

# INTERNATIONAL ACCOUNTABILITY FOR HONOUR KILLINGS AS HUMAN RIGHTS VIOLATIONS

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**Abstract:** *This article provides an analysis of honour killings as violations of international human rights law and discusses a range of different approaches that can be used to attain international accountability for honour killings. It focuses on positive obligations imposed on states by international human rights treaties, in particular in relation to the right to life and the prohibition against discrimination. These rights have been chosen as they are the rights that are primarily affected by the crime of honour killing, and because they represent different ways of seeing honour killings as human rights violations. It is argued that honour killings are no longer seen merely as crimes to be dealt with under domestic legislation, but as violations of international human rights law where states fail to exercise due diligence in preventing and responding to honour killings.* **Keywords:** *Honour killings, right to life, principle of non-discrimination, positive obligations, non-state actors.*

## A. HONOUR KILLINGS AS HUMAN RIGHTS VIOLATIONS

### 1. DEFINING HONOUR KILLINGS

Honour killings can be described as a form of intra-family violence where usually women are killed by their male relatives (usually fathers or brothers) because they are seen to have defiled the family's honour. Women are perceived as the repositories of the man's or family's honour, and as such they must guard their virginity and chastity. When they fail to do so, they are seen as having defiled the family's honour and must be killed in order to restore it. What is seen as defiling honour varies among different societies.<sup>1</sup> Usually the reason for an honour killing is suspicion of a sexual relationship outside marriage. Often mere rumours or insinuations are enough for people to feel their family's honour has been defiled.<sup>2</sup> Also victims of rape have been killed in the name of honour. Women have reportedly been killed in the name

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<sup>1</sup> Honour killings take place in many states, but are most prevalent in the Middle East and South Asia. See, e.g., *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; *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>2</sup> Rachel A. Ruane: 'Murder in the name of honour: violence against women in Jordan and Pakistan' (2000) 14 *Emory International Law Review* 1523, 1531.

of honour for expressing a desire to choose a spouse of their choice, marrying against the will of their families<sup>3</sup> and for demanding divorce from their husbands. In some countries, particularly Pakistan, also so-called ‘fake honour killings’ are reported.<sup>4</sup> Honour killings are also resorted to in order to cover up shameful incidents such as incest.<sup>5</sup> The large majority of the victims of honour killings are women but also men may be killed in the name of honour.<sup>6</sup>

Societies where honour killings occur are characterised by the existence of codes of honour. In codes of honour, honour relates to the outside world’s view of a person. A person’s honour is dependant on the behaviour of others, which must therefore be controlled. The community has a duty to respect a person, insofar as the code of honour is followed. If the code of honour is breached, the person (and his family) loses his honour. We can say that the ideas of honour and lost honour are based on a notion of justification of collective injury.<sup>7</sup> The lost honour becomes a reality only when it is made *public*. Thus, honour killings are highly unlikely unless the transgression becomes known in the community.<sup>8</sup> Consequently, honour killings are often performed openly.<sup>9</sup> Reasons for committing an honour killing include fear of losing power/authority, identity and masculinity, for example, due to changes or circumstances in society. Honour killings can to some extent be seen as a reactionary trend and it has been argued that the social function of honour crimes has changed as a reaction to changes in society, changed perceptions of what is honourable and dishonourable behaviour and changed sexual practices.<sup>10</sup> When honour killings occur amongst immigrant communities, the dishonouring behaviour of the victims is often adaptation to the culture of the majority, an adaptation which is seen as unacceptable by the woman’s family.

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<sup>3</sup> Amnesty International: *Pakistan: violence against women in the name of honour*, ASA 33/17/99 (Amnesty 1999b), 16–21.

<sup>4</sup> *Ibid.*, 21–23, 24–26; Amnesty International: *Pakistan: Honour killings of girls and women*, ASA 33/18/99 (Amnesty 1999a), 6–8, 9–10.

<sup>5</sup> Nadera Shalhoub-Kevorkian: *Mapping and Analyzing the Landscape of Femicide in Palestinian Society*, Report submitted to UNIFEM, January 2000, Section 4; Fadia Faqir: ‘Intrafamily femicide in defence of honour: the case of Jordan’ (2001) 22 *Third World Quarterly* 65, 72.

<sup>6</sup> E.g., the *Kari-Karo* tradition in Pakistan, see Amnesty 1999a, *supra* n. 4, 5.

<sup>7</sup> Lama Abu-Odeh: ‘Comparatively speaking: the “honor” of the “East” and the “passion” of the “West”’ (1997) 2 *Utah Law Review* 287, 292–293.

<sup>8</sup> Unni Wikan: *For Ærens Skyld* (Oslo: Universitetsforlaget 2003) 68–69, 72–74; Nancy V. Baker, Peter R. Gregware and Margery A. Cassidy: ‘Family killings fields: Honour rationales in the murder of women’, (1999) 5 *Violence Against Women* 2 164, 165, 171. See also Nafisa Shah: ‘Honour killings: code of dishonour’, *The Review, Daily Dawn*, (Karachi), Nov. 1998.

<sup>9</sup> Amnesty 1999a, *supra* n. 4, 4–5.

<sup>10</sup> Amnesty 1999b, *supra* n. 3, 5, 32; Shalhoub-Kevorkian, *supra* n. 5, 4; Abu-Odeh, *supra* n. 7, 288. As Ayelet Shachar notes, images of women and the family often become symbols of a group’s “authentic” cultural identity in situations of reactive culturalism. Ayelet Shachar: *Multicultural Jurisdictions* (Cambridge: Cambridge University Press 2001) 35–36.

It should be noted that objections have been made as to the use of the term 'honour' at all in the context of honour killings.<sup>11</sup> For example, the UN Secretary-General Kofi Annan has preferred to call the crimes "shame killings".<sup>12</sup> However, '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." Even though crimes committed in the name of passion and honour have in the international discussion often been grouped under the same heading,<sup>13</sup> the rationale behind these crimes does differ, as do the underlying perceptions of 'passion' and 'honour.'<sup>14</sup> Of course, all killings committed in the name of honour and passion should be seen as human rights questions. However, the problem of impunity is more prevalent in relation to killings motivated by reasons of honour.

