 12 [1999], 1275, 1278.

<sup>43</sup> Campbell, *supra* n. 39, 269. See also N. V. Baker, P. R. Gregware & M. A. Cassidy, ‘Family killings fields: Honour rationales in the murder of women’, 5 *Violence Against Women* 2 [1999], 164, 165.

<sup>44</sup> The opposite of honour is not shame but “honourless”. Wikan, *supra* n. 36, 70-73 and N. Shah, ‘Honour killings: code of dishonour’, *The Review, Daily Dawn*, (Karachi), Nov. 1998. Shah quotes an Imam from Balochistan, Pakistan using the term *beghairat* (dishonourable); *ghairat* is the word for honour in Baloch.

<sup>45</sup> Sev’er & Yurdakul, *supra* n. 40, 972.

community.<sup>46</sup> Thus the ideas of honour and lost honour are based on the notion of *justification of collective injury*, the emphasis is on the nature of the act, not the actor (perpetrator of the crime). What is crucial is the ‘dishonourability’ of the victim.<sup>47</sup> By contrast, *passion* exists in a *private* relationship between a man and a woman. The idea of passion excludes all men who are not or cannot be sexually involved with a woman (fathers, sons, brothers). The issue at stake is more passionate jealousy than violated masculinity. The idea of passion is based on the notion of *excuses*. Here the actors are excused, not the acts. To summarise, “honour is based on ideas of kin, status, honour and collectively, while passion is based on ideas of individualism, romantic fusion, and sexual jealousy.”<sup>48</sup> Therefore in ‘honour-cultures’ the women who get killed are daughters, sisters and mothers, while in ‘passion-cultures’ it is wives, ex-wives and girl friends that are the victims of murder and other crimes. To somewhat simplify the issue: the results of ‘crimes of honour’ and ‘crimes of passion’ are the same – but the reasons are different. Thus Abu-Odeh points out, crimes of honour occur in the “East”, crimes of passion in the “West”.<sup>49</sup> It has, however, been argued that the conception of honour in Europe in the Middle Ages was not very much unlike the understanding of honour and honour codes of the contemporary Middle East and South Asia. According to such views the “European” honour concept started to focus on the inner aspects, such as personal integrity, of honour during the 16th and 17th centuries.<sup>50</sup> Thus, it has been argued that the locus of honour in the west has shifted from the traditional extended family to the individual man due to the increasing role of individualism and the nuclear family.<sup>51</sup> Therefore, it may be that an honour rationale underlies also so called killings in the name of passion in the west.<sup>52</sup>

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<sup>46</sup> Wikan, *supra* n. 36, 68-69, 72-74; Baker, Gregware & Cassidy, *supra* n. 41, 165, 171.

<sup>47</sup> Abu-Odeh 1997, *supra* n. 28, 292-293.

<sup>48</sup> Abu-Odeh 1997, *supra* n. 28, 292-293. *Flagrante delicto* is not an absolute requirement of a crime of honour, whereas it is so in the case of passion.

<sup>49</sup> *Ibid.*, 300, 305-306.

<sup>50</sup> Wikan, *supra* n. 36, 80.

<sup>51</sup> Baker, Gregware & Cassidy, *supra* n. 41, 173-174. See also Spierenburg, P., *Men and violence: Gender, honor and rituals in modern Europe and America*, Ohio State University Press, 1998 and Goodwin, J., *Price of Honor: Muslim women lift the veil of silence on the Islamic world*, Little Brown, 1994 for discussions on the role and impact of honour in western and Muslim cultures.

<sup>52</sup> Abu-Odeh argues that the jurisprudence of the American courts evidences an ambiguous approach towards the provocation defence and crimes of passion. On one hand as the element of justification is almost inherently required by the common law legal system, the rhetoric of *honour* does not seem too

When moving to the discussion on ‘honour killings’ on the international human rights agenda, the question is should only (the “eastern”) honour killings be dealt with as a human rights violation, or should also (the “western”) ‘crimes of passion’ be included?<sup>53</sup> When it comes to considering any violence committed by private actors as a human rights abuse, the central consideration must always be whether these acts are in any way condoned by the state or whether the state in any other way fails to protect the fundamental human rights of the victims of such abuses. Therefore, this paper will use the terminology adopted by the UN Special Rapporteur on extrajudicial, summary and arbitrary executions and thus covers all “killings committed in the name of passion or in the name of honour” but will use the expression *honour killings* for reasons of expediency. Despite this it is important to bear in mind the different nature of ‘honour’ killings and ‘passion’ killings, as understanding that difference will help the reader to understand the rationale of the acts of the perpetrators as well as the conduct of police officials, judges and legislators, as members of the community they live in. Because most of the available material is concerned only with honour killings also this paper does concentrate on that issue. Also, it seems that most of the cases where there is impunity are indeed motivated by reasons of honour, not passion. Despite this fact the arguments in this study do apply to both killings committed in the name of honour and killings committed in the name of passion.

It should also be noted that some objections have been made as to the use of the term ‘honour’ at all in the context of honour killings, for example, the word “femicide” has been advocated by some as a better alternative.<sup>54</sup> Others have spoken about “so called honour killings”<sup>55</sup> or “shame killings” as UN Secretary-General Kofi Annan has preferred to call the practice.<sup>56</sup> Such statements seem to express a wish to de-link the

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foreign; on the other hand the explicit language is that of *passion*. Abu-Odeh 1997, *supra* n. 28, 300, 305-306. See also V. Nourse, ‘Passion’s progress: Modern law reform and the provocation defence’, *106 Yale Law Journal* [1997], 1331.

<sup>53</sup> Compare n. 37-38 and text above.

<sup>54</sup> See, e.g., Faqir, *supra* n. 8; Shalhoub-Kevorkian, *supra* n. 16.

<sup>55</sup> See, e.g., statement made by the representative of Pakistan during the 57<sup>th</sup> Commission on Human Rights, CHR *Summary Record of the 34<sup>th</sup> Meeting*, 7.4.2000, UN doc. E/CN.4/2000/SR.34 (28.4.2000), para. 83.

<sup>56</sup> Statement of Secretary-General Kofi Annan to the General Assembly special session “Women 2000: Gender Equality, Development and Peace for the Twenty-first Century”, *Press Release SG/SM/7430 WOM/1203*, 5.6.2000; and Statement of Secretary-General Kofi Annan on the International Day for the

term ‘honour’ from violence and murder. However, as was discussed above, ‘honour’ is a very complex concept and codes of honour prescribe various forms of conduct, including in extreme cases, killings committed in the name of honour – not in the name of shame or “so called honour”.

### **1.3 Aim and structure of the study**

This study sets out to explore honour killings in the context of human rights, as a violation of international human rights law meriting the accountability of states. The study aims at providing an analysis of honour killings as a violation of international human rights law, identifying the human rights provisions that may be invoked in regard to honour killings and analysing the various approaches that can be taken in order to achieve international accountability for honour killings. Furthermore, the study will present an overview of measures that have been taken in regard to honour killings on the international human rights agenda, both on the inter-governmental and non-governmental level. In addition, questions as to how human rights arguments can be used in a discourse with cultural groups will be addressed and some recommendations be made in relation to future efforts to eradicate the practice of honour killings both as regards the international bodies and mechanisms that can be used to address honour killings and the work that needs to be done on the domestic level.

The study will begin by examining various forms of state responses to honour killings, in regard to legislation, law enforcement as well as adjudication (chapter 2). In chapter 3 the study will identify the human rights provisions that may be invoked in regard to honour killings and discuss honour killings as a violation of human rights. The main part of Chapter 3 discusses international accountability for honour killings as violations of international human rights law. The focus will be on the right to life and the prohibition against discrimination, firstly, as they are the rights that are primarily affected by the crime of honour killing, and secondly, as they represent different viewpoints in seeing honour killings as a human rights violation. This

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Elimination of Violence against Women, 25.11.2000, *Press Release SG/SM/7635 WOM/1239*, 21.11.2000.

discussion is followed by an analysis of the measures that have been taken to combat honour killings within various international human rights bodies, both on the inter-governmental and non-governmental level (chapter 4). Chapter 5 examines the impact of culture on the practice of honour killings and how human rights arguments can be used in a discourse with cultural groups. Finally, the study will attempt to make some recommendations in relation to future efforts to eradicate the practice of honour killings, both as regards the international bodies and mechanisms that can be used to address honour killings and the work that needs to be done on the domestic level including legislation, law enforcement and a dialogue with groups that try to justify honour killings with reference to cultural or religious norms (chapter 6).

## **2 State responses to honour killings**

### **2.1 Legislation, law enforcement and adjudication relevant to honour killings**

As honour killings occur in various cultures and countries this paper cannot provide for a comprehensive overview of the legislation relevant to honour killings in all countries. Moreover, the aim of this paper is to discuss honour killings as a human rights issue – not as a cultural tradition or an issue in domestic legislation. Thus only cases of honour killings where the state for some reason fails to protect the human rights and fundamental freedoms that are violated by the act of honour killing are relevant to this paper. Therefore, only legislation that in some way is responsible for lack of protection against honour killings will be considered here. Thus, an attempt is made at a categorisation of the provisions on the basis of which perpetrators of honour killings are not prosecuted, are given lenient punishments or are completely exempt from punishment. In some states a defence applicable in cases of honour killings is codified in the law. In others, on the face of it neutral laws are interpreted by courts in a discriminatory way with the result that the perpetrators of honour killings “get away with it”. The overview here should be seen as illustrative; neither the categorisation nor the examples used should be understood as being exhaustive.

Therefore, firstly, I shall briefly discuss the category of codified defences by way of the examples of discriminatory laws relating to provocation and extenuating circumstances as well as the of rules of *qisas* and *diyat* of Islamic law. Second, some types of judge made defences in cases of honour killings will be discussed, namely discriminatory application of general provocation provisions. Third, I will briefly discuss the *jirga* system of Pakistan and the so called ‘cultural defence’ as developed, *i.a.*, in the USA, as examples of how traditional practices and cultural arguments can be used to extend impunity to perpetrators of honour killings. All categories will be discussed by reference to examples from different countries, and the discussion does not attempt to be exhaustive, either as to a discussion on which states have such laws or judicial practices, of the legal systems of the mentioned states, or the position of

women in such states. Particularly, this chapter will not attempt to provide a thorough analysis of Islamic law in relation to violence against women<sup>57</sup> or of the criminal law principles relating to extenuating circumstances or provocation.

In most countries honour killings fall under laws dealing with murder, and where these laws do not include any discriminatory provisions on extenuating circumstances or defences of provocation that could be applicable to crimes of honour, and if such laws are not applied in a discriminatory way they will not be considered here.

### ***2.1.1 Codified means for mitigating penalties in honour killing cases***

#### **2.1.1.1 Discriminatory provisions relating to provocation and extenuating circumstances**

Rules of defence that relate to provocation and extenuating circumstances can be found in the penal codes of most states. Laws providing for defences of provocation or extenuating circumstances that are discriminatory on the face can be found in the Penal Codes of various states, mainly Latin American and Middle Eastern states, but also others, e.g., in Argentina, Bangladesh, Egypt, Guatemala, Iraq, Kuwait, Lebanon, Libya, Peru, Syria, Tunisia, Turkey and Venezuela. Such provisions usually originate from the old colonial penal codes, the Spanish Penal Code in Latin America and the French Penal Code of the early 19<sup>th</sup> century and the old Ottoman penal code in many Middle Eastern states.<sup>58</sup> Some of these provisions are limited to situations of adultery and they only provide for an excuse of *reduction of penalty*, for example, the Egyptian,<sup>59</sup> Tunisian,<sup>60</sup> Libyan<sup>61</sup> and Kuwaiti<sup>62</sup> Penal Codes. The Iraqi Penal Code

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<sup>57</sup> For excellent overviews of how Islamic law applies to women, see e.g., A. Quraishi, 'Her honour: an Islamic critique of the rape laws of Pakistan from a woman-sensitive perspective', 18 *MJIL* [1997], 287 and A. Jahangir & H. Jilani, *The Hudood Ordinances: A Divine Sanction?*, Rhotas Books, 1991.

<sup>58</sup> See Abu-Odeh 1996, *supra* n. 28. Article 324 of the 1810 French Penal Code was abolished as late as 1975.

<sup>59</sup> Article 237 of the Egyptian Penal Code. Egypt lacks a general provocation rule like article 98 of the Jordanian Penal Code. There is an 'extenuating circumstances' rule in Article 17 (providing for a reduced penalty from death penalty to permanent or temporary hard labour) of the Penal Code. This article seems to be quite strictly applied at least by the Court of Cassation. However, as Abu-Odeh notes, as decisions under Article 17 are entirely up to the discretion of judges of lower courts (whose decisions are not published) it is hard to tell how far Article 17 provides for an excuse in cases of honour killing. See Abu-Odeh 1996, *supra* n. 28, 162-163.

covers both adultery and “her presence in one bed with her lover” but provides for the excuse of reduction of penalty for both<sup>63</sup> whereas the Turkish Penal Code provides that in cases of homicide or assault, adultery committed by the perpetrator’s wife or illegal sexual relations committed by the perpetrator’s sister can be considered as extenuating circumstances.<sup>64</sup> The Turkish Penal Code also permits a reduction in any sentence when an illegitimate baby is killed immediately after birth (Article 453). Article 463 again reduces imprisonment by 1/8 when a killing was carried out immediately before, during or immediately after a situation of anticipated adultery or fornication.<sup>65</sup> The Syrian and Lebanese Penal Codes expand the application of the provisions to situations of “*attitude equivoque*”<sup>66</sup> and provide for both an excuse of reduction and *exemption in cases of adultery*. In addition to differences as to the type of excuse the provisions also differ as to who may benefit from the provisions. Some of the codes extend the excuse to the husband, son, father, and brother of the victim<sup>67</sup> whereas others limit the beneficiaries of the excuse to husbands.<sup>68</sup> The Algerian Penal Code and the amended Jordanian Penal Code differ from the others in that they provide that both husbands and wives are beneficiaries of the excuse of reduction of penalty which is limited to situations of adultery.<sup>69</sup>

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<sup>60</sup> Article 207 of the Tunisian Penal Code.

<sup>61</sup> Article 375 of the Libyan Penal Code.

<sup>62</sup> Article 153 of the Kuwaiti Penal Code.

<sup>63</sup> Iraqi Penal Code, Article 279. See also Articles 130, 132, 405, 406. In Iraqi Kurdistan the legislation was amended in 2002 and no longer includes a reference to mitigating circumstances applicable in honour crime cases. Before the amendment perpetrators of honour crimes could get away with a prison term of six months to one year. *Jordan Times*, Iraq Kurds amend law to reduce ‘honor crimes’, [http://www.aman.jordan.org/english/daily\\_news-Iraq](http://www.aman.jordan.org/english/daily_news-Iraq), site visited 16.6.2003.

<sup>64</sup> Turkish Penal Code (1926) Article 262.

<sup>65</sup> See, *Crimes of Honour – Outline Report*, Committee on Equal Opportunities for Women and Men, Council of Europe Parliamentary Assembly, 4.6.2002, AS/Ega(2002)7Rev2, para. 19. Note, however, that Turkey has stated that a proposed new draft criminal code would amend any such provisions.

<sup>66</sup> As in the Syrian Penal Code, Article 548 and the Lebanese Penal Code, Article 562.

<sup>67</sup> For example, the Syrian and Lebanese Penal Codes. The Libyan Penal Code limits the excuse the husband, father and brother, while the Turkish Penal Code limits it to the husband and brother of the victim. The Jordanian Penal Code includes a wider category of persons due to the usage of the term “female unlawfuls” which includes every woman who the man cannot marry either for blood, marriage (in-law) or nursing reasons. Abu-Odeh 1996, *supra* n. 28, 145. See also the Iraqi Penal Code.

<sup>68</sup> For example, Egypt, Kuwait and Tunisia.

<sup>69</sup> Article 279 of the Algerian Penal Code; Article 340 of the amended Jordanian Penal Code.

Thus, what makes such provisions remarkable is that, with the exception of the Algerian and Jordanian Penal Code, they only provide for the exemptions for the benefit on men, not women. Therefore such rules are clearly discriminatory as they place the perpetrators of a crime in unequal positions depending on their gender. As indicated above the penal codes in discussed states differ as to the extent and nature of the excuses. Considering the reasons for such differences Lama Abu-Odeh has argued that these provisions can be seen as interventions in the culture of honour killings and that they are an attempt to legitimise certain killings and de-legitimise others.<sup>70</sup> She argues that the various Arab criminal codes evidence a move away from a model of honour towards a model of passion. Therefore the paradigmatic honour killing, a father killing his daughter on her wedding night after it is discovered that she is not a virgin, is not covered by any of the excuses discussed above.<sup>71</sup> Also the fact that all codes require an element of surprise and that the killing must occur immediately is inconsistent with the idea of honour as understood in Arab societies. Presumably, Abu-Odeh argues, none of these considerations would hold in an honour-dominated culture.<sup>72</sup> Arguably this is a result of the hybrid character of the penal codes – applying old French criminal law to an Arab cultural context – and as Abu-Odeh argues, a conscious attempt on part of the legislature to de-legitimise certain aspects of the honour-culture. Furthermore Abu-Odeh argues these provisions are to be seen as a result of a compromise between the idea of ‘passion’ and the idea of ‘honour’, as discussed above in chapter 1.2 Therefore, despite the fact that these provisions are clearly discriminatory as they only provide for excuses only for men killing female relatives for reasons of honour or passion, they can still be seen as an attempt to, at least partially, de-legitimise the culture of honour so prominent in Arab societies. However, as will be discussed below (chapter 2.1.2) judiciaries in some states have used other provisions in the penal codes to circumvent the provisions discussed here in order to “go a step back” towards the culture of honour.

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<sup>70</sup> Abu-Odeh 1996, *supra* n. 28, 148.

<sup>71</sup> *Ibid.*, 148. In most national criminal systems a distinction is made between two types of defences, justifications and excuses. Defences relating to provocation or extenuating circumstances are excuse type of defences, whereas honour codes and honour killings are based on a notion of justifications.

<sup>72</sup> These provisions still have, Abu-Odeh argues, stopped short of fully adopting the model of passion. *Ibid.*, 154-6.

### 2.1.1.2 The Qisas and Diyat Ordinance of Pakistan

Section 300(1) of the Pakistan Penal Code (which codified English common law) used to provide for an exception which stated that culpable homicide is not murder if an accused in a murder case could demonstrate that he had been deprived of the power of self-control by grave and sudden provocation. Even though not explicitly recognising a defence only for males who kill female relatives, the courts' application of the provision resulted in a plethora of court decisions mitigating sentences in cases of honour killings.<sup>73</sup> This provision has subsequently been replaced by the 1990 Qisas and Diyat Ordinance<sup>74</sup> – a body of Islamic criminal law. *Qisas* (or *quesas*) are crimes which are defined in the *Qu'ran* and *Sunna*. Qisas crimes are murder, voluntary killings (manslaughter), involuntary killing, intentional physical injury or maiming and unintentional physical injury or maiming. These crimes give rise to two types of sanctions, *retaliation* (the principle of talion) or *diyat* (or *diyya*), *compensation*.<sup>75</sup> It should be noted that the principle of retribution does not apply if the victim was impious or was in the process of committing a crime, such as adultery.<sup>76</sup> In such a case the killing entails only *diyat* on part of the heir of the victim. Also, female Muslim victims and their heirs are only entitled to *diyat* the amount of which is half of that of a male.<sup>77</sup>

Thus, most acts of domestic violence, including honour killings, are encompassed by the Qisas and Diyat Ordinance.<sup>78</sup> In accordance with Islamic law the Qisas and Diyat Ordinance provides that the individual and/or his/her heirs retain the entire control

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<sup>73</sup> See, e.g., Spatz, *supra* n. 11, 603, notes 33-43, for citations of a number of pre-1990 cases.

<sup>74</sup> Criminal Law (second amendment) Ordinance 1990.

<sup>75</sup> The word *quesas/qisas* means equality or equivalence and implies that a person who has committed a violation will be punished in the same manner and by the same means that he used in harming the person. M. C. Bassiouni, 'Qesas crimes', in M. C. Bassiouni (ed.) *The Islamic criminal justice system*, Oceana Publ., 1982, 203-210, 203.

<sup>76</sup> In Islamic law, adultery, *zina*, is a so called *hudud/ hudood* crime for which the penalty is flogging for unmarried persons and stoning for married persons. The other *hudud* crimes are apostasy, transgression (similar to treason, armed rebellion), slander and drinking alcohol. On *Hudud* crimes see, e.g., A. A. Mansour, 'Hudud crimes', in M. C. Bassiouni (ed.) *The Islamic criminal justice system*, Oceana Publ., 1982, 195-201, 197-200.

<sup>77</sup> Bassiouni, *supra* n. 73, 208-9.

<sup>78</sup> Murder can also be punished by discretionary punishment, *ta'azir*, if the requirements for the imposition of *qisas* or *diyat* are not fulfilled. On *Ta'azir* crimes, see, G. Benmelha, 'Ta'azir crimes', M. C. Bassiouni (ed.) *The Islamic criminal justice system*, Oceana Publ., 1982, 211-225.

over a crime and the criminal and has the right to determine whether to report the crime, to prosecute the offender, to exact retribution or compensation or to pardon the accused. Therefore, serious crimes such as murder have been privatised and “the state cannot impede but must do its best to assist [the heirs] in achieving their object and in appropriately exercising their rights.”<sup>79</sup> Consequently, in cases of honour killing, for example, the father as the heir of the victim (his daughter) may choose to obtain compensation from the perpetrator or, for example, if the perpetrator is the girl’s own brother, the father may choose to pardon the perpetrator, his son, and the honour killing is settled by that. Moreover, in cases where the killings actually are investigated and prosecuted the courts have used other provisions to circumvent the harsh punishments for honour killings (murder is punished by death in Pakistan) and gradually reintroduced the provocation provisions of the pre-1990 laws. In some cases courts have found extenuating circumstances even when the murderer did not claim to have been suddenly and severely provoked. In one pre-1990 case a man killed his wife alleging that he had caught her committing adultery. Although the facts, including medical evidence, spoke against his assertion, the court accepted mitigating circumstances: “The appellant had two children from his deceased wife and when he took the extreme step of taking her life giving her repeated knife blows on different parts of her body, she must have done something unusual to enrage him to that extent.”<sup>80</sup> In another case from 1998 two men were sentenced to life imprisonment for killing their sister who had married a man of her choice. The Lahore High Court reduced the sentence (already undergone) to 18 months, saying that “in our society nobody forgives a person who marries his sister or daughter without the consent of parents of near relatives.”<sup>81</sup>

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<sup>79</sup> *Federation of Pakistan through Secy. Min. of Law vs. S. Gul Hassan Khan*, PLD 1989 SC 633, Quoted in Amnesty 1999a, *supra* n. 3, 12. See also Human Rights Watch, *Crime or custom? Violence against women in Pakistan*, 1999, notes 94-111 and accompanying text.

<sup>80</sup> *Muhammed Younis vs. the State*, 1989 Per LJ 1747, quoted in *Amnesty International: Pakistan: Honour killings of girls and women*, ASA 33/18/99, 14.

<sup>81</sup> *Mohammed Riaz and Mohammed Feroze vs. the State*, Lahore High Court, 1998, quoted in Amnesty 1999a, *supra* n. 3, 15. See also *Muhammed Sharif vs. the State*, Lahore High Court 1995 and *Mohammad Akram vs. the State*, Lahore High Court 1997. On more recent developments see, *infra* s. 2.1.5.

### ***2.1.2 Discriminatory application of general provocation and extenuating circumstances provisions***

In most states the criminal codes include various general provisions on provocation and extenuating circumstances. However, in some states such general, gender-neutral provisions are being applied in cases of honour killings, where the alleged dishonourable behaviour of the victim is seen as provocation. For example, in Brazil men who murder their wives have often benefited from significantly reduced sentences by pleading unjust provocation in accordance with Article 28 of the Brazilian Penal Code; significantly, the same mitigating circumstances have usually not been accepted when wives murder their husbands.<sup>82</sup> In Britain there is currently a debate on whether the defence of provocation should be reviewed. It has been argued that the provocation defence reflects a medieval view of marriage, and institutionalises the blaming of the victim. The discussed options for reform include discarding the provocation defence altogether or strictly limiting the circumstances in which provocation could be claimed, making clear that sexual jealousy is not enough.<sup>83</sup>

The Syrian Penal Code is noteworthy as it in addition to the general provocation and extenuating circumstances rules (Article 242 and Article 243 respectively) also includes a so called ‘honourable motive’ rule in Article 192: “*Lorsque le juge reconnaît que le motif était honorable, il appliquera les peines suivantes: au lieu de la peine de mort, la détention perpétuelle; au lieu des travaux forcés à perpétuité, la détention perpétuelle ou à temps pour quinze ans...*”.<sup>84</sup> Where the requirements of the special rule in Article 548<sup>85</sup> have not been satisfied it is the honourable motive rule

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<sup>82</sup> *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, Addendum, Report on the mission of the Special Rapporteur to Brazil on the issue of domestic violence* (15-26 July 1996), UN doc. E/CN.4/1997/47/Add.2, 21 Jan. 1997, para. 46. See also paras. 75, 91 and 104 of the Report.

<sup>83</sup> See, ‘*Crime of passion*’ is no defence, by Gaby Hinsliff, 19.1.2003, Guardian Unlimited Special Reports, <http://www.guardian.co.uk/crime/article/0,2763,877844,00.html>, site visited 31.3.2003. See also Leader-Elliott, I., ‘Passion and insurrection in the law of sexual provocation’, in N. Naffine & R. J. Owens, *Sexing the Subject of Law*, Sweet & Maxwell, 1997, 149.

<sup>84</sup> That is, where the judge recognises a honourable motive for a crime he may reduce the penalty from death penalty to life imprisonment, and from permanent hard labour to lifetime or 15 year imprisonment. (Own translation.) Also the Lebanese Penal Code includes a similar provision.

<sup>85</sup> See *supra* n. 66.

(which provides for harsher penalties than the provocation rule and the extenuating circumstances rule) that has been applied by the Syrian Court of Cassation in honour killings cases. Abu-Odeh characterises the Syrian courts as “manifesting a stronger desire than the Jordanian one to penalise the offenders, since the punishment attached by the honourable motive rule is greater than that of the provocation rule.”<sup>86</sup> However, Abu-Odeh argues that nonetheless also the Syrian courts tend to reconstitute the crime of honour in the traditional sense by circumventing Article 548.

Before its amendment in the end of 2001, Article 340 of the Penal Code was the provision that provided for an excuse in certain cases where men kill their female relatives in Jordan. After the amendment Article 340 provides for a reduction of penalty in cases of adultery for both women and men. However, the provision that is actually applied by court in cases of honour killings is not Article 340 but Article 98 which is a general provision dealing with crimes such as murders, robbery and rape. Article 98 provides that: “He who commits a crime in a fit of fury caused by an *unrightful and dangerous act* on the part of the victim benefits from a *reduction of penalty*.” (emphasis added). Interestingly enough, it seems that in the early day of Jordanian independence the Jordanian Court of Cassation did not apply Article 340 in a single case and argued against the application of Article 98 in several cases. Primarily the Court laid down very strict criteria of what an “unrightful and dangerous act” was and held that the (dishonourable) behaviour of the female victim could not be such an act. At times the Court also argued along the lines of the maxim *lex specialis* (Article 340) *derogat lex generalis* (Article 98).<sup>87</sup> However, in 1960s the Court overturned its previous position concerning the applicability of Article 98 to cases of honour killings and decided that the dishonourable act of the victim did amount to an unrightful act against the defendant, and/or against the defendant’s honour.<sup>88</sup> For example, the illegitimate pregnancy of a daughter was seen as an “unrightful and dangerous act” against the family’s honour.<sup>89</sup>

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<sup>86</sup> Abu-Odeh 1996, *supra* n. 28, 165.

<sup>87</sup> See Abu-Odeh 1996, *supra* n. 28, 158.

<sup>88</sup> See Abu-Odeh for a discussion of the case law of the Jordanian Court of Cassation relating to honour killings in the 1960s-1980s, *ibid.*, 157-161.

<sup>89</sup> Court of Cassation, Criminal 11/78, p. 458, 1978 as quoted in Abu-Odeh 1996, *supra* n. 28, 160.

Therefore, the attempts of the Jordanian legislature to de-legitimise certain forms of honour killings discussed above have been marginalized as a result of the judiciary's application of Article 98 and tolerant attitude towards honour killings. A similar, though weaker tendency is found in Syrian jurisprudence. It remains to be seen whether the recent change of climate in the Jordanian government and upper house of parliament will also affect the attitudes of the judiciary. The fact that the provision providing for exemption of penalty was deleted from Article 340 will not affect the application of Article 98, particularly as the provision providing for reduction of penalty was retained in Article 340. Therefore, even though the deletion of paragraph i) of Article 340 of course must be welcomed as an achievement, and particularly indicates that also the lower house of parliament shows interest for reform, it is certainly merely symbolic as Article 98 that is applied to cases of honour killings, not Article 340. And Article 98 still remains in force and is applied. For example, in June and July 2002, in two cases of honour killings where brothers had killed their sisters for reasons of honour sentences were reduced to 1 year's imprisonment (already served) and 3 months imprisonment respectively.<sup>90</sup> Women activists in Jordan remain optimistic and hope that the government will start considering also an amendment of Articles 98 and 97 of the Penal Code.<sup>91</sup>

### ***2.1.3 Honour killings and the impact of culture, traditions and customs on justice systems***

#### **2.1.3.1 The 'cultural defence'**

The states mentioned in the discussion above are all Arab or Muslim states in the Middle East or southern Asia. It is, however, a generalisation to say that western societies and courts always react to honour killings without being affected by the nature of the crimes. In Sweden the sentence of a father who killed his daughter for

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<sup>90</sup> *Jordan Times*, 12 June 2002, Rana Hussein, 'Murder charge reduced to misdemeanour in Azraq crime of honour case', and *Jordan Times*, 1 July 2002, Rana Hussein, 'Brother gets 3 months in prison for killing sister'.

<sup>91</sup> Rana Hussein, *Women activists set their eyes on 2002 polls after positive legislative changes*, 1 Jan. 2002, [http://www.amanjordan.org/english/daily\\_news/wmview.php?ArtID=6](http://www.amanjordan.org/english/daily_news/wmview.php?ArtID=6), quoting human rights activist Asma Khader. See Ch 2.1.5 on a more elaborate discussion on the turns in the amendments of Article 340 of the Penal Code.

honour related reasons was mitigated due to his cultural background, instead of being convicted of murder he was convicted of manslaughter.<sup>92</sup> In the United States the so-called cultural defence has developed during the last two decades. Judges and attorneys have relied on cultural, ethnic and religious background to lessen a defendant's responsibility for certain crimes. Courts have used the cultural defence to assess the defendant's mental state, "incorporating cultural factors into traditional defences".<sup>93</sup> In *People v. Chen*<sup>94</sup> the court used the cultural defence to reduce the sentence for a Chinese immigrant who had murdered his wife, because the court found that Chen had been driven to violence by traditional Chinese values about loss of manhood (his wife had admitted to having an affair). In *Quang Ngo Bui v. State*,<sup>95</sup> cultural evidence was admitted to shed light on the mental state of a Vietnamese man charged with the murder of his three young children. Bui reportedly killed them to help him save face after his wife's possible infidelity. In *People v. Toua Moua*,<sup>96</sup> the cultural background of a man shooting his wife because of her adultery led to a reduced charge. In another case where a Korean woman was raped by two Korean youths the court found that by going to bars with the men - an act supposedly unacceptable in her culture - the victim had effectively consented to have sex.<sup>97</sup> Also in Brazil culture has been used as an argument for the 'defence of honour'. For example, in the case of *Joao Lopes* the minority of the Supreme Court judges argued that the cultural context and understanding of the crime had to be taken into account

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<sup>92</sup> The case is discussed in Eldén, Å., "The killing seemed to be necessary": Arab cultural affiliation as an extenuating circumstance in a Swedish verdict', *6 NORA 2 [1998]*, 89. See, however, also Wikan, *supra* n. 36, 200, who describes a Norwegian case where the alleged cultural motivation of an attempted murder of a sister by her brother was seen as an *aggravating* circumstance.

