

# SHE CAN DO NO WRONG: RECENT FAILURES IN AMERICA’S IMMIGRATION COURTS TO PROVIDE WOMEN ASYLUM FROM “HONOR CRIMES” ABROAD\*

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“. . . if you don't shoot the immoral one, you jeopardize the morality of the others. All the girls in your family will be soiled.”<sup>1</sup>

“There is no honor in honor killings.”<sup>2</sup>

## I. INTRODUCTION

On January 1, 2008, Yaser Abdel Said drove his seventeen and eighteen-year-old daughters, Sarah and Amina, to a hotel parking lot in Dallas, Texas and shot them both to death.<sup>3</sup> Much speculation surrounded the Said sisters' brutal murders and the term “honor killing” soon emerged as the suspected motive for the crimes.<sup>4</sup> Honor crimes are brutal acts of violence against women, committed by male relatives who seek to avenge their family's honor after perceiving that the female engaged in a dishonorable act.<sup>5</sup>

In the media frenzy that surrounded the girls' deaths, friends of the Said family informed reporters that Yaser was “furious” that his daughters had boyfriends and that he previously threatened to kill them.<sup>6</sup> The Said family's story further unfolded in the public eye, revealing long-suffered abuse and an attempt by the girls to flee their home.<sup>7</sup> After the murders,

1. AYSE ONAL, HONOUR KILLING: STORIES OF MEN WHO KILLED 164 (2008) (statement by Bahri Efendi who was convicted of the brutal murder of his younger sister Naile). Bahri shot Naile in the head while neighbors and family members watched and applauded Bahri's “bravery.” *Id.* at 161.

2. H.R. Con. Res. 296, 109th Cong. (2005) (statement of Rep. Nadler) (expressing the sense of Congress that society should not tolerate honor crimes); *see also* Press Release, Eighth Cong. Dist. of N.Y., Nadler Bill Condemns Practice of So-Called “Honor Killings” (Oct. 8, 2003), *available at* [http://www.house.gov/list/press/ny08\\_nadler/2003\\_10\\_08\\_honor\\_killings.html](http://www.house.gov/list/press/ny08_nadler/2003_10_08_honor_killings.html) (introducing a resolution proposing that the United States work with other nations to end all honor crimes and murders).

3. Rachel Slade, *Reward Extended in Case of Cab Driver Accused of Killing 2 Daughters*, DALLAS MORNING NEWS, June 3, 2008, *available at* 2008 WLNR 10491559.

4. *See, e.g.*, Rod Dreher, Editorial, *Was This an Honor Killing?: Motive of Girls' Killer Matters More than You May Think*, DALLAS MORNING NEWS, Jan. 13, 2008, at 5P; Robert Spencer, *Honor Killing in Texas*, HUMAN EVENTS (Jan. 8, 2008).

5. *See* Mazna Hussain, Note, “Take My Riches, Give Me Justice”: A Contextual Analysis of Pakistan's Honor Crimes Legislation, 29 HARV. J.L. & GENDER 223, 225 (2006) (stating that an honor crime usually consists of murder).

6. Dreher, *supra* note 4.

7. *See* Tanya Eiserer et al., *Haunted by History*, DALLAS MORNING NEWS, Jan. 10, 2008, at 1A [hereinafter *Haunted by History*]; *see also* Tanya Eiserer et al., *Lewisville Cab Driver Had Been Investigated for Previous Abuse*, DALLAS MORNING NEWS, Jan. 9, 2008, at 1A (reporting that Amina and Sarah had accused their father of sexual abuse at ages eight and nine, but later told authorities the allegations were false); Spencer,

Yaser fled the area and a capital warrant remains active for his arrest.<sup>8</sup> Family members believe he returned to Egypt, his native country.<sup>9</sup>

Due to Yaser's disappearance, Sarah and Amina's deaths in the name of "honor" remain an unexamined issue for the criminal justice system. The perpetrators in comparable honor crimes—both nationwide and internationally—have similarly not been brought to justice for committing crimes against female family members. Although many of these crimes remain untried, women who seek asylum for fear of becoming honor killing victims in their native countries bring this challenging issue into American courtrooms. To rule on these claims, an immigration judge must examine the fear of "potential" harm based on a cultural and societal practice that is so foreign to the American way of life.<sup>10</sup> As a result, a claim in a woman's asylum petition that she fears an honor killing does not guarantee her protection within America's borders.

This article first introduces the extreme value of honor in Islamic societies to provide the reader a backdrop against which honor killings are deemed acceptable and necessary.<sup>11</sup> Second, this article defines honor crimes and killings and explains the cultural, societal, and religious justifications surrounding such offenses.<sup>12</sup> Next, a brief overview explains how women who fear becoming honor crime victims in their home countries may seek asylum in the United States under the Immigration and Nationality Act.<sup>13</sup> A discussion of *Vellani v. U.S. Attorney General* and *Yaylacicegi v. Gonzales* follows, which both involve women who sought asylum based on their fear of a potential honor killing.<sup>14</sup> This section purposefully narrates the women's stories to underscore the severity of harm that the practice of honor crimes and killings causes women and the international community as a whole.

The article then shifts its focus to analyze the inherent problems in immigration proceedings, evident in *Vellani* and *Yaylacicegi*, where the court fails to find fear of an honor killing credible even when substantiated by the woman's personal history and the prevalence of honor crimes in her native country.<sup>15</sup> To remedy this situation, the article first recommends that

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*supra* note 4.

8. Slade, *supra* note 3.

9. *Haunted by History*, *supra* note 7.

10. See 8 U.S.C. § 1101(a)(42)(A) (2006) (specifying that one must have a "well-founded fear of persecution" to be classified as a refugee and receive asylum).

11. See *infra* Part II (framing honor crimes within Islamic gender norms).

12. See *infra* Part III.

13. See *infra* Part IV (outlining U.S. asylum protections).

14. See *infra* Part V.

15. See *infra* Part VI (noting the difficulties in surpassing the "more than one death threat" requirement and in assessing the reaction or inaction of a foreign government regarding honor crimes or killings).

courts comprehend the meaning and context of such crimes in the specific country at issue before denying an asylum seeker's petition.<sup>16</sup> Highlighting the Ninth Circuit's recent and progressive approach, the article then recommends that courts eliminate the harmful link between adverse credibility determinations and delayed reports of sexual abuse for honor killing-based asylum claims.<sup>17</sup> This article concludes that if implemented, both recommendations for immigration proceedings will improve the status of women who seek asylum from potential honor crimes or killings abroad.

## II. THE VALUE OF "HONOR" IN ISLAMIC SOCIETIES

The concept of "honor" in Islamic societies has long been a gendered principle, deeply rooted in cultural tradition.<sup>18</sup> For Muslim men, one's honor, or "sharaf," represents a man's moral behavior and determines his social standing in the community.<sup>19</sup> A Muslim man obtains sharaf through family reputation, hospitality, generosity, chivalry, socioeconomic status, or political power.<sup>20</sup> Sharaf is a flexible concept in that an Arab man can acquire, augment, diminish, lose, or regain his honor.<sup>21</sup>

The traditional Arab female equivalent—"ardh"—translates to "virtue," but generally relates to a woman's sexual practices, such as her chastity, purity, seclusion, and marital faithfulness.<sup>22</sup> Ardh specifically requires Muslim women to exhibit bodily modesty with non-provocative, unadorned clothing.<sup>23</sup> In more conservative Islamic sects, women must also veil themselves in public and refrain from wearing makeup when in the presence of men outside of their families.<sup>24</sup> Ardh also requires that women remain sexually pure by zealously protecting their virginity until

16. See *infra* Part VII.A.

17. See *infra* Part VII.B.

18. See Dale Radtke, *Defining a Core Zone of Protection in Asylum Law: Refocusing the Analysis of Membership in a Particular Social Group to Utilize Both the Social Visibility and Group Immutability Component Approaches*, 10 J.L. & SOC. CHALLENGES 22, 51 (2008) (noting that "honor" originated in pre-Islamic eras in the ancient cultures of desert tribes); Hussain, *supra* note 5, at 227.

19. See Catherine Warrick, *The Vanishing Victim: Criminal Law and Gender in Jordan*, 39 LAW & SOC'Y REV. 315, 322 (2005) (observing that Muslim men have a right and duty to defend their sharaf and that certain conduct or immoral behavior by a man's female relatives "would impugn the honor of the entire family").