## 2. WHY ARE HONOUR KILLINGS A HUMAN RIGHTS ISSUE?

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 (including violence against women) have traditionally been excluded from the ambit of international human rights law.<sup>15</sup> The international understanding of state responsibility has, however, significantly widened in recent years. In the words of the Inter-American Court of Human Rights:

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<sup>11</sup> E.g., Shalhoub-Kevorkian, *supra* n. 5; Faqir, *supra* n. 5, at 65.

<sup>12</sup> Statement of Secretary-General 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 June 2000; Statement of Secretary-General on the International Day for the Elimination of Violence against Women, 25 Nov. 2000, *Press Release SG/SM/7635 WOM/1239*, 21 Nov. 2000.

<sup>13</sup> E.g., UN Commission on Human Rights resolutions on extrajudicial, summary and arbitrary executions, most recently *res 2003/53*, 24 Apr. 2003, UN doc. E/CN.4/2003/53, para. 5.

<sup>14</sup> E.g., Abu-Odeh, *supra* n. 7, at 292–293. It has, however, been argued that the conception of honour in Middle Age-Europe was not much unlike the understanding of honour in contemporary Middle East and South Asia. It has been argued that the locus of honour in the west has shifted from the extended family to the individual mainly due to the increasing role of individualism and the nuclear family. Therefore, it may be that an honour rationale underlies also so called passion killings in the west. See Wikan, *supra* n. 8, 80; Baker, Gregware & Cassidy, *supra* n. 8, at 173–74; Abu-Odeh, *supra* n. 7, at 300, 305–06. See also Victoria Nourse, 'Passion's progress: Modern law reform and the provocation defence', (1997) 106 *Yale Law Journal* 1331.

<sup>15</sup> E.g., Rebecca Cook: 'State responsibility for violations of women's human rights', (1994) 7 *Harvard Human Rights Journal* 125, 127. See also, e.g., Charlotte Bunch: 'Women's rights as human rights: toward a re-vision of human rights' (1990) 12 *Human Rights Quarterly* 486; Hilary Charlesworth, Christine Chinkin and Shelley Wright: 'Feminist approaches to international law' (1991) 85 *American Journal of International Law* 613; Celina Romany: 'State responsibility goes private: a feminist critique of the public/private dimension in international human rights law', in Rebecca R. Cook (ed.): *Human rights of women* (Philadelphia: University of Pennsylvania Press 1994) 85–115; Christine Chinkin: 'A critique of the public/private dimension' (1999) 10 *European Journal of International Law* 387.

An illegal act which violates human rights and is not ... 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>16</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 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 the failure of states to prevent and provide remedies for these crimes that is why honour killings are and should be on the international human rights agenda.

Legislation, law enforcement and adjudicatory practices in relation to honour killings have been discussed at length elsewhere.<sup>17</sup> Hence I will here only make an attempt at categorising the grounds on which perpetrators of honour killings are either not investigated or prosecuted, are given lenient punishments or are completely exempt from punishment. In most states, honour killings fall under laws dealing with murder. Where these laws do not include discriminatory provisions on extenuating circumstances or defences of provocation, and if such laws are not applied in a discriminatory way, they are not relevant for the purposes of this paper.

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<sup>16</sup> *Velasquez Rodriguez case*, Inter-American Court of Human Rights, judgment 27 July 1988, (Ser. C, No. 4), para. 172–4. See also *Godínez Cruz case*, (IAmCtHR, 20 Jan. 1989 (Ser. C, No. 5)); *Villagrán Morales et al. case* (the “Street Children” Case), Judgment of 19 Nov. 1999, Inter-Am. Ct. HR (Ser. C) No. 63 [1999], para. 144; *Herrera Rubio v. Colombia* (Human Rights Committee, Communication No. 161/1983); *Delgado Paez v. Colombia* (Communication No. 195/1985); *X and Y v. the Netherlands* (ECtHR judgment 26 March 1985, Ser. A 91); *Costello-Roberts v. UK*, (ECtHR judgment 1993 Ser. A 247-C); *A v. UK*, (ECtHR judgment of 23 Sept. 1998, Reports 1998-VI); and *Osman v. UK*, (ECtHR judgment 28 Oct. 1998). See also the *Declaration on the Elimination of Violence against Women*, 20 Dec. 1993, UN GA res. 48/104, 48 UNGAOR Supp. (No. 49), 217, UN Doc. A/48/49; *UN GA resolution 55/66*, 31 Jan. 2001; and Article 7 of *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women*, 33 I.L.M. 1534 (1994).

<sup>17</sup> E.g., Kathryn Christine Arnold: ‘Are the Perpetrators of Honor Killings Getting Away With Murder? Article 340 of the Jordanian Penal code Analyzed Under the Convention on the Elimination of All Forms of Discrimination Against Women’ (2001) 16 *American University International Law Review* 1343; Ruane, supra n. 2; Leila Linhares Barsted and Jacqueline Hermann: ‘Legal doctrine and the gender issue in Brazil’ (1998/1999) 7 *American University Journal of Gender, Social Policy and the Law* 235; Amnesty 1999a, supra n. 4; Human Rights Watch, *Crime or Custom: Violence against Women in Pakistan*, 1999, <http://www.hrw.org/reports1999/pakistan/>; Laura Sue Nelson: ‘The defence of honor: is it still honored in Brazil?’, (1993) 11 *Wisconsin International Law Journal* 531; and Melissa Spatz: ‘A “lesser” crime: a comparative study of legal defences for men who kill their wives’ (1991) 24 *Columbia Journal of Law & Social Problems*, 597. See also Pieter Spierenburg: *Men and Violence: Gender, Honor and Rituals in Modern Europe and America* (Columbus: Ohio State University Press 1998) and Jan Goodwin: *Price of Honor: Muslim Women Lift the Veil of Silence on the Islamic World* (Boston: Little, Brown & Co. 1994) for discussions on the role and impact of honour in western and Muslim cultures.