<sup>93</sup> Spatz, *supra* n. 11, 620. Those who support the 'cultural defence' claim that recognition of such a defence will advance the achievement of individualised justice for the defendant as well as a commitment to cultural pluralism. Critics again refer to society's interests in maintaining order and providing equal protection before the law in arguing against the recognition of the cultural defence. J. J. Sing, 'Culture as sameness: toward a synthetic view of provocation and culture in criminal law', *108 Yale Law Journal [1999]*, 1845, 1847. Van Broeck notes that while the discussion in common law countries tends to focus on the 'cultural defence' aspect of so called culturally motivated crimes, the debate in the civil law countries concerns 'cultural offences'. See J. Van Broeck, 'Cultural defence and culturally motivated crimes (cultural offences)', *9 European Journal of Crime, Criminal Law, and Criminal Justice 1 [2001]*, 1, 1.

<sup>94</sup> *People v. Chen*, No. 87-7774, NY Sup.Ct., 21.3.1989.

<sup>95</sup> *Quang Ngo Bui v. State*, 551 So. 2d 1094, Ala. Crim. App. 1988.

<sup>96</sup> No. 328106-0, Fresno County Super. Ct. Nov. 28, 1985.

<sup>97</sup> See Sacks, V.L., 'An indefensible defence: on the misuse of culture in criminal law', *13 Ariz. J. Int'l & Comp. L. [1996]*, 523, n. 47 and following text.

and that if the ‘defence of honour’ is accepted in the other culture (other part of Brazil) also the Supreme Court must accept it.<sup>98</sup>

The logic of the cultural defence is thus that a defendant should be allowed to introduce evidence of his or her (foreign) cultural values in order to mitigate or negate her culpability. Hence the defendant should not be punished as severely – or not be punished at all – for behaviour that is sanctioned or promoted by the culture in the country of origin.<sup>99</sup> Particularly controversial is the use of the cultural defence in cases of so called non-volitional behaviour, that is, in cases where the defendant was aware of the illegality of the act, but was somehow unable to control his or her actions.<sup>100</sup> For example, few of those who commit an honour killing are not aware of the fact that murder is a crime; still that knowledge does not prevent them from carrying out their intention. In essence the cultural defence implies the recognition of cultural evidence under the provocation defence. Accordingly, in an Australian case<sup>101</sup> the defendant, a man of Turkish decent had killed his sixteen-year old daughter because she had shamed him. The question was whether the defence of provocation could be pleaded to reduce the charges from murder to manslaughter. The defendant argued that the jury should be allowed to take his Turkish and Muslim background into account in its consideration of the characteristics of “an ordinary man”. While the court held that the issue of provocation was to left to the jury it noted that the cultural background of the defendant could be taken into account in the consideration of the characteristics of an “ordinary man.” However, the court also noted that defence of provocation would not apply to any act in the nature of a ritual killing or a killing dictated by the accused man’s religious or political beliefs and convictions. The High Court of Australia has, however, subsequently rejected the cultural defence and stated that ethnicity should not be taken into account when determining the level of self-control of the “ordinary man”.<sup>102</sup> As the provocation defence in general has historically (in still is to a certain extent) been selectively available to men,<sup>103</sup> the

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<sup>98</sup> Nelson, *supra* n. 12, 548.

<sup>99</sup> Sing, *supra* n. 91, 1849.

<sup>100</sup> *Ibid.*, 1851-52.

<sup>101</sup> *R v. Dincer*, [1983] 1 V.R. 460, Supreme Court, Victoria, Australia.

<sup>102</sup> *Giovanni Masciantonio v. R* [1995] 69 ALJR 598

<sup>103</sup> Nourse, *supra* n, 50. Compare to discussion in chapter 1.2.

cultural defence represents a risk of “reintroducing “backward” gender-norms into criminal law.”<sup>104</sup> Often the discourse in cultural defence cases is also both gendered and racist, and often the female victim is thus multiply vulnerable and disadvantaged.<sup>105</sup> Some authors have argued that the cultural defence should be limited to so called non-volitional crimes, excluding defences based on “volitional” behaviour. According to this view such a doctrine would preclude defences based on ignorance of the law, and thus defences based on, e.g., FGM or honour killings.<sup>106</sup> Even though this approach may in principle represent a restrictive approach to the cultural defence, one must emphasize, as noted above, that few of those committing an honour killing would claim volitional behaviour, on the contrary the claims are arguably essentially non-volitional, as e.g., the Australian case referred to above. Thus there is arguably a substantial risk of unduly mitigated sentences in honour killing cases when the cultural defence is invoked.

### **2.1.3.2 Tribal justice systems: Pakistan and Palestine**

The Pakistani traditional system of informal settlement is not a punitive system but a system of settlement of disputes which is rooted in tradition and has no formal legal recognition, except in certain specified tribal areas.<sup>107</sup> Tribal *jirgas*,<sup>108</sup> consisting of elders of the tribe are headed by a *sardar*, the head of the tribe, deal with a wide range of issues ranging from claims to land and water and inheritance disputes to breaches of the honour code, including honour killings.<sup>109</sup> As justice is understood in terms of conciliation achieved by restoring the balance disrupted by an offence, the guilty is

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<sup>104</sup> Sing, *supra* n. 91, 1866.

<sup>105</sup> G. Bird & M. McDonnell, ‘Muslims in the dock: a transgressive narrative of law and life’, Vol. 5 Australian Journal of Human Rights [1997].

<sup>106</sup> In volitional crimes the defendant may admit that he or she committed an offensive act of purpose but raises the cultural defence to demonstrate that he or she lacked culpable intent. Sing, *supra* n. 91, 1851, 1866.

<sup>107</sup> See Amnesty International, *Pakistan: the tribal justice system* (hereafter Amnesty 2002), ASA 33/024/2002, 5 and generally for an overview of the tribal justice system. See also S. S. Ali, *Gender and Human Rights in Islam and International Law*, Kluwer Law International, 2000, 173-83; and Article 8 of the Constitution of Pakistan and the System of Sardari (Abolition) Act of 1976, as quoted in the Amnesty report.

<sup>108</sup> *Jirga* means literally meeting, the word *faislo* is a Sindhi term for both the meeting and the decision adopted by the meeting. Amnesty 2002, *supra* n. 105, 7.

<sup>109</sup> Amnesty 2002, *supra* n. 105, 7.

obliged to compensate the loss to the aggrieved party. Furthermore, it must be noted that women do not as a rule have access to the tribal justice system.<sup>110</sup> In honour crime cases compensation can be either money or a woman given as compensation to damaged honour.<sup>111</sup> The *jirga* system is commonly perceived as expeditious, reliable and restorative. It is also perceived as providing for lasting solutions to disputes.<sup>112</sup> The tribal justice system deals with honour killings in two ways. First, a *jirga* may order the killing of a woman who has allegedly violated the honour code. Second, a *jirga* may be involved in the reconciliation of a dispute after an honour killing has occurred. In these cases the victim (the man to whom the woman, *kari*, belonged) and accused (*karo*) are brought together before the *jirga* to settle their differences and to restore balance and peace.<sup>113</sup> In the Palestinian tribal justice system the tribal judges' first priority is to seek for means to provide *sutra*, or to conceal a scandalous incident, for example through forced marriage or, ultimately by killing the women concerned. Alternatively, the tribal notables will aim at preventing a scandal from further deterioration, *dabdabeh*, through e.g., retribution.<sup>114</sup> The decisions of the Pakistani *jirgas* are final. The fact that the *jirga* aims at conciliation means in cases of honour killings that the cases are neither investigated nor prosecuted and that the perpetrators are not punished.

According to Amnesty International the state authorities as a rule do not take action when *jirga* decisions have led to the killing of women for alleged breaches of the honour code or handing over women and children as compensation to settle disputes. In some cases state authorities have sought the assistance of tribal leaders to settle criminal cases. As the position of the *jirgas* is strong and they seem to enjoy considerable respect in the Pakistani society it has been suggested that the *jirgas* should be given official status. Some tribal leaders have also used their standing to introduce positive changes, for example, in March 2002 the leader of the Leghari tribe announced a complete ban on honour killings. The current government seems, however, to have taken the position that *jirga* decisions are not recognised. However,

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<sup>110</sup> *Ibid.*, 31.

<sup>111</sup> *Ibid.*, 14-15.

<sup>112</sup> *Ibid.*, 16-18.

<sup>113</sup> *Ibid.*, 14.

<sup>114</sup> Shalhoub-Kevorkian, *supra* n. 16, s. 4.

as the official, state justice system in Pakistan is perceived as inefficient, slow, expensive and remote and many people have lost faith in the police, many people escape criminal prosecution through the official system and turn to the traditional justice system instead.<sup>115</sup> Similarly, in Palestine, the influence of the tribal justice system is reported to have increased since the advent of the Palestinian National Authority and the security officials often seeks the assistance of the tribal notables in cases of social dispute, and particularly in those involving breaches of family honour. Interviews carried out with tribal notables, police officers, district governors and forensic specialists showed that the reasons for the continued utility of tribal law were the inaptness and marginalization of the formal judicial system in cases related to the sexuality of women and the inexperience of the Palestinian police in dealing with such cases.<sup>116</sup>

The legal status of women in Pakistan has been described as being defined by “interplay of tribal codes, Islamic law, Indo-British judicial traditions and customary traditions... [which have] created an atmosphere or oppression around women, where any advantage or opportunity offered to women by one law is cancelled out by one or more of the others.”<sup>117</sup> Also, it has been argued that with the imposition of the Hudood Ordinances and the Qisas and Dyiat Ordinance religious characteristics have been added also to the state judicial system and the distance between the state law and the informal traditional system is thus being bridged.<sup>118</sup> At the same time the public’s loss of confidence in the state judiciary and the fact that also state authorities are occasionally turning to the traditional tribal institutions in solving conflicts, has led to an impression that the state judicial system is dispensable and replaceable by alternative systems, such as the traditional tribal justice system.<sup>119</sup>

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<sup>115</sup> See Amnesty 2002, *supra* n. 105, 18-24, 32.

<sup>116</sup> Shalhoub-Kevorkian, *supra* n. 16, s. 4.

<sup>117</sup> Amnesty 1999b, *supra* n. 6, 11, quoting S. Kamal & A. Khan, *A study on the interplay of formal and customary law of women*, vol. I, 1997, ii.

<sup>118</sup> Ruane, *supra* n. 14, referring to F. N. Shah, ‘The informal settlement system and crimes against women in Sindh’, in Farida Shaheed et.al. (ed.) *Shaping Women’s Lives: Laws, Practices & Strategies in Pakistan*, 1998, 227, 250-251. On the application of the Hudood Ordinance in Pakistan to violence against women and particularly rape, see also Quraishi and Jahangir & Jilani, *supra* n. 55.

<sup>119</sup> See, Amnesty 1999, *supra* n. 6, 36.

### ***2.1.4 Problems relating to law enforcement***

Societal misconceptions and the reluctance of law enforcement officials to investigate violence against women is said to have created an atmosphere in Pakistan where such violence, including honour crimes, is rarely acknowledged and punished.<sup>120</sup> When confronted with cases of domestic violence police in Pakistan have been reported to refuse to register complaints, to have humiliated the victim and have advised the battered woman to return to her husband. In many cases of domestic violence police and medical personnel have reportedly hampered the legal process. Police are also usually reluctant to register complaints relating to honour killings. It should also be noted that in honour killing cases investigating police officials often receive little support from the family of the victim as the practice continues to have wide social approval and are thus dependant on circumstantial evidence.<sup>121</sup> In Jordan, law enforcement officials often concentrate on the assailant and tend to overlook the involvement of the family in carrying out and arranging the crime. Also, even though the Jordanian government tries to protect women from honour killings, the women who are under such threat are being kept in protective custody in prisons or correctional facilities. Reportedly every year 50-60 women are placed ‘administrative detention’ for protection reasons.<sup>122</sup> Also, financial corruption seems to contribute to the inaction of the police in honour killing cases.<sup>123</sup> In Palestine police officers have complained of lack of resources and support and the public do not consider the police force to be a viable address. Whereas some police officers supported the traditional code of honour and saw their role mainly as one of teachers urging deviant women to return to the traditional role in the family, others perceived the problem of honour crimes as result of confusion within cultural and social codes. The latter perceived the return to “authentic norms and traditions” as the primary solution to the problem whereas empowerment of women and development of appropriate methods of intervention was seen as a secondary approach. Interestingly many police officers

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<sup>120</sup> Ruane, *supra* n. 14, 1542-43.

<sup>121</sup> Amnesty 2002, *supra* n. 105, 47, Quoting Justice Nasirul Mulk of the Peshawar High Court. See also Amnesty 1999, *supra* n. 6, 52.

<sup>122</sup> See Ruane, *supra* n. 14, 1555. See also BBC News Online, [www.news.BBC.co.uk](http://www.news.BBC.co.uk), *Jordan women seek jail ‘sanctuary’*, 7 July 2000.

were critical of the prevalent tribal policy used to address honour crimes in Palestine and some presented very creative methods for protecting women against further abuse or death. Many felt, however, that in practice there were no opportunities for them to apply their views.<sup>124</sup> Also many state officials in Pakistan have officially recognised the problem of honour killings and made recommendations to solve it. For example, a high police official, the Inspector General of Sindh Police, Aftab Nabi, has suggested that honour killings should be made a separate offence and not be tried under the Qisas and Diyat Ordinance and that specific laws dealing with honour killings and domestic violence were needed in order to ensure effective protection of women.<sup>125</sup> Also representatives of the judiciary have deplored the low conviction rate and nominal punishments cases of honour killings and stated that these are the reasons for the uncontrollable nature of crimes of honour in Pakistan.<sup>126</sup> Despite such statements, no concrete measures have been taken.

### ***2.1.5 Debates on legal reform: Pakistan and Jordan***

In Pakistan, state officials have on several occasions taken up the need for reform of laws affecting women. For example, the Pakistani Interior Minister General (Rtrd.) Moinuddin Haider has said that “all discriminatory laws against women should be repealed or amended to remove discrimination against women.”<sup>127</sup> Also Chief Justice Saeed uz Zaman Siddiqui has said that laws and procedures in Pakistan were in need or urgent reform to stop discrimination against women.<sup>128</sup> Further, the Minister for Women, Development, Social Welfare and Special Education, Dr Attiya Inayatullah, said in November 2001 that the government was preparing a policy and a legal framework of ‘zero tolerance’ in relation to gender-based violence.<sup>129</sup> Also members of the judiciary have spoken for legislative change. For example, a judge of the

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<sup>123</sup> See report of Amnesty International 1999, *supra* n. 6, 53.

<sup>124</sup> Shalhoub-Kevorkian, *supra* n. 16, s. 5.

<sup>125</sup> Amnesty 2002, *supra* n. 105, 43-47.

<sup>126</sup> A. Sabir, ‘Law the end honour killings demanded’, 11 April 2001, Dawn, [www.dawn.com](http://www.dawn.com), site visited 8.1.2003.

<sup>127</sup> As quoted in Amnesty 2002, *supra* n. 107, 9.

<sup>128</sup> See Amnesty 2002, *supra* n. 107, 10.

<sup>129</sup> *Ibid.*, 10.

Peshawar High Court has suggested that special teams should be created to investigate cases of honour killings. Moreover, he suggested that in cases where the right of *qisas* was waived or compounded by the legal heirs of the victim courts could still pursue the case under Section 311.<sup>130</sup> The issue of honour killings has also been debated in the Pakistani senate, where, for example, Senator Iqbal Haider in 1999 presented a resolution condemning the killing of Samia Sarwar. In response to this resolution, other senators were reported to having shouted threats against the two lawyers concerned with Samia's case. Regrettably the resolution failed.<sup>131</sup> Despite such statements no concrete action to amend or abolish laws that are discriminatory towards women is known to have been taken.<sup>132</sup> There are, however, a few cases where perpetrators of honour killings have been convicted for murder<sup>133</sup> and in some cases higher courts have enhanced sentences for murder in honour killing cases where lower courts have been more lenient. For example, a division bench of the Lahore High Court at Multan sentenced Abdul Hamid to death for murdering his niece Hafeezaan and a boy, Abid Hussain in 1996 on suspicion of intimacy. Abdul Hamid had earlier been convicted for murder and sentenced to seven years imprisonment by a sessions court in Rajanpur. It is worthwhile to quote Justices Tasaduq Husain Jilani and Raha Muhammad Sabir: "We have had a string of government functionaries, ministers, judges and senior police and law enforcement officials saying publicly that legislation against 'honour' killings needed to be toughened. Following this, one would have expected certain changes in the law but unfortunately none came. ... It would be a significant step forward if the government...makes up its mind and introduces legislation that makes 'karo-kari' premeditated murder."<sup>134</sup> Moreover, the Supreme Court held in a recent judgment that honour killings cannot be justified on any ground. The Court did, however, state that it would not comment on whether honour killings are justified or not. Further, in relation to the case concerned the Court noted that especially the killing of family members of the person who is accused of

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<sup>130</sup> Quoting Justice Nasirul Mulk, Peshawar High Court, Amnesty 2002, *supra* n. 107, 47.

<sup>131</sup> See Ruane, *supra* n. 14, 1546-1548; *Women's International Network News* 25-4 Autumn 1999, 36.

<sup>132</sup> Amnesty 2002, *supra* n. 105, 10-11. The amendment of the Criminal Procedure Code (November 2001, new Section 174A) must, however, be noted as a positive development.

<sup>133</sup> See, e.g., Amnesty 2002, *supra* n. 105, 52, referring to a case where two brothers sentenced to death for murdering the wife of one of them when they had suspected her of an illicit relationship.

<sup>134</sup> *Ibid.*, judgment 26.10.2001.

dishonourable act and who have no role in dishonouring any person could not be justified on any ground. Moreover, the facts of the case were not those of a paradigmatic honour crime, and the case seemed to be a “fake” honour killing case.<sup>135</sup> Members of the judiciary have also noted that the judiciary in Pakistan has forsaken an important role of the judiciary, namely leading the way of reform and progress in the area of personal liberty Courts can either choose to reflect existing and broadly accepted norms of society or they can use the law as an instrument for change, said Justice Sabihuddin Ahmed.<sup>136</sup> Hopefully, the recent Pakistani case law indicates a step in latter direction.

In Jordan there has been a lively debate on the issue of abolishing the practice of honour killings and Article 340 of the Jordanian Penal Code. Shortly before his death in 1999 the late King Hussein condemned violence against women and children and his son, King Abdullah II, has continued on this line and called for repeal of Article 340 and an end to the absolving excuse.<sup>137</sup> Consequently, the Jordanian Justice Minister Hamzeh announced the plan to abolish Article 340. Also the Chief Islamic Justice Sheikh Ezzedin al-hatib al Tamimi called for tough punishment for honour criminals.<sup>138</sup> Also an active citizen’s campaign against honour killings was organised in which also members of the Jordanian royal family participated. Also the Senate played an active role in the campaign to amend Article 340.<sup>139</sup> These efforts met considerable resistance, particularly from the conservative Lower House of the parliament, which twice rejected draft amendments of Article 340.<sup>140</sup> Finally, in the end of 2001 an amendment to Article 340 was finally accepted also by the Lower

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<sup>135</sup> R. Ali, ‘Honour killings unjustified: SC’, 4 June 2002, Dawn, [www.dawn.com](http://www.dawn.com), site visited 23 May 2003.

<sup>136</sup> Amnesty 1999b, *supra* n. 6, 55, quoting statement of Justice Sabihuddin Ahmed of the Sindh High Court in February 1999.

<sup>137</sup> See statement of the Jordanian representative to the 56<sup>th</sup> session of the UN Commission on Human Rights, Commission on Human Rights *Summary Record of the 32<sup>nd</sup> Meeting*, 6 April 2000; UN doc. UN doc. E/CN.4/2000/SR.32, 3 Oct. 2000, para. 1; and Ruane, *supra* n. 14, 1556.

<sup>138</sup> See Ruane, *supra* n. 14, 1556, referring to a number of articles on Jordanian newspapers.

<sup>139</sup> *Ibid.*, 1556-60.

<sup>140</sup> See statement of the Jordanian representative to the 56<sup>th</sup> session of the UN Commission on Human Rights, *supra* n. 137, para. 1. See also Human Rights Watch, press release, *Jordanian Parliament supports impunity for honour killings*, 27 Jan. 2000, <http://www.hrw.org/press/2000/01/jord0127.htm>, page visited 21 Oct. 2002.

House of the Parliament.<sup>141</sup> Regrettably this amendment, as noted above, is only partial as it abolishes only the excuse granting total exemption from penalty in cases of adultery. The provision on reduction of penalty still remains in force as does Article 98, as discussed above. Despite this, the recent debate reflects a change in the Jordanian society as to attitudes and awareness about women's rights. As such the amendment must be acknowledged as a positive step towards eliminating the practice of honour killings and on a more general level toward greater enjoyment of human rights for women. Still, there is much work left.

## **2.2 Government statements concerning honour killings**

Recently honour killings have been discussed quite frequently in various international bodies and some governments where these crimes occur have been questioned in relation to these violations. Such government statements are briefly summarised in the following in order to provide an overview of the official statements of the governments concerned in relation to honour killings.

### ***2.2.1 Turkey***

Responding to the report of the Special Rapporteur on violence against women (2000) the representative of Turkey “expressed astonishment” that Special Rapporteur had “unjustifiably” included Turkey among the countries in which honour killings take place. She pointed out that the Turkish government had provided information on the subject to the Special Rapporteur on extrajudicial, summary and arbitrary executions at her request and not in response to a complaint. Moreover, she noted that the Turkish Penal Code laid down very severe penalties for persons engaging in such inhuman practices.<sup>142</sup> During the discussion on the initial report of Turkey before the Committee on the Rights of the Child the representatives of the Turkish government acknowledged that although the provisions of the Turkish Penal Code may have been

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<sup>141</sup> See *supra* s. 2.1.2, n. 86-90 and following text.

<sup>142</sup> CHR *Summary Record of the 37<sup>th</sup> Meeting*, 10 April 2000, UN doc. E/CN.4/2000/SR.37 (7 July 2000), para. 78.

acceptable at the time of their adoption (1926) this was no longer the case, particularly as it “was in complete contradiction with the prescriptions of various international instruments.”<sup>143</sup> The representative of the government also informed the Committee that a draft new criminal code would therefore abolish such provisions from the law. Furthermore, she said that the General Directorate of the Status and Problems of Women supported awareness programmes and that various panels had been organized to study the question of honour killings. The outcome of such work had been published and widely circulated by the General Directorate. Also television broadcasts had been produced on the subject.<sup>144</sup>

### **2.2.2 Lebanon**

Honour killings were also discussed during the examination of the second periodic report by Lebanon to the Committee on the Rights of the Child in 2002.<sup>145</sup> The Lebanese representative noted that honour killings “were now so rare in Lebanon that one could no longer speak of a social phenomenon.” He continued by noting that women’s associations were nevertheless campaigning for amendment of the criminal provisions on honour killings which established no penalties against men for such offences.<sup>146</sup>

### **2.2.3 Jordan**

Commenting the report of the Special Rapporteur on extrajudicial executions (2000), the representative of Jordan stated that the Jordanian authorities did not ‘maintain a deadly and deliberate silence’ about honour killings and that there had been a sharp drop in honour crimes. She also said that crimes of honour were the result of social pressure and indoctrination and traditions and customs could not be changed

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<sup>143</sup> CRC *Summary Record of the 702<sup>nd</sup> Meeting: Turkey*, 11 Feb. 2002, CRC/C/SR.702, para. 5.

<sup>144</sup> *Ibid.*.

<sup>145</sup> UN doc. CRC/C/70/Add.8.

<sup>146</sup> CRC *Summary Record of the 752<sup>nd</sup> Meeting: Lebanon*, 17 Sept. 2002, UN doc. CRC/C/SR.752, para. 3.

overnight.<sup>147</sup> Responding to the report of the Special Rapporteur on violence against women, the Jordanian representative explained that a crime considered in some parts of the world to be a crime of passion was deemed an honour killing in other parts. She stressed that the Jordanian delegation had demonstrated that the perpetrators of honour killings did not remain unpunished in Jordan, even if some sentences were reduced in certain circumstances. She noted that The Jordanian Government had placed a bill before Parliament to annul article 340 of the Penal Code in respect of honour killings, but regrettably the bill had failed to pass.<sup>148</sup> Responding to NGO statements on various topics before the Commission on Human Rights some state representatives took up honour killings in their statements. The representative of Jordan said that Jordan neither approved nor condoned honour crimes. However, she stressed that there were extenuating circumstances in some cases that allowed for a reduction in sentence and added that such circumstances were found in many legal systems.<sup>149</sup> Moreover, she said that in Jordan, the criminal law was comprehensively enforced and no one was immune.<sup>150</sup>

#### **2.2.4 Egypt**

In the response to NGO statements in the CHR in 2000 the representative of Egypt stressed that a distinction should be made between two different things, namely, extenuating circumstances and the denial of justice and failure to prosecute. Also he argued that the concept of extenuating circumstances was well established in criminal law in all parts of the world and that all such circumstances for which provision was made in the Egyptian Penal Code were compatible with international standards and in line with modern legislation elsewhere. The Egyptian legal system did not distinguish between men and women, although there were examples of positive discrimination,

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<sup>147</sup> Commission on Human Rights *Summary Record of the 32<sup>nd</sup> Meeting*, 6 April 2000, UN doc. E/CN.4/2000/SR.32 (3 Oct. 2000), para. 1.

<sup>148</sup> CHR *Summary Record of the 37<sup>th</sup> Meeting*, 10 April 2000, UN doc. E/CN.4/2000/SR.37 (7 July 2000), para. 43, 79-80.

<sup>149</sup> CHR *Summary Record of the 34<sup>th</sup> Meeting*, 7 April 2000, UN doc. E/CN.4/2000/SR.34 (28 April 2000), para. 55.

<sup>150</sup> *Ibid.*, para. 56.

such as in the new Family Affairs Act, which constituted clear affirmative legal action in favour of women.<sup>151</sup>

### **2.2.5 Pakistan**

The government of Pakistan has in recent years repeatedly expressed their concern about the practice of honour killings. On the highest level, General Musharraf said in Islamabad in April 2000 that “the Government of Pakistan vigorously condemns the practice of so-called ‘honour killings’. Such actions do not find any place in our religion or law.”<sup>152</sup> Moreover, the Interior Minister General (retrd.) Moinuddin Haider stated in September 2000 that he had directed the police to register police reports in honour killing cases even if the killers have tried to take shelter behind verdicts of tribal councils (*jirgas*), as such councils were not recognised by law. He further said that “the law is going to be amended to end this un-Islamic practice. And those who commit murders in the name of honour should be hanged.”<sup>153</sup> Furthermore, a government hand-out from July 2000 states that the practice of honour killings “is carried over from ancient tribal customs which are anti-Islamic.” More importantly it continued: “The government is committed to combating this practice with all the resources at its disposal. The present leadership in Pakistan had launched a national human rights campaign, singling out honour killings for special denunciation. Administrative instructions have been issued to ensure that due process of law takes its course un-hindered and there is no manipulation in either the registration or proceedings of such cases.”<sup>154</sup> Moreover, demands for a law to abolish honour killings have been called for by various representatives of the police and judiciary.<sup>155</sup> Also other state bodies have denounced honour killings. The Council of Islamic Ideology has emphasised that Islam does not permit honour killings and that nobody could be

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<sup>151</sup> *Ibid.*, para. 57.

<sup>152</sup> As quoted in Amnesty International, *Pakistan: Insufficient protection of women*, 2002, ASA/33/006/2002 (hereafter Amnesty 2002b), 6.

<sup>153</sup> As quoted in Amnesty 2002b, *supra* n. 150, 6-7.

<sup>154</sup> As quoted in Amnesty 2002b, *supra* n. 150, 6.

<sup>155</sup> See, Arman Sabir, ‘Law to end honour killings demanded: seminar on human rights, policing’, 11.4.2001 Dawn, [www.dawn.com](http://www.dawn.com). Site visited 23 May 2003.

punished without being held for any reported sin.<sup>156</sup> Also a few other Islamic clerics have publicly spoken against honour killings.<sup>157</sup> However, not everybody shares the government's statements. For example, the chairman of the Sindh National Front has defended honour killings and said that if in "a country which already lacks honesty, truthfulness, faithfulness and hard work, if one is condemned to death for maintaining his honour and self-respect, then what is left for him to live."<sup>158</sup>

The Pakistani government has been anxious to defend its reputation also in international fora. Commenting the report of the Sub-Commission Special Rapporteur on harmful traditional practices the Pakistani representative stated that the government of Pakistan "vigorously condemned" honour killings and that it was determined to ensure that the law was enforced and to prevent and punish such crimes.<sup>159</sup> Responding to NGO statements in the CHR (2000) the representative of Pakistan stressed that the Pakistani government had at the highest level affirmed that "there was nothing honourable about so-called honour killings" and the government would combat the practice of honour killings by all the means at its disposal. Such killings were, she said, not sanctioned by religion but were un-Islamic and remnants of ancient tribal customs.<sup>160</sup> During the 57<sup>th</sup> session of the CHR the Pakistani delegate argued that "the barbaric practice of so-called honour killings had been wrongfully associated with Islamic societies." She wished to stress that there was no compatibility between such criminal acts and Islamic States or the religion of Islam. Her Government considered all forms of passion killing, including "honour killings", to be murder and was firm in combating the practice through full implementation and

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<sup>156</sup> Statement by Qazi Hussain Ahmed, leader of the Jamaat-i-Islami, reported in Dawn, 20.4.2000, [www.dawn.com](http://www.dawn.com), site visited 23 May 2003. In a statement in reply to an inquiry by Amnesty International the Council had, however, stated that "nevertheless, if ... a person kills ... a person on sudden provocation and then proves before the court, by producing four witnesses that the person so killed by him was committing adultery, he shall not be liable to qisas though the court may award taazir [discretionary punishment] punishment in this case." Letter by the Council of Islamic Ideology to Amnesty International of 22.4.2000, referring to the Council's 139<sup>th</sup> session 6-7.12.1999, as quoted in Amnesty 2002b, *supra* n. 152, 7.

<sup>157</sup> See Amnesty 2002b, *supra* n. 150, 7.

<sup>158</sup> Statement by Sardar Mumtaz Ali, the Chairman of SNF. 'SNF defends honour killings', 24.4.2000, Dawn, [www.dawn.com](http://www.dawn.com).

<sup>159</sup> Sub-Commission on the Promotion and Protection of Human Rights, *Summary Record of the 14th Meeting*, 10 Aug. 2000, E/CN.4/Sub.2/2000/SR.14 (5 Sept. 2000).

<sup>160</sup> CHR *Summary Record of the 34<sup>th</sup> Meeting*, 7 April 2000, UN doc. E/CN.4/2000/SR.34 (28 April 2000), para. 83.

enforcement of the law. The administrative and law-enforcement agencies in Pakistan were under strict instructions to permit no manipulation in registering or processing such cases.<sup>161</sup>

## **2.3 State responses to honour killings – initial conclusions**

The aim of this chapter has been to provide an overview of the practice of honour killings and the culture of honour that lies behind such crimes. Moreover, the purpose has been to provide a basis for the discussion on state responsibility for honour killings as human rights violations. As will be discussed in more detail in the next chapter, only such cases of honour killings where the state for some reason fails to protect the human rights and fundamental freedoms that are violated by the act of honour killing can be considered violations of international human rights law. Therefore, this chapter has discussed the legislation, law enforcement and adjudicatory practices that in some way are responsible for lack of protection against honour killings. The gender biased attitudes of the police, corruption and lack of resources, amongst other factors lead to a situation where honour killings are neither reported, filed, nor investigated, let alone prosecuted. Various states, particularly Middle Eastern states, have clearly discriminatory provocation defences in their criminal codes. Such provisions provide for either a reduction or exemption of penalty for a man who kills his wife for reasons of adultery or reduction of penalty if he kills his sister or other female relative for “illegal sexual relations”. In addition to the discriminatory provocation defences, the *qisas* and *diyat* provisions of Islamic law (e.g., in Pakistan) provide for another codified means of reduction or exemption of penalty for the perpetrator of an honour killing. In addition to these codified means of reducing or exempting perpetrators of honour killings from penalty, also the application of laws by courts may give the same result. Article 98 of the Jordanian Penal Code provides for a notorious example. In some countries, e.g., Pakistan, a system of tribal justice operates alongside the official courts and deals with a

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<sup>161</sup> CHR *Summary Record of the 45<sup>th</sup> Meeting*, 9 April 2001, E/CN.4/2001/SR.45 (18 April 2001), para. 30. See also CHR *Summary Record of the 15<sup>th</sup> Meeting*, 26 March 2002, E/CN.4/2002/SR.15 (8 April 2002), para. 79.

considerable amount of cases of honour crimes and killings, usually without any consideration for the official laws or guarantees for a fair trial, sometimes authorising honour killings as a remedy for lost honour. Outside the Middle East, the so-called cultural defence has been invoked to reduce a defendant's responsibility for certain crimes. Such evidence clearly provides a basis for discussing honour killings as violations of international human rights law.