20. Radtke, *supra* note 18, at 51.

21. See Ferris K. Nesheiwat, *Honor Crimes in Jordan: Their Treatment Under Islamic and Jordanian Criminal Laws*, 23 PENN ST. INT'L L. REV. 251, 253 n.6 (2004) (citing RAPHAEL PATAI, *THE ARAB MIND* 120-21 (1973)).

22. M.M. Slaughter, *The Salman Rushdie Affair: Apostasy, Honor, and Freedom of Speech*, 79 VA. L. REV. 153, 197 (1993).

23. ANN ELIZABETH MAYER, *ISLAM AND HUMAN RIGHTS: TRADITION AND POLITICS* 120 (Westview Press 3d ed. 1999).

24. *Id.*

marriage.<sup>25</sup> In fact, Islamic culture and society view female virginity and ardh as indistinguishable.<sup>26</sup> Unlike a man's sharaf, the loss of ardh is irreparable.<sup>27</sup> As the practice of honor killings reveals, losing one's ardh can bear fatal consequences for many Arab women.

A woman's ardh also reflects upon her family.<sup>28</sup> In particular, a man's sharaf will greatly suffer if a woman's ardh becomes damaged due to actual or alleged sexual relations.<sup>29</sup> Many Arab men will therefore ardently protect the ardh of the women in their families to preserve their own sharaf first, and their family's reputation second.<sup>30</sup>

### III. THE VALUELESS FEMALE

#### A. Honor Crimes Defined

Honor crimes are brutal acts of violence towards women committed by male relatives who seek to avenge their family's honor when the male perceives that the female engaged in a dishonorable act.<sup>31</sup> Mostly fathers commit such atrocities, although brothers, uncles, and even female relatives frequently assist.<sup>32</sup> Honor crimes typically involve murder, but maiming, disfigurement, or dismemberment of the female may also occur, such as through acid attacks or cutting off a specific organ.<sup>33</sup> Rape may also punish

25. See Editorial, *Honor Killings*, N.Y. TIMES, Nov. 12, 2000, § 4 (stating that honor killings are the "manifestation of the social pressures of traditional societies, which hold that women are the property of the family, whose honor rests on their obedience and virginity").

26. Nesheiwat, *supra* note 21, at 253 n.6.

27. See *id.* (describing that virginity and ardh "cannot be augmented, they can only be lost, and their loss is irreparable").

28. See Radtke, *supra* note 18, at 51 (stating that ardh "represents a fundamental view that sexual activities by women affect the honor of the family"). For example, Mehmet Mirza, who was convicted for the brutal murder of his daughter, Nuran, remarked that he had taught Nuran to be "virtuous like her mother" and that she "carried the family's honour in her body." ONAL, *supra* note 1, at 121-22.

29. Amy E. Ray, *The Shame of It: Gender-Based Terrorism in the Former Yugoslavia and the Failure of International Human Rights Law to Comprehend the Injuries*, 46 AM. U. L. REV. 793, 804 n.61 (1997). For example, a man will lose his sharaf temporarily when a female relative loses her virginity outside of marriage, until the man avenges that loss. *Id.*

30. See Nesheiwat, *supra* note 21, at 253 n.6 (acknowledging that the basis of sharaf is to protect the women's ardh).

31. Hussain, *supra* note 5, at 225.

32. See Cinnamon Stillwell, *Honor Killings: When the Ancient and the Modern Collide*, S.F. GATE, Jan. 23, 2008, <http://www.sfgate.com/cgi-bin/article.cgi?f=/g/a/2008/01/23/cstillwell.DTL>; ONAL, *supra* note 1, at 9 (telling the story of twenty-year-old Banaz Mahmud's father and uncle who were convicted of her 2007 rape and murder, a planned honor killing).

33. See, e.g., Rana Lehr-Lehnardt, Comment, *Treat Your Women Well: Comparisons and Lessons from an Imperfect Example Across the Waters*, 26 S. ILL. U. L.J. 403, 403-04 (2002) (describing an honor crime in which the husband gouged out his wife's eyes and cut off her nose and ears); Hussain, *supra* note 5, at 226 (detailing

an alleged dishonorable act.<sup>34</sup> Islamic communities in which honor crimes and killings occur offer no consensus regarding what they consider “dishonorable.”<sup>35</sup> Consequently, the scope of acts sufficient to justify an honor crime is dangerously wide and far-reaching.

For example, a woman may become an honor crime victim for seeking a divorce, adultery, premarital sexual relations, pregnancy out of wedlock, refusing to consent to sexual relations (including forced prostitution), not fulfilling the demands of husbands, fathers, brothers, or other male relatives, or even interrupting man-to-man conversations.<sup>36</sup> Additional behaviors that provoke honor crimes in some Muslim communities include being seen alone with a boy, dating, smoking, seeking employment without permission, or refusing to agree to an arranged marriage.<sup>37</sup> Even failing to serve a meal on time, receiving a dedication of a love song over the radio, stealing a glance at a boy, or wanting to go to the movies, have incited honor crimes and murders.<sup>38</sup>

Female victims of sexual assault or rape also dishonor the family name, despite their lack of consent to the “dishonorable” act.<sup>39</sup> In fact, when rape occurs, the community views the female victim, not the rapist, as the offender, believing that the woman tarnished both her own and her family’s honor.<sup>40</sup> In an egregious twist of fate, this “crime” is then punishable by death.<sup>41</sup>

Mere rumor or speculation can also instigate an honor crime against a female relative in many Islamic communities, since even gossip related to sexual behavior or misconduct can tarnish a family’s reputation, regardless of its accuracy.<sup>42</sup> In 2007, the U.S. State Department reported that twenty-

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the murder of Salwa, a sixteen-year-old girl whose sister placed ten bags of detergent in a large plastic bag over Salwa’s nose while she was sleeping and smothered her to death).

34. Hussain, *supra* note 5, at 225.

35. ELLEN R. SHEELEY, RECLAIMING HONOR IN JORDAN 1 (2007).

36. Hussain, *supra* note 5, at 225-26; U.S. DEP’T OF STATE, 2007 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: TURKEY (2008), <http://www.state.gov/g/drl/rls/hrrpt/2007/100589.htm>.

37. See Lehr-Lehnardt, *supra* note 33, at 403 n.1.

38. See, e.g., Adam Jones, *Case Study: “Honour” Killings and Blood Feuds*, GENDERCIDE WATCH, Jan. 20, 2009, [http://www.gendercide.org/case\\_honour.html](http://www.gendercide.org/case_honour.html) (relaying how in 1998, a male relative slit a Turkish woman’s throat after a man dedicated a love ballad to her over the radio); Dan Bilefsky, *How to Avoid Honor Killing in Turkey? Honor Suicide*, N.Y. TIMES, July 16, 2006, § 1, at 13; see also Hussain, *supra* note 5, at 225-26; Lehr-Lehnardt, *supra* note 34, at 403 n.1.

39. See Hussain, *supra* note 5, at 225-26; Lehr-Lehnardt, *supra* note 33, at 403 n.1.

40. *No Honor in “Honor Crimes,”* INT’L WOMEN’S ISSUES NEWSLETTER (U.S. Dep’t of State, Washington, D.C.), Dec. 2005, at 3.

41. *Id.*; see, e.g., Editorial, *supra* note 25 (describing how in 1998, after a seventeen-year-old Jordanian woman was raped by a family friend, the girl’s father and brother “shot her eight times and left her for dead”).

42. See Hussain, *supra* note 5, at 225 (relaying the story of Nawal, a Pakistani

five percent of honor crime victims in Jordan were killed after a mere “suspicion” of involvement in an illicit relationship and only fifteen percent were murdered *after* the family proved any relationship occurred.<sup>43</sup> Generally, any activity that triggers suspicion of dishonorable conduct can lead to a woman’s death.<sup>44</sup> In other words, honor crimes often transpire when a male merely *believes* a woman committed an indiscretion, rather than when a woman actually defies a societal gender norm.<sup>45</sup> Mere idle gossip can therefore dictate whether a woman lives or dies.<sup>46</sup>

The U.S. State Department officially monitors and reports on honor crimes and murders against women in annual Country Reports on Human Rights Practices.<sup>47</sup> In general, the U.S. government reports that honor crimes and murders largely occur in the Middle East and South Asia, with the majority committed in Islamic communities.<sup>48</sup> Specifically, London’s Centre for Social Cohesion reports that some of the highest rates of honor killings in the world occur in the Kurdish regions of Turkey and Iraq.<sup>49</sup> Nevertheless, such atrocities against women occur in countless regions of the world, crossing socioeconomic and cultural boundaries.<sup>50</sup> Honor crimes and violence against women are thus a global epidemic.