*First*, the gender-biased attitudes of the police, corruption and lack of resources, amongst other factors, has given rise to a situation where honour killings are neither reported, filed, nor investigated, let alone prosecuted. *Second*, 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 a man who kills his wife for reasons of adultery or a reduction of penalty if a man kills his sister or other female relative for “illegal sexual relations”.<sup>18</sup> 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.<sup>19</sup> *Third*, there may be *discriminatory application* of general provocation and extenuating circumstances provisions. A notorious example of this is the application by courts of Article 98 of the Jordanian Penal Code. For example, the illegitimate pregnancy of a daughter has been seen as an “unrightful and dangerous act” (in accordance with Article 98) against the family’s honour. In two recent 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>20</sup> *Fourth*, in some countries, e.g., Pakistan, a system of tribal justice operates alongside the official courts and deals with a considerable amount of cases of honour crimes and killings, usually without any consideration for the official laws or guarantees for a fair tri-

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<sup>18</sup> See generally Lama Abu-Odeh: ‘Crimes of honour and the construction of gender in Arab societies’, in Mai Yamani: *Feminism and Islam: Legal and literary perspectives* (New York: New York University Press 1996) 141–194, 162–163. Compare Article 237 of the Egyptian Penal Code (see also Article 17); Article 207 of the Tunisian Penal Code; Article 375 of the Libyan Penal Code; Article 153 of the Kuwaiti Penal Code; Articles 548, 242 and 243 of the Syrian Penal Code; Article 562 of the Lebanese Penal Code; Articles 262, 463 of the Turkish Penal Code (1926); Article 279 of the Iraqi Penal Code (also Articles 130, 132, 405, 406); to Article 279 of the Algerian Penal Code; and Article 340 of the amended (Dec. 2001) Jordanian Penal Code, which provide for a similar defence for both men and women. See also the CIMEL/Interights ‘Honour’ Crimes Project website for a compilation of penal provisions of Arab states relevant to crimes of honour, compiled by Lynn Welchman, [http://www.soas.ac.uk/honourcrimes/Mat\\_ArabLaws.htm](http://www.soas.ac.uk/honourcrimes/Mat_ArabLaws.htm) (site visited 7 Jan. 2004).

<sup>19</sup> Asma Jahangir and Hina Jilani: *The Hudood Ordinances: A Divine Sanction?* (Lahore: Rhotas Books 1991); Asifa Quraishi: ‘Her honor: A critique of the rape laws of Pakistan from a women sensitive perspective’ (1996–1997) 18 *Michigan Journal of International Law* 287; and Human Rights Watch, *supra* n. 17, notes 94–111 and text. Concerning Yemen, see Article 232 of law no.12/1994, available on the CIME/Interights honour crimes website, see *supra* n. 25. On the law of *qisas* and *diyat* generally see, e.g., M. Cherif Bassiouni: ‘Qesas crimes’, in M. Cherif Bassiouni (ed.): *The Islamic Criminal Justice System* (London: Oceana Publ. 1982) 203, 203.

<sup>20</sup> Rana Husseini, ‘Murder charge reduced to misdemeanour in Azraq crime of honour case’, *Jordan Times*, 12 June 2002; Rana Husseini, ‘Brother gets 3 months in prison for killing sister’, *Jordan Times*, 1 July 2002. See generally Abu-Odeh, *supra* n. 4, 157–161. See also ‘Crime of passion’ is no defence, by Gaby Hinsliff, 19 Jan. 2003, *Guardian Unlimited Special Reports*, <http://www.guardian.co.uk/crime/article/0,2763,877844,00.html> (site visited 31 March 2003).

al, sometimes authorising honour killings as a remedy for lost honour.<sup>21</sup> Outside the Middle East and South Asia, the so-called cultural defence has been invoked to reduce a defendant's responsibility for certain crimes, including honour killings.<sup>22</sup> Such evidence clearly provides a basis for discussing honour killings as violations of international human rights law.

### 3. HONOUR KILLINGS AND HUMAN RIGHTS TREATIES

The issue of honour killings is not explicitly addressed in any human rights instruments. With the exception of the UN Declaration on the Elimination of all Forms of Violence against Women<sup>23</sup> and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women,<sup>24</sup> also the wider issue of violence against women remains an area untouched by international human rights instruments. Despite this, a mandate to deal with honour killings as human rights violations can be derived both from general and women-specific human rights instruments.

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),<sup>25</sup> the International Covenant on Civil and Political Rights (ICCPR),<sup>26</sup> the Convention on the Rights of the Child (CRC),<sup>27</sup> the European Convention on Human Rights and Fundamental Freedoms (ECHR),<sup>28</sup> the American Convention on Human Rights (ACHR),<sup>29</sup> and the African Charter on Human and People's Rights (ACHPR).<sup>30</sup> Moreover, the right to life in the context of violence against women is reaffirmed in the Declaration on the Elimination of violence against Women<sup>31</sup> and the Inter-American Convention on Violence against Women.<sup>32</sup>

Provisions including the principle of equality and providing for the prohibition against discrimination are also 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 inclu-

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<sup>21</sup> See generally Amnesty International, *Pakistan: the tribal justice system* (hereafter Amnesty 2002), ASA 33/024/2002; and Shalhoub-Kevorkian, *supra* n. 5, s. 4.

<sup>22</sup> James J. Sing: 'Culture as sameness: toward a synthetic view of provocation and culture in criminal law' (1999) 108 *Yale Law Journal* 1845, 1849; Valerie L. Sacks: 'An indefensible defence: on the misuse of culture in criminal law' (1996) 13 *Arizona Journal of International & Comparative Law* 523.

<sup>23</sup> 20 Dec. 1993, UN General Assembly resolution 48/104, 48 GAOR Supp. (No. 49), 217, UN doc. A/48/49.

<sup>24</sup> Belém do Pará, 9 June 1994, 33 *ILM* 1534 (1994).

<sup>25</sup> 10 Dec. 1948, UN GA resolution 217 A (III), Article 3.

<sup>26</sup> New York, 16 Dec. 1966, 999 *UNTS* 171, Article 6.

<sup>27</sup> New York, 20 Nov. 1989, 28 *ILM* 1456 (1989), Article 6.

<sup>28</sup> Rome, 4 Nov. 1950, *ETS* No. 5, Article 2.

<sup>29</sup> San José, 22 Nov. 1969, *OAS Treaty Series* No. 36, Article 4.

<sup>30</sup> Banjul, 27 June 1981, 21 *ILM* 58 (1982), Article 4.