As discussed above the officials of several states where honour killings occur have made various statements where they have emphasised that honour killings are illegal and that they will take measures to combat the crimes. Although such statements must be welcomed as indications of a turn in the attitudes of many governments towards honour killings and violence against women, they must be contrasted with the numerous reports evidencing a strong gender bias in the justice systems of these states. Also, it is remarkable that the forceful statements made by Pakistani government officials have not led to any legislative reforms, despite the fact that some progressive judges have spoken strongly against honour killings in a few cases. Could it also be that the government is afraid of enacting laws that cannot be implemented as the public support for the honour culture and its implications (including honour killings) is so strong? In Jordan, again, the recent legislative reforms must be seen as an indication of changed attitudes towards violence against women and conceptions of honour. It remains to be seen whether these changes in the Jordanian government and upper house of parliament will also affect the attitudes of the judiciary, and more importantly the public at large. Therefore, even though the amendment of Article 340 of course must be welcomed as an achievement, and particularly indicates that also the lower house of parliament shows interest for reform, it is certainly merely symbolic as Article 98 continues to be applied to cases of honour killings, resulting in mitigated penalties for perpetrators of honour killings. Still, a considerable step forward has been taken as honour killings are actually discussed both on the national and international level, in Jordan and elsewhere.

## 3 International accountability for honour killings as human rights violations

### 3.1 Introduction

Because the purpose of human rights law has been understood as protecting individuals against abuses perpetrated by the state and its officials, abuses committed by private actors have traditionally been excluded from the ambit of international human rights law and many forms of violence against women have thus not been viewed as violations imputable to the state. Furthermore, the traditional view of the law of state responsibility holds a state accountable only for breaches of international obligations committed by or attributable to the state.<sup>162</sup> The international understanding of state responsibility has, however, significantly widened in recent years and states are by now obliged to accept the ‘privatisation’ of human rights as a “juridical fact” and states can no longer argue that international treaties have no relevance for the activities of private persons.<sup>163</sup> In the words of the Inter-American Court of Human Rights, “an illegal act which violates human rights and is not ...

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<sup>162</sup> See, e.g., Cook (1994), R., ‘State responsibility for violations of women’s human rights’, 7 *Harvard Hum. Rts. J.* [1994], 125-176, 127. The (feminist) discussion on this issue has largely evolved around the dichotomy between the public and private spheres; international law operating in the former and excluding the latter (which women are usually confined to) from its scope. E.g., Bunch, C., ‘Women’s rights as human rights: toward a re-vision of human rights’, 12 *HRQ* [1990], 486-498; Charlesworth, H., Chinkin, C., Wright, S., ‘Feminist approaches to international law’, 85 *AJIL* 4 [1991], 613-645; Cook, R., ‘Women’s international human rights law: the way forward’, 15 *HRQ* 2 [1993], 230-261; Romany, C., ‘State responsibility goes private: a feminist critique of the public/private dimension in international human rights law’, Cook, R. (ed.), *Human rights of women*, UPP, 1994, 85-115; Sullivan, D., ‘The public/private distinction in international human rights law’, Peters, J & Wolper, A. (eds.) *Women’s rights, human rights*, Routledge, 1995, 126-134; Chinkin, C., ‘A critique of the public/private dimension’, 10 *EJIL* 2 [1999], 387-396.

<sup>163</sup> A. Clapham, *Human Rights in the Private Sphere*, Clarendon Press, 1993, 111. See s. 3.2 for a more elaborate discussion on positive obligation to protect human rights. It should also be noted that also the customary understanding of state responsibility attributes responsibility to the state for acts (or omissions) committed by private actors not acting on behalf of the states in certain circumstances, e.g., where the state does not exercise due diligence in the control of private persons. This doctrine has its origins in state responsibility for injuries to aliens. E.g., Brownlie, I., *System of the law of nations: state responsibility Part I*, Clarendon Press, 1983, 160-3; Kamminga, M., *Inter-state accountability for violations of human rights*, UPP, 1992, 143; Meron, T., *Human rights and humanitarian norms as customary law*, Clarendon Press, 1989, 164; and Crawford, J., ‘Revising the Draft Articles on State Responsibility’, 10 *EJIL* 2 [1999], 435.

imputable to a State (for example, because it is the act of a private person...) can lead to the international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it [...]”.<sup>164</sup> States are therefore obliged to exercise due diligence to eliminate, prevent, reduce and mitigate private discrimination and harmful acts and are responsible for acts of private persons if they have not exercised due diligence to prevent the violation or respond to it.<sup>165</sup> In other words, in addition to the obligation to respect the human rights of individuals, states also have a positive obligation to protect and ensure the human rights and fundamental freedoms.

Although abuses by private actors such as honour killings are crimes under the domestic laws of most countries, it is thus the systematic failure by states to prevent and investigate these crimes and to punish the perpetrators that is the reason why honour killings are and should be on the international human rights agenda. Accordingly, the UN Special Rapporteur on extrajudicial, summary and arbitrary executions has taken up the issue of honour killings in her reports where the state either approves of or supports honour killings or extends impunity to the perpetrators by giving tacit support to the practice.<sup>166</sup> A parallel can be drawn to the UN Convention against Torture,<sup>167</sup> where *travaux préparatoires* make clear that the requirement of state involvement was based on the expectation that as regards private violence and abuses “the normal machinery of justice will operate... and prosecution

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<sup>164</sup> *Velasquez Rodriguez case*, Inter-American Court of Human Rights, judgment 27.7.1988, (Ser. C, No. 4), para. 172. Due diligence requires such reasonable measures of prevention that a well-administered government could be expected to exercise under similar circumstances. Shelton, D., ‘State responsibility for covert and indirect forms of violence’, Mahoney & Mahoney (eds.) *Human Rights in the 21<sup>st</sup> century*, Martinus Nijhoff Publ., 1993, 272. The states do thus have a duty to prevent, investigate, punish and remedy human rights violations committed by private actors. See *Velasquez Rodriguez*, para. 173-4.

<sup>165</sup> D. Shelton, ‘State responsibility for covert and indirect forms of violence’, 272 in Mahoney & Mahoney (eds.) *Human Rights in the 21<sup>st</sup> century*, Martinus Nijhoff Publ., 1993 and R. Cook, ‘Violations of women’s human rights’, 7 *Harv. Hum. Rts. J.*, 127.

<sup>166</sup> *Extrajudicial, summary or arbitrary executions, report of the Special Rapporteur, Ms. Asma Jahangir*, UN doc. E/CN.4/2001/9, 11 Jan. 2001, para. 41. The Commission on Human Rights resolutions on extrajudicial, summary and arbitrary executions which have repeatedly called upon governments to investigate honour killings, bring the responsible to justice and ensure that honour killings are not condoned by the government. See most recently *resolution 2002/36*, para. 6, *resolution 2001/45*, para. 7;. The Commission also referred to the *inherent* right to life in relation to honour killings.

<sup>167</sup> *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, GA resolution 39/46, 10 Dec. 1984, entry into force 26 June 1987.

and punishment will follow.”<sup>168</sup> Therefore it is the absence of effective state action not only to punish violence against women but also to “dismantle the system of unequal power”<sup>169</sup> between men and women that is the reason for the need to recognise honour killings as a human rights violation meriting the accountability of states.

The issue of honour killings is not explicitly addressed in any human rights instruments, and with the exception of the UN Declaration on the Elimination of all Forms of Violence against Women<sup>170</sup> and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women,<sup>171</sup> also the wider issue of violence against women remains an area untouched by international human rights instruments. Despite this, honour killings are in violation of a number of human rights and a mandate to deal with honour killings as human rights violations can be derived both from general and women specific human rights instruments and, at least to some extent, from customary international law.

Being either manslaughter or murder, honour killings self-evidently violate the right to life. Provisions safeguarding the right to life may be found in various international human rights instruments, including the Universal Declaration on Human Rights (UDHR) Article 3, the International Covenant on Civil and Political Rights (ICCPR) Article 6, the Convention on the Rights of the Child (CRC) Article 6, the European Convention on Human Rights and Fundamental Freedoms (ECHR) Article 2, the American Convention on Human Rights (ACHR) Article 4, and the African Charter on Human and People’s Rights (ACHPR) Article 4. Moreover, the right to life in the context of violence against women is reaffirmed in the UN GA Declaration on the

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<sup>168</sup> Burgers, H. & Danelius, H., *The United Nations Convention against torture – A Handbook on the Convention against torture, and other cruel, inhuman or degrading treatment or punishment*, 1988, 119-120.

<sup>169</sup> Copelon, R., ‘Recognising the egregious in the everyday: domestic violence as torture’, 25 *Columbia Human Rights Law Review* [1994], 291-367, 344.

<sup>170</sup> *Declaration on the Elimination of Violence against Women*, 20.12.1993, UN GA res. 48/104, 48 UN GAOR Supp. (No. 49), 217, UN Doc. A/48/49; *UN GA resolution 55/66*, 31.1.2001.

<sup>171</sup> *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women*, 33 I.L.M. 1534 (1994), entered into force 5.3.1995.

Elimination of violence against Women<sup>172</sup> and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.<sup>173</sup>

Under international law states are obliged to ensure the protection of human rights to all persons, without discrimination.<sup>174</sup> Furthermore, states must ensure that all persons enjoy the right to equal protection of law and equality before the law. Provisions including the principle of equality and providing for the prohibition against discrimination are found in various instruments. The UDHR prohibits discrimination in Article 2 and provides for the right to equality before the law in Article 7. The ICCPR includes a comprehensive non-discrimination provision in Article 26 in addition to the equality provision in Article 3. Article 2(1) of the Covenant obliges all states to respect and ensure *to all persons* within its jurisdiction the rights recognised in the Covenant, *without distinction of any kind*, such as race, colour, sex, language, religion political or other opinion, national or social origin, property, birth or other status. All the regional treaties include a similar provision that guarantees the rights in the respective treaties without discrimination.<sup>175</sup> In addition, Protocol 12 to the ECHR provides for a free-standing non-discrimination provision.<sup>176</sup> Also, Article 15(1) of Convention on the Elimination of All forms of Violence Against Women (CEDAW) provides that state parties shall “accord to women equality with men before the law.” The ICCPR similarly provides that “All persons shall be equal before the courts and tribunals”.<sup>177</sup> Arguably honour killings constitute discrimination where the laws applicable to these crimes treat men and women on an unequal basis as they provide

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<sup>172</sup> *Declaration on the Elimination of Violence against Women*, e.g., Article 3. Article 1 of the Declaration defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”

<sup>173</sup> E.g., Articles 3 and 4.

<sup>174</sup> Discrimination as used in the ICCPR should be understood as implying any “distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.” ICCPR *General Comment 18: Non-discrimination*, 10.11.1989, para. 7. This definition is derived from the wording of CERD and CEDAW respectively, see CERD Article 1(1) and CEDAW Article 1.

<sup>175</sup> ACHR Article 1; ACHPR Article 2; CRC Article 2(1); and ECHR Article 14.

<sup>176</sup> *Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 Nov. 2000, ETS no. 177, not yet in force, Article 1.

<sup>177</sup> ICCPR Article 14. See also ACHR Article 24, ACHPR Article 3.

for excuses only for men who commit honour killings or where the application of laws applicable to honour killings results in unequal treatment of men and women. Furthermore, the act of honour killing itself may also constitute discrimination.<sup>178</sup>

Honour killings can arguably violate also other rights, including the prohibition against torture and inhuman treatment,<sup>179</sup> the right to personal liberty and security of person,<sup>180</sup> as well as the right to privacy.<sup>181</sup> Arguably also the right to health is violated by honour killings.<sup>182</sup> I have chosen to focus on the right to life and the prohibition against discrimination, firstly, as they are the rights that are primarily affected by the crime of honour killing, and secondly, as they represent different viewpoints in seeing honour killings as a human rights violation. Despite this, most of the arguments considering the positive obligations in regard to the right to life also apply to the prohibition against torture which arguably is the most relevant human rights provision in relation to most honour *crimes*. In addition, the prohibition against torture and the related principle of *non-refoulement* is of particular relevance as it prohibits returning a person who is threatened by an honour killing to any country where she is likely to be subjected such treatment.<sup>183</sup>

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<sup>178</sup> The issues relating to honour killings as a form of discrimination are discussed *infra* in Chapter 3.3.

<sup>179</sup> UDHR Article 5; ICCPR Article 7; CAT; CRC Articles 19(1) and 37; ECHR Article 3; ACHR Article 5; ACHPR Article 5.

<sup>180</sup> UDHR Article 3; ICCPR Article 9; ECHR Article 5; ACHR Article 7; ACHPR Article 6.

<sup>181</sup> ICCPR Article 17; ECHR Article 8.

<sup>182</sup> See particularly Article 24(3) of the CRC: states parties “shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.” Also ICESCR Article 12; CEDAW Article 12; European Social Charter (ESC) Article 11; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) Article 10; ACHPR Article 16.

<sup>183</sup> The principle of *non-refoulement* prescribes that nobody should be returned to any country where she is likely to face persecution, torture or inhuman treatment or punishment. See, e.g., G. Goodwin-Gill, *The Refugee in International Law*, 2<sup>nd</sup> ed., Oxford University Press, 1996, 117-207; *Convention Relating to the Status of Refugees*, Geneva, 1951, Article 33; CAT Article 3; and *Jabari v. Turkey*, ECtHR 11.7.2000, Reports 2000-VIII. See also *Crimes of Honour – Outline Report*, Committee on Equal Opportunities for Women and Men, Council of Europe Parliamentary Assembly, 4.6.2002, AS/Ega(2002)7Rev2, paras. 47-50.

## **3.2 A positive obligation to protect the right to life under international law**

### ***3.2.1 The right to life and positive obligations under human rights treaties***

Article 2(1) of the ICCPR requires that states have an obligation to *respect and to ensure* the rights protected in the Covenant to all individuals within its jurisdiction without distinction of any kind. Article 1 of the ECHR obliges states similarly to *secure* the rights the Convention and Article 1(1) of the ACHR obliges states to *ensure the free and full exercise* of the rights protected in the Convention. Traditionally the state fulfils its obligation to ‘respect’ by not infringing upon the individual’s rights, while the obligation to ‘ensure’ puts an affirmative duty upon states. The obligation to secure or ensure thus implies a positive obligation, an obligation whereby a state must take action to secure human rights. It should be noted that also the duty to respect goes beyond a mere duty to refrain from abuses of human rights and that the distinction between respect for and protection of human rights should be seen as flexible.<sup>184</sup> Thus, a state must not only respect the right to life but also ensure it and must thus take certain protective measures to prevent the deprivation of life of one person by another person, e.g., through legislation, as well as to investigate homicides and prosecute the perpetrators.<sup>185</sup> In addition to the general obligations to secure or ensure the rights in the human rights treaties, some

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<sup>184</sup> G. Ress, ‘The duty to protect and ensure human rights under the European Convention on Human Rights’, and; P-M. Dupuy, ‘The duty to protect and ensure human rights under the International Covenant on Civil and Political Rights’, in E. Klein (ed.) *The Duty to Protect and to Ensure Human Rights*, Berlin Verlag, 2000, at 165, 170-3 and 319 respectively. See also *X and Y v. Netherlands*, (ECtHR judgment 26 March 1985, Ser. A 91), where the Court held that “there may be positive obligations inherent in an effective *respect* for private or family life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves.” (para. 23).

<sup>185</sup> The United Nations Human Rights Committee (HRC) has emphasised that states have undertaken to ensure the enjoyment of the rights set forth in the Covenant to all individuals under their jurisdiction and that this aspect “calls for specific activities by the States parties to enable individuals to enjoy their rights.” Human Rights Committee, *ICCPR General Comment 3*, 29.7.1981, para. 2. See also M. Scheinin, ‘Women’s economic and social rights as human rights: conceptual problems and issues of practical implementation’, in L. Hannikainen & E. Nykänen, *New Trends in Discrimination Law – International Perspectives*, Grafia, 1999, 1-28, 4-8; H.A. Kabaalioglu, ‘The obligations to ‘respect’ and to ‘ensure’ the right to life’, in Ramcharan (ed.), *The right to life in international law*, Martinus Nijhoff Publ., 1985 160, 165; and T. Buergenthal, ‘To respect and to ensure: state obligations and permissible derogations’, in Henkin, L., (ed.) *The international bill of rights: the Covenant on Civil and Political Rights*, Columbia University Press, 1981, 72, 77-8.

positive obligations are expressly stated in the text of certain provisions. One of these provisions is Art. 2(1) of the ECHR, which states that “everyone’s life shall be protected by law.” Similarly, Art. 4(1) of the ACHR provides that “every person has the right to have his life respected” and that “this right shall be protected by law.” Although not as explicit as the regional treaties, also Art. 6 of the ICCPR includes a positive obligation to protect the right to life.<sup>186</sup> The positive obligation to protect the right to life thus includes the duty of states to make adequate provisions in their law for the protection of human life.<sup>187</sup> Further, this duty includes the effective enforcement of the law, taking reasonable steps of prevention, e.g., by providing a judicial system, police and security forces,<sup>188</sup> and by carrying out proper investigations, prosecuting offenders as well as providing for adequate remedies for victims.<sup>189</sup>

### **3.2.1.1 Acts of private persons and the scope of positive obligations to ensure the right to life**

The different monitoring bodies have adopted slightly differing approaches and language when tackling the issue of positive obligations. In relation to right to life the Human Rights Committee has in its General Comment on the right to life stated that states parties should take measures to prevent and punish deprivation of life by

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<sup>186</sup> According to the *travaux préparatoires* to Article 6 “while the view was expressed that the article should concern itself only with protection of the individual from unwarranted actions by the state, the majority thought that states should be called upon to protect human life against unwarranted actions by public authorities as well as by private.” 10 GAOR Annexes, UN doc. A/2929 Ch. VI, para. 4 (1955).

<sup>187</sup> ECHR Art. 2(1) and ACHR Art. 4(1). See also Harris, D. J., O’Boyle, M. & Warbrick, C., *Law of the European Convention on Human Rights*, Butterworths, 1995, 38.

<sup>188</sup> Harris, O’Boyle & Warbrick, *supra* n. 185, 39. See also the *Velasquez Rodriguez* case, where the Inter-American Court held that the obligation to ‘ensure’ under Art. 1(1) implies the duty to “organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights.” *Velasquez Rodriguez*, *supra* n. 162, para. 166. The Inter-American Court of Human Rights has using the language of the law of state responsibility interpreted Art. 1(1) of the ACHR as placing a duty on states to exercise due diligence to prevent violations and respond to them.

<sup>189</sup> The Inter-American Court has held that the duty to prevent includes all means of “a legal, political, administrative and cultural nature that promote the protection of human rights and ensure that any violations are considered and treated as illegal acts, which, as such, may lead to the punishment of those responsible and the obligation to indemnify the victims for damages.” *Velasquez Rodriguez*, *supra* n. 162, para. 175. The court noted, however, that “while the State is obligated to prevent human rights abuses, the existence of a particular violation does not, in itself, prove the failure to take preventive measures. *Ibid.*”

criminal acts. The Committee further noted that the notion of an ‘inherent right to life’ “cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures.” Among such positive measures the Committee included taking all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.<sup>190</sup> The HCR has addressed the issue of lack of state control of acts committed by private actors in violation of the right to life in a number of Concluding Observations criticising lenient laws regarding infanticide,<sup>191</sup> tolerance of female genital mutilation (FGM),<sup>192</sup> “easy availability of firearms” which threaten the “protection and enjoyment” of the right to life<sup>193</sup> as well as abuses against street children which may amount to a violation of the right to life.<sup>194</sup> As to case law, in the case of *Herrera Rubio v. Colombia* the Committee found a violation of Article 6 of the Covenant and held that state parties should take “specific and effective measures to prevent the disappearance of individuals and establish effective facilities and procedures to investigate thoroughly, by an appropriate impartial body, cases of missing and disappeared persons in circumstances which may involve a violation of the right to life.”<sup>195</sup> Moreover, in March 2002 the HRC decided a landmark case related to prison conditions where a violation of the right to life was found when the son of the author lost his life because of inhuman prison conditions and lack of medical treatment. The Committee concluded that the State party had failed to take

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<sup>190</sup> Human Rights Committee, *General Comment 6*, 30 April 1982, Un doc. A/37/40, Annex V, paras. 3, 5.

<sup>191</sup> *Concluding observations on Paraguay* (1995), UN doc. CCPR/C/79/Add.48, para. 16.

<sup>192</sup> FGM is here seen as violating the right to life. See, e.g., *Concluding observations on Lesotho* (1999), UN doc. CCPR/C/79/Add.106 para. 12 and *Concluding observations on Senegal* (1997), UN doc. CCPR/C/79/Add.82, para. 12. FGM is also seen as violating other rights, including the prohibition against torture and inhuman and degrading treatment, see e.g., *Concluding observations on Sudan* (1997), UN doc. CCPR/C/79/Add.85, para. 10.

<sup>193</sup> See *Concluding observation on the United States of America* (1995), UN doc. CCPR/C/79/Add.50, para. 17.

<sup>194</sup> Further, the Committee noted that the state party has a duty to adopt “necessary measures to guarantee the right to life” of pregnant women who decide to interrupt their pregnancy by providing information and resources as well as by amending the legislation. *Concluding observation on Guatemala* (2001), UN doc. CCPR/C/79/GTM, paras. 15, 19 and 26. See also *Concluding observations on Columbia* (1997), UN doc. CCPR/C/79/Add.76, para. 37 (priority should be given to protecting women’s right to life by taking effective measures against violence against women) and *Concluding observations on Algeria* (1998), UN doc. CCPR/C/79/Add.95, para. 6.

appropriate measures to protect Mr Lantsov's life during detention and that there was a violation of article 6(1).<sup>196</sup> Of the other UN treaty monitoring bodies dealing with right to life issues, Committee on the Rights of the Child has expressed concern about the threat to the right to life of children caused by the degree of militarization in Mexico and the confrontations with "irregular armed civilian groups." The Committee on the Rights of the Child recommended that the government take "effective measures to protect" children against the negative effects of such confrontations.<sup>197</sup> More specifically, both CRC and the Committee on the Elimination of Discrimination against Women (CEDAW Committee) have expressed serious concern about the violation of the right to life that occur in the form of honour killings.<sup>198</sup>

In addition to the duty to exercise due diligence in relation to private actors established in the landmark case of *Velasquez Rodrigues* mentioned above,<sup>199</sup> the American Court on Human Rights has held that "the fundamental right to life includes, not only the right of every human being not to be deprived of his life arbitrarily, but also the right that he will not be prevented from having access to the conditions that guarantee a dignified existence."<sup>200</sup> Also the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women,<sup>201</sup> provides that the states parties "agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and

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<sup>195</sup> HRC *Communication No. 161/1983*, decision of 2 Nov. 1987, paras. 10.3 and 11. See also *Delgado Paez v. Colombia (Communication No. 195/1985*, decision of 23 Aug. 1990) where Colombia was seen to have failed its duty to ensure Mr. Delgado's right to security of person.

<sup>196</sup> *Lantsova v. Russia (763/1997)*, decision 26.3.2002, UN doc. CCPR/C/74/D/763/1997, para. 9.2.

<sup>197</sup> *Concluding Observations of the Committee on the Rights of the Child: Mexico*, 10.11.1999, UN doc. CRC/C/15/Add.112, para. 20.

<sup>198</sup> See chapters 4.2.1 and 4.2.2 above.

<sup>199</sup> See *supra* n. 162. See also e.g., the *Godinez Cruz* case, IAmCtHR, 20 Jan. 1989 (Ser. C, No. 5).

<sup>200</sup> *Villagrán Morales et al.* case (the "Street Children" Case), Judgment of 19.11.1999, Inter-Am. Ct. H.R. (Ser. C) No. 63 [1999], para. 144. The case concerned the killing of five street children and youths in Guatemala by police officers. Moreover, the Commission stated at an earlier stage of the proceedings (using language similar to the European Court of Human Rights) that compliance with Art. 4 in relation to Article 1(1) of the Convention "not only presumes that no person shall be deprived of his life arbitrarily (negative obligation), but also requires the States to take all necessary measures to protect and preserve the right to life (positive obligation)."

<sup>201</sup> Article 7(b), 33 *ILM* 1534 (1994). See also Ewing, A.P., 'Establishing state responsibility for private act of violence against women under the American Convention on Human Rights', 26 *Columbia H. Rts. L. Rev.* 751.

undertake to: [*inter alia*]... apply due diligence to prevent, investigate and impose penalties for violence against women.”

The European Court of Human Rights has elaborated this issue considerably in its jurisprudence and it has read certain positive obligations into the ECHR, mainly because it has held that the ECHR is designed to safeguard the right in it in a “real and practical way”<sup>202</sup> and that the respect for human rights on part of the state must be “effective”.<sup>203</sup> The Court has used the concept of implied positive obligations for indirectly attributing a certain effect in private relations, and accepted an obligation on part of the authorities to take measures to guarantee respect for human rights in relations between private actors.<sup>204</sup> Such positive obligations include the duty to put in place a legal framework which provides effective protection for the rights in the Convention,<sup>205</sup> the duty to prevent breaches of rights,<sup>206</sup> the duty to provide information and advice relevant to a breach of a right,<sup>207</sup> the duty to respond to breaches of rights,<sup>208</sup> and the duty to provide resources to individuals whose rights are at stake.<sup>209</sup>

Concerning the right to life the Court held in the *McCann* case that “a general legal prohibition of arbitrary killing by the agents of the State would be ineffective, in practice, if there existed no procedure for reviewing the lawfulness of the use of lethal force by State authorities. The obligation to protect the right to life ... requires by

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<sup>202</sup> *Airey* case, ECtHR judgment 9.10.1979, Ser. A 32, para. 26.

<sup>203</sup> *Marckx* case, ECtHR judgment 13.6.1979, Ser. A 31, para. 31.

<sup>204</sup> See van Dijk, P., “Positive obligations” implied in the European convention on human rights: are the states still the “masters” of the convention?, Castermans, M., van Hoof, F. & Smith, J. (eds.) *The role of the nation-state in the 21<sup>st</sup> century – Human rights, international organisations and foreign policy*, Kluwer Law International, 1998, 17-33, 19; Starmer, K., ‘Positive obligations under the Convention’, Jowell, J. & Cooper, J. (eds.), *Understanding human rights principles*, Hart Publishing, 2001, 139, 146-147.

<sup>205</sup> As articulated by the Court, *inter alia*, in *X and Y v. the Netherlands*, *supra* n. 182. Compare to the *Velasquez Rodriguez* case, *supra* n. 162.

<sup>206</sup> Especially in regard to fundamental rights such as the right to life and the freedom from torture. See, most notably *Costello-Roberts v. UK*, judgment 1993 Ser. A 247-C; *A v. UK*, ECtHR judgment of 23.9.1998, Reports 1998-VI; and *Osman v. UK*, ECtHR judgment 28.10.1998.

<sup>207</sup> As in *L.C.B. v. United Kingdom*, ECtHR judgment 9.6.1998, Reports 1998-III. See also *Guerra v. Italy*, (judgment 19.2.1998, Reports 1998-I) and *McGinley and Egan v. UK*, (judgment 9.6.1998, Reports 1998-III).

<sup>208</sup> E.g., *Aydin v. Turkey*, judgment 25.9.1997, Reports 1997-VI.

<sup>209</sup> E.g., *Airey v. Ireland*, *supra* n. 200.

implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force by, *inter alios*, agents of the State.”<sup>210</sup> In *L.C.B. v. UK*<sup>211</sup> the court held that the first sentence of Article 2(1) “enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction.” In the landmark case of *Osman v. UK*<sup>212</sup> the Court affirmed that Article 2 may imply, amongst others, a positive obligation for the state to take preventive operational measures to protect an individual whose life is at risk from criminal acts of another individual.<sup>213</sup> The Court held that in order to prove that the authorities have violated their positive obligation to protect the right to life “it must be established ...that the authorities *knew or ought to have known* at the time of the existence of *a real and immediate risk to the life of an identified individual* or individuals from the criminal acts of a third party and that they *failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.*”<sup>214</sup> In *Paul and Audrey Edwards v. UK*, the applicants’ son, Christopher Edwards, had been killed by another prisoner while in custody. Referring to *Osman v. UK*, the Court held that “the failure of the authorities involved ... [medical profession, police, prosecution and court] to pass information about [the perpetrator R.L.] to the prison authorities and the inadequate nature of the screening process on R.L.’s arrival in prison disclose a breach of the State’s obligation to protect

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<sup>210</sup> *McCann and Others v. UK*, judgment 5.9.1995, Ser A 324, para. 161. See also *Kaya v. Turkey*, judgment 19.2.1998, Reports 1998-I, para. 91.

<sup>211</sup> See *supra* n. 205, para. 36. The HRC found a very similar claim concerning the French nuclear tests on the Mururoa atolls in 1995-1996 inadmissible as the claimants were not ‘victims’. *Communication No. 645/1995*, 30.7.1996.

<sup>212</sup> See *supra* n. 204. See also *A V. UK*, *supra* n. 204, where the Court held that the obligation under Article 1 of the ECHR taken together with Article 3, does requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, “including such ill-treatment administered by private individuals”, para. 22. See also, *Z and Others v. UK* (judgment 10.5.2001, *Application no. 29392/95*) and *T.P. & K.M. v. UK* (judgment 10.5.2001, *Application no. 28945/95*) All three are child abuse cases.

<sup>213</sup> *Osman v. UK*, *supra* n. 204, para. 115.

<sup>214</sup> *Ibid.*, para. 116. The Court did not accept the government’s argument that the failure to perceive a risk to life must be tantamount to “gross negligence or wilful disregard” of the duty to protect life as such a rigid standard was considered to be incompatible with the obligations under Article 1 to secure the practical and effective protection of the rights and freedoms laid down in the Convention. The Court did not, however, find a violation of Article 2 in that particular case. Considering the amount of evidence of a threat to life that had been laid down before the police in this particular case, it is to be asked what circumstances would give rise to accountability.

the right to life of Christopher Edwards.”<sup>215</sup> In *Mastromatteo v. Italy*, the applicant’s son was murdered by criminals who were on leave from prison. The applicant argued that the state had breached its obligation to protect the right to life of his son. In this case the Court made a distinction between the “requirement of *personal protection* of one or more individuals as a potential target of a lethal act” (as in *Osman* and *Edwards*) on one hand and on the other hand “an obligation to afford *general protection* to society against the potential acts of one or several persons” (as in the present case).<sup>216</sup> In determining the scope of that general protection the Court held that in the present case the Italian system (relating to alternative measures in the penal system, leave from prison) and the implementation of that system in the instant case was sufficiently protective and thus found no violation of Article 2. The Court has thus reaffirmed the positive obligation to protect the right to life in a number of recent cases. Simplifying the test in *Osman v. UK*, one could thus identify two criteria which must be fulfilled in order find a state accountable for an abuses committed by a private person under the ECHR; first, there must a real and immediate risk to the life of a person; and second, there must be an direct and immediate link between the state’s failure to act and the harm suffered by the person.<sup>217</sup> While it has noted that “a positive obligation to prevent every possibility of violence” cannot be derived from Article 2 and that a such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities, “bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources,”<sup>218</sup> the positive obligation to undertaken preventive measures to protect the right to life is by now well established.

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<sup>215</sup> *Paul and Audrey Edwards v. UK*, judgment 14.3.2002, Application no. 46477/99, para. 64. See also *Akkoç v. Turkey*, ECtHR judgment 10.10.2000, Reports 2000-X, paras. 77-94; *Keenan v. UK*, ECtHR judgment 3.4.2001, Application no. 27229/95, paras. 88-101; and *Öneryildiz v. Turkey*, ECtHR judgment 18.6.2002, Application no. 48939/99, paras. 87-88.

<sup>216</sup> *Mastromatteo v. Italy*, ECtHR judgment 24.10.2002, Application no. 37703/97, para. 69.

<sup>217</sup> See also Ress, *supra* n. 182, 181.

<sup>218</sup> See, *inter alia*, *Mastromatteo v. Italy*, para. 68; *Edwards v. UK*, para. 55; and *Osman v. UK*, para. 116.