### *B. Cultural, Societal, and Religious Justifications*

Although honor crimes and murders are widespread throughout Islamic communities, neither Islamic religion nor law officially sanction murder in the name of honor.<sup>51</sup> In fact, the Koran, the central religious text of Islam, forbids honor killings.<sup>52</sup> Furthermore, the Universal Islamic Declaration of

woman who was accused of behaving dishonorably because people were gossiping about her); Warrick, *supra* note 19, at 322.

43. U.S. DEP’T OF STATE, 2007 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: JORDAN (2008), <http://www.state.gov/g/drl/rls/hrrpt/2007/100598.htm> [hereinafter REPORT ON HUMAN RIGHTS PRACTICES: JORDAN].

44. See Hussain, *supra* note 5, at 226.

45. See Rebecca E. Boon, Note, *They Killed Her for Going Out with Boys: Honor Killings in Turkey in Light of Turkey’s Accession to the European Union and Lessons for Iraq*, 35 HOFSTRA L. REV. 815, 816 (2006) (defining “honor killings” as “the murder of a girl or woman by her family members due to their disapproval of her alleged sexual misbehavior, which they perceive as defying societal gender norms”); Warrick, *supra* note 19, at 322.

46. See ONAL, *supra* note 1, at 256 (discussing the “powerless young women whose fates were sealed by neighborhood gossip”).

47. *No Honor in “Honor Crimes,” supra* note 40, at 3.

48. See *id.*; SHEELEY, *supra* note 35, at 1 (providing statistics for Jordan, Gaza, and the West Bank, which account for about half of the honor killings in the world each year).

49. Joan Smith, *Introduction to AYSE ONAL, HONOUR KILLINGS: STORIES OF MEN WHO KILLED 9*, 10 (2008).

50. *No Honor in “Honor Crimes,” supra* note 40, at 3.

51. See Jones, *supra* note 38.

52. See David J. Western, *Islamic “Purse Strings”: The Key to the Amelioration of*

Human Rights (“UIDHR”)<sup>53</sup> asserts that “human life is sacred and inviolable and every effort shall be made to protect it.”<sup>54</sup> Thus, Islamic religion and law do not justify honor crimes to preserve or restore a family’s reputation.

Yet, even though the UIDHR proclaims that the right to life is sacred, the international community criticizes its English translation as misleading and differing significantly from the original Arabic text.<sup>55</sup> Much speculation therefore surrounds the UIDHR, questioning whether its many obscure or ambiguous proclamations actually forbid honor crimes and killings.<sup>56</sup> Many Arab communities also believe Islam allows honor killings as an

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*Women’s Legal Rights in the Middle East*, 61 A.F. L. REV. 79, 104-05, 107 (2008); Editorial, *supra* note 25 (describing how many men who commit honor crimes erroneously cite the Koran as justification to do so).

53. Universal Islamic Declaration of Human Rights, Islamic Council, Sept. 9, 1981, 21, 75 Dhul Aidah 1401, art. 1 (a)-(b). In 1981, the “Islamic Council,” a private organization that consisted of representatives from many Arab countries and that represents the interests and views of conservative Muslims, promulgated the UIDHR at an International Islamic Conference, the United Nations Educational, Scientific and Cultural Organization. See Anna-Liisa Jacobson, *Lambs Into Lions: The Utilization of Child Soldiers in the War in Iraq and Why International and Iraqi Laws Are Failing to Protect the Innocent*, 8 RICH. J. GLOBAL L. & BUS. 161, 190 (2008) (citing David G. Littman, *Human Rights and Human Wrongs: Sharia Can’t Be an Exception to International Human-Rights Norms*, NAT’L REV. ONLINE, Jan. 19, 2003, <http://www.nationalreview.com/comment/comment-littman011903.asp>); Scott Kent Brown II, Note, *The Coptic Church in Egypt: A Comment on Protecting Religious Minorities from Nonstate Discrimination*, 2000 B.Y.U. L. REV. 1049, 1081 (2000); MAYER, *supra* note 23, at 21-22. The UIDHR’s preamble asserts that the tenets of Islam define the human rights described within the UIDHR. Jacobson, *supra*, at 190 (citing WILLIAM M. SULLIVAN & WILL KYMLICA, *THE GLOBALIZATION OF ETHICS* 247 (2007)). The UIDHR contains twenty-three articles covering various topics such as the right to life, right to freedom, and the rights of married women. See generally UIDHR, *supra*.

The UIDHR is not legally binding, but depicts how the international Muslim community reconciles Islamic law with international human rights law. Donna E. Arzt, *Religious Human Rights in Muslim States of the Middle East and North Africa*, 10 EMORY INT’L L. REV. 139, 143 (1996). Interestingly, many Islamic states signed the Universal Declaration of Human Rights (“UDHR”), a declaration adopted by the United Nations after World War II that is recognized as customary international law. Jennifer Trahan, *Reflections on the Difficulties of Enforcing International Justice*, 30 U. PA. J. INT’L L. 1187, 1188 n.5 (2009); Sarah L. Dygert, Note, *Eradicating Sudanese Slavery: The Sudanese Government and the Abuse of Islam*, 3 REGENT J. INT’L L. 143, 170 (2005). Nonetheless, much of the Arab world follows the UIDHR, rather than the UDHR. Dygert, *supra*, at 170 (citing David Littman, *Universal Human Rights and “Human Rights in Islam,”* MIDSTREAM, Feb./Mar. 1999, <http://www.dhimmi.org/Islam.html>). Accordingly, the UIDHR is also known as the Muslim Declaration on Human Rights. Brown, *supra*, at 1081 n.201.

54. UIDHR, *supra* note 53.

55. See MAYER, *supra* note 23, at 21 (“In a casual reading, the English version of the UIDHR seems to be closely modeled after the UDHR, but upon closer examination many of the similarities turn out to be misleading. In addition, the English version diverges from the Arabic version at many points.”). For more information on the UIDHR, see *supra* note 53.

56. See MAYER, *supra* note 23, at 111 (discussing how the UIDHR does not provide any human rights as understood in international law).



acceptable and standard practice to cleanse or restore a family's name.<sup>57</sup> For example, in August 2008, Pakistani Senator Israr Ullah Zehri publicly defended honor killings as "our norms" that should "not be highlighted negatively" after a human rights organization leaked information about five Pakistani women who were beaten, shot, and buried alive by male relatives.<sup>58</sup> Many communities openly defend such murders as "inherently just" punishment for the societal harm and loss of honor caused by women's behavior.<sup>59</sup>

Arab society may even label a man as feminine or weak if he fails to take authoritative action (an act of violence) in response to a woman's perceived disobedience.<sup>60</sup> In fact, acts of violence by a male against a female family member often demonstrate masculinity and reinstate his dominance in his family and in society.<sup>61</sup> Some men therefore carry out honor crimes to be "treated as men" within their communities, while others do so to retain male authority over their female relatives.<sup>62</sup> For example, Bahri Efendi, who was convicted of his sister's murder after she gave birth out of wedlock, commented, "[t]he authority of our family solely over the girls would have been shaken . . . if I hadn't shot Naile."<sup>63</sup> Such ideologies starkly contradict the view that murderers and domestic abusers are cowardly and inhuman for committing such gruesome crimes.

#### IV. A BRIEF OVERVIEW OF ASYLUM LAW IN THE UNITED STATES

A woman who fears becoming an honor crime victim in her home country may seek asylum through the Immigration and Nationality Act's ("INA") "Sufficiency of Evidence to Establish Alien's Well-Founded Fear of Persecution Entitling Alien to Status of Refugee" provision.<sup>64</sup> Under this provision, a woman in fear of an honor killing satisfies her burden of proof if she: (1) proves a "well-founded fear of persecution" or past persecution;<sup>65</sup> (2) proves her persecution is based within one of the five

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57. See Salman Masood, *Pakistan Begins Inquiry Into Deaths of 5 Women amid Dispute over Honor Killings*, N.Y. TIMES, Sept. 3, 2008, at A6; Lehr-Lehnardt, *supra* note 33, at 419.