<sup>31</sup> E.g., Article 3.

<sup>32</sup> E.g., Articles 3 and 4.

des a comprehensive non-discrimination provision in Article 26 in addition to the equality provision in Article 3, and the non-discrimination clause in Article 2(1). All the regional treaties include similar provisions that guarantee the rights in the respective treaties without discrimination.<sup>33</sup> Also, the Convention on the Elimination of All forms of Violence Against Women (CEDAW) includes a definition of discrimination against women (Article 2) and provides that state parties shall “accord to women equality with men before the law.”<sup>34</sup> Further, honour killings are a most extreme form of “physical harm”, 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.”<sup>35</sup>

Honour killings can arguably violate also other rights, including the freedom from torture and inhuman treatment,<sup>36</sup> the right to personal liberty and security of person,<sup>37</sup> the right to privacy,<sup>38</sup> and the right to health.<sup>39</sup> 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 other 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>40</sup>

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<sup>33</sup> ACHR Article 1; ACHPR Article 2; CRC Article 2(1); ECHR Article 14; and *Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 Nov. 2000, ETS no. 177, Article 1.

<sup>34</sup> Article 15(1). See also ICCPR Article 14; ACHR Article 24; ACHPR Article 3.

<sup>35</sup> *CEDAW General Recommendation No. 19: Violence against women* (11th session, 1992), UN doc. A/47/38, para. 6; *Declaration on the elimination of violence against women*, GA res 48/104, 20 Dec. 1993, UN doc. A/RES/48/104, 23 Feb. 1994, Article 1. See also *Beijing Declaration and Platform for Action*, Fourth World Conference on Women, Beijing, China, 4–15 Sept. 1995, para. 113–115; *CEDAW General Recommendation No. 19: Violence against women* (11th session, 1992), UN doc. A/47/38, paras. 11 and 24(r); *Preliminary report of the Special Rapporteur on violence against women, its causes and consequences*, UN doc. E/CN.4/1995/42, paras. 20–45; 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; *Recommendation Rec (2002) 5 of the Committee of Ministers to member states on the protection of women against violence*, 30 Apr. 2002, 794th meeting of the Ministers’ Deputies.

<sup>36</sup> UDHR Article 5; ICCPR Article 7; *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, New York, 10 Dec. 1984, 1465 UNTS 86, entry into force 26 Jun. 1987 (CAT); CRC Articles 19(1) and 37; ECHR Article 3; ACHR Article 5; ACHPR Article 5.

<sup>37</sup> UDHR Article 3; ICCPR Article 9; ECHR Article 5; ACHR Article 7; ACHPR Article 6.

<sup>38</sup> ICCPR Article 17; ECHR Article 8.

<sup>39</sup> See particularly CRC Article 24(3). 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>40</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. Guy Goodwin-

## B. A POSITIVE OBLIGATION TO PROTECT THE RIGHT TO LIFE UNDER HUMAN RIGHTS TREATIES

Article 2(1) of the ICCPR provides 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 in 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. 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>41</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>42</sup>

In addition to the general obligations to secure or ensure the rights in human rights treaties, some positive obligations are expressly stated in the text of certain provisions. For example, Article 2(1) of the ECHR states that “everyone’s life shall be protected by law,” and Article 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.” Also Article 6 of the ICCPR includes a duty to ensure the right to life.<sup>43</sup> The positive obligation to protect the right to life thus includes the

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Gill: *The Refugee in International Law* (2nd ed., Oxford: Oxford University Press 1996) 117–207; *Convention Relating to the Status of Refugees*, Geneva, 28 July 1951, 189 UNTS 150, Article 33; CAT, Article 3; and *Jabari v. Turkey*, ECtHR 11 Jul. 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 June 2002, AS/Ega(2002)7Rev2, paras. 47–50.

<sup>41</sup> Georg Ress: ‘The duty to protect and ensure human rights under the European Convention on human rights’, and Pierre-Marie Dupuy: ‘The duty to protect and ensure human rights under the International Covenant on Civil and Political Rights’, in Eckart Klein (ed.): *The Duty to Protect and to Ensure Human Rights* (Berlin: Springer Verlag 2000) 165, 170–173, and 319 respectively. See also *X and Y v. The Netherlands*, supra n. 16, para. 23.

<sup>42</sup> H. A. Kabaalioglu, ‘The obligations to ‘respect’ and to ‘ensure’ the right to life’, in Bertrand Ramcharan (ed.): *The right to life in international law* (Dordrecht: Martinus Nijhoff Publ. 1985) 160, 165; Thomas Buergenthal, ‘To respect and to ensure: state obligations and permissible derogations’, in Louis Henkin (ed.): *The International Bill of Rights: the Covenant on Civil and Political Rights* (New York: Columbia University Press 1981) 72, 77–78.

<sup>43</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 (1955), para. 4. The United Nations Human Rights Committee (HRC) has emphasised that states have

duty of states to make adequate provisions in their law for the protection of human life.<sup>44</sup> 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>45</sup> and by carrying out proper investigations, prosecuting offenders as well as providing for adequate remedies for victims.<sup>46</sup>

#### 1. ACTS OF PRIVATE PERSONS AND THE SCOPE OF THE DUTY TO ENSURE THE RIGHT TO LIFE AS INTERPRETED BY UN HUMAN RIGHTS BODIES

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 (HRC) has noted that the protection of the right to life “requires that States adopt positive measures.”<sup>47</sup> The HRC 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>48</sup> tolerance of female genital mutilation,<sup>49</sup> and “easy availability of firearms.”<sup>50</sup> Moreover, in March 2002 the HRC found a violation of Article 6(1) in a case where the son of the author lost his life because of inhuman prison conditions and lack of medical treatment. The Committee concluded that Russia had failed to take appropriate measures to protect the applicant’s son’s life during detention.<sup>51</sup>

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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, *CCPR General Comment 3* (implementation at the national level), 29 Jul. 1981, para. 2.

<sup>44</sup> ECHR Art. 2(1), see also , David J. Harris, Michael O’Boyle and Colin Warbrick: *The Law of the European Convention on Human Rights* (London: Butterworths 1995) 38 and ACHR Art. 4(1).