### 3.2.1.2 Conclusions

All the major general human rights conventions which protect the right to life include a positive duty to ensure the rights protected in them, and thus also the right to life. Different treaty bodies have used slightly differing language – the American system the traditional language of state responsibility for acts of private actors and the European Court and the Human Rights Committee the terminology of positive obligations – in articulating the principle of positive obligations, but the substance is the same; states are obliged to effectively prevent, investigate, punish and remedy all violations of the right to life, including abuses committed by private actors. The provisions safeguarding the right to life under human rights treaties, and particularly the ECHR, provide a strong basis for challenging the inaction of states in regard to honour killings and other similar violations of the right to life committed by private actors.

In relation to honour killings, a state that has non-existent, inadequate or discriminatory legislation in regard to honour killings fails its duty to prevent honour killings and thus safeguarding the right to life. Enacting legislation is not enough, any legislation must be effectively enforced and a state that systematically fails to effectively investigate, punish and remedy honour killings or does so in a clearly discriminatory manner,<sup>219</sup> is in breach of its duty to effectively respond to such killings. Thus, states such as Turkey, being party to the ECHR, could be challenged on the basis of the discriminatory provocation defences in its Penal Code. In order to fulfil the obligation to prevent loss of life, states must undertake various protective measures and build up structures for the prevention of and protection against honour killings and other violence against women. For example, states should ensure that shelter homes and legal counselling are available and accessible for all women. If it can be shown that a state knew or ought to have known about a real and immediate risk of danger to a woman's life and failed to take measures which might reasonably have been expected to avoid that risk that state could be held in violation of the right to life, at least under the ECHR. The central question is then which measures are regarded as *reasonable* and how it can be established that the authorities knew about

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<sup>219</sup> Ewing, *supra* n. 199, 780. See also *infra* s. 3.3.2.2.

the risk. Also measures beyond the criminal justice system may be required,<sup>220</sup> and it has been suggested that public information and education programmes to counter gender-bias and to empower women may be required to satisfy the duty to exercise due diligence to prevent violations on human rights.<sup>221</sup> This aspect is particularly important in relation to honour killings and many other forms of violence against women as the causes for such violence often lie in cultural norms, customs and attitudes towards women,<sup>222</sup> which need to be altered in order to effectively protect the right to life of women against abuses by private persons.

### ***3.2.2 A positive obligation to protect the right to life in customary international law?***

Perhaps particularly in regard to honour killings, but also other human rights violations committed by private persons, the fact that countries to which such abuses are attributable have not ratified relevant human rights conventions under which they could be found responsible, poses a substantial problem.<sup>223</sup> The question thus remains as to whether customary international law can provide for an additional means of attributing responsibility to a state for a private violation of the right to life?<sup>224</sup>

It can hardly be denied that the right to life is a norm of customary international law. Indeed, the International Covenant on Civil and Political Rights (ICCPR) describes the right to life as inherent, and it can thus be concluded that the right to life existed before the Covenant and was not established by that text. The term ‘inherent’ indicates that the right to life is recognised as customary international law and is not

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<sup>220</sup> As pointed out by the American Court in *Velasquez Rodriguez*, see *supra* n. 162.

<sup>221</sup> Ewing, *supra* n. 199, 774.

<sup>222</sup> Mertus, J., State discriminatory family law and customary abuses, Peters & Wolpers (eds.) *Women's Rights, Human Rights*, 1995.

<sup>223</sup> E.g. Pakistan, Saudi Arabia and Turkey have not ratified the ICCPR. Turkey is, however, party to the ECHR. Jordan has ratified the ICCPR but has not ratified the Additional Protocol enabling individual complaints.

<sup>224</sup> Customary international law comprises of two components, consistent state practice and *opinio juris*. State practice may take different forms, including treaties, decisions of national and international courts, national legislation, diplomatic correspondence, opinions of national legal advisers, practice of international organisations and policy statements. Harris, D.J., *Cases and Materials on International Law*, 5<sup>th</sup> ed., 1998, 26 and Charlesworth, H. & Chinkin, C., *The boundaries of international law: a feminist analysis*, Manchester University Press, 2000, 63.

merely a norm of treaty law.<sup>225</sup> Thus, it could be held that Article 6 is declaratory of custom, and therefore also the positive obligations implied in Article 6 would be customary international law.<sup>226</sup> In addition, many dimensions of the right to life have the character of *jus cogens*.<sup>227</sup> The issue as to the scope of a positive obligation to ensure the right life in customary law, similar to the one found in human rights treaties is, however, not clear. As noted above, international law recognises a number of principles that attach legal responsibility to a state for acts or omissions of private persons that can be regarded as customary law. Of these customary principles<sup>228</sup> the lack of due diligence in the control of private individuals is the one of most relevance to honour killings. Thus states are obliged in accordance with the duty to exercise due diligence to take such measures of prevention that a well-administered government could be expected to take in similar circumstances.<sup>229</sup>

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<sup>225</sup> Kabaalioglu, *supra* n. 181, 160 and Dinstein, Y., ‘The right to life, physical integrity, and liberty’, Henkin, L. (ed.) *The international bill of rights: the Covenant on Civil and Political Rights*, Columbia University Press, 1981, 114, 115.

<sup>226</sup> The issue of how far treaties are a source of custom was addressed by the ICJ in the *North Sea Continental Shelf* cases (*ICJ Reports 1969*, 3), where the ICJ held that a treaty provision may be declaratory of or crystallise custom or it may be accepted as custom after the adoption of the treaty. See also *travaux preparatoires* to Art. 6.

<sup>227</sup> *Jus cogens* norms apply to all states as peremptory norms of customary international law. See the *Vienna Convention on the Law of Treaties*, Art. 53 and 64. The status of *jus cogens* is, however, unclear, as questions are raised both as to its content and even as to its mere existence. Despite this lack of clarity at least the prohibitions against genocide, slavery, murder, torture or cruel, inhuman or degrading treatment or punishment and the prohibition of retroactive penal measures can be regarded as *jus cogens*. See the *1987 Restatement of U.S. Foreign Relations Law*, Vol. 2, 165, §702, reprinted in Harris, *supra* n. 119, 95-97, Gormley, W.P., ‘The right to life and the rule of non-derogability: peremptory norms of *jus cogens*’, 120-159, 148 in B.G. Ramcharan (ed.), *The right to life in international law*, Martinus Nijhoff Publ., 1985 and Meron, *supra* n. 163, 95-7.

<sup>228</sup> Cook identifies state agency, ratification or adoption, state complicity and lack of due diligence in control of private actors. *Cook, supra* n. 160, 143. See also *supra* n. 161 and following text. On the other hand, the *Third Restatement of US Foreign Relations Law*, vol. 2 (1987) § 702, states that states are responsible only for acts committed by private persons if they are encouraged or condoned as a state policy.

<sup>229</sup> See *supra* n. 161-2. The ICJ held in the *Barcelona Traction* case (*Barcelona Traction, Light and Power Co. Case, (Belgium v. Spain)* ICJ Reports 1970, 3, 32) that some obligations are so basic that they apply equally to all states (including “principles and rules concerning the basic rights of the human person;” including the protection from slavery and racial discrimination), and that every state has the right to help protect such rights. When a state breaches such obligations *erga omnes*, it injures every state and every state is thus competent to bring action against the breaching state. Although it is unclear which rights are included in the concept of “basic right of the human person” it can be argued that the obligation to ensure the right to life would be included as a basic right. Further, it remains to be seen when and for what reasons a state would be willing to bring action against another state for not exercising due diligence to protect the right to life. See also the *Tehran Hostages* case (*United States Diplomatic and Consular Staff in Tehran (United States v. Iran)* ICJ Reports 1980, 3, 29-30, where the ICJ held that Iran was responsible for acts committed by militants occupying the American embassy in

The theory of *jus cogens* and non-derogability of the right to life stand in a sharp contrast to the gross violations of the right to life committed in various parts of the world. It is, however, incorrect to treat violations of the right to life as accepted state practice as most governments which commit or acquiesce to such violations do not attempt to justify their behaviour but on the contrary strongly deny any involvement.<sup>230</sup> It has been suggested that state practice and *opinio juris* operate on a sliding scale requiring greater consistency in state practice where there is little evidence of *opinio juris*, but tolerating contradictory behaviour where there is greater consensus about its illegality.<sup>231</sup> It has, however, been argued that in relation to violence against women, there is no evidence of such strong *opinio juris* which would justify discounting the contrary state practice.<sup>232</sup>

On the one hand, there is some national case law that is contrary to the international trend of attributing states positive obligation to protect the right to life<sup>233</sup> and honour killings continue to occur. There is also the issue that some states could claim to be persistent objectors to the emerging customary norm. On the other hand, the positive obligation to ensure the right to life is included in several human rights treaties which

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Tehran 1979. Although the acts were not directly attributable to the state, the fact that the Iranian government condoned the acts made the Iranian state responsible for them.

<sup>230</sup> See the *Nicaragua* case (*Nicaragua v. United States*) *ICJ Reports 1986*, 14, para. 186. Also N. Rodley, *The Treatment of Prisoners in International Law*, 2<sup>nd</sup> ed., OUP, 1999, 66, for the same argumentation in relation to torture and Gormley, *supra* n. 225, 145.

<sup>231</sup> F. Kirgis, 'Custom on a sliding scale', *81 AJIL [1987] 147*, 149.

<sup>232</sup> Charlesworth & Chinkin, *supra* n. 222, 72.

<sup>233</sup> See *supra*, s. 2.1 and the US case of *DeShaney v. Winnebago Social Services Department*, United States Supreme Court (1989) 489 US 189. The Court held that the due process clause in the US Constitution forbids the state to deprive individuals of life or liberty without the due process of law but cannot be extended to impose "an affirmative obligation on the State to ensure that those interests do not come to harm through any other means." *Ibid.*, at 195-6. The case is a child abuse case and can be contrasted with the jurisprudence of the European Court of Human Rights, e.g., *A v. UK*, see *supra* n. 25. It must, however, be noted that it is the view of the Supreme Court that it is the legislature, not the judges that should make decisions with resource implications (that is, positive obligations); it has thus been argued that the case should not be understood as disapproving of positive obligations. Starmer, *supra* n. 202, 144. See also *Thurman v. City of Torrington*, US District Court, (595 F. Supp. 1521, D. Connecticut 1984), where the court held that police officers are under an affirmative duty to protect the personal safety of persons in the community (in this case a woman from against threats and assault by her estranged husband); and *Doe v. Board of Commissioners of Police of Municipality of Toronto*, 1990, 1 CCR (2d) 211 (Ontario Div. Ct), where the court, while agreeing with the defendants that the Canadian Charter of Rights and Freedoms placed *no obligation* on the state to ensure that life, liberty or property that did not come to harm through means other than state action, referring to the positive duties imposed by the Police Act the court held that the police had failed to perform the positive duties to preserve the peace, prevent crimes (failure to warn women, and the plaintiff, in the community of serial rapist) and apprehend offenders provided for in the Police Act.

have been widely ratified,<sup>234</sup> and has been repeatedly affirmed by the bodies monitoring these treaties.<sup>235</sup> Furthermore, the duty to exercise due diligence in relation to honour killings and other abuses by private actors has been reaffirmed by international bodies such as the UN General Assembly,<sup>236</sup> Economic and Social Council,<sup>237</sup> Commission on Human Rights<sup>238</sup> and Sub-Commission on the Promotion and Protection of Human Rights.<sup>239</sup> With a few exceptions national laws have criminalized honour killings and government officials have publicly addressed and condemned honour killings. In addition, courts in countries where discriminatory practices such as honour killings have traditionally been condoned, have made efforts

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<sup>234</sup> The universal human rights treaties protecting the right to life, ICCPR and CRC had 148 and 191 state parties respectively as of 8.2.2002, see <http://www.unhchr.ch/pdf/report.pdf>.

<sup>235</sup> In addition to the jurisprudence of the HRC and the regional human rights courts, General Recommendation No. 19 issued by CEDAW (Committee on the Elimination of Discrimination against Women) reaffirms that under general human rights conventions state may be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation. (para. 9)

<sup>236</sup> E.g., the *Declaration on Violence against Women* (1993); *resolution 55/66* on honour killings; *resolution 57/179* on honour killings. See also the resolutions referred to below in s. 4.1.1. Although not formally a legally binding instruments declarations are considered to have more weight than resolutions and it has been submitted that the Declaration has the potential to generate state practice and *opinio juris* to crystallise customary international law. Further, restatements in form of resolutions and declarations provide further evidence of growing *opinio juris*. ICJ Advisory opinion on the *legality of the threat or use of nuclear weapons*, 1996 ICJ Rep. 226, para. 70, ICJ in *Nicaragua*, *supra* n. 228, para. 188 and Sloan, B., 'General Assembly resolutions revisited', 58 *BYIL* [1987] 39.

<sup>237</sup> E.g., Economic and Social Council resolutions 1996/12 (violence against women) and 1997/24 (crime prevention and criminal justice measures to eliminate violence against women).

<sup>238</sup> Most recently *res 2003/53*, 24 April 2003, adopted by 37 votes to none, with 16 abstentions. Para. 5 reads: "Reaffirms the obligation of States to ensure the protection of the inherent right to life of all persons under their jurisdiction and calls upon States concerned to investigate promptly and thoroughly all cases of killings committed in the name of passion or in the name of honour, [...] as well as other cases where a person's right to life has been violated, all of which are being committed in various parts of the world, and to bring those responsible to justice before a competent, independent and impartial judiciary, and to ensure that such killings, including those committed by security forces, police and law enforcement agents, paramilitary groups or private forces, are neither condoned nor sanctioned by government officials or personnel." See also previous resolutions 2002/36, 22 April 2002; 2001/45, 23 April 2001; and 2000/31, 20 April 2000. Further, *Resolution 2002/52* on violence against women condemns all acts of gender-based violence and emphasises the duty on states to "exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women and to take appropriate and effective action concerning acts of violence against women, whether those acts are perpetrated by the State, by private persons or by armed groups or warring factions, and to provide access to just and effective remedies and specialized, including medical, assistance to victims." (para. 4). Honour crimes are included in the definition of violence against women (para. 3).. See also para. 14 of the resolution which stresses the *affirmative duty* of states to protect and promote human rights of women. See also previous resolutions 1996/49, 1997/44, 1998/52, 1999/42, 2000/45 and 2001/49. All resolutions except the two latest resolutions on extrajudicial executions have been adopted without a vote.

<sup>239</sup> Sub-Commission on the Promotion and Protection of Human Rights *resolution 2001/20* (systematic rape).

to tackle abuses of women's rights and the lack of measures taken in regard to them by the police and other administration.<sup>240</sup>

Regrettably, the first resolution on honour killings (55/66) met with some resistance and was not adopted by consensus. 26 states abstained from voting, among these Pakistan and Jordan and many others where honour killings continue to take place but whose governments have repeatedly condemned honour killings.<sup>241</sup> In 2002 the GA adopted resolution 57/179 on honour crimes without a vote, but also without reference to resolution 55/66.<sup>242</sup> Recently also the resolutions on extrajudicial, summary and arbitrary executions have been subject to controversy both in the GA and the CHR. Having been a resolution usually adopted by consensus, the resolution has been voted upon repeatedly during the last two years and the paragraph that has given rise to the strongest resistance has been the one referring to honour killings.<sup>243</sup> It is, however, unclear whether such resistance is more about sexual orientation and the Rapporteur's person than about honour killings. It seems that it might be the issue of sexual orientation that is the most difficult at the moment, not honour killings. Despite this the recent debates in the GA and the CHR indicate that the issue of honour killings is not yet free from controversy.

Still, hardly any states have objected to the idea of positive obligations in relation to the right to life expressed in these resolutions. One could thus argue that there is strong enough evidence of *opinio juris* discounting any contrary state practice and thus an emerging norm of customary international law providing for accountability of the state for honour killings and other similar violations of the right to life where the

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<sup>240</sup> E.g., *Mst Humaira v. Malik Moazzam Ghayas Khokhar & Others*, High Court, Lahore, Pakistan, 18.2.1999, (1999) 2 CHRLD 273; held that a woman's freedom to choose spouse was infringed by unlawful police interference; *Begum & Anor v. Government of Bangladesh & Others*, High Court Division, Bangladesh, 4.9.1997, 50 DLR (1998) 557; held that detaining a woman in custody without cause (she was detained because she had married against the will of her father who wanted to sell her to a prospective husband) was unlawful. Both these cases concern state interferences, but can still be regarded as evidence of a more gender-sensitive perspective. In *In Re Miriam Willingal*, National Court of Justice, Papua New Guinea, (1997) 2 CHRLD 57, 10.2.1997, a woman's freedom to choose spouse was held to be infringed by custom which dictated that two women were to be given in marriage as 'head pay' to a tribe as compensation for the death of a member.

<sup>241</sup> Res 55/66 was adopted by 146 votes to 1, with 26 abstentions. See further *supra* n. 321.

<sup>242</sup> UN GA res 57/179, 18.12.2002, UN doc. A/RES/57/179; UN GA 57<sup>th</sup> session, Agenda item 102, *Report of the Third Committee*, 3.12.2002, UN doc. A/57/549, para. 26.

<sup>243</sup> UN CHR res 2002/36, para. 6; UN CHR res 2003/53, para. 5 respectively. See chapters 4.1.1 below and 4.1.2.1 for a more detailed discussion on this debate.

state has failed its duty to exercise due diligence to prevent and respond to such crimes.

### **3.2.3 Summary**

Commenting critiques of the law of state responsibility and its alleged inability to respond to abuses committed by private actors Professor James Crawford has noted that “if international law is not responsive enough to problems in the private sector, the answer lies in the further development of the primary rules ... or in exploring what may have been neglected aspects of existing obligations.”<sup>244</sup> It seems that this is exactly the effect of the case law of the European and American Courts of Human Rights and recently also the Human Rights Committee that has been discussed above; in some cases clarification of existing obligations, in others development of the law. Arguably, international human rights law, or at least the human right to life, has now moved beyond the public/private distinction to more adequately meet the needs of people whose rights have been violated by private entities. Positive obligations to protect the right to life against abuses by private actors can be found in all the major general human rights treaties. This positive obligation includes the duties to put in place a legal framework which provides effective protection for the right to life, to prevent breaches of the right to life, to provide information and advice in order to prevent breaches and to respond to breaches of the right to life. Further, arguably there is also a norm of customary international law providing for a positive obligation to take necessary measures to prevent, amongst others by way of legislation and awareness campaigns, honour killings, as well as to carry out effective investigations and prosecute the perpetrators.

### **3.3 Accountability for honour killings in accordance with the principles of non-discrimination and equality**

The concepts of equality, discrimination and non-discrimination have been given different meanings in different contexts. Within the ambit of international human

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<sup>244</sup> Crawford, *supra* n. 161, 440.

rights law there is no universally accepted definition of discrimination; there are however many similarities between the various definitions.<sup>245</sup> For the purposes of this study discrimination is understood as “any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”<sup>246</sup>

This chapter will not aim at providing an exhaustive discussion of the international human rights provisions relating to equality and non-discrimination.<sup>247</sup> Instead the purpose is to attempt to identify the different approaches that can be taken when discussing honour killings as a form of discrimination. The analysis will begin with an examination of the circumstances where laws and application of laws relating to honour killings can constitute discrimination. This discussion is followed by an evaluation of whether the failure of the state to protect against, prevent or respond to honour killings may constitute discrimination. Finally, the chapter will briefly consider the issue of multiple discrimination and honour killings.

### ***3.3.1 Discriminatory laws and application of laws relating to honour killings as discrimination***

Both the concept ‘discrimination against women’ as defined in Article 1 of CEDAW<sup>248</sup> and the concept of ‘discrimination’ as used in the ICCPR<sup>249</sup> refer to the

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<sup>245</sup> See, e.g., Frostell, K., ‘Gender difference and the non-discrimination principle in the CCPR and the CEDAW’, in L. Hannikainen & E. Nykänen, *New trends in discrimination law – international perspectives*, Publications of Turku Law School, Vol. 3 No. 1/1999, Grafia, 1999, 29-57, 33-34.

<sup>246</sup> This is the definition formulated by the UN Human Rights Committee in its General Comment on non-discrimination. ICCPR *General Comment 18: Non-discrimination*, 10.11.1989, para. 7.

<sup>247</sup> As noted above in the introductory section 3.1 the fundamental principles of equality and non-discrimination are codified in a number of international human rights instruments, both general and women-specific. Generally on state accountability under CEDAW, see R.J. Cook, ‘State accountability under the Convention on the Elimination of All Forms of Discrimination Against Women’, in *Human Rights of Women: National and International Perspectives*, R.J. Cook (ed.), University of Pennsylvania Press, 1994, 228-256.

<sup>248</sup> “Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field.”

“effect” or “purpose” of the discrimination, implying that both direct and indirect discrimination as well as deliberate and unintended discrimination are prohibited.<sup>250</sup> Direct discrimination refers to less favourable or differential treatment in comparable circumstances based explicitly on a discriminatory criterion, e.g., sex or gender. Indirect discrimination again means such differential treatment that is based on a (gender-) neutral criterion, which results in a distinction based, e.g., on sex or gender.<sup>251</sup> Thus, indirect discrimination occurs when, e.g., laws, rules or practices that are neutral on the surface but detrimental in their effect or impact disproportionately upon particular groups.<sup>252</sup> Moreover, discrimination can be institutional, that is, when practices or procedures of an entity, a company or the society as a whole, are structured so that they tend to produce discriminatory effects.<sup>253</sup> Such discrimination may be both unintentional and intentional; in the latter case the concept of institutionalised discrimination has been used.<sup>254</sup>

In the context of honour killings, laws such as the ones regarding the provocation defence discussed above<sup>255</sup> that explicitly limit the beneficiaries of the defence to men, and exclude women, can be seen as directly discriminatory as by explicitly mentioning only one sex the other is (explicitly) excluded. Also the Islamic qisas and diyat provisions can be seen as directly discriminatory as they differentiate between remedies for murder on the basis of sex.<sup>256</sup> Such laws can also be seen as evidence of institutionalised discrimination of women.

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<sup>249</sup> See, *supra* n. 172 and text. This definition is derived from the wording of CERD and CEDAW respectively, see CERD Article 1(1) and CEDAW Article 1. See also Article 14 of the ECHR. One must, however, keep in mind that this provision only covers discrimination in relation to the right protected in the convention.

<sup>250</sup> See, e.g., M. Pentikäinen, *The applicability of the human right model to address concerns and the status of women*, Forum Iuris, Yliopistopaino, 1999, 29-30.

<sup>251</sup> Frostell, *supra* n. 243, 36-37. *Gender* refers to the socially constructed roles of women and men ascribed to them on the basis of their biological sex.

<sup>252</sup> See, Pentikäinen, *supra* n. 248, 30 and S. Joseph, J. Schultz & M. Castan, *The International Covenant on Civil and Political Rights: Cases, materials and commentary*, Oxford University Press, 2000, 533.

<sup>253</sup> T. Makkonen, ‘Multiple, compound and intersectional discrimination: bringing the experiences of the most marginalized to the fore’, Institute for Human Rights, Åbo Akademi University, electronic publication, No. 11(2002), at <http://www.abo.fi/institut/imr/norfa/timo.pdf>, 2002, 5.

<sup>254</sup> *Ibid.*

<sup>255</sup> See s. 2.1.1.1 above.

<sup>256</sup> See s. 2.1.1.2 above.

Where the application by courts of law of gender-neutral laws concerning the defence of provocation or other mitigating circumstances results in, e.g., large or disproportionate numbers of acquittals or reductions of penalties of men who have committed honour killings, that is a question of indirect (and institutional) discrimination. Thus, for example, the application of Article 98 of the Jordanian Penal Code by Jordanian courts as described above,<sup>257</sup> is a clear example of indirect discrimination. Also the so-called ‘cultural defence’<sup>258</sup> may be indirectly discriminatory where it, e.g., disproportionately benefits men. A state party to the ICCPR can be in breach of its obligations under Articles 2(1) and 26 both due to direct and indirect discrimination. Therefore, for example, Jordan as a party to the ICCPR is in violation of the non-discrimination clauses of the Covenant due to the indirectly discriminatory application of Article 98 of the Penal Code. Moreover, such laws violate the right to equality before the law as provided for in Article 14 of the ICCPR.<sup>259</sup>

Under Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) directly discriminatory laws relating to honour killings can be seen as violations of article 2(c). Article 2(c) obliges states parties to “establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any form of discrimination.” Arguably laws such as provocation defence laws that provide defences only for men deny women rights on an equal basis with men, and are thus in violation of Article 2(c). Moreover, Article 2(c) is also applicable in cases of indirect discrimination as it obliges states to ensure that women are protected against any form of discrimination, in this context, application of law that results in discriminatory effects. Therefore, e.g., Jordan is in violation of Article 2 due to court application of Article 98 of the Penal Code. Also, the fact that traditional tribal justice system in Pakistan deals with a considerable number of honour related cases, often with detrimental effects for the women concerned,<sup>260</sup> implies that the government of Pakistan has failed its duty to ensure the protection of women against

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<sup>257</sup> See s. 2.1.2 above.

<sup>258</sup> See s. 2.1.3.1 above.

<sup>259</sup> See also HCR *General Comment 28*, para. 31.

<sup>260</sup> See s. 2.1.3.2 above.

discrimination through “competent national tribunals.”<sup>261</sup> Further, under CEDAW Article 2(f) states undertake to “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women”. Article 2(g) again requires state parties to “repeal all national penal provisions which constitute discrimination against women.” In addition Article 15(1) obliges state parties to accord to women equality before the law. Consequently, all states parties to CEDAW that have discriminatory provocation defence provisions in their penal codes, such as Egypt, Kuwait, Lebanon, Libya, Tunisia and Turkey as well as the Islamic provisions of qisas and diyat can be regarded as violating Articles 2(f) and 2(g) of CEDAW.<sup>262</sup>

### ***3.3.2 Honour killings as discrimination***

#### **3.3.2.1 Honour killings in the context of violence against women**

According to the Committee on the elimination of discrimination against women (CEDAW Committee) gender-based violence is violence that is directed against a woman because she is a woman or that affects women disproportionately. Such violence includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.<sup>263</sup> In 1993, the General Assembly followed in the CEDAW Committee’s footsteps and adopted the

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<sup>261</sup> See the wording of Article 2(c). Pakistan acceded CEDAW 12 March 1996 with the following declaration: “The accession by [the] Government of the Islamic Republic of Pakistan to the [said Convention] is subject to the provisions of the Constitution of the Islamic Republic of Pakistan.” Austria, Denmark, Finland, Germany, Norway, Portugal, Netherlands, and Sweden have objected to this declaration. See [http://www.unhchr.ch/html/menu3/b/treaty9\\_asp.htm](http://www.unhchr.ch/html/menu3/b/treaty9_asp.htm), page visited 21 May 2003.

<sup>262</sup> See s. 2.1.1.1 above. Iraq has made a reservation to CEDAW where it, i.a., states that “approval of and accession to this Convention shall not mean that the Republic of Iraq is bound by the provisions of article 2, paragraphs (f) and (g) [...]”. (Amongst others, Germany, Netherlands, Sweden and USA have objected to this reservation). Arguably, Egypt’s general reservation to Article 2 is not applicable in this context: “The Arab Republic of Egypt is willing to comply with the content of this article [Article 2], provided that such compliance does not run counter to the Islamic *Sharia*.” The Egyptian reservation has been held to be incompatible with the object and purpose of the treaty, e.g., by Germany, the Netherlands and Sweden. ([http://www.unhchr.ch/html/menu3/b/treaty9\\_asp.htm](http://www.unhchr.ch/html/menu3/b/treaty9_asp.htm), page visited 13 Dec. 2002). On the compatibility of such reservations with the object and purpose of the Convention, see R. J. Cook, ‘Reservations to the Convention on the Elimination of All Forms of Violence Against Women’, 30 *Virginia Journal of International Law* [1990], 643-712, 687-692.

<sup>263</sup> *CEDAW General Recommendation No. 19: Violence against women* (11<sup>th</sup> session, 1992), UN doc. A/47/38, para. 6.

Declaration on the elimination of violence against women.<sup>264</sup> The Declaration adopts the Committee's definition of gender-based violence and defines violence against women in similar terms.<sup>265</sup> The Declaration then goes on to identify various types of violence against women, including violence in the family,<sup>266</sup> violence in the community,<sup>267</sup> and violence perpetrated or condoned by the state.<sup>268</sup> Also the Platform for Action that was adopted by the Fourth World Conference on Women, held in Beijing in 1995 provides a similar definition of violence against women.<sup>269</sup> On the regional level, the Inter-American Convention on the prevention, punishment and eradication of violence against women was adopted in 1994.<sup>270</sup> It remains the only instrument to address the problem of violence against women explicitly and specifically at treaty level. The Convention defines violence against women as any act or conduct, psychological harm or suffering to women, whether in the public or the private sphere. Violence against women is understood to include various types of physical, sexual and psychological violence occurring within the family or domestic unit, in the community and that is perpetrated or condoned by the state.<sup>271</sup>

None of these documents explicitly mentions honour killings as a form of violence against women.<sup>272</sup> However, being murder (or manslaughter) honour killings are the

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<sup>264</sup> *Declaration on the elimination of violence against women*, GA res 48/104, 20.12.1993, UN doc. A/RES/48/104, 23.2.1994. On the various initiatives against violence against women within the UN see, e.g., the *Preliminary report of the Special Rapporteur on violence against women, its causes and consequences*, UN doc. E/CN.4/1995/42, paras. 20-45.

<sup>265</sup> *Declaration on the elimination of violence against women*, Article 1.

<sup>266</sup> Article 2(a). Such violence includes sexual abuse, battering, marital rape, dowry-related violence, female genital mutilation and other traditional practices harmful to women.

<sup>267</sup> Article 2(b), including rape, sexual abuse, sexual harassment and intimidation at work and elsewhere, trafficking and forced prostitution.

<sup>268</sup> Article 2(c).

<sup>269</sup> *The Beijing Declaration and Platform for Action*, Fourth World Conference on Women, Beijing, China, 4-15.9.1995, para. 113-115.

<sup>270</sup> *Inter-American Convention of the prevention, punishment and eradication of violence against women*, Belém do Pará, 9.6.1994, entered into force 5.3.1995, 33 ILM 1534 (1994).

<sup>271</sup> *Inter-American Convention of the prevention, punishment and eradication of violence against women*, Articles 1 and 2. The Convention identifies the rights protected, including a right of "every woman ... to be free from violence both the public and the private spheres." Articles 3 and 6. The Convention also lists the duties of states parties to condemn and eradicate violence against women. Articles 7 and 8.

<sup>272</sup> Even though honour killings is not explicitly mentioned as a form of violence against women in the Declaration, dowry deaths and acid attacks are mentioned in the connection of violence in the family. Also, in its specific recommendations the Women's Committee lists measures that are necessary to overcome family violence. Such measures include legislation to remove the defence of honour in

most extreme form of “physical harm” and a form of violence that occurs within the family and affects women disproportionately. Therefore, honour killings are clearly a form of “violence against women in the family” as defined in these international instruments. Accordingly, honour killings have subsequently been mentioned as a form of violence against women in various documents.<sup>273</sup> One of the most comprehensive recent additions in the area of violence against women is the Council of Europe recommendation on the protection of women against violence.<sup>274</sup> Significantly, this recommendation explicitly includes honour killings in the definition of violence against women<sup>275</sup> and lists recommendations for measures to be taken concerning honour killings.

### **3.3.2.2 Failure of the state to protect against, prevent or respond to honour killings as discrimination**

Even though the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) explicitly addresses neither the issue of honour killings specifically nor the larger problem of violence against women the Committee on the Elimination of Discrimination against Women (CEDAW Committee) has held that discrimination against women as defined in Article 1 of CEDAW includes gender-based violence.<sup>276</sup> In the subsequent instruments concerning violence against women, the UN Declaration on the elimination of violence against women and the Beijing (declaration and) platform of action as well as in the Inter-American Convention of violence against women, violence against women is not treated so much as a

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regard to the assault of murder of a female family member. *CEDAW General Recommendation No. 19: Violence against women* (11<sup>th</sup> session, 1992), UN doc. A/47/38, paras. 11 and 24(r).

<sup>273</sup> See, e.g., GA Res 55/66 and the *Report of the Ad Hoc Committee on the Whole of the twenty-third special session of the General Assembly (2000)*, UN doc. A/S-23/10/Rev.1, paras. 69 and 96. For a discussion on the activities of the GA in relation to honour killings see s. 4.1.1 below.

<sup>274</sup> *Recommendation Rec (2002) 5 of the Committee of Ministers to member states on the protection of women against violence*, 30.4.2002, 794<sup>th</sup> meeting of the Ministers’ Deputies. See also s. 4.4 below.