58. Masood, *supra* note 57.

59. See Warrick, *supra* note 19, at 323 (finding certain Islamic communities often treat men who commit honor killings with leniency); Lehr-Lehnardt, *supra* note 33, at 418.

60. Hussain, *supra* note 5, at 227.

61. *Id.*

62. See ONAL, *supra* note 1, at 255-56.

63. *Id.* at 164.

64. 8 U.S.C. § 1101(a)(42)(A) (2006).

65. *Id.*; see also Kara Simard, Note, *Innocent at Guantanamo Bay: Granting Political Asylum to Unlawfully Detained Uighur Muslims*, 30 SUFFOLK TRANSNAT'L L. REV. 365, 389 (2007).

categories enumerated by the INA: race, religion, nationality, membership in a particular social group, or political opinion;<sup>66</sup> (3) proves her presence in the United States;<sup>67</sup> and (4) overcomes the court's ability to exercise discretion in granting asylum.<sup>68</sup>

For the "well-founded fear of persecution" element, the INA does not define "persecution" and no universal definition has been accepted for use in immigration proceedings.<sup>69</sup> A definition of persecution crafted in a federal court might exclude otherwise valid applicants from obtaining asylum if such individuals experienced or presently fear harms that fall outside the confines of such a definition.<sup>70</sup> Certain jurisdictions and governmental entities, however, provide some guidance on how to interpret whether an asylum seeker has a well-founded fear of persecution. For example, the Eighth Circuit applies the reasonable person standard—the asylum seeker must show that "a reasonable person in the alien's position would fear persecution if returned to the alien's native country."<sup>71</sup> In addition, the Board of Immigration Appeals ("BIA") interprets "persecution" as "harm or suffering that is inflicted upon an individual in order to punish him for possessing a belief or characteristic a persecutor seeks to overcome."<sup>72</sup> Both federal courts and the BIA recognize that "a government, or persons a government is unwilling or unable to control" can inflict persecution.<sup>73</sup> The United Nations High Commissioner for Refugees Office also provides that private acts of violence—the category under which honor crimes and killings fall—"can be considered persecution if they are knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer effective protection."<sup>74</sup>

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66. § 1101(a)(42)(A) (2006); *see also* Nathan Brooks, *In Praise of Creativity: Gang-Based "Social Group" Claims in Asylum Cases*, 56 FED. LAW 26, 26 (2009); 13 AM. JUR. 3D *Proof of Facts* § 5 (2009).

67. § 1101(a)(42)(A) (2006); *see also* Simard, *supra* note 65, at 389.

68. § 1101(a)(42)(A) (2006); *see also* Simard, *supra* note 65, at 389.

69. Anwen Hughes, *Asylum and Withholding of Removal – A Brief Overview of the Substantive Law*, in BASIC IMMIGRATION LAW 2009 295, 301 (Practicing Law Institute ed., 2009).

70. *Id.* at 316.

71. *Menjivar v. INS*, 259 F.3d 940, 941 (8th Cir. 2001) (citing *Ghasemimehr v. INS*, 7 F.3d 1389, 1390 (8th Cir. 1993)); *see also* *Regalado-Garcia v. INS*, 305 F.3d 784, 788 (8th Cir. 2002).

72. Amy B. Kretkowski, Note, *Continuing Persecution: An Argument for Doctrinal Codification in Light of In re A-T and Brand X*, 94 IOWA L. REV. 331, 338 (2008) (citing *In re Acosta*, 19 I. & N. Dec. 211, 211–12 (B.I.A. 1985)).

73. *Id.* (citing *Pitcherskaia v. INS*, 118 F.3d 641, 647 (9th Cir. 1997)).

74. U.N. High Comm'r for Refugees [UNHCR], *Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, ¶ 65, U.N. DOC. HCR/IP/4/Eng/REV.1 (Jan. 1, 1992). Following World War II, the United Nations General Assembly established the Office of the United Nations High Commissioner for Refugees on December 14, 1950. UNHCR, About Us, <http://www.unhcr.org/pages/49c3646c2.html> (last visited Oct. 25,

V. IN FEAR OF “HONOR CRIMES”: RECENT IMMIGRATION LAW DECISIONS  
IN THE UNITED STATES DENYING ASYLUM

A. Vellani v. U.S. Attorney General: *October 20, 2008*

In 2003, Zehra Vellani, a Pakistani citizen, entered the United States with a nonimmigrant fiancé visa.<sup>75</sup> One year later, Zehra sought asylum, arguing that she would be persecuted if sent back to Pakistan.<sup>76</sup> What happened to Zehra in the interim provides the basis of her asylum claim—fear of being subjected to an honor killing if forced to return to Pakistan.<sup>77</sup>

Numerous facets of Zehra’s story are highly characteristic of the archetypal honor crime or killing. Soon after joining her fiancé Amin in the United States, Amin requested Zehra engage in premarital sexual relations.<sup>78</sup> Knowing such acts were forbidden both by her family and Muslim society, Zehra refused.<sup>79</sup> Amin, however, forced Zehra to perform oral sex on him repeatedly over ten days.<sup>80</sup> Amin then called off the engagement claiming he would not marry a “loose woman.”<sup>81</sup> Zehra’s brother accused her of ruining the “family’s honor” and moved his family from Zehra’s home in Pakistan to shield his own daughter from Zehra’s “disgrace.”<sup>82</sup> Zehra’s brother repeatedly informed her that she could not return to Pakistan because “he was waiting for her there” and the

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2009). The UNHCR’s primary purpose is to “safeguard the rights and well-being of refugees . . . striv[ing] to ensure that everyone can exercise the right to seek asylum and find safe refuge in another State, with the option to return home voluntarily, integrate locally or to resettle in a third country.” *Id.* An Executive Committee of sixty-four member states meets annually in Geneva, Switzerland, to continue to discuss and approve the UNHCR’s programs and protections. Stacy Huber, *Refugees in the U.S.: Protected from Persecution, or Vulnerable to Unjust Removal?*, 20 ST. JOHN’S J. LEGAL COMMENT. 199, 211 (2005). The UNHCR is recognized as one of the world’s principal humanitarian agencies. *Id.*

Specifically, the UNHCR supervises international agreements that protect refugees, although international law does not regulate how countries grant asylum. Elizabeth Kay Harris, *Economic Refugees: Unprotected in the United States by Virtue of an Inaccurate Label*, 9 AM. U. J. INT’L L. & POL’Y 269, 275 (1993). The UNHCR is not binding on the U.S. president’s ultimate decision regarding refugee resettlement in America, although the president often looks to the UNHCR for recommendations on refugee resettlement. Heidi H. Boas, Note, *The New Face of America’s Refugees: African Refugee Resettlement to the United States*, 21 GEO. IMMIGR. L.J. 431, 438 (2007).

75. *Vellani v. U.S. Att’y Gen.*, 296 F. App’x 870, 872 (11th Cir. 2008). The fiancé visa allows United States citizens to bring prospective spouses to the United States for the marriage. 8 U.S.C. § 1101(a)(15)(K) (2006).

76. *Vellani*, 296 F. App’x at 874.

77. *Id.*

78. *Id.*

79. *Id.* at 872.