<sup>45</sup> Harris, O’Boyle & Warbrick, *supra* n. 44, 39. See also *Velasquez Rodrigues*, *supra* n. 16, para. 166.

<sup>46</sup> E.g., *Velasquez Rodrigues*, *supra* n. 16, para. 175.

<sup>47</sup> Human Rights Committee, *CCPR General Comment 6* (Right to Life), 30 Apr. 1989, para. 5.

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

<sup>49</sup> E.g., HRC *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.

<sup>50</sup> HRC *Concluding observation on the United States of America* (1995), UN doc. CCPR/C/79/Add.50, para. 17. Also HRC *Concluding observation on Guatemala* (2001), UN doc. CCPR/C/79/GTM, paras. 15, 19 and 26; *Concluding observations on Columbia* (1997), UN doc. CCPR/C/79/Add.76, para. 37; *Concluding observations on Algeria* (1998), UN doc. CCPR/C/79/Add.95, para. 6; and *Concluding Observations of the Committee on the Rights of the Child: Mexico*, 10 Nov. 1999, UN doc. CRC/C/15/Add.112, para. 20.

<sup>51</sup> *Lantsova v. Russia* (763/1997), decision 26 Mar. 2002, UN doc. CCPR/C/74/D/763/1997, para. 9.2.

The UN treaty-monitoring bodies have also more specifically dealt with the issue of honour killings, mainly during the examination of reports by state parties.<sup>52</sup> The 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, but also the other treaty bodies have taken up the issue of honour killings. Both the CEDAW Committee and CRC have expressed serious concern about the violation of the right to life that occur in the form of honour killings.<sup>53</sup>

## 2. ACTS OF PRIVATE PERSONS AND THE SCOPE OF POSITIVE OBLIGATIONS TO PROTECT THE RIGHT TO LIFE IN ACCORDANCE WITH THE ECHR

The European Court of Human Rights has elaborated the issue of positive obligations considerably in its jurisprudence, and has accepted obligations on part of the authorities to take measures to guarantee respect for human rights in relations between private actors.<sup>54</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>55</sup> the duty to prevent breaches of rights,<sup>56</sup> the duty to pro-

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<sup>52</sup> HRC *Concluding Observations: Sweden*, 24 Apr. 2002, CCPR/CO/74/SWE, paras. 7–8. CCPR *General Comment 28*, UN doc. CCPR/C21/Rev.1/Add.10, para. 31; CESCR *Concluding Observations: Syrian Arab Republic*, 24 Sept. 2001, E/C.12/1/Add.63; CESCR *Concluding Observations: Tunisia*, 14 May 1999, UN doc. E/C.12/Add.36; CAT *Summary Record of the 440th Meeting: Armenia*, 17 Nov. 2000, UN doc. CAT/C/SR.440; CAT *Summary Record of the 496th Meeting: Israel*, 29 Nov. 2001, UN doc. CAT/C/SR.496; CERD *Summary Record of the 1251st Meeting: Israel*, 11 Mar. 1998, UN doc. CERD/C/SR.125.

<sup>53</sup> CRC *Concluding Observations: Jordan*, 2 June 2000, UN doc. CRC/C/15/Add.125; CRC *Concluding Observations: Turkey*, 9 July 2001, CRC/C/15/Add.152; CRC *Summary Record of the 701st Meeting: Turkey*, 29 May 2001, CRC/C/SR.701; CRC *Summary Record of the 702nd Meeting: Turkey*, 11 Feb. 2002, CRC/C/SR.702; CRC *Summary Record of the 752nd Meeting: Lebanon*, 17 Sept. 2002, UN doc. CRC/C/SR.752; CEDAW *Concluding Observations: Egypt*, 2 Feb. 2001, UN doc. A/56/38; CEDAW *Concluding Observations: Turkey*, 12 Aug. 1997, UN doc. A/52/38; CEDAW *Concluding Observations: Uruguay*, 7 May 2002, UN doc. A/57/38; CEDAW *Concluding Observations: Netherlands*, 31 July 2001, A/56/38; CEDAW *Concluding Observations: Jordan*, 27 Jan. 2000, UN doc. A/55/38; CEDAW *Concluding Observations: Israel*, 12 Aug. 1997, UN doc. A/52/38/Rev.1, Part II; CEDAW *Concluding Observations: Iraq*, 14 June 2000, UN doc. A/55/38.

<sup>54</sup> Pieter van Dijk: “Positive obligations” implied in the European convention on human rights: are the states still the “masters” of the convention?, in Monique Castermans, Fried van Hoof and Jacqueline Smith (eds.) *The role of the nation-state in the 21st century – Human rights, international organisations and foreign policy* (Hague: Kluwer Law International 1998) 17–33, 19; Keir Starmer: ‘Positive obligations under the Convention’, in Jeffrey Jowel and Jonathan Cooper (eds.): *Understanding human rights principles* (Oxford: Hart 2001) 139, 146–147.

<sup>55</sup> E.g., in *X and Y v. the Netherlands*, supra n. 16.

<sup>56</sup> *Osman v. UK*, supra n. 16.

vide information and advice relevant to a breach of a right,<sup>57</sup> the duty to respond to breaches of rights,<sup>58</sup> and the duty to provide resources to individuals whose rights are at stake.<sup>59</sup>

Concerning the right to life the Court held in *McCann v. UK*:

[t]he obligation to protect the right to life [...] requires by implication that there should be some form of effective official investigation when individuals have been killed [...] by, *inter alios*, agents of the State.<sup>60</sup>

Since then, the Court has elaborated on its understanding of ‘effective investigations.’ For example, the Court has held that while the form of investigation may vary in different circumstances, the authorities must act of their own motion, once the matter has come to their attention.<sup>61</sup> Further, the obligation to conduct an effective obligation is not one of result but one of *means*. Thus, the authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident.<sup>62</sup> Also, the investigations must be undertaken promptly and expeditiously.<sup>63</sup>

In *L.C.B. v. UK*, the court held that 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.”<sup>64</sup> In the landmark case of *Osman v. UK*,<sup>65</sup> the Court affirmed that Article 2 may imply 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>66</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 [...] of the existence of a real and immediate risk to the life of an identified individual [...] 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>67</sup>

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<sup>57</sup> *L.C.B. v. United Kingdom*, (ECtHR judgment 9 Jun. 1998, Reports 1998-III); *Guerra v. Italy*, (judgment 19 Feb. 1998, Reports 1998-I); *McGinley and Egan v. UK*, (judgment 9 Jun. 1998, Reports 1998-III).