<sup>275</sup> Violence against women is understood as “any act of gender-based violence, which results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life.” Such acts include “violence occurring within the family or domestic unit, *inter alia*, ... crimes committed in the name of honour...”. *Appendix to Recommendation Rec(2002)5*, para. 1.

<sup>276</sup> *CEDAW General Recommendation No. 19: Violence against women*, UN GAOR, 47<sup>th</sup> session, UN Doc. A/47/38, 29.1.1992, para. 6.

discrimination issue but rather as a violation of different rights, such as the right to life or the prohibition of torture. Despite this, the CEDAW Committee's approach to violence against women as discrimination is useful particularly where the only applicable human rights provisions are those relating to non-discrimination. For example, Pakistan is neither a party to the ICCPR nor CAT<sup>277</sup> and therefore the issues of violence against women and honour killings must be construed as discrimination issues in order to find accountability under international human rights (treaty) law.

As mentioned above,<sup>278</sup> honour killings are one of the most extreme forms of violence against women, and therefore the act of honour killing is not only a violation of the right to life but also a form of discrimination. It must also be emphasised that discrimination under CEDAW is not restricted to action by or on behalf of the government but also covers discriminatory acts committed by "any person, organization or enterprise" and therefore the state is under an obligation to take measures to eliminate such discrimination.<sup>279</sup>

Turning then to look more closely at CEDAW and what provisions may be applicable when discussing honour killings as prohibited discrimination and state obligations in relating to such acts, Article 2 of CEDAW begins by stating generally that "States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women."<sup>280</sup> More specifically state parties are required to "take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise."<sup>281</sup> As honour killings are seen as discrimination, the fact that they occur can be seen as a failure to take appropriate measures to eliminate discrimination, and thus a violation of Article 2(e). However, in accordance with the duty to "pursue" elimination of discrimination in Article 2 does the fact that human rights violations –

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<sup>277</sup> Pakistan is a party to the CRC; however, the provisions relating to the right to life (Article 6) in that Convention would be applicable only for honour killings of girls under 18 years of age.

<sup>278</sup> See section 3.3.2.1 above.

<sup>279</sup> See CEDAW Article 2(e) and *General Recommendation No. 19*, para. 9.

<sup>280</sup> Here questions arise particularly as to the meaning of "agree to pursue by all appropriate means". Generally it can be said that Article 2 entails both obligations of means and of results, as exemplified by Articles 2(c) and 2 (a) respectively. See, e.g., R. J. Cook, 'State responsibility for violations of women's human rights', 7 *Harvard Human Rights Journal* [1994], 125, 158.

<sup>281</sup> CEDAW Article 2(e).

in this case discrimination (i.e. honour killings) – occur not always entail state responsibility; where the state has acted in good faith and has taken measures to eliminate discrimination (e.g., legislation, awareness campaigns) it cannot be held responsible.<sup>282</sup> Therefore, Article 2(e) is applicable in cases where the state has failed to take measures to eliminate honour killings. In this respect, the fact that legislation exists should not be enough; the laws must be enforced effectively, the killings investigated and the perpetrators prosecuted, and perhaps most importantly, the state must have taken preventive measures, particularly public awareness and gender sensitising programmes. The existence and availability of protective measures such as shelter homes is also vital. The term ‘due diligence’ seems to clarify the scope of state obligations also in this context.<sup>283</sup> Similar argumentation can be used in relation to CEDAW Article 2(b), which obligates states parties to “adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women” and CEDAW Article 2(f) which provides that states shall undertake “appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women”. A state party to CEDAW would be in violation of Article 2(b) where there is not legislation that prohibits honour killings. When arguing for responsibility for honour killings *per se* under Article 2(f), it is mainly the failure to abolish customs and practices that constitute discrimination against women that entails the responsibility of the state. Similarly, states can be found responsible under Article 5(a) as the fact that honour killings occur can be seen as a failure to “modify the social and cultural patterns of conduct of men and women”, where it can be proven that the state has not exercised due diligence in taking measures to fulfil the aims in Article 5(a). In this respect the vague wording of many of the provisions in CEDAW, including Articles 2(e) and (f) and 5(a) is problematic as they leave a wide margin of discretion for the states as regard the implementation of such provisions; defining

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<sup>282</sup> Cook, *supra* n. 275, 153. See also the approach taken by the Inter-American Court of Human Rights in the *Velasquez Rodriguez* case, where the court noted that “while the State is obligated to prevent human rights abuses, the existence of a particular violation does not, in itself, prove the failure to take preventive measures. *Velasquez Rodriguez*, *supra* n. 162, para. 175.

<sup>283</sup> Compare for example to Article 4 of the Declaration of Violence Against Women which provides states should “exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.” Article 4(c).

what is “appropriate” is necessarily subject to national, political and social circumstances and environments.<sup>284</sup> For example, Articles 2(e) and 5 define neither the measures nor the extent of measures to be taken by state parties. The Committee monitoring CEDAW has, however, identified a number of measures that are necessary to provide protection against gender-based violence (and thus discrimination) which must be seen as guidelines when determining whether a state has complied with the provisions of CEDAW or not. Such measures include effective *legal* measures to provide effective protection against gender-based violence such as penal sanctions, civil remedies and compensatory provisions. Perhaps more importantly, *preventive* measures including public information and education programmes to change attitudes concerning the roles and status of women and men and *protective* measures such as shelter homes, counselling, rehabilitation and victim support services for women who are victims or potential victims of violence.<sup>285</sup> Therefore, in the case an honour killing occurs and the state has, for example, failed to provide for appropriate penal sanctions for such crimes, or failed to set up shelter homes for women at risk of honour killings has not taken such appropriate measures that are required by CEDAW to eliminate discrimination and is thus in violation of the Convention.

The non-discrimination component of Article 2(1) of the ICCPR imposes a duty to respect, ensure or secure the rights protected in each convention without discrimination.<sup>286</sup> Furthermore, under Article 3 ICCPR states parties have undertaken “to ensure the equal right of men and women to the enjoyment of all civil and political rights” set forth in the Covenant. The obligation in Articles 2 and 3 to ensure to all individuals the rights recognized in the ICCPR requires that states remove obstacles to the equal enjoyment of such rights, adjust legislation and educate the population as well as state officials in human rights. Also positive measures in all areas are required

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<sup>284</sup> Pentikäinen, M., ‘The prohibition of discrimination and the 1979 UN Convention on the Elimination of All Forms of Discrimination against women’, in *New Trends in Discrimination Law: International Perspective*, L. Hannikainen & E. Nykänen (eds.), Publications of Turku Law School no. 1/1999, 59, 74.

<sup>285</sup> CEDAW, *General Recommendation No. 19*, para. 24(t).

<sup>286</sup> See also Article 1(1) of the ACHR. Similar argumentation must also be used in the context of the ECHR as the non-discrimination provision in the ECHR (Article 14) concerns only discrimination in relation to the rights protected in that convention.

in order to achieve the effective and equal empowerment of women.<sup>287</sup> Thus, in conjunction with each duty imposed on a state by the ICCPR (or other human rights conventions) there is an obligation to carry out that duty in a non-discriminatory manner, respecting the requirement of equal treatment. For example, a state that investigates cases of murdered men in a normal fashion, but does not take reasonable measures to investigate cases of honour killings of women, is in violation of the non-discrimination provision of a treaty, e.g., Article 2(1) ICCPR, in conjunction with the right to life, as it breaches the duty to respond to a crime in a non-discriminatory manner. Significantly, the Human Rights Committee has specifically held that the commission of honour crimes which remain unpunished constitutes “a serious violation” of the Covenant and in particular of Articles 6, 14 and 26.<sup>288</sup> One could talk about adding a non-discrimination component to positive obligations; and more specifically in the context of honour killings a non-discrimination component to the positive obligations in relation to the right to life. Therefore, even though this approach is somewhat different from the idea of honour killings as a form of violence against women and thus discrimination in accordance with General Recommendation 19 of the CEDAW Committee, the central idea derived from Articles 2 and 3 of the ICCPR is similar: the failure of states to protect women against honour killings, to prevent honour killings from taking place or to effectively respond to such crimes constitutes discrimination and a failure to fulfil the requirements of equal treatment of men and women in relation to the rights protected, particularly the right to life.

### ***3.3.3 Honour killings in migrant communities – a case of multiple discrimination?***

In the preceding discussion gender has been assumed as the sole ground for discrimination – also the traditional understanding of discrimination usually treats the various discrimination grounds as separate issues.<sup>289</sup> However, some situations may involve discrimination based on several grounds at the same time, or in relation to different rights or on behalf of the several agents that carry out a discriminatory

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<sup>287</sup> HRC, *General Comment 28*, UN doc. CCPR/21/Rev.1/Add.10, para. 3.

<sup>288</sup> HRC, *General Comment 28*, para. 31. See also Ewing, *supra* n. 199, 780.

<sup>289</sup> Makkonen, *supra* n. 251, 9.

practice or measure.<sup>290</sup> Such discrimination has been named multiple discrimination,<sup>291</sup> or alternatively compound or intersectional discrimination.<sup>292</sup> The idea of intersectionality thus addresses the manner in which “racism, patriarchy, economic disadvantages and other discriminatory systems contribute to create layers of inequality that structures the relative positions of women and men, races and other groups.”<sup>293</sup>

Honour killings and the failure of the authorities to protect women against such killings can give rise to various types multiple, compound or intersectional discrimination. It seems, however, that the problem of multiple discrimination is most evident in situations where honour killings occur in migrant communities, that is, amongst an immigrant, minority community. For example, a woman threatened by honour killing on part of her family is discriminated against on the basis of her gender. When she seeks help or protection from the police she may encounter prejudice or discrimination based on her ethnic or cultural background and/or gender. Thus, she encounters discrimination both on several grounds (gender and ethnicity) and on part of several agents (her family or community and the police). In other words, she faces both “in-group” and “out-group” discrimination at the “intersection of ethnic origin and gender”.<sup>294</sup> Also the concepts of “overpolicing” and “underpolicing” have been used in the context of violence against minority women. For example, certain crimes tend to be constructed in racial terms and are given disproportionate attention in the media (“overpolicing”) and respectively, all domestic

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<sup>290</sup> A. Spiliopoulou Åkermark, ‘Minority women: international protection and the problem of multiple discrimination’, 85-119, in *New Trends in Discrimination Law: International Perspective*, L. Hannikainen & E. Nykänen (eds.), Publications of Turku Law School no. 1/1999, 105-108.

<sup>291</sup> Spiliopoulou Åkermark uses this term. Makkonen has suggested that the term intersectional discrimination is preferable. He notes, however, that the term multiple discrimination is widely used particularly within the human rights field. Makkonen, *supra* n. 251, 12

<sup>292</sup> Timo Makkonen has distinguished between different types of situations involving discrimination as follows: *multiple* discrimination occurs where one person suffers from discrimination on several grounds, but on the basis on one ground at a time; *compound* discrimination again refers on the basis of two or more grounds that add to each other to create an added burden; and *intersectional* discrimination is based on several ground operating and interacting with each other at the same time and which produces very specific forms of discrimination. Makkonen, *supra* n. 251, 10-11. On intersectional discrimination and violence against women see also, K. Crenshaw, ‘Mapping the margins: intersectionality, identity politics, and violence against women of color’, *43 Stanford Law Review* [1991], 1241-1299.

<sup>293</sup> UN Division for the Advancement of Women (DAW), *Gender and racial discrimination: Report of the Expert Group Meeting 21-24.11.2000*, Zagreb, Croatia, 2000, 8.

violence has traditionally been “underpoliced”. Also, non-interference in the affairs of cultural minorities may justify for fear of being culturally insensitive.<sup>295</sup>

As the issues of multiple or intersectional discrimination have largely been disregarded in the jurisprudence of international organs it is important to afford appropriate attention to the fact that discrimination experienced by minority women is often intersectional; the failure to recognise this fact arguably results in an incomplete and inaccurate reflection of the problems and violations experienced by minority women.<sup>296</sup> Existing international human rights law does generally speaking provide for appropriate tools to deal with intersectional or multiple discrimination.<sup>297</sup> For example, the Human Rights Committee has stated in relation to Article 3 of the ICCPR that states parties should address the ways in which any instances of discrimination on other grounds than gender (such as race, colour, language, religion, political or other opinion, national or social origin, property, birth or other status) affect women in a particular way.<sup>298</sup> However, it has been argued that the various provisions dealing with discrimination may differ in terms of both in terms of grounds of discrimination, scope and legitimate exceptions and may thus lead to differing interpretations of what treatment is considered discrimination. Also, certain groups may be in need of additional protection. Moreover, as the factors underlying structural intersectional discrimination are often very complex and sometimes beyond legal regulation the law may be incapable of addressing the various structural root causes of intersectional discrimination.<sup>299</sup> It has been argued that positive (or affirmative) action is one way of compensating such disadvantages and that intersectional or multiple

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<sup>294</sup> See Makkonen, *supra* n. 251, 23-30.

<sup>295</sup> See, e.g., UN Special Rapporteur on violence against women, its causes and consequences, *Race, gender and violence against women*, World Conference against Racism, Racial discrimination, Xenophobia and related Intolerance, Prep. Com. 3<sup>rd</sup> session, UN doc. A/CONF.189/PC.3/5, 27.7.2001, paras. 37-56.

<sup>296</sup> Spiliopoulou Åkermark, *supra* n. 288, 98-99.

<sup>297</sup> DAW, *supra* n. 291, 15.

<sup>298</sup> HRC, *General Comment 28*, *supra* n. 279, para. 30. See also CERD, *General Recommendation 25*, Gender related dimensions of racial discrimination, 20 March 2000.

<sup>299</sup> Makkonen, *supra* n. 251, 50-51.

discrimination is a good argument in favour of developing positive state obligations in regard to non-discrimination.<sup>300</sup>

### **3.3.4 Summary**

The idea of positive obligations in relation to the right to life and the prohibition of torture seem to be quite established by now and there is a considerable amount of case law of this subject, particularly from the European Court of Human Rights. Therefore it seems that the public/private distinction has lost meaning at least as far as violations of core non-derogable rights are concerned. However, when it comes to the prohibition of discrimination in relation to violence against women the practice of human rights bodies is not as established, particularly the intersectional approach to discrimination remains scarcely utilised. Despite this there are several useful approaches that can be taken in relation to honour killings in the context of discrimination in order to construe honour killings as violations of the principles of non-discrimination and equality. First, in some circumstances laws and/or application of laws relating to honour killings can constitute discrimination. Such discrimination may either be direct and institutional discrimination, as arguably is the case of codified discriminatory provocation defences or the Islamic *qisas* and *diyat* provisions, or indirect and institutional as, for example, in the case of the application by courts of law of Article 98 of the Jordanian Penal Code. Second, in accordance with the view of the CEDAW Committee, honour killings *per se*, as a form of violence against women, are a form of discrimination. Consequently, a state party to CEDAW has violated its duty to eliminate discrimination (that is, honour killings) against women when an honour killing occurs unless it has acted in good faith and pursued the elimination and prevention of honour killings, e.g., through effective enforcement of legislation and protective measures such as shelter homes. Similarly under general human rights conventions, such as the ICCPR, each duty imposed on a state by human rights convention must be read in conjunction with a duty to carry out the obligation in question in a non-discriminatory manner as well as the requirement of equal treatment of men and women. Therefore, in the context of honour killings, a

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<sup>300</sup> *Ibid.*, 51.

state that investigates cases of murdered men but does not, e.g., carry out effective investigation of cases of honour killings may be seen as violating its duty to respond to a breach of the right to life in a non-discriminatory manner. Finally, it is important to note that particularly when it comes to honour killings occurring in migrant communities the victims are often subject to multiple or intersectional discrimination; the failure to do so may give an inaccurate and incomplete reflection of the situation of minority women. In order to effectively address problems in migrant communities, and particularly problems such as honour killings, it is essential to recognise the intersectional character of the discrimination faced by women in migrant communities. Arguably it is useful to distinguish between the different approaches to honour killings and discrimination as summarised above. Such a multidimensional view of the issues of honour killings and discrimination gives a more nuanced understanding of the problems involved and provides for several different angles and possibilities of challenging discriminatory laws and practices and providing redress for victims of honour killings.

### **3.4 Where to turn for redress? Issues of implementation and enforcement**

Like many other forms of violence against women honour killings become a human rights issue where states, due to unwillingness or inability, fail to protect the fundamental rights of individuals. Whether violations of the right to life, the prohibition of discrimination, or any other human rights, are committed by state agents or private persons, states have an obligation to prevent and respond to them. Thus, where states have discriminatory laws or judicial practices that apply to honour killings, where states fail to prevent and investigate honour killings, bring the perpetrators to justice and provide remedies for the victims it is the international human rights machinery that must step in and provide for the redress that the state either cannot or will not provide. Such redress can be provided, for example, through individual complaints to various human rights treaty bodies or outside the treaty machinery, e.g., through the various procedures within the framework of the UN

Commission on Human Rights.<sup>301</sup> Having to resort to the international human rights machinery for a remedy always implies that something has gone terribly wrong in the first place and in the case of honour killings worst possible scenario has taken place; a person has lost her life. Therefore the main role of the international human rights monitoring system can be described as reactive.<sup>302</sup>

In the 'ideal' case the state in which the honour killing has taken place has ratified a human rights instrument under which an individual (or in the case of honour killings, for example the relatives of a victim) claiming to be victim of a human rights violation can lodge a complaint against the state alleging a breach of one or several rights in the relevant treaty. The international human rights body, for example the European Court of Human Rights, then examines the admissibility and merits of the case and comes to a decision on whether the state has violated its obligations under the relevant treaty and eventually awards adequate compensation for the victim. In the case of the European Court of Human Rights the judgments are binding on states. In other cases a decision by a treaty body represents an authoritative interpretation of the state's legal obligations under the treaty in question.

Many states where honour killings occur have, however, not ratified any international human rights treaties under which they could be held responsible for their failure to protect the right to life of women, to respond effectively to violations of the right to life or their failure to eliminate discrimination against women. For example, Pakistan, the state where at least 461 women were killed in 2002 in the provinces of Sindh and Punjab alone,<sup>303</sup> is not a party to the ICCPR under which it could be held responsible for the failure to protect the right to life of women. As a party to the Convention on the Rights of the Child (CRC) Pakistan could be held accountable under that

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<sup>301</sup> There is no need for an extensive overview of the international human rights monitoring system here; instead these remarks aim at pointing out issues and problems that are particular in the context of honour killings. For a general overview of the international system for the protection of human rights see, e.g., G. Alfredsson, J. Grimheden, B.G. Ramcharan & A. de Zayas (eds.) *International Human Rights Monitoring Mechanisms*, Martinus Nijhoff Publ., 2001.

<sup>302</sup> Of course the human rights bodies may give more general recommendations and observations in the comments of state reports and in general recommendations that may have a preventive effect. The more proactive aspects of the role of human rights in the prevention of honour killings will be dealt with in the next chapter.

<sup>303</sup> See BBC news, Wednesday 11 Dec. 2002, *Rise in Pakistan 'honour killings'*, [http://news.bbc.co.uk/2/hi/south\\_asia/2567077.stm](http://news.bbc.co.uk/2/hi/south_asia/2567077.stm), homepage visited 7 Jan. 2003.

convention;<sup>304</sup> however, the CRC does not include a possibility of individual complaints. Still, there is the possibility that the Committee on the Right of the Child takes up the issue of honour killing when examining the periodical reports of Pakistan.<sup>305</sup> Even where a state has ratified a relevant human rights treaty it may not have ratified the instrument that enables individual complaints,<sup>306</sup> and therefore an individual cannot lodge a complaint against the state claiming to be a victim of human rights violations. Jordan, for instance, is a party to the ICCPR<sup>307</sup> but has not recognised the Human Rights Committee's competence in accordance with the Optional Protocol;<sup>308</sup> thus the only chance of considering honour killings occurring in Jordan as violations of the right to life is in the context of examination of Jordan's periodical reports to the Human Rights Committee. So far the issue of honour killings in Jordan has not been mentioned at all within the framework of the ICCPR.<sup>309</sup> The Committee on the Right of the Child has however taken up the problem of honour killings in Jordan in the context of the right to life and stated that it is seriously concerned that the inherent right to life of persons under 18 years of age is not guaranteed under the law in Jordan.<sup>310</sup> Also, even though it can be argued that there exists a positive obligation to protect the right to life also under customary

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<sup>304</sup> Pakistan ratified the CRC 12 Nov. 1990, upon signature Pakistan made the following reservation "provisions of the Convention shall be interpreted in the light of the principles of Islamic laws and values," but withdrew it in 1997.

<sup>305</sup> The first periodic report by Pakistan was submitted in 1993 (due 1992), and the second in 2001 (due 1997). The issue of honour killings was not mentioned during the examination of the first report, see UN doc. CRC/C/15/Add.18. The second periodic report will be examined during the Committee's 34<sup>th</sup> session in September 2003. The third periodic report of Pakistan to the CRC was due in December 2002.

<sup>306</sup> For example, state parties to the ICCPR must separately "recognise the competence" of the Human Rights Committee to consider communications from individuals claiming to be victims of violations of rights by ratification of Optional Protocol I. See Article 41 of the ICCPR.

<sup>307</sup> Jordan ratified the Covenant on 25 May 1975.

<sup>308</sup> Egypt, Iraq, Lebanon, Syria and Turkey are other states where honour killings occur and that are state parties to the ICCPR but have not ratified Optional Protocol I. <http://www.unhcr.ch/pdf/report.pdf>.

<sup>309</sup> Jordan has submitted 3 periodic reports to the Human Rights Committee and in the reply to the last report the Committee emphasised "the need for the Government to prevent and eliminate discriminatory attitudes and prejudices towards women and to achieve the effective implementation of article 3 of the Covenant, by adopting promotional measures to overcome the weight of certain traditions and customs." The issue of honour killings was not mentioned. *Concluding observations on Jordan*, UN doc. CCPR/C/79/Add.35, 10 Aug. 1994. Jordan's subsequent reports are overdue, the 4<sup>th</sup> periodic report was due in 1997.

<sup>310</sup> *Concluding Observations of the Committee on the Rights of the Child: Jordan*, 2 June 2000, UN doc. CRC/C/15/Add.125, para. 35. Jordan's next periodic report is due in June 2003.

international law the enforcement mechanisms in relation to customary law are still weak.

One convention that has been ratified by most states<sup>311</sup> and thus also by many states where honour killings occur, is CEDAW. CEDAW is the body that has taken up the issue of honour killings most frequently in its concluding observations on member states' reports. It has, e.g., urged the government of Jordan to repeal (the now amended) Article 340 of the Penal Code and to undertake awareness-raising programmes. CEDAW also noted with concern the fact that women are being placed in protective custody to be protected from their relatives.<sup>312</sup> It can, however, be noted that CEDAW has not had the opportunity to question the Pakistani government about honour killings as Pakistan has so far submitted no reports to the Committee.<sup>313</sup> CEDAW has been described as the "definitive international legal instrument requiring respect of and observance of the human rights of women; it is universal in reach, comprehensive in scope and legally binding in character."<sup>314</sup> Also one of the Convention's major weaknesses, the lack of an individual complaints procedure, was remedied in 2000 when the Optional Protocol to CEDAW entered into force.<sup>315</sup> Still, particularly the numerous reservations, the character of many reservations and the response of non-reserving states towards reservations considerably undermine the significance of CEDAW.<sup>316</sup> Moreover, the combined effect of the weak enforcement mechanisms and the *de facto* acceptance of reservations to some of the most fundamental obligations of the Convention has been a weak adherence to the normative principles of the Convention and indicates a lack of commitment to the basic values enshrined in the Convention.<sup>317</sup> However, it remains to be seen what the

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<sup>311</sup> As of 9 Dec. 2002 CEDAW had 170 states parties.

<sup>312</sup> CEDAW *Concluding Observations: Jordan*, 27 Jan. 2000, A/55/38, para. 179. Jordan's third periodic report was due in July 2001.

<sup>313</sup> Pakistan's first periodic report was due in 1997 and the second in 2001.

<sup>314</sup> Cook, *supra* n. 276, 643.

<sup>315</sup> *Optional Protocol to the Convention on the Elimination of Discrimination against Women*, Adopted by UN GA Res A/54/4, 6 Oct. 1999, entry into force 22 Dec. 2000. The Optional Protocol has currently 47 state parties.

<sup>316</sup> See, e.g., Cook, *supra* n. 260, and M. Jacobs, 'A conditional promise', *12 Netherlands Quarterly of Human Rights* [1994], 271-285.

<sup>317</sup> L. A. Hoq, 'The Women's Convention and its Optional Protocol: Empowering women to their internationally protected rights', *32 Columbia Human Rights Law Review* 3 [2001], 677-726, 691.

impact of the new Optional Protocol will be in combating the marginalization of the human rights of women and in empowering the CEDAW Committee.<sup>318</sup>

Even though the other universal human rights treaty monitoring bodies have taken up the problem of honour killings in their concluding observations on some states<sup>319</sup> and in their general comments, so far no individual cases concerning honour killings have been considered by international human rights bodies. As the discussion in this paper has attempted to show, international human rights law does, despite certain weaknesses in the enforcement mechanisms, offer an established framework for obtaining redress for honour killings as violations of human rights. What is then to be done? Of course, all states must be encouraged to ratify both universal and regional human rights treaties and to recognise the competence of the treaty monitoring bodies to examine individual complaints. As it is not likely that state parties will be willing to take up honour killings in their own reports to the monitoring bodies the international human rights treaty monitoring bodies should be encouraged to take initiative in examining whether honour killings have taken place in the reporting state. Here the role of NGOs in providing the members of the treaty bodies with relevant background information is vital. NGOs also have an important task in informing the public, and particularly women, of their human rights and of those (international) procedures that are available for seeking redress. Also the issue of availability of legal counselling to persons wishing to bring a claim to a human rights body provides a major challenge where particularly the contribution of NGOs is essential.

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<sup>318</sup> *Ibid.*, 699-704.

<sup>319</sup> See s. 4.2 below.

## **4 Honour killings on the international human rights agenda**

### **4.1 Measures to combat honour killings within the United Nations Charter based bodies**

#### ***4.1.1 UN General Assembly***

Within the General Assembly, honour killings have been mentioned in a number of resolutions on extrajudicial, summary or arbitrary executions and on violence against women. In the context of extrajudicial executions, the GA took up honour killings for the first time in 2000 in resolution 55/111. The GA called upon Governments to investigate promptly and thoroughly “cases in various parts of the world of killings committed in the name of passion or in the name of honour...and to bring those responsible to justice before an independent and impartial judiciary, and to ensure that such killings are neither condoned nor sanctioned by government officials or personnel.”<sup>320</sup> Honour killings were also mentioned in resolution 55/68 on violence against women.<sup>321</sup> References to honour killings were subsequently included in respective resolutions in 2002.<sup>322</sup>

Most notably, however, in 2000 the GA adopted also a resolution exclusively on the subject of honour crimes.<sup>323</sup> In this resolution the GA reaffirmed that states have an obligation to exercise due diligence to prevent, investigate and punish the perpetrators of such crimes and to provide protection for the victims and that a failure on part of the state to do so constitutes a violation of human rights.<sup>324</sup> The GA expressed its concern at the practice of honour crimes and called upon states to intensify efforts to

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<sup>320</sup> GA res 55/111, 4 Dec. 2000, UN doc. A/RES/55/111, para. 7.

<sup>321</sup> GA res 55/68, 4 Dec. 2000, UN doc. A/RES/55/68, pp. 5, op. 1.

<sup>322</sup> UN GA res 57/214, 18 Dec. 2002, A/RES/57/214, para. 6 (voting: 130-0-49 ) and UN GA res 57/181, 18 Dec. 2002, UN doc. A/RES/57/181, para. pp. 6, op. 2.

<sup>323</sup> This was the first resolution to exclusively deal with *honour* crimes, excluding the so called crimes of *passion*. GA res 55/66, working towards the elimination of crimes against women committed in the name of honour, 4 Dec. 2000, UN doc. A/RES/55/66.

<sup>324</sup> *Ibid.*, pp. 3.

prevent and eliminate honour crimes by using legislative, educational and social measures. Further, the GA called upon states to support and implement awareness programmes for law enforcement personnel, judiciary and health personnel, to establish, strengthen or facilitate support services for victims as well as institutional mechanisms for reporting of such crimes. The GA also encouraged relevant treaty bodies to continue to address the issue of honour crimes where appropriate.<sup>325</sup> Regrettably, the resolution met with some resistance and was not adopted by consensus. 26 states abstained from voting, among these Pakistan and Jordan and many others where honour killings continue to take place but whose governments have repeatedly condemned honour killings.<sup>326</sup> The sentiments of these governments were perhaps summed up by the statement of the representative of Qatar, who said that “crimes of passion” were not confined to any particular people or region and expressed reservations concerning the use of the term “crime of honour”.<sup>327</sup> Pursuant to resolution 55/66 the Secretary General presented his report *Working towards the elimination of crimes against women committed in the name of honour* in July 2002.<sup>328</sup> In this report the SG provides for an overview of the measures taken by members states, regional organisations and UN bodies towards the elimination of honour crimes and identifies areas where further efforts are needed. The report concludes that although attention has been drawn to the problem of honour crimes both at the international and national levels, greater and more concerted efforts are needed. All forms of violence against women, including honour crimes, should be criminalized, and those responsible should be punished. Cases of honour crimes

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<sup>325</sup> *Ibid.*, paras. 1, 4.

<sup>326</sup> *Res 55/66* was adopted by 146 votes to 1, with 26 abstentions. The abstaining states were: Algeria, Bahrain, Brunei, Cameroon, China, Comoros, Djibouti, Egypt, Iran, Jordan, Kenya, Kuwait, Libya, Malaysia, Maldives, Myanmar, Nigeria, Oman, Pakistan, Qatar, Russia, Saudi Arabia, Sierra Leone, Sudan, Syria and the United Arab Emirates. Lesotho voted against but subsequently informed that it had intended to vote in favour and the delegation of Mauritania informed that it had intended to abstain. GA 55<sup>th</sup> session, 81<sup>st</sup> plenary meeting, 4 Dec. 2000, UN doc. A/55/PV.81, p. 6.

<sup>327</sup> *Statement by Mr. Al-Mohannadi (Qatar)*, GA 55<sup>th</sup> session, 81<sup>st</sup> plenary meeting, 4 Dec. 2000, UN doc. A/55/PV.81, p. 6. The UN Sub-Commission Special Rapporteur on traditional practices affecting the health of women and girls has argued that many Muslim delegations reacted negatively to the showing of a film on honour crimes at the UN headquarters and that it would have been possible to avoid voting on the resolution if the sponsors would have sufficiently considered to advisability of showing that film. *Traditional practices affecting the health of women and the girl child*, fifth report by Mrs. Halima Embarek Warzazi, UN doc. E/CN.4/Sub.2/2001/27, 4 July 2001, paras. 100-102.

<sup>328</sup> *Working towards the elimination of crimes against women committed in the name of honour*, Report of the Secretary General, UN doc. A/57/169, 2 July 2002.

should be promptly reported, investigated, documented, and prosecuted. Various preventive and protective measures must be taken.<sup>329</sup> During its 57<sup>th</sup> session the GA adopted resolution 57/179 on honour crimes, this time without a vote, and also without reference to resolution 55/66.<sup>330</sup>

#### **4.1.2 UN Commission on Human Rights**

Like in the GA, honour killings have been taken up before the Commission on Human Rights in a number of resolutions on extrajudicial, summary or arbitrary executions and on violence against women. Also in the CHR, honour killings were mentioned for the first time in the context of extrajudicial executions in resolution 2000/31,<sup>331</sup> where the Commission noted with concern “the large number of killings committed in the name of passion or in the name of honour” and called upon the Governments concerned to “investigate such killings promptly and thoroughly, to bring those responsible to justice and to ensure that such killings are neither condoned nor sanctioned by government officials or personnel.”<sup>332</sup> Since then the problem of honour killings has been mentioned in all CHR resolutions on the subject with some alterations in the wording.<sup>333</sup> Even though most of these resolutions have been adopted by consensus their adoption was a result of heated debates in the preparatory committees and plenum of the Commission both in 2001 and 2002, and according the Special Rapporteur, the reference to honour killings – together with the references to sexual orientation and the abolition of the death penalty – in the resolutions continues to be a difficult issue for many governments and meets with resistance each year.<sup>334</sup>

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<sup>329</sup> *Ibid.*, paras. 31-34.