80. *Id.*

81. *Id.*

82. *Id.*

community had branded her an adulterer and a “woman of loose moral character.”<sup>83</sup> In addition, Zehra’s brother told her: “If you come in front of me, I will kill you.”<sup>84</sup>

Zehra submitted an affidavit detailing her story to the immigration court in January 2005.<sup>85</sup> Zehra’s attorney also submitted data and information on the prevalence of honor killings in Pakistan, underscoring the fact that many men killed female relatives suspected of adultery or “defiled” by rape.<sup>86</sup> Zehra informed the court that the Pakistani government took no measures to ban the practice of honor killings or to hold perpetrators accountable despite a documented 1,211 cases in that year alone, plus numerous suspected, unreported murders.<sup>87</sup> Zehra’s expert witness, Professor Riffat Hassan, testified that Zehra’s denial of the accusations of loose behavior would hold “no weight in Pakistan” and the fact that she sought legal recourse would “weigh against her.”<sup>88</sup> Hassan stated that it was “highly probable” Zehra would experience “grievous bodily harm” if Zehra returned to Pakistan.<sup>89</sup>

The immigration court denied Zehra’s application for asylum because the court believed Zehra could live again in Pakistan, but away from her family.<sup>90</sup> Zehra appealed to the BIA, arguing that even if not killed by her brother or other male relative in Pakistan, her family and community would shun her, a social act that forces women to live in squalor and branded as prostitutes.<sup>91</sup> The BIA, however, affirmed the denial of asylum.<sup>92</sup> On appeal, the Eleventh Circuit held that substantial evidence supported the determination that Zehra did not establish that it would be unreasonable for her to relocate within Pakistan.<sup>93</sup> The court therefore denied Zehra’s asylum petition.<sup>94</sup>

### B. *Yaylaci v. Gonzales: March 29, 2006*

Like Zehra Vellani, Mehriban Yaylaci v. Gonzales came from a devout Muslim

83. *Id.*

84. *Id.* at 874.

85. *Id.* at 872.

86. *Id.*

87. *Id.* For example, Vellani argued that Pakistani law allowed criminal prosecution for honor killings only upon the request of the murder victim’s family. *Id.*

88. *Id.* at 873.

89. *Id.*

90. *Id.* at 877.

91. *Id.* at 874 (asserting that extremely poor living conditions would render suicide Zehra’s only option if she returned to Pakistan).

92. *Id.* (explaining that the BIA did not adopt the immigration judge’s adverse credibility finding, although the court affirmed the denial of asylum).

93. *Id.* at 877.

94. *Id.* at 878.

family that imposed a strict code of conduct on all aspects of Mehriban's life.<sup>95</sup> While living in her native country of Turkey, Mehriban endured repeated acts of domestic violence at the hands of her two older brothers.<sup>96</sup> For example, after using the phone without their permission, one brother attacked Mehriban with a knife causing her an injury that required stitches and left visible scars.<sup>97</sup> After Mehriban requested to marry Umit, a man from a "modern" family, her brothers sequestered her in the family home and beat her for three weeks.<sup>98</sup> Mehriban and Umit later eloped, after which her brothers again beat her so severely that she was bedridden for one month.<sup>99</sup>

Mehriban, Umit, and their daughter came to the United States on a visitor's visa.<sup>100</sup> In applying for asylum, Mehriban argued that the Turkish police were "unable or unwilling to help women in her situation" and that she feared her brothers would kill her if she returned to Turkey.<sup>101</sup> Mehriban's expert witness, Professor Charles MacDonald, testified about the prevalence of honor killings in Turkey, stating that he too believed Mehriban's brothers would kill her if she returned to Istanbul.<sup>102</sup> Consistent with the argument that certain Islamic societies view honor killings as an acceptable practice, MacDonald also informed the court that Turkish police "often look the other way" and that courts hand down "very, very lenient or nonexistent" prison terms for honor killing perpetrators.<sup>103</sup>

Despite MacDonald's testimony, the immigration judge denied the Yaylacicegis' asylum application, finding that the State Department's Report on Human Rights contradicted the family's testimony that Turkish authorities would not protect them from an honor killing.<sup>104</sup> The court also found that Mehriban was persecuted by her brothers, and not by the Turkish government, "government agents, or parties whom the government

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95. *Yaylacicegi v. Gonzales*, 175 F. App'x 33, 34 (7th Cir. 2006) (detailing that Mehriban was required to wear traditional, concealing clothing, such as a scarf covering her head, and that she could not leave the house unescorted).

96. *Id.*

97. *Id.* Once, Mehriban also suffered a herniated disk after her brothers beat her upon discovering that her mother had rejected her for wearing "regular" clothes and not the extremely modest clothing her family had required her to wear. *Id.*

98. *Id.*

99. *Id.* at 35.

100. *Id.*

101. *See id.* (arguing that Mehriban would be killed by her brothers for refusing to abide by their religious beliefs and because of her conversion to Christianity).

102. *See id.* (testifying that Mehriban's brothers were part of a radical, fundamentalist Islamic party called the Sadaat Party).

103. *Id.*

104. *See id.* (finding that Mehriban had not shown that the potential abuse was on account of her religion, political opinion, or membership in a particular social group).

was unwilling or unable to control.”<sup>105</sup> The BIA affirmed the immigration judge’s decision.<sup>106</sup> On appeal, the circuit court affirmed the denial of Mehriban’s petition, holding that the Yaylacicegis did not prove the Turkish government would not come to the family’s aid.<sup>107</sup>

## VI. PROBLEMS WITH DENYING ASYLUM TO POTENTIAL HONOR CRIME VICTIMS

### A. The “More than One Death Threat” Requirement

What is most shocking in *Vellani v. U.S. Attorney General* is not that the court denied asylum to a woman who feared an honor killing in her home country, but rather *how* the United States Court of Appeals handled Zehra Vellani’s honor killing claim. The court stated that although Zehra presented substantive, documentary evidence proving that honor killings occur throughout Pakistan, her argument that she would become a victim of such a crime was “without merit.”<sup>108</sup> The court reasoned that “it is irrelevant that honor killings occur throughout Pakistan” since Zehra “has not argued that *people throughout Pakistan* wish to kill her to avenge the dishonor of her family.”<sup>109</sup> The court asserted that to avoid the honor killing, Zehra could move to a place in Pakistan where her brother did not reside.<sup>110</sup> The court disregarded the fact that her brother can likely seek out Zehra if he so chooses. Moreover, Zehra’s brother never specified that he would only kill her if she returned to the area of Pakistan in which he lived.

The court’s ruling suggests that a woman who fears an honor killing must prove that at least more than one person plans to murder or gravely harm her in her home country.<sup>111</sup> For American citizens, one death threat surely bears enough weight to warrant action by law enforcement or the judicial system. *Vellani* therefore raises the question of why women with American citizenship should enjoy a higher standard of the basic human

105. *Id.* (asserting that because the Yaylacicegis had never sought police protection in Turkey, they could not argue that they would not be protected on their return).

106. *Id.* (affirming the denial of asylum, but finding that Mehriban’s difficulties were on account of her religion).

107. *See id.* at 36 (maintaining that the Yaylacicegis failed to show that the government’s indifference would affect the non-Islamic community that the family would likely live in).

108. *Vellani v. U.S. Att’y Gen.*, 296 F. App’x 870, 876 (11th Cir. 2008).

109. *Id.* at 877 (emphasis added).

110. *Id.*

111. *See, e.g., id.* at 876-77 (expressing dissatisfaction with Zehra’s inability to prove that anyone other than her brother, who was located in one particular area of Pakistan, had threatened to kill her). The Eleventh Circuit mentions that Zehra had testified to the immigration judge and the BIA that “several” family members had threatened to kill her. On appeal, however, the court viewed any threat to Zehra as coming solely from one brother. *Id.*

right to life than non-American women seeking protection within our borders. Although the court has discretion to determine whether asylum claims should go forward,<sup>112</sup> *Vellani* suggests a deep ignorance regarding the severity and prevalence of honor killings abroad. Requiring Zehra Vellani to prove a continuous threat in *all* areas of Pakistan precluded her from obtaining asylum in America. The Eleventh Circuit's holding set an unattainable standard for future asylum petitions from women who fear honor crimes and killings.

### *B. The Difficulty in Proving the Foreign Government's Role*

In *Yaylacicegi v. Gonzales*, the female asylum seeker could not establish the required well-founded fear of persecution due to the court's focus on whether the government, or private parties whom the government was unable or unwilling to control, inflicted harm on the Yaylacicegis.<sup>113</sup> For women like Mehriban Yaylacicegi, it is extremely difficult to prove that a "government entity" or a party controllable by the government caused their suffering and fear of future harm when the threat is actually posed by a close male relative. Such private and intimate harm is often free from any reasonable expectation of government intervention.<sup>114</sup>

Moreover, a government entity will likely not provide clear evidence that it will condone or allow honor killings or that it is unable to control certain factions of its society that perpetrate such crimes. To prove her native country's approval of honor killings, an asylum seeker therefore faces the difficult challenge of establishing the case of government indifference. In *Yaylacicegi*, Mehriban sought to overcome this hurdle by offering expert testimony from a specialist in human rights in Turkey.<sup>115</sup> Yet the expert's testimony did not suffice, despite the fact that he provided substantial evidence regarding honor crimes and killings in Turkey and emphasized the gravity of Mehriban's particular situation.<sup>116</sup> In fact, other jurisdictions, such as the Sixth Circuit, have held that "[g]overnment acquiescence . . . is not established by proof of the mere existence of the problem of honor

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112. See 8 U.S.C. § 1101(a)(42)(A) (2006); see also Simard, *supra* note 65, at 389 (stating that the lower courts determine the credibility of the asylum claim, while the Attorney General has the ultimate discretion to grant asylum).