<sup>58</sup> E.g., *Aydin v. Turkey*, (judgment 25 Sept. 1997, Reports 1997-VI).

<sup>59</sup> E.g., *Airey v. Ireland*, (ECtHR judgment 9 Oct. 1079, Ser. A 32), para. 26.

<sup>60</sup> *McCann and Others v. UK*, (judgment 5 Sept. 1995, Ser. A 324), para. 161.

<sup>61</sup> Most recently *Finucane v. UK*, (application no. 29178/95, 1 Jul. 2003), para. 67.

<sup>62</sup> *Ibid.*, para. 69.

<sup>63</sup> *Ibid.*, para. 70.

<sup>64</sup> *L.C.B. v. UK*, supra n. 57, para. 36. Compare to HRC *Communication No. 645/1995*, 30 Jul. 1996.

<sup>65</sup> Supra n. 16; *A.V. UK*, supra n. 16, para. 22; *Z and Others v. UK* (judgment 10 May 2001, *Application no. 29392/95*) and *T.P. & K.M. v. UK* (judgment 10 May 2001, *Application no. 28945/95*) All three are child abuse cases relating to Article 3 ECHR.

<sup>66</sup> *Osman v. UK*, supra n. 16, para. 115.

<sup>67</sup> *Ibid.*, para. 116.

This line of reasoning has been reaffirmed in recent right to life cases. For example, in *Paul and Audrey Edwards v. UK*, the applicants' son (C.E.) had been killed by another prisoner while in custody. Referring to *Osman v. UK*, the Court held:

the failure of the authorities involved [...] 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 the right to life of C.E.<sup>68</sup>

In *Mastromatteo v. Italy*, the applicant's son was murdered by criminals who were on leave from prison. The applicant argued that Italy 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*) and "an obligation to afford *general protection* to society against the potential acts of one or several persons" (as in the present case).<sup>69</sup> In determining the scope of that general protection, the Court held that the Italian system relating to leave from prison and the implementation of that system in the instant case was sufficiently protective. Thus the Court 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. It can be said that the positive obligation to undertake preventive measures to protect the right to life is by now well established in the jurisprudence of the European Court on Human Rights. Simplifying the test in *Osman v. UK*, one could identify two criteria which must be fulfilled in order to find a state accountable for failure to prevent abuses committed by private persons under the ECHR. *First*, there must be a real and immediate risk to the life of a person; and *second*, there must be a direct and immediate link between the state's failure to act and the harm suffered by the victim.<sup>70</sup> Still, the obligation to prevent violence and loss of life 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." In other words, "a positive obligation to prevent every possibility of violence" cannot be derived from Article 2.<sup>71</sup>

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<sup>68</sup> *Paul and Audrey Edwards v. UK*, (judgment 14 Mar. 2002, Application no. 46477/99), para. 64; *Akkoç v. Turkey*, (ECtHR judgment 10 Oct. 2000, Reports 2000-X), paras. 77–94; *Keenan v. UK*, (ECtHR judgment 3 Apr. 2001, Application no. 27229/95), paras. 88–101; and *Öneryildiz v. Turkey*, (ECtHR judgment 18 Jun. 2002, Application no. 48939/99), paras. 87–88.

<sup>69</sup> *Mastromatteo v. Italy*, (ECtHR judgment 24 Oct. 2002, Application no. 37703/97), para. 69.

<sup>70</sup> Compare to Ress, *supra* n. 41, at 181.

<sup>71</sup> E.g., *Mastromatteo v. Italy*, *supra* n. 69, para. 68; *Edwards v. UK*, *supra* n. 68, para. 55; and *Osman v. UK*, *supra* n. 16, para. 116.

### 3. THE RIGHT TO LIFE AND STATE ACCOUNTABILITY FOR FAILURE TO PREVENT AND RESPOND TO HONOUR KILLINGS

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. In accordance with this duty 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 abuses committed by private actors.

A state that has non-existent, inadequate or discriminatory legislation in regard to honour killings fails its duty to prevent honour killings. Enacting legislation is not enough; any legislation must be effectively enforced. A state that systematically fails to effectively investigate, punish and remedy honour killings or does so in a clearly discriminatory manner, is in breach of its duty to effectively respond to such killings. Thus, states such as Turkey,<sup>72</sup> being party to the ECHR, could be challenged on the basis of the discriminatory provocation defences in its Penal Code.

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, the 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 the risk.

Also measures beyond the criminal justice system may be required. 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. It has been suggested that public information and education programs 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>73</sup> This aspect is particularly important in relation to honour killings (and other forms of violence against women), as the causes for such violence often lie in cultural norms, customs and attitudes towards women, which need to be altered in order to effectively protect women against abuses by private persons.

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<sup>72</sup> See, e.g., Aysan Sever and Gokcecicek Yurdakul: 'Culture of honor, culture of change: a feminist analysis of honor killings in rural Turkey', (1999) 7 *Violence Against Women* 9, 964.

<sup>73</sup> Anthony P. Ewing: 'Establishing state responsibility for private act of violence against women under the American Convention on Human Rights' (1995) 26 *Columbia Human Rights Law Review* 751, 774.

## C. ACCOUNTABILITY FOR HONOUR KILLINGS IN ACCORDANCE WITH THE PRINCIPLES OF NON-DISCRIMINATION AND EQUALITY

As many states where honour killings are a considerable problem are parties neither to the ICCPR nor CAT, honour killings must be construed as discrimination issues in order to find accountability under international human rights law. 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>74</sup>

The discussion here will not aim at providing an exhaustive discussion of the international human rights provisions relating to equality and non-discrimination.<sup>75</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.