<sup>330</sup> UN GA *res 57/179*, 18 Dec. 2002, UN doc. A/RES/57/179; UN GA 57<sup>th</sup> session, Agenda item 102, *Report of the Third Committee*, 3 Dec. 2002, UN doc. A/57/549, para. 26.

<sup>331</sup> UN CHR *res 2000/31*, 20 April 2000, para. 6.

<sup>332</sup> *Ibid.*

<sup>333</sup> UN CHR *res 2001/45*, 23 April 2001, para. 7, UN CHR *res 2002/36*, 22 April 2002, para. 6; UN CHR *res 2003/53*, 24 April 2003, para. 5. Particularly important were the additions in resolution 2001/45 where the Commission reiterated “the obligation of Governments to *ensure the protection of the inherent right to life* of all persons under their jurisdiction” and the references to competent, independent and impartial judiciaries. *Res 2001/45*, para. 7.

<sup>334</sup> Discussions with the Special Rapporteur during her visit to Finland, 1-2.11.2002.

The first mention of honour killings in the resolutions on violence against women was in 2000, when the Commission adopted resolution 2000/45, where it included honour crimes in the definition of violence against women.<sup>335</sup> The Commission has adopted similar resolutions also the following years.<sup>336</sup> On the basis of these resolutions the Special Rapporteurs of the Commission on Human Rights on extrajudicial, summary or arbitrary executions and violence against women, its causes and consequences, respectively, have taken up honour killings in their reports. In addition to them, also other Special Rapporteurs of the Commission on Human Rights have taken up honour killings in their reports and expressed their concern as to the practice.<sup>337</sup> Honour killings have also been taken up in speeches before the Commission by government and NGO representatives alike.<sup>338</sup>

#### **4.1.2.1 Special Rapporteur on extrajudicial, summary or arbitrary executions**

The current Special Rapporteur on extrajudicial, summary or arbitrary executions, Ms. Asma Jahangir, who was appointed to the mandate in 1998, took up the question of honour killings already in her first report to the Commission in 1999.<sup>339</sup> The following year she continued to receive reports on honour killings of women and devoted a substantial part of her report to these crimes.<sup>340</sup> She stated her intention to

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<sup>335</sup> UN CHR *res* 2000/45, 20 April 2000, para. 3.

<sup>336</sup> UN CHR *res* 2001/49, 24 April 2001; UN CHR *res* 2002/52, 23 April 2002; UN CHR *res* 2003/45, 23 April 2003.

<sup>337</sup> See, e.g., *Report of the Special Rapporteur on the Independence of Judges and Lawyers, Mr. Param Cumaraswamy*, E/CN.4/1999/60, 13 Jan. 1999, paras. 41-42.

<sup>338</sup> See e.g., UN CHR 57<sup>th</sup> session, *Summary Records of the 29<sup>th</sup> meeting*, UN doc. E/CN.4/2001/SR.29, para. 20 (Pakistan); UN CHR 57<sup>th</sup> session, *Summary Records of the 29<sup>th</sup> meeting*, UN doc. E/CN.4/2001/SR.45, para. 3 (Sweden on behalf of the EU), 20 (Norway), 30 (Pakistan); UN CHR 58<sup>th</sup> session, *Summary Records of the 3<sup>rd</sup> meeting*, UN doc. E/CN.4/2002/SR.3, para. 21 (Finland); UN CHR 58<sup>th</sup> session, *Summary Records of the 10<sup>th</sup> meeting*, UN doc. E/CN.4/2002/SR.10, para. 88 (Norway); UN CHR 58<sup>th</sup> session, *Summary Records of the 15<sup>th</sup> meeting*, UN doc. E/CN.4/2002/SR.15, para. 79 (Pakistan), and 90 (France); UN CHR 58<sup>th</sup> session, *Summary Records of the 43<sup>rd</sup> meeting*, UN doc. E/CN.4/2002/SR.43, para. 30 (Spain on behalf of the EU); as well as UN CHR, *Summary Record of the 38<sup>th</sup> Meeting*, E/CN.4/2000/SR.38 (1.5.2000); *Summary Record of the 34<sup>th</sup> Meeting*, E/CN.4/2000/SR.34, particularly para. 22; *Summary Record of the 47<sup>th</sup> Meeting*, E/CN.4/2001/SR.47, para. 37.

<sup>339</sup> *Extrajudicial, summary or arbitrary executions, report of the Special Rapporteur, Ms. Asma Jahangir*, UN doc. E/CN.4/1999/39, 6 Jan. 1999, paras. 74-75.

<sup>340</sup> *Extrajudicial, summary or arbitrary executions, report of the Special Rapporteur, Ms. Asma Jahangir*, UN doc. E/CN.4/2000/3, 25 Jan. 2000, paras. 78-84.

continue to follow cases of honour killings in order to assess the level of impunity extended to such crimes.<sup>341</sup> In her reports in 2001, 2002 and 2003 to the Commission she continued to report on honour killings committed with impunity in various parts of the world. She clarified that she only acts upon such cases of honour killings “where the State either approves or supports these acts, or extends impunity to the perpetrators by giving tacit approval to the practice.”<sup>342</sup> The Special Rapporteur has also received reports of honour killings on her country missions. E.g., during her mission to Turkey the Special Rapporteur noted with concern that apart from some women’s rights organizations, all other NGOs dealing with human rights were of the opinion that honour killings were not a human rights concern but rather a social issue.<sup>343</sup>

The Rapporteur’s efforts to take up honour killings in her reports have met with some resistance, and her way of carrying out her mandate has been criticised by governments that have objected to her taking up acts committed by private actors in her reports. Most recently the resolution on extrajudicial executions and the way the current Rapporteur is carrying out her mandate were subject to an attack in the Third Committee during the 57<sup>th</sup> session of the General Assembly. No less than seven separate votes were taken on specific paragraphs of the draft resolution with the result that the whole draft resolution was voted upon being approved by a vote of 112 to none against with 48 abstentions.<sup>344</sup> Many of the proposed amendments would have modified language in the text pertaining to the mandate of the Special Rapporteur and would have deleted a list of investigative priorities and duties for governments.

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<sup>341</sup> *Ibid.*, para. 84.

<sup>342</sup> *Extrajudicial, summary or arbitrary executions, report of the Special Rapporteur, Ms. Asma Jahangir*, UN doc. E/CN.4/2001/9, paras. 41 and 117; *Extrajudicial, summary or arbitrary executions, report of the Special Rapporteur, Ms. Asma Jahangir*, UN doc. E/CN.4/2002/74, paras. 52, 147; and *Extrajudicial, summary or arbitrary executions, report of the Special Rapporteur, Ms. Asma Jahangir*, UN doc. E/CN.4/2003/3, para. 59. See also *Extrajudicial, summary and arbitrary executions, Interim report of the Special Rapporteur of the Commission on Human Rights*, UN doc. A/55/288, (11 Aug. 2000), para. 40; and *Extrajudicial, summary and arbitrary executions, Interim report of the Special Rapporteur of the Commission on Human Rights*, UN doc. A/57/138 (2 Aug. 2002), para. 34-36.

<sup>343</sup> *Extrajudicial, summary or arbitrary executions, report of the Special Rapporteur, Ms. Asma Jahangir, Addendum: Mission to Turkey*, UN doc. E/CN.4/2002/74, paras. 64-66.

<sup>344</sup> See *Press Release 25 Nov. 2002, Third Committee approves draft resolution calling for effective action to eliminate extrajudicial, summary or arbitrary executions*, 57<sup>th</sup> GA, Third Committee, 59<sup>th</sup> meeting, UN doc. GA/SHC/3731. Votes were requested on pp. 3 and op. 6, 11, 12, 18 and 22 as well as pp. 7 and op. 3.

Several delegations felt that the Rapporteur had exceeded her mandate.<sup>345</sup> One of the major stumbling blocks was operative paragraph 6 and the reference to honour killings (and sexual orientation).<sup>346</sup> Particularly states members of the Organization of the Islamic Conference (OIC) had serious problems with the wording of the paragraph and as the Pakistani delegate expressed himself, they felt that the exchange of the word ‘execution’ with ‘killings’ had totally changed the focus of the resolution.<sup>347</sup> In the recorded vote on the paragraph the Third Committee decided to retain it as it was in a vote of 92 in favour and 34 against, with 28 abstentions.<sup>348</sup> The Third Committee was split in two camps, where on one side the OIC states complained of inflexibility and failure to respect “cultural diversity” of part of the co-sponsors and on the other side, the EU and other likeminded states emphasised the fact that the proposed amendments would have altered agreed language.

Therefore, while many states acknowledge that honour killings indeed are crimes, murder and a violation of women’s human rights, some contend that honour killings have no place in a resolution and mandate on extrajudicial executions. However, as the Special Rapporteur herself has emphasised she is only concerned with cases of honour killings where the state has failed to exercise due diligence in investigating, punishing and remedying honour killings. Furthermore, situations of extrajudicial, summary or arbitrary executions include “*all acts and omissions of state representatives that constitute violations of the right to life*”.<sup>349</sup> Thus, violations of the right to life by private actors fall within the mandate in the event of the state’s systematic omission to exercise due diligence in order to, e.g., prevent violations and to effectively remedy violations that have occurred. The present Special Rapporteur has correctly interpreted her mandate to include honour killings as such violations of the right to life. As the Special Rapporteur has taken up the issue of honour killings in a traditionally very ‘male’ mandate, she has on her part contributed significantly to the mainstreaming of gender within the context of violations of the right to life.

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<sup>345</sup> *Ibid.*

<sup>346</sup> The other major issues were the references to the death penalty and the ICC.

<sup>347</sup> *Ibid.* Also the representatives of Egypt, Syria, Sudan, Malaysia, Iran, Libya and Lebanon expressed their intentions to vote against the paragraph.

<sup>348</sup> *Ibid.*

<sup>349</sup> *Extrajudicial, summary or arbitrary executions Fact Sheet No. 11, 1997, p. 5 (emphasis added).*

#### 4.1.2.2 Special Rapporteur on violence against women, its causes and consequences

The Special Rapporteur on violence against women, its causes and consequences was appointed by the Commission in 1994. Since then the Special Rapporteur has presented a number of reports on various aspects of violence against women, including violence against women in the family,<sup>350</sup> trafficking in women, women's migration and violence against women,<sup>351</sup> violence against women in armed conflicts,<sup>352</sup> and most recently, cultural practices in the family that are violent towards women.<sup>353</sup> In addition to these thematic reports the Special Rapporteur has conducted a number of country missions.<sup>354</sup> She also publishes country specific information based on communications to and from governments.

The first report where the Special Rapporteur discussed the issue of honour killings at more length was her report on violence against women in the family in 1999. In that report the Special Rapporteur included honour crimes in her definition of violence in the family.<sup>355</sup> In her country specific comments the Special Rapporteur expressed her concern for the occurrence of honour killings in relation to Israel and Jordan.<sup>356</sup> Before 1999, the Special Rapporteur had mentioned honour killings in her report on

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<sup>350</sup> *Violence against women in the family, Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy*, UN doc. E/CN.4/1999/68, 10 March 1999.

<sup>351</sup> *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, on trafficking in women, women's migration and violence against women*, UN doc. E/CN.4/2000/68, 29 Sept. 2000.

<sup>352</sup> *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, on violence against women perpetrated and/or condoned by the State during times of armed conflict*, UN doc. E/CN.4/2001/73, 23 Jan. 2001.

<sup>353</sup> *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, cultural practices in the family that are violent towards women*, UN doc. E/CN.4/2002/83, 31 Jan. 2002.

<sup>354</sup> Most recently, see e.g., reports on Afghanistan and Pakistan (UN doc. E/CN.4/2000/68/Add.4); Colombia (UN doc. E/CN.4/2002/83/Add. 3); and Sierra Leone (UN doc. E/CN.4/2002/83/Add. 2).

<sup>355</sup> *Violence against women in the family, Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy*, UN doc. E/CN.4/1999/68, 10.3.1999, para. 17. See also para. 18.

<sup>356</sup> *Violence against women in the family, Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy*, UN doc. E/CN.4/1999/68, 10.3.1999, paras. 120, 126.

her mission in Brazil in 1996.<sup>357</sup> She also briefly mentioned honour killings in her report of her mission to Afghanistan and Pakistan in 1999.<sup>358</sup> In addition the Special Rapporteur has expressed her concern for individual cases of honour killings and has sent urgent appeals to governments. For example, the Special Rapporteur sent an urgent appeal to the Canadian government together with the Special Rapporteur on executions in regard to a Pakistani citizen who had sought refugee status on Canada as she feared honour killing if she returned to Pakistan.<sup>359</sup> Most extensively the Special Rapporteur discussed honour crimes in her 2002 report to the Commission on violent cultural practices in the family. In her report the Special Rapporteur gives an overview of the frequency, historic and social origins of and reasons for honour killings in various parts of the world.<sup>360</sup>

It seems that the work of the Special Rapporteur on violence against women with honour killings has been better accepted than that of the Special Rapporteur on extrajudicial executions. For example, in the recent GA resolution of crimes of honour there is a reference to the work of the Special Rapporteur on violence against women,<sup>361</sup> but not to that of the Rapporteur on extrajudicial executions. One wonders why it is more acceptable to deal with honour killings as a human rights violation within the framework of violence against women than within a mandate that deals with the right to life? Is this yet another example of an attempt to marginalize a gender-specific human rights violation to the category of “women’s human rights” and thus excluding them from scrutiny in the more “mainstream”, (male) mandates?

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<sup>357</sup> *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, Addendum, Report on the mission of the Special Rapporteur to Brazil on the issue of domestic violence* (15-26.7.1996), UN doc. E/CN.4/1997/47/Add.2, 21 Jan. 1997, para. 43-45.

<sup>358</sup> *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, Addendum, Mission to Pakistan and Afghanistan* (1-13.9.1999), UN doc. E/CN.4/2000/68/Add.4, 13.3.2000, paras. 46.

<sup>359</sup> *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, Addendum, Communications to and from Governments*, UN doc. E/CN.4/2001/73/Add.1, 13 Feb. 2001, paras. 11-13. Also, in 2000 the Special Rapporteur reported that she had received information on a case of honour killing in Pakistan and that she had sent a letter to the Pakistani government concerning that case. *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, Addendum, Communications to and from Governments*, UN doc. E/CN.4/2000/68/Add.1, 27 Jan. 2000, paras. 92-97.

<sup>360</sup> Including Brazil, Pakistan, Turkey, Lebanon, Egypt, Bangladesh, Iraq, Jordan and the occupied territories of Israel. *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, cultural practices in the family that are violent towards women*, UN doc. E/CN.4/2002/83, 31 Jan. 2002, paras. 21-37.

### **4.1.3 UN Sub-Commission on the Promotion and Protection of Human Rights**

In the Sub-Commission honour killings have mainly been discussed in the framework on harmful traditional practices. Even though the Special Rapporteur has largely focused on female genital mutilation in her reports, she has also briefly mentioned honour killings in her more recent reports.<sup>362</sup> Her reports have, however been limited to some general comments on these crimes.

### **4.1.4 UN Commission on the Status of Women**

The UN Commission on the Status of Women has been silent on the issue of honour killings. The Commission failed to adopt agreed conclusions on the topic of violence against women during its 47<sup>th</sup> session in 2003.<sup>363</sup> The Secretary General did, however, mention honour killings in his report to the Commission.<sup>364</sup>

## **4.2 Honour killing on the agendas of United Nations human rights treaty-monitoring bodies**

Within the UN treaty-monitoring system the issue of honour killings has mainly been dealt with during the examination of reports by state parties and mentioned in the concluding observation of various treaty bodies. So far no individual communications relating to honour killings have been decided. Committee on the Elimination of Discrimination against Women (CEDAW Committee) and the Committee on the Rights of the Child (CRC) are the bodies where honour killings are most frequently discussed. In addition to these bodies the Human Rights Committee (HRC) and the

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<sup>361</sup> UN GA *res* 57/179, UN doc. A/RES/57/179, pp. 6 and 8.

<sup>362</sup> See, *Third report on the situation regarding the elimination of traditional practices affecting the health of women and the girl child* by Mrs. Halima Embarek Warzazi, UN doc. E/CN.4/Sub.2/1999/14; *Fourth report*, UN doc. E/CN.4/Sub.2/2000/17, paras. 69-77; *Fifth report*, E/CN.4/Sub.2/2110/21, paras. 84, 94-102; and *Sixth report*, UN doc. E/CN.4/Sub.2/2002/32, paras. 28-32, 50.

<sup>363</sup> *Press release WOM/1400*, 25 March 2003.

<sup>364</sup> *Thematic issues before the Commission on the Status of Women, Report of the Secretary-General*, UN doc. E/CN.6/2003/7 (16 Jan. 2002), paras. 14, 21.

Committee on Economic, Social and Cultural Rights (CESCR) have also taken up honour killings in their concluding observations. Honour killings have also occasionally been mentioned in the discussions on state reports before the Committee on the Elimination of Racial Discrimination (CERD) and Committee against Torture (CAT).<sup>365</sup>

#### ***4.2.1 Committee on the Elimination of Discrimination against Women***

The treaty body that has most frequently discussed honour killings is the CEDAW Committee. The CEDAW Committee has emphasised that honour killings are a violation of the right to life and security of persons.<sup>366</sup> The Committee has urged governments to respect and promote the human rights of women over discriminatory cultural practices and to take “effective and proactive measures” to eliminate discrimination and violence against women in general and in immigrant and minority communities. In addition to enacting laws criminalizing harmful cultural practices, such measures should include awareness-raising programmes, programmes to sensitise the community to combat patriarchal attitudes, practices and stereotypical roles.<sup>367</sup> Further, the CEDAW Committee has expressed its concern that women of ethnic and minority communities have limited information concerning their rights, including their right to be free from violence such as honour killings.<sup>368</sup> The Committee has also called for a holistic approach to prevention and elimination of violence against women, including honour killings.<sup>369</sup> More specifically, the CEDAW Committee has expressed its concern over certain provisions in national criminal codes that discriminate against women and that are in contradiction to Article 2(f) of

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<sup>365</sup> See, e.g., CAT *Summary Record of the 440<sup>th</sup> Meeting: Armenia*, 17 Nov. 2000, UN doc. CAT/C/SR.440; CAT *Summary Record of the 496<sup>th</sup> Meeting: Israel*, 29 Nov. 2001, UN doc. CAT/C/SR.496; CERD *Summary Record of the 1251<sup>st</sup> Meeting: Israel*, 11 March 1998, UN doc. CERD/C/SR.125.

<sup>366</sup> See, e.g., CEDAW *Concluding Observations: Turkey*, 12 Aug. 1997, UN doc. A/52/38, para. 195.

<sup>367</sup> CEDAW *Concluding Observations: Netherlands*, 31 July 2001, A/56/38, para. 206; CEDAW *Concluding Observations: Jordan*, 27 Jan. 2000, UN doc. A/55/38, para. 167. See also CEDAW *Concluding Observations: Israel*, 12 Aug. 1997, UN doc. A/52/38/Rev.1, Part II, paras. 132-183; CEDAW *Concluding Observations: Iraq*, 14 June 2000, UN doc. A/55/38, paras. 166-210.

<sup>368</sup> *Concluding Observations: Netherlands*, *supra* n. 365, para. 207.

<sup>369</sup> CEDAW *Concluding Observations: Egypt*, 2 Feb. 2001, UN doc. A/56/38, para. 312-358, para. 344.

the Convention.<sup>370</sup> For example, the Committee has urged the government of Jordan to “provide all possible support for the speedy repeal of Article 340 and to undertake awareness-raising activities that make ‘honour killings’ socially and morally unacceptable.”<sup>371</sup> In addition to the right to life aspects of honour killings, the CEDAW Committee has noted with concern the fact that women are being placed in protective custody to be protected from their relatives. The Committee urged the government of Jordan to “take steps to ensure the replacement of protective custody with other types of protection for women.”<sup>372</sup>

#### **4.2.2 Committee on the Rights of the Child**

The committee monitoring the Convention of the Rights of the Child, CRC, has expressed deep concern about the violation of the right to life that occur in the form of honour killings.<sup>373</sup> The CRC has emphasised that honour killings violate Articles 2 (non-discrimination), 3 (best interest of the child), 6 (right to life) and 19 (protection from all forms of violence). In relation to the initial report of Turkey<sup>374</sup> the CRC recommended that the state party concerned rapidly review its legislation with a view to addressing honour crimes in an effective way and to eliminating all provisions allowing reductions of sentence where the crime is committed for honour purposes. Further, the CRC recommended the government to develop and effectively implement an awareness and education campaign to combat effectively discriminatory attitudes and harmful traditions affecting girls. Such a campaign should involve religious and community leaders. Moreover, the state party should provide special training and resources to law enforcement officials with a view to more effectively protecting girls

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<sup>370</sup> *Concluding Observations: Netherlands*, *supra* n. 365, para. 178 and *Concluding Observations: Turkey*, *supra* n. 364, para. 177.

<sup>371</sup> *Concluding Observations: Jordan*, *supra* n. 365, para. 179. See also *Concluding Observations: Turkey*, *supra* n. 361, para. 179.

<sup>372</sup> *Concluding Observations: Jordan*, *supra* n. 365, para. 179. See also CEDAW *Concluding Observations: Uruguay*, 7 May 2002, UN doc. A/57/38, paras. 167-214, paras. 194, 196.

<sup>373</sup> CRC *Concluding Observations: Turkey*, 9 July 2001, CRC/C/15/Add.152, para. 31.

<sup>374</sup> UN doc. CRC/C/51/Add.4.

who are in danger of honour killings as well as to prosecuting cases of honour killings in an effective way.<sup>375</sup>

### **4.2.3 Human Rights Committee**

The Human Rights Committee (HRC) has also taken up honour killings in its concluding observations and noted with concern the occurrence of cases of honour killings. In relation to Sweden the HRC stated that the state party “should continue its efforts to prevent and eradicate [honour killings]. In particular, [the state party] should ensure that offenders are prosecuted, while promoting a human rights culture in the society at large, especially amongst the most vulnerable sectors of immigrant communities.”<sup>376</sup> In addition the HRC mentioned honour killings in its General Comment 28 on article 3 of the ICCPR where it stated that honour killings which remain unpunished constitute a serious violation of the Covenant and that laws which impose more serious penalties on women than on men for adultery or other offences also violate the requirement of equal treatment.<sup>377</sup>

### **4.2.4 Committee on Economic, Social and Cultural Rights**

Also the Committee on Economic, Social and Cultural Rights (CESCR) has expressed concern about the honour crimes. In relation to Syria the CESCR expressed concern about the “persisting discrimination in the political, social and economic spheres of life against women.” The CESRC regretted that Syria had not adopted any significant legislative or administrative measures to eliminate discrimination against women nor ratified the Women’s Convention.<sup>378</sup> The CESCR recommended Syria to take effective measures “to incorporate a gender equality perspective in both legislation

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<sup>375</sup> *Concluding Observations: Turkey*, supra n. 371, para. 32. See also the summary records of the meeting of the Committee, *CRC Summary Record of the 701<sup>st</sup> Meeting: Turkey*, 29 May 2001, CRC/C/SR.701, para. 51. See also *CRC Summary Record of the 702<sup>nd</sup> Meeting: Turkey*, 11 Feb. 2002, CRC/C/SR.702, para. 5; *Concluding Observations: Jordan*, 2 June 2000, UN doc. CRC/C/15/Add.125, para. 35; and *CRC Summary Record of the 752<sup>nd</sup> Meeting: Lebanon*, 17 Sept. 2002, UN doc. CRC/C/SR.752, para. 3.

<sup>376</sup> *HRC Concluding Observations: Sweden*, 24 April 2002, CCPR/CO/74/SWE, paras. 7-8.

<sup>377</sup> *CCPR General Comment 28*, UN doc. CCPR/C21/Rev.1/Add.10, para. 31.

<sup>378</sup> *CESCR Concluding Observations: Syrian Arab Republic*, 24 Sept. 2001, E/C.12/1/Add.63, para. 14.

and in governmental policies and administrative programmes, with a view to ensuring equality of men and women ... and addressing in particular the problems of ... 'honour crimes'.<sup>379</sup> CESCR has also welcomed the removal of legal recognition of crimes against honour from the Tunisian legislation.<sup>380</sup>

### **4.3 Honour killings on the agenda of UN specialized agencies**

Honour killings have also been taken up on the agendas of some of UN specialized agencies. UNIFEM has given priority to the issue of honour killings in the selection of their new Trust Fund projects for 2001 and in 2000 UNIFEM financed Trust Fund projects included a follow-up project on honour killings in which NGOs in Jordan and the West Bank are using a two-pronged approach to address the problem of honour killings, by conducting research to develop safe methods of disclosure for girls at risk and simultaneously working with judges in order to improve the delivery of justice and the treatment of survivors.<sup>381</sup> UNICEF has condemned honour killings and has also been active in the campaign against honour killings and has supported a number of projects aiming at the eradication of the practice. Such projects have included various awareness programmes and sensitisation workshops and have amongst others taken place in Jordan, Lebanon, Palestine and Pakistan.<sup>382</sup> Also UNDP has been engaged in the campaign against honour killings.<sup>383</sup>

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<sup>379</sup> *Ibid.*, para. 31.

<sup>380</sup> CESCR *Concluding Observations: Tunisia*, 14 May 1999, UN doc. E/C.12/Add.36, para. 4.

<sup>381</sup> *Report of the United Nations Development Fund for Women on the elimination of violence against women*, Commission on Human Rights, 57<sup>th</sup> session, E/CN.4/2001/126 and Commission on the Status of Women, 45<sup>th</sup> session, E/CN.6/2001/6, 30.1.2001, para. 7(b). See also Nadera Shalhoub-Kevorkian's report to UNIFEM 2000, *supra* n. 16.

<sup>382</sup> See, e.g., Statement by Carol Bellamy on International Women's Day 2000, [www.unicef.org/newsline/00pr/17.htm](http://www.unicef.org/newsline/00pr/17.htm).

<sup>383</sup> See, e.g., *Women's Rights and Human Security*, Message of UNDP Administrator Mark Malloch Brown on the occasion of International Women's Day New York, 8 March 2002, <http://www.undp.org/dpa/statements/administ/2002/march/08mar02.html>.

## 4.4 Honour killings on the European human rights arena

In Europe the Council of Europe and its Committee of Ministers has been concerned with issues relating equality between men and women and violence in the family and against children and women for a number of years.<sup>384</sup> An explicit statement on violence against women has, however, been lacking. In 2002 the Council's Committee of Ministers adopted a recommendation on the protection of women against violence.<sup>385</sup> In this recommendation the Committee of Ministers recommends governments to, *inter alia*, review their legislation and policies with a view to, amongst others, guaranteeing women the recognition, enjoyment, exercise and protection of their human rights and fundamental freedoms<sup>386</sup> as well as to recognise that states have an obligation to exercise due diligence to prevent investigate and punish all acts of violence, whether those acts are committed by the state or private persons, and to provide protection to victims.<sup>387</sup> Furthermore, governments are recommended to recognise that male violence against women is a major structural and societal problem, and to encourage all institutions dealing with violence against women, including the police, medical and social profession to draw up action coordinated plans for the prevention of violence and the protection of victims.<sup>388</sup> Significantly, this recommendation includes honour killings in the definition of violence against women.<sup>389</sup> The recommendation also gives a comprehensive list of general measures concerning violence against women, including measures relating to

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<sup>384</sup> See, e.g., Recommendation No. *R (79) 17* on the protection of children against ill-treatment; Recommendation No. *R (85) 4* of violence in the family; Recommendation No. *R (90) 2* on social measures concerning violence within the family; Recommendation No. *R (91) 11* on sexual exploitation, pornography and prostitution of, and trafficking in children and young adults; Recommendation No. *R (93) 2* on the medico-social aspects of child abuse; Recommendation No. *R (2000) 11* on action against trafficking in human beings for the purpose of sexual exploitation; and Recommendation *Rec (2001) 16* on the protection of children against sexual exploitation.

<sup>385</sup> *Recommendation Rec (2002) 5 of the Committee of Ministers to member states on the protection of women against violence*, 30 April 2002, 794<sup>th</sup> meeting of the Ministers' Deputies.

<sup>386</sup> *Rec (2002) 5*, para. I(1).

<sup>387</sup> *Rec (2002) 5*, para. II.

<sup>388</sup> *Rec (2002) 5*, paras. III-IV. See also paras. V-IX.

<sup>389</sup> Violence against women is understood as "any act of gender-based violence, which results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life." Such acts include "violence occurring within the family or domestic unit, *inter alia*, ... crimes committed in the name of honour...". *Appendix to Recommendation Rec(2002)5*, para. 1.

information, public awareness, education and training, media, local, regional and urban planning, assistance for and protection of victims, as well as criminal law, civil law and judicial proceedings.<sup>390</sup> Furthermore, the recommendation gives detailed recommendations concerning more specific aspects of the problem of violence against women, including intervention programmes for perpetrators of violence,<sup>391</sup> sexual violence,<sup>392</sup> violence within the family,<sup>393</sup> and killing in the name of honour.<sup>394</sup> Governments are recommended to penalise all forms of violence committed in the name of honour, including participation in, and facilitation or encouragement of honour killings, to take all necessary measures to prevent honour killings, including information campaigns, aimed at the population groups and professionals concerned with honour crimes, particularly judges and legal personnel as well as to support NGOs and other groups in their campaigns against the practice.<sup>395</sup> Recommendation Rec (2002) 5 must be welcomed for its pragmatic approach to the problem of violence against women and its detailed recommendations have potential to be a useful tool for government officials as well as NGOs in the campaign against honour killings and other violence against women. More specifically, honour crimes were addressed in a report by the Parliamentary Assembly's Committee on Equal Opportunities of Women and Men.<sup>396</sup> The brief report provides for a general introduction on honour crimes<sup>397</sup> and then focuses more specifically on honour killings.<sup>398</sup> Also a discussion of state responsibility under international human rights law is included.<sup>399</sup> The report recommends that member states of the Council of Europe take legal, preventive and protective measures in relation to honour killings, and importantly points out that

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<sup>390</sup> *Appendix to Recommendation Rec(2002)5*, para. 2-49.

<sup>391</sup> *Ibid.*, para. 50-53.

<sup>392</sup> *Ibid.*, para. 54.

<sup>393</sup> *Ibid.*, para. 55-59.

<sup>394</sup> *Ibid.*, para. 80-83. See also additional measures with regard to sexual harassment, (para. 60-61), genital mutilation (para. 62-67), violence in conflict and post-conflict (para. 68-76), violence in institutional environments (para. 77-78), failure to respect freedom of choice with regard to reproduction (para. 79).

<sup>395</sup> *Appendix to Recommendation Rec(2002)5*, para. 80-83. See also the *Explanatory Memorandum* annexed to the Recommendation, para. 104.

<sup>396</sup> *Crimes of Honour - Outline Report*, AS/Ega(2002)7rev2, 4 June 2002. (Not yet adopted).

<sup>397</sup> *Ibid.*, paras. 1-9.

<sup>398</sup> *Ibid.*, paras. 10-37.

<sup>399</sup> *Ibid.*, paras. 38-46.

states should ensure that their immigration policies acknowledge that a woman has the right of asylum in order to escape from violence (whoever the perpetrator), such as honour killings, and is relieved of the threat of deportation or removal if there is, or has been, any actual or threat of violence or abuse.<sup>400</sup>

The problem of honour killings has also been on the agenda of the European Union (EU). In August 1999 the Finnish Presidency took up the issue in a statement concerning Pakistan and stated that the EU condemns all honour killings and urged the government of Pakistan to ensure the full protection of all citizens in accordance with the Constitution of Pakistan as well as to initiate measures to prevent honour killings, to prosecute the perpetrators and “leave no doubt about the Government’s disapproval of such acts...”.<sup>401</sup> In 2000 the European Parliament’s *Annual Report on Human Rights in the World 2000 and the European Union Human Rights Policy* condemned honour killings in Pakistan and Jordan and urged all governments to formulate legislation against all forms of domestic violence and to refrain from invoking religions or cultural considerations to avoid such obligations.<sup>402</sup> In 2001 the Swedish presidency stated on behalf of the EU before the UN Commission for Human Rights that governments worldwide must take action to end all harmful traditional or customary practices including honour killings. The EU stated its determination to combat all crimes committed in the name of honour and emphasised that social, cultural and religious factors could not be invoked as a justification for violating the human rights of women and girls.<sup>403</sup> A similar statement was made by Spain in 2002.<sup>404</sup>

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<sup>400</sup> Ibid., para. 57.