113. 175 F. App'x 33, 36 (7th Cir. 2006).

114. See *id.* at 35-37 (acknowledging that in *Yaylacicegi*, the petitioner's expert testimony did not sufficiently prove a difference between the government's written law and the actual, controlling societal customs and norms that prevail).

115. See *id.* at 35.

116. See *id.* at 35-37. Mehriban's expert, Professor MacDonald, testified that Mehriban's brothers would likely kill her upon her return to Turkey and that the police would turn a blind eye. *Id.* at 36. Professor MacDonald informed the court that Turkish authorities often view situations such as Mehriban's as "family matters" for which they are unlikely to provide protection. *Id.*

killings in the country.”<sup>117</sup> With such precedent, women with similar claims are hard-pressed to prove their native government’s fault in the perpetration of and tolerance for honor killings in their home countries. Without doing so, such women cannot meet their burden of proof, requiring their return to the violent home from which they fled.

## VII. RECOMMENDATIONS

Due to the court’s discretion in asylum cases, a judge may bar an asylum petition regardless of whether the applicant meets all other required elements under the INA. That discretion allows the court to measure honor killing claims against its own yardstick of credibility. Yet, such claims require a more flexible evaluation since honor killings are so foreign to the American way of life. The following two recommendations seek to address this inherent need.

### *A. Review Information on Foreign Nations with a Grain of Salt*

First, since many foreign nations enact laws that forbid honor killings even though the practice remains widespread,<sup>118</sup> courts must not take a foreign nation’s stated legal and political assertions at face value. Rather, judicial decision-makers must understand the social and cultural context apart from the proclamations of the asylum seeker’s native government. For example, Pakistan banned honor killings in 2004 on penalty of death, yet the practice remains “rampant” in high-poverty, rural areas.<sup>119</sup> Despite the law’s enactment, the Pakistani government and police officials do not implement it effectively and the threat of capital punishment does not serve as a deterrent.<sup>120</sup> In 2005, Pakistan’s Parliament even defeated a bill to

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117. See *Dia v. Mukasey*, 292 F. App’x 468, 470 (6th Cir. 2008); see also *Rreshpja v. Gonzales*, 420 F.3d 551, 557 (6th Cir. 2005) (holding that the known problem of human trafficking in Albania did not alone establish “government acquiescence” because the government does not force women into prostitution).

118. See *supra* Part III.A (relaying information from the U.S. State Department’s reports on honor crimes against women throughout the world).

119. Masood, *supra* note 57. In its 2008 Human Rights Report on Pakistan, the U.S. State Department reported the following: “Statistics on honor crimes were unreliable due to underreporting, but there were 476 killings of women reported between January and May.” U.S. DEP’T OF STATE, 2008 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: PAKISTAN (2009), <http://www.state.gov/g/drl/rls/hrrpt/2008/sca/119.htm> [hereinafter REPORT ON HUMAN RIGHTS PRACTICES: PAKISTAN].

120. See Masood, *supra* note 57 (quoting Pakistani politicians who assert that the law against honor killings is not enforced appropriately). One reason for such ineffective implementation of the law in Pakistan is that “community members and political authorities collaborate in covering up the atrocities” of honor crimes and killings. AMNESTY INT’L, PAKISTAN: HONOUR KILLINGS OF GIRLS AND WOMEN (1999), <http://www.amnesty.org/en/library/asset/ASA33/018/1999/en/dom-ASA330181999en.html> [hereinafter HONOUR KILLINGS OF GIRLS AND WOMEN]. Moreover, in many countries where honor crimes and killings occur, “police officers often either overlook honor crimes or conduct faulty investigations that result in evidence insufficient for a



strengthen the law prohibiting honor killings; many lawmakers supported the government's rejection of the law as "un-Islamic."<sup>121</sup> Numerous other foreign, Muslim-based governments have enacted laws that mitigate or eliminate sentences for those who kill female relatives in the name of honor.<sup>122</sup> In 2003, Jordan's Parliament twice voted against stricter penalties for men who commit honor killings, arguing the law "would encourage vice and destroy families."<sup>123</sup> Some Parliament members argued the tougher laws would "promote adultery" and "harm public morality."<sup>124</sup>

It is imperative that decision-makers in asylum cases also understand the alarming frequency and severity of honor killings abroad.<sup>125</sup> The United Nations Population Fund approximates that 5,000 women worldwide

conviction." Hussain, *supra* note 5, at 234. Also in Pakistan, the public generally perceives the police as a "corrupt" entity, known to accept bribes to release guilty parties. *Id.*; REPORT ON HUMAN RIGHTS PRACTICES: PAKISTAN, *supra* note 119 (stating that in 2008, "[p]ublic perception of corruption was widespread" in Pakistan). The U.S. State Department also reported that in 2008, "[c]orruption was widespread within the government and police forces, and the government made few attempts to combat the problem" and that "[c]orruption within the police was rampant." *Id.*

121. Salman Masood, *Pakistan: Bill to Strengthen 'Honor Killing' Law Rejected*, N.Y. TIMES, Mar. 3, 2005, at A8 [hereinafter Masood, *Pakistan*]. In December 2004, Parliament passed a bill making the punishment for honor killings equivalent to that for murder. Priya Verma et al., *Pakistan: Anti-Honor Killing Bill Rejected*, 35 OFF OUR BACKS 6, Mar. 1, 2005, available at 2005 WLNR 7360918. The bill, however, did not alter or override preexisting law that allowed the accused to negotiate pardon with the victim's family under what are known as the bill's "Islamic provisions." *Id.* Under these provisions, an honor killing perpetrator may seek or buy pardon from the victim's family. *Id.* Human rights agencies and activists expressed concern regarding the provisions, arguing that they provided "too many loopholes" in the law and did not adequately protect women from honor killings. Masood, *Pakistan, supra*.

In early 2005, Parliament Member Kashmala Tariq proposed amendments to the bill that included a rejection of the forgiveness option. Hussain, *supra* note 5, at 240. The proposed amendments sparked controversy and heated debate. *Id.* at 241. Liberal members of the National Assembly of Pakistan—the lower house of Pakistan's Parliament—and the Religious Affairs Minister, backed the amendments. *Id.* The opposition to the amendments included members of Pakistani President Musharraf's own cabinet and members of the fundamentalist party, the Muttahida Majlis-i-Amal, a coalition of Islamic groups who now wield significant influence in Pakistan's Parliament. *Id.* at 239, 241. The opponents specifically argued that Islam required the "Islamic provisions." *Id.* at 241.

122. See Editorial, *supra* note 25, at 4 (explaining that Syria, for example, has a law that reduces penalties for those who murder a woman caught in a "suspicious state"); see also Lehr-Lehnardt, *supra* note 33, at 419 (stating that many Arab countries either "mitigate or completely excuse the murder of a female relative if the man has committed the act in an attempt to restore the family's honor").

123. Abeer Allam, *Jordan: 'Honor Killings' Law Blocked*, N.Y. TIMES, Sept. 9, 2003, at A8. But see Zeid Raad Al Hussein, Letter to the Editor, *Ending 'Honor Killings'*, N.Y. TIMES, Nov. 19, 2000, § 4 at 14 (printing a letter from the Jordanian Ambassador to the U.N., Zeid Raad Al Hussein, stating that Jordan finds honor crimes "abominable").