### 1. DISCRIMINATORY LAWS AND APPLICATION OF LAWS RELATING TO HONOUR KILLINGS

Both the concept ‘discrimination against women’ as defined in Article 1 of CEDAW,<sup>76</sup> and the concept of ‘discrimination’ as used in the ICCPR, refer to the “effect” or “purpose” of the discrimination, implying that both direct and indirect discrimination, as well as deliberate and unintended discrimination, are prohibited.<sup>77</sup> In the context of honour killings, laws such as the

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<sup>74</sup> Human Rights Committee, *CCPR General Comment 18* (Non-discrimination), 10 Nov. 1989, para. 7. This definition is derived from the wording of CERD (Article 1(1)) and CEDAW (Article 1) respectively. See also Article 14 of the ECHR and Protocol No. 12 to the ECHR.

<sup>75</sup> Generally on state accountability under CEDAW see Rebecca J. Cook: ‘State accountability under the Convention on the Elimination of All Forms of Discrimination Against Women’, in Rebecca J. Cook (ed.): *Human Rights of Women: National and International Perspectives* (Philadelphia: University of Pennsylvania Press 1994) 228.

<sup>76</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.”

<sup>77</sup> Merja Pentikäinen: *The applicability of the human right model to address concerns and the status of women* (Helsinki: Yliopistopaino 1999) 29–30; Katarina Frostell: ‘Gender difference and the non-discrimination principle in the CCPR and the CEDAW’, in Lauri Hannikainen and Eeva Nykänen (eds.): *New Trends in Discrimination Law—International Perspectives* (Turku: Turku Law School 1999) 29, 36–37; and Sarah Joseph, Jenny Schultz and Melissa Castan: *The International Covenant on Civil and Political Rights: Cases, materials and commentary* (Oxford: Oxford University Press 2000) 533.

ones regarding the provocation defence<sup>78</sup> that explicitly limit the beneficiaries of the defence to men 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>79</sup> Such laws can also be seen as evidence of institutionalised discrimination of women.<sup>80</sup>

Where the application by courts 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,<sup>81</sup> is a clear example of indirect discrimination. Also the so-called ‘cultural defence’<sup>82</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>83</sup>

Under CEDAW, directly discriminatory laws relating to honour killings can be seen as violations of article 2(c). 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>84</sup> implies that the government of Pakistan has failed its duty to ensure the protection of women against discrimination through “competent national tribunals.”<sup>85</sup> Further, under CEDAW Article 2(f), states undertake to:

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<sup>78</sup> See supra n. 18 and text.

<sup>79</sup> See supra n. 19 and text.

<sup>80</sup> Timo Makkonen: ‘Multiple, compound and intersectional discrimination: bringing the experiences of the most marginalized to the fore’, unpublished paper, Institute for Human Rights, Åbo Akademi University, 2002, 5.

<sup>81</sup> See supra n. 20 and text.

<sup>82</sup> See supra n. 22 and text.

<sup>83</sup> Also CCPR *General Comment 28* (Equality of rights between men and women), UN doc. CCPR/C/21/Rev.1/Add.10, 29 Mar. 2000, para. 31.

<sup>84</sup> See supra n. 21 and text.

<sup>85</sup> See the wording of CEDAW Article 2(c). Pakistan acceded CEDAW 12 March 1996 with a general declaration. See [http://www.unhchr.ch/html/menu3/b/treaty9\\_asp.htm](http://www.unhchr.ch/html/menu3/b/treaty9_asp.htm) (site visited 21 May 2003).

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), 2(g) and 15(1) of CEDAW.<sup>86</sup>

## 2. POSITIVE DIMENSIONS OF THE PRINCIPLE OF NON-DISCRIMINATION: FAILURE OF THE STATE TO PROTECT AGAINST, PREVENT OR RESPOND TO HONOUR KILLINGS AS DISCRIMINATION

Even though CEDAW explicitly does not address the problem of violence against women, the CEDAW Committee has held that discrimination against women as defined in Article 1 of CEDAW includes gender-based violence.<sup>87</sup> Honour killings are one of the most extreme forms of violence against women and hence a form of discrimination. It should 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.”<sup>88</sup> Therefore the state is under an obligation to take measures to eliminate any such discrimination.

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, the fact that discrimination—in this case honour killings—occurs does not always entail state responsibility. Where the state has acted in good faith and has taken measures to eliminate discrimination it cannot be held responsible.<sup>89</sup> However, the fact that legislation exists is not 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. Similar argumentation can be used in relation to CEDAW Articles 2(b) and 2(f). A state party to CEDAW would be in violation of Article 2(b) where there is no 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

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<sup>86</sup> Iraq and Egypt have made reservations to CEDAW. See

[http://www.unhchr.ch/html/menu3/b/treaty9\\_asp.htm](http://www.unhchr.ch/html/menu3/b/treaty9_asp.htm) (site visited 13 Dec. 2002). See Rebecca J. Cook: ‘Reservations to the Convention on the Elimination of All Forms of Violence Against Women, (1990) 30 *Virginia Journal of International Law*, 643–712, at 687–692.

<sup>87</sup> CEDAW *General Recommendation No. 19*, supra n. 35, para. 6.

<sup>88</sup> CEDAW Article 2(e); *General Recommendation No. 19*, para. 9.

<sup>89</sup> Cook, supra n. 15, at 153; *Velasquez Rodriguez*, supra n. 16, para. 175.

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 undertaking measures to fulfil the aims in Article 5(a).

The vague wording of many of the provisions in CEDAW, including Articles 2 and 5, is problematic as they leave a wide margin of discretion for the states as regards the implementation of such provisions. Defining what is “appropriate” is necessarily subject to national, political and social circumstances and environments.<sup>90</sup> For example, Articles 2(e) and 5 define neither the measures nor the extent of measures to be taken by state parties. The CEDAW Committee has, however, identified certain measures that are necessary to provide protection against gender-based violence which must be seen as guidelines when determining whether a state has complied with the provisions of CEDAW. Such measures include effective *legal* measures to provide effective protection against gender-based violence such as penal sanctions, civil remedies and compensatory provisions. *Preventive* measures include public information and education programmes to change attitudes concerning the roles and status of women and men. *Protective* measures encompass, e.g., shelter homes, counselling, rehabilitation and victim support services for women who are victims or potential victims of violence.<sup>91</sup> Therefore, in the case an honour killing occurs and the state has, e.g., failed to provide for appropriate penal sanctions for such crimes, or failed to set up shelter homes for women at risk of honour killings, the state has not taken such appropriate measures as are required by CEDAW to eliminate discrimination.