<sup>401</sup> Statement of 16 Aug. 1999, Quoted in Amnesty International, *Pakistan: Insufficient Protection of Women*, ASA 33/006/2002, 57, Appendix.

<sup>402</sup> European Parliament, *Annual Report on Human Rights in the World 2000 and the European Union Human Rights Policy*, Rapporteur Matti Wuori, A5-0193/2001, 30 May 2001, para. 94.

<sup>403</sup> UN CHR 57<sup>th</sup> session, *Summary Records of the 29<sup>th</sup> meeting*, UN doc. E/CN.4/2001/SR.45 (18 April 2001), para. 3.

<sup>404</sup> UN CHR 58<sup>th</sup> session, *Summary Records of the 43<sup>rd</sup> meeting*, UN doc. E/CN.4/2002/SR.43 (24 April 2002), para. 30.

## 4.5 NGOs and honour killings

NGOs are increasingly concerned with the promotion and protection of also women's human rights and consequently also honour killings are on the agenda of some human rights organisations. For example, several NGO representatives have taken up honour killings in their speeches before the Commission on Human Rights and the Sub-Commission on the Promotion and Protection of Human Rights.<sup>405</sup> However, as the Special Rapporteur on extrajudicial, summary or arbitrary executions experienced during her recent mission to Turkey, there are still a human rights activists and organisations that do not view honour killings as a human rights problem, but rather as a "social issue."<sup>406</sup>

Among the well-known international NGOs, Amnesty International has been the most active organisation when it comes to reporting cases of honour killings. Amnesty has focused on the occurrence of honour killings in Pakistan and has published three reports dealing exclusively with honour killings.<sup>407</sup> In addition Amnesty has published more general reports on situation of women in Pakistan<sup>408</sup> and a recent report on the tribal justice system in Pakistan,<sup>409</sup> all of which extensively discuss honour killings. Human Rights Watch has also published a comprehensive report on women's human rights in Pakistan, which covered the problem of honour killings.<sup>410</sup> The issue of crimes of passion and the defence of honour was also taken up in Human Rights

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<sup>405</sup> See, Commission on Human Rights, *Summary Record of the 38<sup>th</sup> Meeting*, E/CN.4/2000/SR.38 (1 May 2000); *Summary Record of the 34<sup>th</sup> Meeting*, E/CN.4/2000/SR.34 (28 April 2000), particularly para. 22; *Summary Record of the 47<sup>th</sup> Meeting*, E/CN.4/2001/SR.47 (25 Sept. 2001), para. 37. See also Sub-Commission on the Promotion and Protection of Human Rights, *Summary Record of the 13<sup>th</sup> Meeting*, E/CN.4/Sub.2/2000/SR.13 (20 Feb. 2001).

<sup>406</sup> *Extrajudicial, summary or arbitrary executions, Report of the Special Rapporteur, Ms. Asma Jahangir, Addendum: Mission to Turkey*, UN doc. E/CN.4/2002/74/Add.1, 18 Dec. 2001, para. 64.

<sup>407</sup> Amnesty International, *Pakistan: violence against women in the name of honour*, ASA 33/17/1999; Amnesty International, *Pakistan: Honour killings of girls and women*, ASA 33/18/1999; and Amnesty International, *Pakistan: Insufficient Protection of Women*, ASA 33/006/2002.

<sup>408</sup> Amnesty International, *Women in Pakistan: disadvantaged and denied their rights*, ASA 33/23/95; Amnesty International, *Pakistan: Women's human rights remain a dead letter*, ASA 33/07/97; and Amnesty International, *Pakistan: No progress on women's rights*, ASA 33/13/98.

<sup>409</sup> Amnesty International, *Pakistan: the tribal justice system*, ASA 33/024/2002.

<sup>410</sup> Human Rights Watch, *Crime or custom? Violence against women in Pakistan*, 1999.

Watch's report on Brazil in 1991.<sup>411</sup> Human Rights Watch has also at times mentioned honour killings in its World Reports and reports on Women's Human Rights, mainly focusing on Jordan and Pakistan, occasionally mentioning Turkey.<sup>412</sup> Interights, a UK based human rights NGO, launched their honour crimes project together with CIMEL in 1999. Within that project an annotated bibliography on honour crimes and forced marriages has been compiled and the project's home page on the Internet was opened in January 2003. In addition the project has organised seminars and expert meetings on the subject and are currently working on a compilation of penal codes pertaining to honour crimes.<sup>413</sup> Also OMCT has taken up the issue of honour crimes.

On the national level, particularly Pakistani and Jordanian NGOs have actively taken up honour killings in their human rights reporting.<sup>414</sup> Also certain Kurdish, Arab and Muslim human rights and women's rights organisations have been active in their campaign against honour killings.<sup>415</sup> In Israel, Women Against Violence works with the Palestinian community in Israel and has an extensive programme which includes work with victims or potential victims of honour crimes and operates, amongst others shelters for young women in distress, a halfway house for young women, a crisis centre providing *inter alia* legal counselling and moral support, and an awareness raising project aimed at police officers, government officials and teachers.<sup>416</sup> The Women's Centre for Legal Aid Counselling provides guidance, counselling and social and legal aid for Palestinian women who encounter psychological, verbal, physical or

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<sup>411</sup> Women's Rights Project and Americas Watch, *Criminal Injustice: Violence Against Women in Brazil*, 1991, 18-29.

<sup>412</sup> See, e.g., *Human Rights Watch World Report 2002: Women Human Rights*, <http://www.hrw.org/wr2k2/print/cgi?women.html>, site visited 30 Oct. 2002.

<sup>413</sup> See CIMEL and Interights Honour Crimes Project, <http://www2.soas.ac.uk/honourcrimes/>.

<sup>414</sup> See, e.g., the Human Rights Commission of Pakistan (HRCP): <http://www.hrcp.cjb.net/> and AMAN, The Arab Regional Resource Center on Violence Against Women, <http://www.amanjordan.org/english/http://www.arabhra.org/core/albadeel.htm>.

<sup>415</sup> See e.g., Kurdish Women Action Against Honour Killings, <http://www.kurdmedia.com/kwahk/about.htm>, Campaign Against Honour Killings in Turkey, <http://honourkillings.gn.apc.org/index.htm>, and Women Living Under Muslim Laws, <http://www.wluml.org>.

<sup>416</sup> Women Against Violence, *2001 Annual Activity Report*, PO Box 313 Nazareth, 16000 Israel, and [www.wavo.org](http://www.wavo.org) (in Arabic).

sexual violence and abuse. They also work to challenge discriminatory legislation and to promote legal literacy and education amongst women.<sup>417</sup>

As the reporting of honour killings by NGOs has been almost exclusively limited to Jordan and Pakistan (and to some extent Turkey and Palestine) it gives a somewhat distorted picture of the occurrence of the practice. It would be desirable that the international NGOs would also make efforts to report cases of honour killings in other countries, and particularly those where the national human rights NGOs are weak. The work of NGOs is vital when it comes to information on cases of human rights violations, including honour killings. Particularly in closed societies it may be very difficult for a local organisation to operate, let alone to gather information on honour killings. Therefore it would be important that the international organisations such as Amnesty International continue their important campaign against honour killings with a wider perspective.

#### **4.6 No longer “only a crime”**

As the discussion in this chapter has aimed to show, honour killings are no longer seen merely as a crime to be dealt with under domestic legislation, but as a violation of international human rights law where states systematically fail to exercise due diligence in preventing and investigating honour killings and in punishing the perpetrators. Consequently, honour killings have been given an increasing amount of attention in international human rights fora during the last 5 years. Initiatives to combat honour killings have been taken at the international, regional as well as the national level, within both intergovernmental and nongovernmental organisations. The obligation of states to exercise diligence to prevent and investigate honour killings and to punish the perpetrators has been repeatedly reiterated in the UN General Assembly and Commission on Human Rights. Particularly the work of the Special Rapporteurs of the Commission on extrajudicial executions and violence against women respectively has contributed significantly to the international awareness of the prevalence of honour killings and other crimes committed in the

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<sup>417</sup> See <http://www.nisaa.org/wclac/>. See also Report by N. Shalhoub-Kevorkian, *supra* n. 16, who is affiliated with WCLAC.

name of honour. Also the UN treaty-monitoring bodies have questioned governments about the occurrence of honour killings. UNIFEM has given priority to the issue of honour killings in their Trust Fund projects and within such projects NGOs are carrying out vital work on the grass root level, providing assistance to (potential) victims of honour killings and carrying out education and awareness campaigns. The role of NGOs and particularly the work of the national NGOs working with honour killings is essential in reporting cases of honour killings to the public and to human rights treaty monitoring bodies and in informing victims of the possibilities of complaining about human rights violations. Thus, honour killings, both as a form of violence against women and as a violation of the human rights, are by now an established item on the international human rights agenda.

## **5 Human rights, culture and strategies to address honour killings**

### **5.1 Perspectives on honour killings, culture and human rights**

#### ***5.1.1 Impact of culture and the occurrence of honour killings***

When discussing crimes and violations of women's rights such as honour killings the concept of 'culture' inevitably comes up. A lengthy discussion on the meaning of the term 'culture' is not possible here. However, as it is such a central concept in the context of honour killings, it merits some reflections. Culture provides both the individual and the community with values and interests to be pursued in life as well as the legitimate means of pursuing them. It can thus be described as the source of both the individual and the communal worldview. As such culture is the primary force in the socialisation of individuals and a major determinant of the consciousness and experience of the community.<sup>418</sup> Moreover, it should be noted that the contemporary understanding of 'culture' focuses on the protection of a "capacity for culture" rather than the protection of "any particular culture". Thus, culture is (or should be) understood as "a process, developing and changing through actions and struggles over meaning, rather than as a static system of shared beliefs and values."<sup>419</sup>

Interestingly, culture is often invoked to explain forms of violence against immigrant or third world women but not similarly to explain violence against western women. Thus, while sexual violence in immigrant or third world communities is seen as cultural, the cultural aspects of sexual violence against white, western women are

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<sup>418</sup> A. A. An-Na'im, 'Toward a cross-cultural approach to defining international standards of human rights: the meaning of cruel, inhuman or degrading treatment or punishment', in *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus*, A. A. An-Na'im (ed.), University of Pennsylvania Press, 1992, 19-43, 23.

<sup>419</sup> S. Engle Merry, 'Changing rights, changing culture', in *Culture and Rights: Anthropological Perspectives*, J.K. Cowan, M-B. Dembour & R.A. Wilson (eds.), Cambridge University Press, 2001, 31-55, 39. See, however, also Parekh, who argues that "[r]espect for culture (...) means respect for a community's right to its culture and for the content and character of that culture." B. Parekh, *Rethinking Multiculturalism: Cultural Diversity and Political Theory*, Macmillan, 2000, 176.

usually not recognised.<sup>420</sup> For example, it is common to discuss honour killings in the context of culture whereas the cultural background of killings committed in the name of passion is often forgotten.<sup>421</sup> This does not mean that culture should be used as an explanation in neither case; on the contrary, culture should be understood as constituting a part of the context in which violence occurs, wherever it occurs. As expressed by Arati Rao, “[r]egardless of the particular forms it takes in different societies, the concept of culture in the modern state circumscribes women’s lives in deeply symbolic as well as immediately real ways.”<sup>422</sup>

In countries such as Turkey, Jordan and Pakistan the notion of honour is a very central part of the culture, and while the understanding of honour has many positive aspects,<sup>423</sup> defending one’s honour, sometimes through honour killings, is also a part of such cultures.<sup>424</sup> Of course, violence must not be reduced merely to a question of culture. It must also be emphasised that no culture is homogenous and it must be appreciated that many, particularly women, may find it insulting to describe honour killings as ‘a part of’ for example, ‘Turkish’ or ‘Pakistani’ culture. The culture of women may differ from that of men, and this is perhaps particularly true in the case of ‘honour cultures’.<sup>425</sup> Indeed, honour killings can be seen as a part of the patriarchal culture of some societies.<sup>426</sup> It could be said that certain elements of cultures may lie behind practices such as honour killings, e.g., emphasis on virginity and chastity of women and the understanding of ‘honour’ etc. Accordingly, one’s culture may be the reason for responding or acting in a certain way (that is, by committing an honour

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<sup>420</sup> L. Volpp, ‘Feminism versus multiculturalism’, *101 Columbia Law Review* [2001] 1181, 1186-90.

<sup>421</sup> See s. 1.2 for a discussion on passion and honour killings and the cultural rationale underlying them.

<sup>422</sup> A. Rao, ‘The politics of gender and culture in international human rights discourse’, in *Women’s Rights, Human Rights: International Feminist Perspectives*, J. Peters & A. Wolper (eds.), Routledge, 1995, 167-175, 169

<sup>423</sup> E.g., the Turkish notion of honour includes ‘honour’ that is derived from being able to show generosity towards others Sever & Yurdakul, *supra* n. 40, 972.

<sup>424</sup> See also S. Mojab & A. Hassanpour, *In memory of Fadime Shahindal: thoughts on the struggle against “honour killing”*, p. 1, [http://www.kurdmedia.com/kwahk/fadime\\_hassanpur.htm](http://www.kurdmedia.com/kwahk/fadime_hassanpur.htm), site visited 20 Feb. 2003.

<sup>425</sup> For example, the Turkish understanding of honour distinguishes between conceptions of honour that are usually gender neutral (*gurur, onur, izzet*) in application, conceptions that are androcentric (*seref*) and conceptions that relate to female qualities (*namus*). Sever & Yurdakul, *supra* n. 40, 972-973.

<sup>426</sup> Mojab & Hassanpour, *supra* n. 422, 2.

killing). Therefore culture is a part of the answer to the question why honour killings occur.

The cultural aspects of practices such as honour killings are often sensationalised and generalised, particularly in the media. Perhaps as a result of fears for such reactions, the problem in the west has not so much been one of attempts to justify or excuse honour killings ‘in the name of culture’, as it has been one of overt sensitivity towards the cultures of minority populations and thus to some extent a denial of the fact that culture does have something to do with honour killings. For example, after the murder of Fadime Sahindal in Sweden in 2002 many participants in the public debate – particularly those representing the ‘official Sweden’ – seemed very concerned to point out that violence against women is not culturally presupposed but occurs everywhere, irrespective of culture. Some of these commentators have later admitted that such rhetoric was often a result of fears of sounding racist. As summarized by Swedish anthropologist Mikael Kurkiala, in order to avoid viewing honour killings as something culture specific, two strategies are utilised; either the incident is marginalized so much that it only applies to one individual or the crime generalized so much that it becomes universal.<sup>427</sup>

It should, however, be noted that identifying marginalisation as a background factor of honour killings is not to marginalize the issue itself. Thus the reason for resorting to honour killings is sometimes not so much a question of culture but rather of a fear of lost power, identity and masculinity, for example, due to changes or circumstances in the surrounding society. At a recent conference on honour killings held in Sweden<sup>428</sup> the problem of honour killings was linked to the wider issue of integration of immigrants into Swedish society and several speakers suggested that the honour killings were a symptom of the failure of the Swedish integration policy. Many speakers emphasised that particularly men originally from patriarchal societies seem to feel left out and without power and influence. We can also recall the remarks made

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<sup>427</sup> M. Kurkiala, *Den stora skräcken för skillnader* [The big fear of difference], available at <http://www.elektra.nu/db/artiklar>, page visited 20.1.2003. However, there have also been the cases of so-called “cultural defence” where a defendant’s cultural or ethnic background has been used and accepted as a mitigating circumstance, or an excuse, for honour killing. See s. 2.1.3.1 above.

<sup>428</sup> *Konferens till minnet av Fadime Shahindal: Hedersmord och våld mot kvinnor: kultur, politik eller kulturpolitik* [Conference in the memory of Fadime Shahindal: Honour killings and violence against women: culture, politics or cultural politics], 17-19 Jan. 2003, Stockholm, Sweden.

above in chapter 1 about the rise of honour killings in Pakistan as a reaction to women's increasing awareness and self-confidence and the comments by Palestinian tribal leaders and police officers concerning the reasons to why honour killings occur.<sup>429</sup> Such reactions may be seen as what Ayelet Shachar calls "reactive culturalism," that is, strict adherence to a group's traditional laws, norms and/or practices as part of such a group's resistance to external forces of change, such as modernity or secularism.<sup>430</sup> As Shachar notes, images of women and the family often become symbols of a group's "authentic" cultural identity in situations of reactive culturalism.<sup>431</sup> Therefore, honour killings can be seen as a kind of internal restrictions<sup>432</sup> based on strict adherence to traditional notions of honour and chastity, and (occasionally) as results of reactive culturalism both when they occur amongst immigrant communities in the west and in e.g., contemporary Pakistan.

### ***5.1.2 Multiculturalism and the limits of tolerance: respecting culture or individual human rights?***

"The liberal utopia of a multicultural society collapsed [when Fadime Sahindal was murdered]", said one of the speakers at a recent conference on honour killings held in Sweden.<sup>433</sup> This statement seemed to correspond to the sentiments of the majority of the participants in that conference. Indeed, it seemed that for many – particularly for some Kurdish women present – the fight against honour killings was an 'either culture or human rights' situation; there is not room for adequate respect for both.

The issues of reconciling the importance of cultural diversity with respect for the human rights of individuals have been subject to lively debates for quite some time. Multicultural accommodation has proved to be problematic particularly when policies aimed at promoting equality between cultural groups indirectly allow systematic

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<sup>429</sup> See *supra* Ch. 1.1.

<sup>430</sup> A. Shachar, *Multicultural Jurisdictions*, Cambridge University Press, 2001, 35.

<sup>431</sup> *Ibid.*, 36.

<sup>432</sup> See W. Kymlicka, *Multicultural Citizenship*, Clarendon Press, 1995, 35-36.

<sup>433</sup> See *supra* n. 426, the speaker was Göran Greijer.

maltreatment of individual members of such groups, particularly women.<sup>434</sup> Several theories have been offered as guidance as to solving the problem of accommodating respect for minority cultures in multicultural societies; some of them emphasizing the interests of the minority groups,<sup>435</sup> and others prioritising the rights of individuals.<sup>436</sup> Most contributions do, however, recognise that certain elements of cultures may in some way be harmful to some of the members of such a cultural group. While rejecting the idea of groups as such having any rights to self-preservation of perpetuation, Kukathas argues that if a right of exit is ensured to (dissident) minority group members the state or majority society must not interfere in order to protect such group members against abuses of their individual rights within the group.<sup>437</sup> Even though Kukathas does set certain limits on actions that a group can take to enforce group loyalty,<sup>438</sup> he seems to retract by stating that “if an individual continues to live in a community and according to ways that [...] treat her unjustly, even though she is free to leave, then our concern about the injustice diminishes.”<sup>439</sup> The central problem is of course, how genuine and realistic such a right of exit is. Although Kukathas recognises that a right of exit must be “substantive,”<sup>440</sup> he fails to acknowledge that the major obstacle to a realistic freedom to leave are circumstances *within* the group which limit or obstruct the formation of an informed choice and the practical possibilities to leave. When it comes to a substantive right of exit for female members of minority groups issues such as the traditional construction and understanding of gender roles, access to education and property as well as practices concerning marriage and divorce, make the exit option neither desirable nor thinkable for those

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<sup>434</sup> See Shachar, *supra* n. 428, 1-3. Shachar has named this phenomenon the *paradox of multicultural vulnerability*.

<sup>435</sup> E.g., Chandran Kukathas, ‘Are there any cultural rights?’, 20 *Political Theory* 1 [1992], pp. 105-139.

<sup>436</sup> See e.g., S. Okin Moller, *Is multiculturalism bad for women?*, at 7 in *Is Multiculturalism Bad for Women?*, J. Cohen, M. Howard & M. Nussbaum (eds.), Princeton University Press, 1999 and B. Barry, *Culture and Equality: An Egalitarian Critique of Multiculturalism*, Polity, 2001.

<sup>437</sup> Kukathas, *supra* n. 433, 117, 128.

<sup>438</sup> “[I]n recognising the right of exit, [minority groups] would also have to abide by liberal norms forbidding slavery [...] and physical coercion. More generally they would be bound by liberal prohibitions on “cruel, inhuman or degrading treatment.” Kukathas, *supra* n. 433, 128.

<sup>439</sup> *Ibid.*, 133.

<sup>440</sup> *Ibid.*, 133-34.

most in need of it.<sup>441</sup> However, even the extremely tolerant ‘right of exit’ rationale would deny autonomy to a group carrying out honour killings, as honour killings are precisely such measures to enforce group loyalty that violate “the liberal norms forbidding physical coercion” – for what would be a more extreme form of physical coercion than the taking of life. Kymlicka again argues that any “internal restrictions”<sup>442</sup> that are used to restrict the liberty of a group’s own members in the name of group solidarity, and which thereby restrict group members’ basic civil and political liberties, are not to be tolerated.<sup>443</sup> Honour killings can be seen as a particularly harsh form of such internal restrictions; their aim is precisely to stifle internal dissent and they do restrict one of the most basic of civil and political liberties, namely the right to life. According to Kymlicka honour killings should therefore never be tolerated. However, the idea of internal restrictions may not prove to be of much help when faced with discrimination in relation to economic and social rights, or the like.<sup>444</sup> Martha Nussbaum on her part differentiates between “substantial burdens” on the exercise of a culture or religion of a group and “compelling interests” on part of the state or the society at large in the context of multicultural accommodation.<sup>445</sup> That is, when considering whether a practice or a norm must be tolerated within a multicultural society, it must be considered first, whether giving up that practice or norm would be a “substantial burden” on the exercise of the culture of that group. If the answer is negative, the problem is of course solved. However, if the answer is in the affirmative, it must be weighed against the “compelling interests” of

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<sup>441</sup> See, e.g., S. Okin Moller, “‘Mistresses of their own destiny’: Group rights, gender, and realistic rights of exit”, in *112 Ethics [2002]*, pp. 205-230, at p. 229, for a critique of the right of exit rationale.

<sup>442</sup> That is, claims that aim at protecting a group from the destabilizing impact of internal dissent. See Kymlicka, *supra* n. 430, 35.

<sup>443</sup> *Ibid.*, 35-35.

<sup>444</sup> Kymlicka has been criticized both for not being accommodating enough in relation to minorities and for being too accommodating on the expense of particularly minority women. See, for example, Kukathas, *supra* n. 433, and Okin Moller, *supra* n. 434 and 439, respectively.

<sup>445</sup> M.C. Nussbaum, ‘A plea for difficulty’, p. 105 in *Is Multiculturalism Bad for Women?*, 111-114. The terminology is derived from the US constitutional tradition. Nussbaum’s “compelling interests” could be compared to Bhikhu Parekh’s term “operative public values”. Parekh, *supra* n. 417, 268, 271-72. The parallel between Nussbaum’s balancing between compelling interests and substantial burdens on one hand and the margin of appreciation-doctrines on the other hand is not far fetched. The “margin of appreciation” is used by the European Court of Human Rights to indicate the measure of discretion allowed to a state in the manner in which they implement the standards of the ECHR, taking into account their own particular national circumstances and conditions. Y. Arai-Takahashi, *The Margin of Appreciation Doctrine and the Principle of Proportionality in the Jurisprudence of the ECHR*, Intersentia, 2002, 2.

the society at large. The central question is thus what such “compelling interests” are. As human rights arguably form a central part of such “compelling interests” or “public values” in many societies, the human rights terminology may turn out to be helpful in solving this problem. In other words, the respect for and protection of which human rights is seen as a compelling interest? Which are those minimum standards or human rights that must be protected? Are only the non-derogable core rights such as the right to life, prohibition against torture and forced labour included? Or also the prohibition against discrimination and other civil and political rights? What about economic, social and cultural rights and the prohibition of discrimination in relation to those rights? In any case, it is clear that at least respect for and protection of non-derogable rights such as the right to life is such a “compelling interest” of the state that even if forbidding a practice that would violate the right to life, such as honour killings, would be constitute a “substantial burden” on the exercise of the culture of a particular group, it would be outweighed by the “compelling interest” on part of the state to protect the right to life of its citizens. Such balancing of group interests and individuals rights should, however, be subject to certain conditions. Eventual interferences in individuals’ rights must never amount to a denial or violation of the rights concerned. Moreover, certain rights, such as the right to life, can never be compromised due to their non-derogable nature.<sup>446</sup> Further, society at large must provide conditions for a substantive right of exit for those members of minority groups who wish to exercise that right. Finally, children must be offered special protection.<sup>447</sup>

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<sup>446</sup> The UN Human Rights Committee has taken a clearly universalist position regarding conflicts between minority rights and individuals rights, amongst others by stating in its General Comment on rights of minorities that none of the rights protected under article 27 of the ICCPR “may be legitimately exercised in a manner or to an extent inconsistent with the other provisions of the Covenant.” ICCPR *General Comment No. 23*, Rights of minorities (art. 27), 8 April 1994, UN doc., para. 8. More specifically, the Human Rights Committee emphasises in General Comment 28 that “the rights which persons belonging to minorities enjoy under article 27 of the Covenant in respect of their language, culture and religion do not authorize any State, group or person to violate the right to the equal enjoyment by women of any Covenant rights, including the right to equal protection of the law.” ICCPR *General comment No. 28*, Equality of rights between men and women (art. 3), UN doc. CCPR/C/21/Rev.1/Add.10, 29 March 2000, para. 32.

<sup>447</sup> M. Scheinin, ‘Universality and cultural relativism in the human rights debate – is a cross-cultural dialogue possible?’, in *Cross-cultural Encounters: Perspectives on Multicultural Europe*, J. Perheentupa and K. Karppi (eds.), Edita, 2002, 245, 249-250.

## 5.2 Human rights arguments and the eradication of honour killings

### 5.2.1 Cultural relativism and feminist critiques of the human rights approach

When approaching honour killings as a kind of culture specific violations of women's human rights,<sup>448</sup> one is confronted with two problems. First, issues relating to the compatibility of universal human rights with the values of the societies where such culture specific violations occur, and second, the feminist critique of the inadequacy of the human rights approach in relation to women. Although both the feminist and cultural relativist critiques share a critical attitude toward the dominant human rights discourse, the two are often taking "diametrically opposed" sides, particularly in questions relating to human rights of women.<sup>449</sup>

In addition to the general criticism of the male bias and disregard of women's concerns of international law and human rights law, the feminist critique has also pointed out that the language of *rights* itself can be seen as tainted by hierarchical power relations and therefore as essentially male. Thus, a focus on rights may not be beneficial to women, particularly as rights discourse may simplistically reduce intricate power relations. It is argued that often the mere acquisition of rights is assumed to have solved an imbalance of power and to imply an automatic and immediate advance for women.<sup>450</sup> Further, it is argued that legal strategies do not allow women to "touch base with their traditional sources of empowerment."<sup>451</sup> One question has been whether the current human rights approach forces women to

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<sup>448</sup> Here the term "Culture specific" is used in a similarly as "gender specific" violence, meaning that violence that women are subjected to varies and is specific to certain cultures; this is not to say that any culture would be free from violence against women, just that the forms of violence are often culture specific. Alternatively one could speak about 'cultural offences' or 'culturally motivated crimes'. See Van Broeck, *supra* n. 91.

<sup>449</sup> E. Brems, 'Enemies or allies? Feminism and cultural relativism as dissident voices on human rights discourse', *19 Human Rights Quarterly* [1997], 136-164, 136.

<sup>450</sup> For an overview of the feminist critique of rights see, H. Charlesworth, C. Chinkin & S. Wright, 'Feminist approaches to international law', *85 American Journal of International Law* 4 [1991], 613-645, 634-5.

<sup>451</sup> R. Coomaraswamy, 'To bellow like a cow: women, ethnicity and the discourse of rights', in *Human Rights of Women: National and International Perspectives*, R. Cook (ed.), University of Pennsylvania Press, 1994, 39-57, 46.

impossible choices between the community and themselves, or in the case of honour killings, “between a social death and a physical death”.<sup>452</sup> Arguably, the right to exit rationale implies precisely this kind of an impossible choice. It has also been argued that although the human rights approach has empowered those outside a culture to challenge, e.g., harmful traditional practices, it has not (yet) similarly empowered those within the concerned culture.<sup>453</sup> A rights based approach is of course not the only available one in addressing women’s concerns. Also needs, interests, well-being or economic development can be seen as potential starting points for change. However, despite the limitations of the rights model, the notion of (human) rights remains a source for potential empowerment of women. The discourse of rights provides an accepted means to challenge the traditional legal order as well as to develop alternative principles. Also, as Carol Smart points out, law can be and is used as a “*site of struggle*” rather than merely as a tool of struggle.<sup>454</sup> Arguably, the feminist voices criticising international law and human rights have been heard and the feminist stance has won some victories over the cultural relativist one at the UN World Conferences of the 1990s. The acceptance of the feminist position has arguably been accompanied by a rejection of cultural relativism.<sup>455</sup>

The critique relating to the cultural legitimacy of the human rights approach is essentially a cultural relativist one. According to the anthropological understanding of the principle of cultural relativism “judgments are based on experience, and experience is interpreted by each individual in terms of his own enculturation,”<sup>456</sup> whereas within ethical theory relativism implies the position that no moral judgment is universally valid, or in other words, that every moral judgment is culturally relative.<sup>457</sup> Some relativists argue that the notion of human rights is inherently western

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<sup>452</sup> CIMEL/Interights Project on Strategies of Response to ‘Crimes of honour’, *Roundtable on Strategies to Address ‘Crimes of Honour’: A Summary Report*, (1999), 15, available at <http://www2.soas.ac.uk/honourcrimes/Meetings.htm>.

<sup>453</sup> C. A. A. Packer, *Using Human Rights to Change Tradition*, Intersentia, 2002, 207.

<sup>454</sup> Emphasis in the original. C. Smart, ‘The woman of legal discourse’, *1 Social & Legal Studies [1992]*, 29-44, at 30, 40.

<sup>455</sup> Brems, *supra* n. 447, 149-154 and D. Otto, ‘Rethinking the ‘universality’ of human rights law’, *20 Columbia Human Rights Law Review 1 [1997]*, 1-46, 12.

<sup>456</sup> M. J. Herskovits, *Cultural Relativism: Perspectives in Cultural Pluralism*, Vintage Books, 1973, 15.

<sup>457</sup> J. J. Tilley, ‘Moral arguments for cultural relativism’, *17 Netherlands Quarterly of Human Rights [1999]*, 31-41, 31. Whereas ‘radical cultural relativists’ would claim that culture is the only source of validity of a moral norm or rule, ‘weak cultural relativists’ contend that culture can be an important, but

and thus not relevant to cultures that do not share western values and norms.<sup>458</sup> Some view the imposition of universal morality in the form human rights as a form of imperialism. The problem of the human rights discourse from a relativist point of view is that it tends to see itself as the only valid vision of how to achieve human dignity.<sup>459</sup>

Relativist arguments have been particularly vehement in relation to human rights of women, and especially regarding reproductive rights and sexuality.<sup>460</sup> It is also in this connection that the clashes between feminists and cultural relativists have been hardest. Particularly the fierce feminist critique of ‘harmful traditional practices’ has provoked strong resistance on part of cultural relativists. In their absolutist form both positions seem to be deaf to the arguments of the other side; feminists refusing to accept cultural objections to women’s human rights, as culture is seen as male created and male dominated, and cultural relativists arguing that the communal right to practice and maintain culture comes first and that in any case the notion of women’s rights is a western construct.<sup>461</sup> Whereas the feminist (universalist) position is perceived as arrogant, the cultural relativist one may result in indifference; culture may become “an excuse for abuse”.<sup>462</sup> As both feminism and cultural relativism tend

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not sole, source for the validity of a moral rule. J. Donnelly, ‘Cultural relativism and universal human rights’, *6 Human Rights Quarterly* 4 [1984], 400-419, 400-401.

<sup>458</sup> E.g., the 1993 Bangkok Declaration states that adherence to human rights standards should be encouraged by consensus and not through “confrontation and the imposition of incompatible values.” (Bangkok Declaration on Human Rights, Pp. 10.) Moreover, the Declaration emphasises that “while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious back-grounds.” (Bangkok Declaration on Human Rights, para. 8.)

<sup>459</sup> Indeed, the philosophical tradition that human rights build upon is largely characterised by moral monism. See, M-B. Dembour, ‘Following the movement of a pendulum: between universalism and relativism’, in J.K. Cowan, M-B. Dembour & R.A. Wilson (eds.), *Culture and Rights: Anthropological Perspectives*, Cambridge University Press, 2001, 56-79, 70 and Parekh, *supra* n. 415, 16.