124. Editorial, *supra* note 25, at 4.

125. See Press Release, Eighth Cong. Dist. of N.Y., *supra* note 2 (stating that the United Nations reports that tens of thousands of honor killings occurred between 2007 and 2008 alone).

become victims of honor killings each year.<sup>126</sup> Yet because various societal, cultural, and unofficial government practices contribute to the underreporting of honor killings, accurate statistics are incredibly difficult to obtain.<sup>127</sup> Most honor killings are a “private family affair,” with very few ever reported to official authorities.<sup>128</sup> Even when reported, some police entities believe themselves to be “guardians of tradition and morality rather than impartial enforcers of the law” and therefore overlook many reported honor killings.<sup>129</sup> Courts must therefore not allow the small number of reported honor killings, which is often the result of the deeply ingrained gender bias of certain legal systems, to seal a woman’s fate.

Financial corruption in some police systems also harms the protection of women and reporting of honor crimes.<sup>130</sup> For example, in Pakistan, police inaction often occurs when family members pay authorities to remain silent about the crime or its perpetrator.<sup>131</sup> In Kashmore, Pakistan, police are known to “charge” 7,000 rupees, the equivalent of about eighty-seven U.S. dollars, to remain silent about an honor killing.<sup>132</sup> The fact that only eighty-seven dollars excuses an honor killing provides inestimable insight into the social and cultural practices surrounding honor killings and the shocking status of women in many Arab nations.

Furthermore, men who live under such lax government regulations against honor killings do not fear the repercussions of committing honor crimes and killings.<sup>133</sup> Even in regions where men do suffer harsh punishments for murder, a practice has emerged where family members demand that the female kill herself so that no one will be further “punished” for her sins.<sup>134</sup> Rising female suicide rates in these areas are

126. Stillwell, *supra* note 32.

127. *Id.*

128. Suzanne Ruggi, *Commodifying Honor in Female Sexuality: Honor Killings in Palestine*, 206 MIDDLE EAST REPORT (1998), available at <http://www.merip.org/mer/mer206/ruggi.htm>; see also Stillwell, *supra* note 31.

129. See HONOUR KILLINGS OF GIRLS AND WOMEN, *supra* note 120 (discussing how Pakistani police officers believe themselves to be such “guardians” of tradition). In Pakistan, fathers also often use police officers to arrest their daughters for marrying men of whom they do not approve. *Id.*

130. See *id.* (discussing how financial corruption contributes to police inaction regarding honor crimes and killings). For example, in 1999, in Jampur City, Pakistan, although a man admitted to the murders of his wife, Khadeja, and a bank officer, the police accepted a bribe to distort the documents. *Id.*

131. *Id.*

132. See *id.* (quoting villagers in 1993 about the practices of a local police station to profit financially from covering up honor killings).

133. See, e.g., Lehr-Lehnardt, *supra* note 33, at 423 (discussing an Egyptian honor statute that punishes men who kill their wives for committing adultery with lesser sentences than those given to other murderers); see also *supra* note 122 and accompanying text.

134. See Bilefsky, *supra* note 38, at 13 (sharing the story of a seventeen-year-old Turkish girl who attempted suicide three times after intense pressure from her family to

therefore distressing manifestations of the deeply rooted practice of honor killings.<sup>135</sup>

Interestingly, the dissenting judge in the 2004 case, *Zaza v. Ashcroft*, discussed Jordanian cultural and societal practices when arguing against the Ninth Circuit's denial of asylum to Fatima Ruman.<sup>136</sup> The dissent stressed that the government's acquiescence to violence against women in Jordan made it more likely that an honor crime against Fatima would occur.<sup>137</sup> Had the majority applied this more critical analysis to Fatima's case, it likely would have held that the Muslim Brotherhood's threats that Fatima "should pay a price" and "be taught a lesson" upon return to Jordan did indeed support a probability of "actual physical harm."<sup>138</sup> The court instead classified the threats as "generalized statements" that "may refer to any treatment," insinuating that Fatima and her three daughters would only suffer "verbal harassment."<sup>139</sup> To Fatima's detriment, the court failed to acknowledge the frequency, severity, and reality of honor killings in Jordan.<sup>140</sup> Such information would have suggested to the court that the Muslim Brotherhood's "lesson" for Fatima would likely include more than mere "verbal harassment."

Overall, a judicial decision-maker must allow the presentation of evidence of social, cultural, and governmental practices regarding honor killings from women who seek asylum. Without specific knowledge, courts cannot adequately assess a foreign nation's role in perpetrating a woman's fear of future harm—the INA-required element that the female asylum seeker must prove to gain protection on American soil. The more educated the court, the better the court can distinguish between a foreign nation's public condemnation of honor killings and the societal reality in which such horrific crimes continue to define the status and rights of

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do so because she fell for a boy she met at school). Women's groups in Turkey also believe many families will put women in rooms with a pistol, rope, or poison to allow them "redemption" through suicide. *Id.*

135. *See, e.g., id.* (reporting that between 2000 and 2006, women committed 102 of 165 suicides in Batman, Turkey).

136. 106 F. App'x 640, 642 (9th Cir. 2004) (Pregerson, J., dissenting).

137. *See id.* (reiterating that the threats against Fatima "came from a group that 'teaches' women lessons by throwing acid on them, beating them, and assaulting them with knives for their refusal to wear the hijab or to otherwise conform to the Muslim Brotherhood's fundamentalist interpretation of Islam").

138. *See id.* (noting that although the Muslim Brotherhood has been intensifying its campaign of attacks against women, the Jordanian government "remain[s] unable or unwilling to stop" the violence).

139. *Id.* at 641 (mem.).

140. *See* REPORT ON HUMAN RIGHTS PRACTICES: JORDAN, *supra* note 43 (recognizing that although authorities prosecuted all seventeen of the reported instances of honor killings in Jordan in 2007, the known, widespread violence against women that carries minimal consequences for the perpetrators suggests that many other cases went unreported).

women.

*B. Eliminate the Link Between Credibility and Delayed Reports of Sexual Abuse*

Under the INA's fourth required element for asylum applicants, one must overcome the court's ability to exercise discretion to grant asylum.<sup>141</sup> This discretion often becomes problematic for female applicants who delayed in reporting sexual abuse that later substantiates their asylum claims. Some courts have used their discretion to find such women not credible due to the late introduction of the evidence of sexual abuse.<sup>142</sup> The Ninth Circuit, however, has repeatedly held that "the assumption that the timing of a victim's disclosure of sexual assault is a bellwether of truth is belied by the reality that there is *often* delayed reporting of sexual abuse."<sup>143</sup> In doing so, the Ninth Circuit affirmatively rejects the link between a delayed report of sexual abuse and credibility, which too often supports adverse credibility findings against female asylum applicants.

In particular, the Ninth Circuit identified that a cultural code of silence justifies why delayed reporting or severe underreporting of sexual abuse occurs with many women seeking asylum in fear of honor killing claims.<sup>144</sup> For example, in *Mousa v. Mukasey*, the Ninth Circuit asserted that many sexual assault victims "feel so upset, embarrassed, humiliated, and ashamed about the assault that they do not tell anyone . . ."<sup>145</sup> In *Paramasamy v. Ashcroft*, the court cited studies that analyze the extreme underreporting of sexual abuse.<sup>146</sup> Such studies revealed that even in the United States, women often do not report sexual assault incidents due to social and cultural pressures.<sup>147</sup> This sobering statistic suggests that

141. 8 U.S.C. § 1101(a)(42)(A) (2006); see also Simard, *supra* note 65, at 389; *supra* note 112 and accompanying text.

142. See, e.g., *Byron v. Ercole*, 2008 U.S. Dist. LEXIS 55033, at \*4 (E.D.N.Y. July 18, 2008) (referencing the trial court's ruling that the delayed report of sexual abuse could be used to consider the alleged victim's credibility).

143. *Paramasamy v. Ashcroft*, 295 F.3d 1047, 1053 (9th Cir. 2002) (emphasis added); see also *Mousa v. Mukasey*, 530 F.3d 1025, 1027 (9th Cir. 2008) (rejecting the finding that Maha Mousa's testimony was not credible due to her delayed reporting of sexual abuse); *Kebede v. Ashcroft*, 366 F.3d 808, 811 (9th Cir. 2004) (asserting that a sexual assault victim who fails to report the assault does not compromise her credibility).

144. See, e.g., *Mousa*, 530 F.3d at 1027-28 (identifying various social, cultural, and religious reasons that prevent women from reporting sexual abuse).