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>92</sup> Furthermore, under Article 3, ICCPR states parties have undertaken to ensure the equal right of men and women to the enjoyment of all 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. Affirmative measures in all areas are required in order to achieve the effective and equal empowerment of women.<sup>93</sup> Thus, in conjunction with each duty imposed on a state by the ICCPR 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 Article 2(1) ICCPR, in conjunction with the right to life, as it breaches the duty respond to a crime

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<sup>90</sup> Merja Pentikäinen: ‘The prohibition of discrimination and the 1979 UN Convention on the Elimination of All Forms of Discrimination against women’, in Lauri Hannikainen and Eeva Nykänen (eds.): *New Trends in Discrimination Law—International Perspective* (Turku: Turku Law School 1999) 59, 74.

<sup>91</sup> CEDAW, *General Recommendation No. 19*, supra n. 35, para. 24(t).

<sup>92</sup> See also Article 1(1) of the ACHR. Similar argumentation must also be used in the context of the ECHR as Article 14 of the ECHR concerns only discrimination in relation to the rights protected in that convention.

<sup>93</sup> CCPR *General Comment 28*, supra n. 83, para. 3.

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, in particular of Articles 6, 14 and 26.<sup>94</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 ICCRP 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 in the Covenant, particularly the right to life.

#### D. 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. It is the task of the international human rights machinery to step in and provide 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>95</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. In the case of honour killings the 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.

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, 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 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 gives its opinions as to an effective remedy. In the case of the European Court of Human Rights the judgments are binding on states.

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 or to eliminate discrimination against women. For example, Pakistan, where at least 461 women were killed in 2002 in the provinces of Sindh and Punjab alone,<sup>96</sup> is not a par-

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<sup>94</sup> *Ibid.*, para. 31. Also Ewing, *supra* n. 73, at 780.

<sup>95</sup> See generally Gudmundur Alfredsson, Jonas Grimheden, Bertrand G. Ramcharan and Alfred de Zayas (eds.): *International Human Rights Monitoring Mechanisms* (Hague: Martinus Nijhoff 2001).

<sup>96</sup> 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.

ty to the ICCPR under which it could be held responsible for the failure to protect the right to life. As a party to the Convention on the Rights of the Child (CRC) Pakistan could be held accountable under that convention;<sup>97</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 could take up the issue of honour killing when examining the periodical reports of Pakistan. In fact, the Committee recently expressed its serious concern about the prevalence of honour killings in the country in its concluding observations on the periodic report of Pakistan.<sup>98</sup>

Even where a state has ratified a relevant human rights treaty it may not have ratified the instrument that enables individual complaints,<sup>99</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>100</sup> but has not recognised the Human Rights Committee's competence in accordance with Article 41.<sup>101</sup> Thus, the only chance of considering honour killings of adults 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>102</sup> The Committee on the Rights 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>103</sup>

One convention that has been ratified by most states<sup>104</sup> and thus also by many states where honour killings occur, is CEDAW. The CEDAW Committee has taken up the issue of honour killings 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 programs.<sup>105</sup> It should, however, be noted that the Committee has not had the opportunity to question the Pakistani government about honour killings as Pakistan has so far submitted no reports to it.<sup>106</sup>

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>107</sup>

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<sup>97</sup> Pakistan ratified the CRC 12 Nov. 1990.

<sup>98</sup> *Concluding observations of the Committee on the Rights of the Child: Pakistan*, UN doc. CRC/C/15/Add.217, 27 Oct. 2003, paras. 29, 34–35.

<sup>99</sup> E.g., Article 41 of the ICCPR.

<sup>100</sup> Jordan ratified the Covenant on 25 May 1975.

<sup>101</sup> Also Egypt, Iraq, Lebanon, Syria and Turkey are parties to the ICCPR but have not ratified Optional Protocol I. <http://www.unhchr.ch/pdf/report.pdf>.

<sup>102</sup> E.g., HRC *Concluding observations on Jordan*, UN doc. CCPR/C/79/Add.35, 10 Aug. 1994. Jordan's subsequent reports are overdue. The 4th periodic report was due in 1997 and the 5th in 2002.

<sup>103</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.

<sup>104</sup> As of 2 Nov. 2003 CEDAW had 174 states parties. See also Cook, *supra* n. 86, at 643.

<sup>105</sup> CEDAW *Concluding Observations: Jordan*, 27 Jan. 2000, A/55/38, para. 179.

<sup>106</sup> Pakistan's first periodic report was due in 1997 and the second in 2001.

<sup>107</sup> *Optional Protocol to the Convention on the Elimination of Discrimination against Women*, UN GA Res A/54/4, 6 Oct. 1999.

Still, the significance of CEDAW has been considerably undermined by the weak enforcement mechanisms, the numerous reservations and the *de facto* acceptance of reservations by non-reserving states.<sup>108</sup> However, it remains to be seen what the impact of the new Optional Protocol will be in combating the marginalization of the human rights of women and in empowering the CEDAW Committee.

Honour killings have been given an increasing amount of attention in international human rights fora during the last 4–5 years.<sup>109</sup> Even though the UN human rights treaty-monitoring bodies have taken up the problem of honour killings, 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 the 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 reports and 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.

While honour killings cannot be altered by reference to human rights alone, a human rights perspective is 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. On perhaps a more proactive note, human rights also have a role as tools for empowerment and emancipation. Thus, emphasis should be put on continuous efforts to enhance the legitimacy of human rights among communities where honour killings continue to occur.

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<sup>108</sup> E.g., Cook, *supra* n. 86; Myriam Jacobs: 'A conditional promise' (1994) 12 *Netherlands Quarterly of Human Rights*, 271; Laboni Amena Hoq: 'The Women's Convention and its Optional Protocol: Empowering women to their internationally protected rights' (2001) 32 *Columbia Human Rights Law Review* 677, 691.

<sup>109</sup> See, e.g., Katja Luopajarvi: *Honour Killings as Human Rights Violations*, Research Report 18 (2003), Institute for Human Rights, Åbo Akademi, [http://www.abo.fi/institut/imr/publications\\_online.htm](http://www.abo.fi/institut/imr/publications_online.htm), pp. 77–96, for a discussion on international measures to combat honour killings.