<sup>460</sup> Packer, *supra* n. 451, 88-89.

<sup>461</sup> At the same time universalist feminists refuse to see the culturally determined character of their own position and argue that the universality of male dominance is a sufficient basis for the universality of women’s rights. Therefore, cultural imperialism may be used in the battle against male imperialism. Brems, *supra* n. 447, 148-49.

<sup>462</sup> Dembour, *supra* n. 457, 56-59.

to concentrate on one particular, both are faced with the danger of ignoring all other particularities, and thus becoming absolutist or essentialist.<sup>463</sup>

Very few relativists do, however, completely reject the concept of human rights as such. Rather they tend to reject specific rights, or the specific content or interpretation of a right.<sup>464</sup> Moreover, ethical theories (and cultures) often *converge* or are *compatible* with human rights as they prescribe the same actions or behaviour, but the rationale differs; human rights uses the language of rights and ethical theories uses language of duties or virtues. Sometimes ethical theories and human rights also affirm same fundamental values.<sup>465</sup> Also, as has been observed in relation to the Convention on the Rights of the Child, culture is usually not being raised by states to challenge the basic legitimacy of human rights norms; on the contrary most states are keen to embrace human rights as the best way forward.<sup>466</sup> Similarly, state officials rarely use culture as an excuse for honour killings in UN human rights bodies.<sup>467</sup> Even though some states' commitment to human rights may be mere lip service (one could compare, e.g., the numerous anti-honour killing statements by the Pakistani government with the inaction that prevails concerning legislative reform), it has been argued that many governments demonstrate a clear willingness to evaluate both the strengths and weaknesses of their respective customs and traditions from a human

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<sup>463</sup> Brems, *supra* n. 447, 154. Inside the feminist movement the universality and essentialism of the feminist approach to human rights have been challenged. Such criticism has been sensitive to cultural differences and often prefers to privilege local issues and recognises that the 'women's voice' is "composed of many different voices" with variations across culture, race, class, age, wealth, sexual orientation etc. R. Coomarswamy & L.M. Kois, 'Violence against women', in *Women and International Human Rights Law*, Vol, 1, K.D. Askin & D.M. Koenig (eds.), Ardsley, 1999, 177-218, 180-81.

<sup>464</sup> In Donnelly's terminology relativism may be related to *substantive* human rights, to the *interpretation* of rights or the *form* in which particular rights are implemented. Donnelly, *supra* n. 455, 401. Some cultural relativists do, however, partially or totally reject the notion of human rights and advocate alternative systems for human rights or for achieving social justice. Brems, *supra* n. 447, 143-144.

<sup>465</sup> S. Caney, 'Human rights, compatibility and diverse cultures', in S. Caney & P. Jones (eds.), *Human Rights and Global Diversity*, Frank Cass, 2001, 51, 53-55.

<sup>466</sup> S. Harris-Short, 'International human rights law: Imperialist, inept and ineffective? Cultural relativism and the UN Convention on the Rights of the Child', *25 Human Rights Quarterly* [2003] 130, 164.

<sup>467</sup> For rare references to culture in relation to honour killings see Commission on Human Rights *Summary Record of the 32<sup>nd</sup> Meeting*, UN doc. UN doc. E/CN.4/2000/SR.32 (3 Oct. 2000), para. 1, where a Jordanian representative stated that honour killings were a result of social pressure and indoctrination, traditions and customs that could not be changed overnight; and CHR *Summary Record of the 34<sup>th</sup> Meeting*, UN doc. E/CN.4/2000/SR.34 (28 April 2000), para. 83, where a Pakistan delegate described honour killings as remnants of ancient tribal customs.

rights perspective.<sup>468</sup> There is, however, arguably, a divide between the official, human rights friendly policy of many a government and the reality of the socio-cultural conditions on the grass-root level.<sup>469</sup> Thus, “if respect for human rights is to be achieved and made sustainable, human rights must reside not only in law but in the living and practiced culture of the people.”<sup>470</sup>

Representing the main strands of criticism against the dominant conception of human rights, feminism and cultural relativism stand opposed particularly on issues relating to women’s rights. The feminist approach has been the one of the two to gain acceptance at the international human rights arena and arguably there has been a shift towards a consensus of a core of universal human rights. It has, however, been argued that the existing “universals”<sup>471</sup> may not be enough to accommodate all human rights. Thus, there is a need to broaden and deepen these universals to support human rights in a culturally legitimate way.<sup>472</sup> The object of human rights discourse should thus be a “quest for a reasonable and balanced approach to human rights that recognises the interplay between various cultural factors in the construction and constitution of human rights.”<sup>473</sup>

### ***5.2.2 What is the relevance of a human rights perspective to campaigning against honour killings?***

Honour killings, other harmful traditional practices or violence against women generally cannot be altered by reference to human rights alone; the question is rather whether such practices can be altered at all through human rights. Even though the relativist challenge, the problems relating to implementation and enforcement of human rights and the dilemma of conflicting rights pose problems particularly in

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<sup>468</sup> Harris-Short, *supra* n. 464, 168.

<sup>469</sup> *Ibid.* 169.

<sup>470</sup> B. Ibhawoh, ‘Between culture and constitution: Evaluating the cultural legitimacy of human rights in the African state’, 22 *Human Rights Quarterly* [2000] 838, 855.

<sup>471</sup> Universals being the “least common denominators to be extracted from the range of variation that all phenomena of the natural or cultural world manifest”, M. J. Herskovits, *Cultural Relativism: Perspectives in Cultural Pluralism*, Vintage Books, 1973, 32.

<sup>472</sup> An-Na’im, *supra* n. 416, 25.

<sup>473</sup> B. Ibhawoh, ‘Cultural relativism and human rights: reconsidering the Africanist discourse’, *Vol. 19 Netherlands Quarterly of Human Rights No. 1* [2001], 43-62, 61.

relation to protection of women's human rights, it is suggested that a human rights perspective may be very useful in the struggle against honour killings. International human rights law offers an established and internationally recognised framework for obtaining redress for violations of human rights. Victims or potential victims of honour killings are threatened by their families, find neither understanding nor refuge in their communities and no redress before national judiciaries. For them and for their families international human rights law provides mechanisms for challenging regimes that fail to protect the fundamental rights of their citizens. On a perhaps more proactive note, human rights have a role as tools for empowerment and emancipation. One of the major challenges of the human rights approach lies in preventing honour killings and other human rights abuses. Thus, emphasis must be put on continuous efforts to enhance the legitimacy of human rights among communities where honour killings occur. While bearing in mind that the human rights approach must supplement, not undermine, other alternative approaches, a human rights perspective is of considerable value also when challenging honour killings.

### ***5.2.3 Finding common ground – enhancing the legitimacy of the human rights approach***

The distinctions between human rights, human dignity and distributive justice can be seen as arising from failure to put the evolution of human rights in historical context. It has been argued that it is the argument of human rights as legally enforceable rights that is “western”, not the idea underlying the notion of human rights itself. Traditional conceptions of human dignity as well as rights and obligations deriving from various religious, cultural or moral values can be considered “contextual equivalents” to the modern concept of legal rights.<sup>474</sup> Also, as Bielefeldt points out, it is only in *retrospective* that we can connect human rights to a certain (the western) religious, cultural and philosophical tradition.<sup>475</sup> The problem is perhaps, that in the current debate on human rights only the “continuities” between the modern conception of human rights and the western cultural and philosophical tradition are being noticed,

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<sup>474</sup> Ibhawoh, *supra* n., 471, 45-46.

<sup>475</sup> H. Bielefeldt, “Western” versus “Islamic” human rights conceptions? A critique of cultural essentialism in the discussion on human rights’, *Vol. 28 Political Theory No. 1 [2000]*, 90-121, 99-100.

not the “discontinuities”.<sup>476</sup> Similarly, in retrospective it is possible to build bridges between the modern understanding of human rights and non-western religions and cultures. Despite their apparent diversity, human societies share some fundamental interests, concerns and values that can be identified and articulated as the “framework for a common “culture” of universal human rights”<sup>477</sup> or as an “overlapping consensus” of basic normative standards on human dignity.<sup>478</sup> Thus, even though universality has been characterised as a conceptual element of the notion of human rights,<sup>479</sup> this does not imply western hegemony, as human rights arguably have a basis in other cultures as well. The central idea of the cross-cultural dialogue approach to human rights is that observance of human rights standards can be improved through the enhancement of the cultural legitimacy of human rights. The means to achieve such cultural legitimacy are “internal dialogue and struggle to establish enlightened perceptions and interpretations of cultural values and norms.” Alongside this internal dialogue a cross-cultural dialogue should aim at broadening and deepening international consensus of common values.<sup>480</sup> The task is therefore to find and build upon ‘common ground’ between human rights standards and various cultural traditions, both between and within the different cultural traditions. One can of course question the notion of cross-cultural *dialogues* in relation to human rights. It can be asked whether a true dialogue can exist between parties that have very different values, and when neither party is willing to compromise their own values. Also, there seems to be a clear conviction that there can (and should) be only one outcome of

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<sup>476</sup> *Ibid.*, 94-100, for an enlightening discussion on the conflicts and polemics concerning the understanding of human rights within the “western” culture.

<sup>477</sup> An-Na'im, *supra* n. 416.

<sup>478</sup> J. Rawls, *Political Liberalism*, Columbia University Press, 1993, 133-172.

<sup>479</sup> Scheinin, *supra* n. 444, 244.

<sup>480</sup> An-Na'im, *supra* n. 416, 20-27. Parekh argues that a dialogue (or debate) on morally controversial practices generally proceeds in three stages (at each stage there is the possibility that the wider society might be persuaded by the minority's arguments and decide to tolerate the practice). First, the minority defends a practice by appealing to the cultural authority of the practice. The wider society answers by arguing that even a culturally authoritative practice cannot be tolerated if it is morally unacceptable. In the second stage, the minority group counters this argument by stating that even though the practice may be unacceptable in itself, the practice is such a central part of the group's way of life that it would undermine the existing way of life is disallowed. The wider rejoins that no way of life is sacrosanct and that it must change if its survival is dependent on such practices. Finally, the group would have to appeal to values that the wider society subscribes to or can be persuaded to share. If this final strategy fails and the majority remains unconvinced, a difficult situation arises. Parekh, *supra* n. 417, 268, 271-72.

both internal and cross-cultural human rights dialogues: “an entrenched human rights culture.”<sup>481</sup> In other words, is the secondly really a dialogue or a series of monologues?<sup>482</sup> Is not a cross-cultural human rights dialogue still essentially one-way communication?<sup>483</sup> However, despite such conceptual questions, cross-cultural dialogues are arguably an effective *strategic* approach towards promoting human rights.<sup>484</sup>

Thus, on a more pragmatic level, it may be a good idea to relate human rights to values that are recognised by the community or society itself when engaging in a dialogue on human rights with societies and cultural groups that are very hostile towards the concept of human rights. It may also be useful to point out that human rights may have an empowering function for the community itself, for example, through the notion of group rights or economic and social rights. However, here the risk of misuse and clashes with individual’s rights should also be kept in mind. Arguably, there is potential in adopting a comprehensive approach to promoting human rights, emphasizing the indivisibility, interdependency and interrelatedness of human rights. Focusing exclusively on harmful traditional practices, excluding, e.g., violations of economic rights is bound to be counterproductive. Also, as a significant attraction of the doctrine of cultural relativism is that it provides a form of protest against imperialism, a *persuasive* rather than a *compulsive* strategy in promoting human rights would arguably not meet as strong a resistance as the absolutist universalist approaches tend to provoke. Further, it may be useful to employ vocabulary of *humanity* and *compassion*, instead of the traditional language of rights, freedom of choice and autonomy. Also, the role of group, community and religious leaders as links to their constituencies should be emphasised and thus it is useful to open up a dialogue with such leadership. Engaging with community or religious

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<sup>481</sup> Harris-Short, *supra* n. 464, 177. “[A] dialogue is not merging or assimilation of positions but the meeting of different positions.” O. Korhonen, ‘Dialogue among civilizations: International law, human rights and difference’, in L. Hannikainen & S. K. Sajjadpour (eds.) *Dialogue Among Civilizations*, University of Lapland Press, 2002, 30, 33.

<sup>482</sup> See Korhonen, *supra* n. 479, 33-34. See also G. Khoshroo, ‘What is a dialogue among civilizations?’, in L. Hannikainen & S. K. Sajjadpour (eds.) *Dialogue Among Civilizations*, University of Lapland Press, 2002, 18, 23-24, who identifies elements of a ‘clash’ and a ‘dialogue’.

<sup>483</sup> See, however, Korhonen’s discussion of Gadamer’s *Horizontenverschmelzung*, or merging of horizons, according to which a dialogue “may ideally produce agreement as to ideas, aims and understanding as to how to get there.” Korhonen, *supra* n. 479, 34-36.

<sup>484</sup> Scheinin, *supra* n. 445, 250.

leadership may give results both among the public as well as at the state level as also the government tends to be responsive to the voices of community leaders.<sup>485</sup> Moreover, it is worthwhile keeping in mind that the human rights approach is not only about litigation but also comprises aspects of education and awareness raising. Thus, existing approaches must be re-examined, and it must be recognised that some rights (such as sexual autonomy and choice of partner/lifestyle) may be very new in some societies and even highly offensive. Therefore such realities must not be denied, because denial may undermine the potential effectiveness of the work.<sup>486</sup>

Internal cultural dialogues are taking place at the moment in countries such as Pakistan and Jordan. Particularly the lively debate on amending Article 340 of the Jordanian Penal Code a few years ago provides a good example of the force of an intra-cultural debate. In Sweden the recent cases of honour killings have fuelled debates and dialogues both within the Swedish society at large and within the concerned immigrant groups. Work is being done at the grass root level in groups gathering to discuss and debate issues relating to gender roles and human rights. Particularly interesting is one initiative by Swedish Save the Children, a programme where immigrant men gather to discuss issues of equality, gender roles, parenthood, fatherhood, etc. together with Swedish men.<sup>487</sup> It would also be important to encourage internal cultural dialogues both between genders and between generations. It seems that particularly within immigrant communities the gaps between the values and interests of different generations are huge. Parents with no jobs and very few contacts with the outside community, may not understand their children who go to school and have been socialized into the majority culture. This may lead to a situation where the parents and their children live in two different worlds and have different

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<sup>485</sup> CIMEL/Interights *Roundtable*, *supra* n. 450, 21. See also Packer, *supra* n. 451, at 207, who notes that the failure to include opinion makers and community leaders into strategies to change harmful traditional practices in Sub-Saharan Africa has been a big mistake.

<sup>486</sup> However, it must also be recognised that even in societies where certain 'liberal values' (such as the right to choose spouse) are not recognised, other 'liberal values' in economic policies, educational systems and *infrastructure* have been so recognised. It must be questioned why 'liberal values' fail particularly when it comes to issues relating to women and the family. CIMEL/Interights *Roundtable*, *supra* n. 450, 14-15.

<sup>487</sup> See *Dialogprojektet – Rädda Barnen*, [http://integration.nu/foreningar/mote/dialogprojektet\\_txt.htm](http://integration.nu/foreningar/mote/dialogprojektet_txt.htm), site visited 22.1.2003, or [www.rb.se](http://www.rb.se). See also articles reflecting such meetings, 'Kvinnoförtryck eller kultur?' [Oppression of women or culture?]; and 'Ett möte i Dialogprojektet' [A meeting within the Dialogue project], in *Manliga nätverket 99-03* and available at <http://www.man-net.nu>.

worldviews, and when those views clash, they may lead to tragedies such as honour killings.

### 5.3 Conclusions

While honour killings, or any other violence, must not be reduced to a question of culture, culture should be understood as constituting a part of the context in which violence occurs, wherever it occurs. Culture is thus undeniably a part of the answer to the question why honour killings occur. Thus, when the aim is to eradicate honour killings it is that cultural basis that must be challenged. The question in this chapter has been whether and how a human rights approach can be used to do so. Despite certain problems posed by the relativist challenge, issues relating to implementation and enforcement of human rights and the dilemma of conflicting rights it has been suggested that a human rights perspective may be very useful in the struggle against honour killings. Arguably the dialogue approach as a strategic means of enhancing cultural legitimacy of human rights can be an effective way to promote human rights also in cultures and among groups that may be suspicious or even hostile towards the whole idea of human rights. Provided that such dialogues are “culturally conscious and sensitive”<sup>488</sup> they may have a substantial impact on the attitudes of politicians, legislators, community leaders and the public alike, and eventually also on the cultural basis of honour killings. One could argue that there are three dimensions in the campaign to eradicate honour killings, first, the individual and the state-dimension, second, the individual and the group-dimension, and third, the group and the state-dimension. The human rights argumentation is arguably very useful in the first dimension, that is, in motivating governments to enact laws, enforce laws and undertake various protective and preventive measures. Following Ayelet Shachar’s model of transformative accommodation<sup>489</sup> one could also argue that human rights may be of relevance in relations between groups and the state. In allocating competence to a group to decide by themselves on some matter, that group is bound to observe some human rights principles, including the principle non-discrimination. If

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<sup>488</sup> Scheinin, *supra* n. 445, 250.

<sup>489</sup> Shachar, *supra* n. 428, 117-145.

they fail to do so, they lose their competence. One could imagine that, for example, the tribal councils in Pakistan could play such a role. The most problematic issue is how to involve human rights in the relations between the group and the individual. However, adopting the human rights dialogue approach as a strategic means is arguably an effective way to challenge and redefine norms and values within groups and thus a means to enhance the legitimacy of human rights within a (cultural) group. Also, the combined effect of international pressure on the state to respect and protect individual human rights and state and outside efforts to engage with group leadership are bound to give some results also in the relations between the group itself and its members.

## **6 General conclusions and recommendations**

### **6.1 General conclusions**

Due to efforts by national and international NGOs and concerned individuals particularly in countries such Jordan, Pakistan and Turkey and arguably also due to increased media attention and recent outraged reactions to honour killings committed in western countries, honour killings have been taken up on the international human rights agenda. This study has aimed at exploring honour killings in the context of human rights, as a violation of international human rights law meriting the accountability of states. The study has also discussed the impact of culture on the occurrence of honour killings and questioned whether the human rights approach is relevant to the campaigning against honour killings and whether it can be of use in challenging the cultural basis of such killings.

Essentially, the failure of a state to protect a woman against honour killings is in breach of the positive obligation to protect and ensure human rights, an obligation that, as has been discussed in this paper, can be found in all the major general human rights treaties. This obligation has been reaffirmed and clarified by the bodies monitoring the compliance of these treaties and includes the duty to put in place a legal framework which provides effective protection for the right to life, the duty to prevent breaches of the right to life, the duty to provide information and advice in order to prevent breaches, and to respond effectively to breaches of the right to life by carrying out effective investigations, bringing the perpetrators to justice and providing remedies for the victims. Further, it has been argued that there is an emerging norm of customary international law providing for a positive obligation to take necessary measures to prevent, amongst others by way of legislation and awareness campaigns, honour killings, as well as to carry out effective investigations and prosecute the perpetrators. Also, under general human rights conventions, such as the ICCPR, each duty imposed on a state by a human rights convention must be read in conjunction with a duty to carry out the obligation in question in a non-discriminatory manner. Therefore, in the context of honour killings, a state that investigates cases of murdered

men but does not, e.g., carry out effective investigation of cases of honour killings may be seen as violating its duty to respond to a breach of the right to life in a non-discriminatory manner. In addition, honour killings constitute discrimination where the laws applicable to these crimes treat men and women on an unequal basis as they provide for excuses only for men who commit honour killings or where the application of laws applicable to honour killings results in unequal treatment of men and women. Such discrimination may either be direct and institutional discrimination, as arguably is the case of codified discriminatory provocation defences or the Islamic *qisas* and *diyat* provisions, or indirect and institutional as, for example, in the case of the application by courts of law of Article 98 of the Jordanian Penal Code. Moreover, in accordance with the view of the CEDAW Committee, honour killings *per se*, as a form of violence against women, constitute a form of discrimination. Consequently, a state party to CEDAW has violated its duty to eliminate discrimination (that is, honour killings) against women when an honour killing occurs unless it has acted in good faith and pursued the elimination and prevention of honour killings, e.g., through effective enforcement of legislation and protective measures such as shelter homes.

Accordingly, honour killings have recently received an increasing amount of attention in the international human rights arena. Honour killings have been discussed in the UN General Assembly and Commission on Human Rights, in most of the UN treaty monitoring bodies, as well as within the Council of Europe and the European Union. Also UN specialized agencies have taken up honour killings as a priority and many NGOs are active in reporting cases of honour killings as well as carrying out human rights education and awareness programmes. Honour killings, both as a form of violence against women and as a violation of human rights, are thus by now an established item on the international human rights agenda.

## **6.2 Recommendations**

As honour killings have recently received increasing attention in various international and national fora also different recommendations on how to prevent honour killings from occurring and how to eradicate the practice completely have been made. In their general recommendation on violence against women the CEDAW Committee

distinguished between different kinds of measures that are necessary to provide effective protection of women against gender-based violence and differentiated between legal measures, preventive measures and protective measures.<sup>490</sup> This distinction is very useful also in the context of honour killings as it helps us categorise the measures that states are required to take and therefore clarify the discussion as to recommendations. In addition to measures required by states also different strategies to eradication of honour killings will be discussed.

### ***6.2.1 Short and middle term legal or judicial measures to be taken by governments***

Regarding legal or judicial measures, the first measure to be taken by states is to ensure that laws applicable to honour killings, that is mainly the criminal codes and provisions relating to murder, do not condone honour killings and do not include discriminatory provisions relating to justifications, excuses or defences. Any existing defences of honour or passion should be removed from the legislation. Also deliberate encouragement, facilitation or participation in an honour killing should be criminalized.<sup>491</sup>

Second, states should ensure that implementation of existing laws is proper, for example, by ensuring that existing non-discriminatory provisions on excuses or defences are always applied in a non-discriminatory manner by the judiciary. Inherently discriminatory laws such as the *qisas* and *diyat* law in Pakistan should be reviewed.

Third, effective penal sanctions for offenders must be provided for by law, all cases of honour killings must be properly and effectively registered, investigated and prosecuted and the perpetrators punished. States must ensure that adequate civil remedies and compensatory provisions exist for victims.<sup>492</sup> Particularly, states should through education and information campaigns ensure that police officials, prosecutors

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<sup>490</sup> CEDAW *General Recommendation No. 19: Violence against women*, (11<sup>th</sup> session, 1992), UN doc. A/47/38, para. 24(t).

<sup>491</sup> Council of Europe, Committee of Ministers, *Recommendation Rec(2002)5*, The Protection of Women against Violence, 30 April 2002, para. 82.

<sup>492</sup> See *supra* n. 488, and *Recommendation Rec(2002)5*, *supra* n. 489, para. 36.

and the judiciary have appropriate awareness and knowledge of the problem of honour killings, including the causes of and cultural considerations relating to honour killings, the legislation relevant to these crimes. If such campaigns are not carried out it can hardly be expected that the police investigations or prosecutions of honour killings will be effective; let alone that the police has the capacity to provide protection to a women at risk of honour killing. One can of course ask what the force of penal measures is. It has been argued that campaigns to eradicate honour killings should focus only on education and attitude change. Still, how will the message reach out if the existing penal provisions are not effectively enforced?

An additional point regarding the legal protection of women against honour killings relates to acknowledging that the threat of honour killings constitute persecution for the purposes of refugee status.<sup>493</sup> Honour killings should also be seen as such torture and inhuman punishment or treatment that it would be in breach of the principle of *non-refoulement* to return a woman to a state where she cannot be protected against honour killing.<sup>494</sup> Thus states should ensure that their immigration laws and policies acknowledge honour killings as a form of persecution (no matter who the perpetrator is), as well as that it is prohibited to return a person who is threatened by an honour killing to any country where she is likely to be subjected such treatment. Finally, all states must be encouraged to ratify the relevant human rights treaties, particularly the ICCPR and CEDAW, to recognise the competence of the monitoring bodies to examine individual complaints and to comply with any reporting obligations under such treaties.

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<sup>493</sup> See the Geneva Convention relating to the Status of Refugees, 1951, Article 1(2).

<sup>494</sup> See e.g., ECHR Article 3, CAT Article 3 and ICCPR Article 7. See particularly *Jabari v. Turkey*, ECHR 11.7.2000, Reports 2000-VIII. In addition, see *Crimes of honour*, Outline report, Committee on Equal Opportunities for Women and Men, Council of Europe, Parliamentary Assembly, AS/Ega(2002)7rev2, 4.6.2002, para. 57.

## ***6.2.2 Protective and preventive measures to be taken by governments with a short and middle term perspective***

In addition to general measures relating to the protection against and prevention of violence against women,<sup>495</sup> some measures are particularly important to the specific issue of honour killings. States must ensure that all victims of attempted honour killings and everyone who has been threatened by honour killing receive immediate and comprehensive assistance, including legal assistance as well as post-traumatic psychological and social support. All such assistance should be of confidential nature and free of charge.<sup>496</sup> It is important to build up structures for prevention and damage control. Most urgently this means establishing shelter homes for girls and women who are at risk of honour killings. Shelter homes should be of both temporary character and offering solutions on a more long-term basis. Also, as was noted in a Swedish study concerning girls from patriarchal cultures, attention must be paid to the fact that the women at risk of honour killings are often young girls or women, and therefore the traditional solutions of shelters may not be suitable for them. They are too old for shelter accommodation in families and perhaps too young for shelter homes meant for battered women. As suggested by the Swedish study,<sup>497</sup> there is a need for collective safe accommodation for young women. Such collective accommodation should always have access to personnel with adequate knowledge of risk assessment, social and psychotherapeutic competence as well as cultural competence. Such safe accommodation should always aim at preparing the young women to live independently. Also, it must be emphasised that these girls and young women are threatened by their families or relatives and even though they may often be underage, contacting the girl's family should always be discussed with the girl and a proper risk assessment should always be undertaken before anything is done. Further protective measures such as security alarms or telephones, moving to another city and name changes should also be considered.

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<sup>495</sup> As recommended for example, in *Recommendation Rec(2002)5*, *supra* n. 489, and CEDAW *General Recommendation No. 19*, *supra* n. 488.

<sup>496</sup> *Recommendation Rec(2002)5*, *supra* n. 489, para. 23.

<sup>497</sup> *Rätten till sitt eget liv: Behovet av skyddat boende för flickor i patriarkala familjer* [Right to one's own life: Need of safe accommodation for girls in patriarchal families], Rapport 2002:13, Länsstyrelsen i Stockholms Län, Socialavdelningen, 8.

It is vital to provide girls and young women (and particularly those who are perceived as facing a higher risk of violence in their homes) with information on their rights and the help and remedies that are available for them, including human rights education and particularly information on the functioning of the criminal justice system, availability of victim support services and legal assistance and the availability of shelter homes as well as other assistance to women and girls at risk of violence. It is essential that such information is both accessible (e.g., in a variety of languages) and available to all girls and women. It is also important that such information is coordinated – an information package should be compiled including information both on the work and functions of the public authorities, NGOs and religious institutions. The role of schools in the campaign towards preventing and eradicating honour crimes and killings can be emphasised in this context. Particularly in western societies the schools reach all young people and therefore schools should be developed also as channels for distributing abovementioned information young women and girls, but of course also more generally for education on gender equality and related issues.<sup>498</sup>

Moreover, education and information campaigns must be directed towards public officials which are likely to be confronted with cases of honour killing, particularly teachers, school psychologists and school nurses, the social services, the police and the judiciary. Such campaigns must include information on what honour killings are, what the reasons behind such killings may be, illustrations of what a *de facto* situation of girls at risk of honour killings can be like, as well as discussions on the concept of culture and what the role of culture can be in the honour killing context, etc. Attention should also be drawn to the problem of multiple discrimination in the context of honour killings. The work of the central authorities (schools, social services and police) must be properly coordinated, common plans of action and guidelines must be formulated, working methods (including risk assessment tools) and best practices identified. An excellent idea found in the Swedish report on girls at risk from patriarchal families was the establishment of a mobile crisis team that has specialised competence in dealing with girls at risk of honour killings, forced marriages etc.<sup>499</sup> Continued emphasis should be put on building networks, both nationally and

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<sup>498</sup> See, e.g., *Recommendation Rec(2002)5*, *supra* n. 489, para. 16.

<sup>499</sup> *Rätten till sitt eget liv*, *supra* n. 495, 10.

internationally, particularly with a view on exchanging information on different efforts to prevent and eradicate honour killings.

### ***6.2.3 Long term measures and strategies to prevent and eradicate honour killings***

In a more long-term perspective the work on building and maintaining infrastructures and support systems must be continued, as must the educational efforts directed towards professionals faced with the problem of honour killings. In the long-term perspective the keywords for change are education, empowerment and democratic development as well as the improvement of the position of women as a part of democratic development.

States and organisations should include the issue of honour killings in any campaigns against violence against women and launch public awareness programs focusing on gender equality, women's human rights and freedom from violence involving the media, the educational system and religious institutions.<sup>500</sup> It is important that such campaigns include information and discussions on the background and context of honour killings including the role of culture. In this context it is important to point out that while it in some circumstances may be strategically important in the campaign against honour killings to separate out honour killings as a particular phenomenon or form of violence against women, it may in other circumstances be essential to campaign on honour killings solely within the broader issue of violence against women. It must be born in mind that any attempt to separately address honour killings as a separate issue must be handled carefully, given the risks of cultural stereotyping and racists backlash.<sup>501</sup> In this respect it is important to encourage the media not to sensationalise cases of honour killings and to be careful in reporting the cases in order to avoid risking eventual informants. It would be important to organise human rights and cultural awareness training for journalists to ensure that they are aware of the complexity and context of the human rights issues they are reporting, e.g., honour killings.

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<sup>500</sup> *Crimes of honour*, Outline report, Committee on Equal Opportunities for Women and Men, Council of Europe, Parliamentary Assembly, AS/Ega(2002)7rev2, 4.6.2002, para 58.

In societies where honour killings occur amongst some immigrant groups, it is particularly important to direct specific campaigns towards immigrant groups, in addition to general information and awareness programs directed to the public at large. More specifically, it would be essential to organise parent education campaigns, e.g., in the form of discussion groups where parents would meet to discuss issues relating to parenthood, adolescence etc. Such parent education programs should also aim at involving parents better into the new society, as has been noted on a number of occasions, it is often much easier for children to adapt to the new country because they attend school, but parents, perhaps being unemployed, risk being left out. Therefore it is important to have some channel through which also the parents can be informed of the values that must be respected in the new country, such as equality of the sexes. Also, it is essential to ensure that any notions children, and particularly boys, may have of superiority on grounds of gender are challenged in school at an early age.<sup>502</sup> This kind of education and awareness projects can for example be organised in the form of dialogues. In this way the usual one-way form of communication is changed to an interactive discussion that hopefully is useful for all the parties involved.

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<sup>501</sup> CIMEL/Interights *Roundtable*, *supra* n. 450, 14.

<sup>502</sup> Council of Europe, *Crimes of honour*, Outline report, *supra* n. 498, para 58.

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## **INTERNET RESOURCES**

Swedish national broadcasting company's website: [www.svt.se/nyheter](http://www.svt.se/nyheter)

BBC: <http://news.bbc.co.uk>

Dawn – Internet Edition (Pakistan): [www.dawn.com](http://www.dawn.com)

Jordan Times: [www.amanjordan.com](http://www.amanjordan.com)

CIMEL and Interights Honour Crimes Project: <http://www2.soas.ac.uk/honourcrimes/>

Human Rights Commission of Pakistan (HRCP): <http://www.hrcp.cjb.net/>.

AMAN, The Arab Regional Resource Center on Violence Against Women:

<http://www.amanjordan.org/english/http://www.arabhra.org/core/albadeel.htm>

Kurdish Women Action Against Honour Killings:

<http://www.kurdmedia.com/kwahk/about.htm>

Campaign Against Honour Killings in Turkey:

<http://honourkillings.gn.apc.org/index.htm>

Women Living Under Muslim Laws: <http://www.wluml.org>.

Women Against Violence: [www.wavo.org](http://www.wavo.org) (in Arabic)

Women's Centre for Legal Aid Counselling (WCLAC): <http://www.nisaa.org/wclac/>

*Dialogprojektet* – Rädda Barnen [Dialogue Project, Swedish Save the Children]:

[http://integration.nu/foreningar/mote/dialogprojektet\\_txt.htm](http://integration.nu/foreningar/mote/dialogprojektet_txt.htm) or [www.rb.se](http://www.rb.se).

Manliga nätverket (Sweden): <http://www.man-net.nu>