145. *Id.* at 1027. The *Mousa* court also analogized the victim's asylum application to another case where the asylum seeker "provided a strong, un rebutted explanation for her reluctance to reveal details—her cultural reluctance to tell male interviewers that she had been violated." *Id.* at 1028.

146. 295 F.3d at 1053 n.3.

147. See *id.* (citing that college women in the United States report less than three percent of attempted sexual assaults or rapes to the police and less than five percent of completed rapes).

women who are part of societies that accept or condone honor crimes to protect a family's integrity are even less likely to report such abuses.<sup>148</sup> Furthermore, many sexually assaulted women are ostracized if they speak out against sexual violence due to societal attitudes about "honor" which teach that such actions are shameful.<sup>149</sup>

Accordingly, when Maha Mousa, the petitioner in *Mousa*, failed to mention early in her asylum proceedings the rape that she suffered at the hands of Iraqi religious fundamentalists, the immigration judge and BIA found her not credible and denied her petition.<sup>150</sup> On appeal, however, the Ninth Circuit held that Maha provided a "compelling explanation"—"her cultural reluctance to admit the fact that [the rape] had occurred."<sup>151</sup> On cross-examination, Maha stated that "through our family tradition [sexual assault] is a big taboo" and "a very shameful thing for a woman."<sup>152</sup> Maha further explained that she failed to tell her male asylum interviewer or translator about the rape out of fear that her community in Iraq would learn of her reports.<sup>153</sup> In *Paramasamy*, the female petitioner similarly testified regarding her cultural reluctance to tell male interviewers that she had been sexually violated.<sup>154</sup> *Mousa* and *Paramasamy* reveal how the code of silence<sup>155</sup> operates as a powerful gendered and cultural construct that suppresses women's voices within male-dominated societies. By doing so, the code of silence also protects men from accountability for crimes against women, since such violence goes undocumented time and time again.

In addition, sexual assault victims seeking asylum often do not report their assaults due to "lack of confidence in the prosecution system and fear of reprisals."<sup>156</sup> Recall that in *Vellani*, Zehra Vellani's expert witness testified that the fact Zehra sought legal recourse in the United States would "weigh against her" and it was therefore "highly probable" she

148. See, e.g., Allison W. Reimann, *Hope for the Future? The Asylum Claims of Women Fleeing Sexual Violence in Guatemala*, 157 U. PA. L. REV. 1199, 1200 (2009) (noting that vast underreporting of sexual abuse occurs in cultures that traditionally subordinate women).

149. Cf. *id.* at 1210 (examining the catch-22 in which Guatemalan victims find themselves: if the women remain silent about sexual abuse, they may face legal obstacles when seeking asylum, but if they speak out, they may be "ostracized because of attitudes that associate women's sexuality with honour" or abandoned by their families and communities).

150. *Mousa*, 530 F.3d at 1027.

151. *Id.* at 1028.

152. *Id.* at 1028 n.3.

153. See *id.* (relaying Maha's desire that nobody in her Chaldean community learn that she had been raped).

154. See *Paramasamy v. Ashcroft*, 295 F.3d 1047, 1053 (9th Cir. 2002).

155. See Ayelet Shachar, *Two Critiques of Multiculturalism*, 23 CARDOZO L. REV. 253, 266 (2001) (identifying the code of silence as a cultural and societal construct in many Muslim communities).

156. Reimann, *supra* note 148, at 1210 n.72.

would experience “grievous bodily harm” if sent back to Pakistan.<sup>157</sup> To address this issue, the Ninth Circuit has held that “a victim of sexual assault does not irredeemably compromise his or her credibility by failing to report the assault at the first opportunity.”<sup>158</sup> Such hesitancy is highly logical due to the lax government response to crimes against women in many of the nations where honor crimes and killings occur.

Fortunately for Maha Mousa and Uthayarosa Paramasamy, the Ninth Circuit acknowledged the female petitioners’ delayed reports of sexual assault as products of the code of silence rather than indicators of credibility. Both cases reveal that many women seeking asylum still adhere to the code of silence—even though currently residing in America—because they fear punishment or retaliation from family or community members. In asylum proceedings involving honor killing claims, decision-makers must acknowledge and understand the operation of the code of silence and the distrust of government officials before finding a female applicant not credible due to a relevant, but delayed report of sexual assault. Accordingly, the Ninth Circuit’s elimination of the link between credibility and delayed reports of sexual abuse provides an extremely valuable model of gender and cultural sensitivity.

#### VIII. CONCLUSION

The complex social structures in many foreign nations where honor crimes occur render it imperative that judges deciding immigration matters look beyond the foreign government’s black letter law. To determine whether a claimant meets her burden of proving that the government—or private parties whom the government was unable or unwilling to control—inflicted harm, the courts must comprehend the *full* meaning and context of honor killings. This includes exploring the motivation of perpetrators, the role of complacent family members, and all factors that influence foreign governments and officials regarding such crimes.<sup>159</sup> Courts must also eliminate the link between credibility and delayed reports of sexual abuse so that women are not denied asylum because they fear reprisal in their families and communities. Doing so will significantly improve the status of women who seek asylum in American courts from potential honor crimes or killings abroad.

During the writing of this article, on October 20, 2009, Faleh Hassan

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157. *Vellani v. U.S. Att’y Gen.*, 296 F. App’x 870, 873 (11th Cir. 2008).

158. *Kebede v. Ashcroft*, 366 F.3d 808, 811 (9th Cir. 2004).

159. See Abdullahi Ahmed An-Na’im, *The Role of “Community Discourse” in Combating “Crimes of Honour”*: Preliminary Assessment and Prospects, in *‘HONOUR’: CRIMES, PARADIGMS AND VIOLENCE AGAINST WOMEN* 64, 66 (Lynn Welchman & Sara Hossain eds., 2005) (identifying the need for governments to combat the practice of honor killings by learning their “basic nature”).

Almaleki drove his Jeep Grand Cherokee into his twenty-year-old daughter, Noor, and the mother of Noor's boyfriend in a parking lot in Peoria, Arizona.<sup>160</sup> Faleh believed he had to end his daughter's "rebellious" and "too Westernized" life.<sup>161</sup> Noor died two weeks later, on November 2, 2009.<sup>162</sup> Although Faleh attempted to escape to London, authorities sent him back to the United States, where he remains in custody.<sup>163</sup> The portrait of Noor that emerged in the aftermath of her death describes a peaceful person, "always respectful of her parents," and "full of hopes and dreams of the future."<sup>164</sup> Faleh admitted that he intentionally ran down Noor because she "had brought shame upon him and his family."<sup>165</sup> Friends, family, and the community at large, however, do not remember this same "fallen woman." As with most, if not all, honor killings, whether on American soil or abroad, this flawed perception of honor has once again caused society an immense and incomprehensible loss.

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160. Debra J. Sanders, *There Is No Honor, There's Only Killing*, S.F. CHRON., Nov. 5, 2009, at A19.

161. Amanda Lee Myers, *Arizona Honor Killing Victim Just Wanted to Be Normal Defying Iraqi Culture, Father May Have Caused Violent Reaction*, HOUSTON CHRON., Nov. 7, 2009, at A6 [hereinafter *Defying Iraqi Culture*]; Sanders, *supra* note 160. Faleh would not tolerate that Noor wanted a job, higher education, and to choose her own husband. Amanda Lee Myers, *Friends Say Honor-Killing Victim Wanted to Be Normal*, CHARLESTON GAZETTE, Nov. 7, 2009, at 9A [hereinafter *Honor-Killing Victim Wanted to Be Normal*].

162. Sanders, *supra* note 160. As of this writing, Amal Edan Khalaf, the mother of Noor's boyfriend, is expected to survive. Opinion, *Cultural Tolerance Doesn't Extend to Honor Killings*, DETROIT FREE PRESS, Nov. 10, 2009, at A14.

163. *Defying Iraqi Culture*, *supra* note 161. When arguing for high bail for Faleh, Prosecutor Stephanie Low told the court: "The defendant tries to hide behind his moral convictions, and yet he also fled." Sanders, *supra* note 160.

164. *Defying Iraqi Culture*, *supra* note 163; *Honor-Killing Victim Wanted to Be Normal*, *supra* note 161.

165. Sanders, *supra* note 160. In her own words, Noor's Facebook page told the world: "I am spectacular." *Defying Iraqi Culture*, *supra* note 161.

