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## 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

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# 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

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\* J.D. Candidate, 2002, American University, Washington College of Law; B.A., Political Science, 1999, George Washington University. I would like to thank Sue and Chuck Arnold for their constant support and for providing me with the international opportunities that led me to choose the topic of this work. I would also like to thank my editor, Barbara Cochrane Alexander, for her incredible effort on this piece. In addition, I owe special thanks to International Human Rights Law Group; Isis Nusair, Researcher, Human Rights Law Group; Lama Abu-Odeh, Professor of Law, Georgetown University Law Center; and Ritu Sharma, Executive Director, Women's EDGE for providing me with insight and research materials on the practice of honor killing. Finally, I would like to thank the rest of my family and friends for their never-ending support and encouragement throughout this endeavor. I dedicate this piece to the continuous effort to provide all women with equality, freedom, and choice. *Please direct questions about this work to kcaindc@hotmail.com.*

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## INTRODUCTION

*Amal, a seventeen-year-old Jordanian, regretfully informed her family she had been raped by her father's friend who was staying at the family's home.<sup>1</sup> Amal's family immediately raised extra money to try to obtain an abortion for Amal because pregnancy outside of marriage carries an extremely negative social stigma.<sup>2</sup> This attempt failed when the doctor Amal saw refused to perform the procedure because abortion is illegal in Jordan.<sup>3</sup>*

*When Amal could not obtain an abortion, her family resorted to other means. Instead, Amal's father decided to use the extra money to purchase a gun.<sup>4</sup> The next day, Amal's father and brother blared loud music, drew the curtains, and sent the rest of the family away from the home.<sup>5</sup> While Amal laid on a mattress, her brother and father shot her eight times in an attempt to take her life.<sup>6</sup> Shockingly, Amal survived the gunshot wounds.<sup>7</sup> Amal's father received no sentence for his part in the crime, while her brother received a seven-year prison sentence, reduced from the minimum sentence of four-*

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1. See Douglas Jehl, *Arab Honor's Prince: A Woman's Blood* [Special Rep.], N.Y. TIMES, June 20, 1999, at 9, available at 1999 WL 30524917 (relating that a Jordanian woman is in prison because of her culture's backward beliefs and a paternalistic Jordanian law); see also Karen Thomas, *Deaths That Dishonour*, MIDDLE EAST, Nov. 1, 1999, at 45, available at 2000 WL 23261688 [hereinafter Thomas, *Deaths That Dishonour*] (describing an account of a recent honor crime committed in Jordan); see also *Honor Killings*, Mar. 18, 2000 (on file with author) (describing how after honor killings occur the killers are often considered innocent heroes).

Perpetrators of honor killings often believe that killing for honor is not a crime and therefore, show no remorse. After he was sentenced to one year in prison with a suspended sentence, Mohammed, an economist who killed his wife for reasons of honor, only served eight days in prison. He reported that his primary concern was maintaining his job security stating, "[t]he only thing a man owns is his honor . . . I was afraid if she stayed alive it would ruin her daughters, set a bad example for them . . . She was not a good wife. So it's better that she didn't stay alive. I am innocent. What I did was right." See Jehl, *supra* note 1.

2. See *id.*

3. See *id.*

4. See *id.*

5. See Jehl, *supra* note 1.

6. See *id.*

7. See *id.*

teen years under Jordanian law.<sup>8</sup> Amal, bullet-scarred and previously pregnant, is currently being held in jail by the Jordanian government due to its belief that without protective custody, her male family members will kill her.<sup>9</sup>

Although the above crime might seem like an anomaly, honor crimes are quite common.<sup>10</sup> Honor crimes include a range of violent acts against women such as murder, attempted murder, acid attacks,<sup>11</sup> dowry deaths,<sup>12</sup> and female infanticide.<sup>13</sup> Murder is considered an honor killing when a person,<sup>14</sup> typically a youthful male,<sup>15</sup> kills a fe-

8. *See id.*

9. *See id.*

10. *See* Int'l Women's Law Group, Honor Crimes 1, 4 (2000) (on file with author) (finding that honor killings constitute fifty-five percent of all crimes committed against women and one fourth of all homicides in Jordan).

11. *See* Yasmeen Hassan, *Stove Burning, Acid Throwing, and Honor Killings*, in WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW 2, 587, 596 (Kelly D. Askin & Doreen M. Koenig eds., 2000) (explaining that acid throwing, common in Pakistan among all classes, is a form of violence against women where typically a male who is denied a woman's hand in marriage throws acid at her face).

12. *See* Christina M. Cerna & Jennifer C. Wallace *Women and Culture*, in WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW 1, 623, 635 (Kelly D. Askin & Doreen M. Koenig eds., 1999) (identifying the practice, primarily in India, in which the groom's family makes increasing demands for dowry payments in the form of gifts from the bride's family and, when they are dissatisfied with the bride's family's purchases, kill the bride, often under the guise of kitchen accidents, in order to remarry their son to another woman who will again pay a hefty dowry for marriage).

13. *See* Bellamy *Condemns Violence Against Women*, JORDAN TIMES, Mar. 7, 2000, at 1 (on file with author) (explaining various types of violence against women classified as honor crimes including female infanticide, which is killing female newborns, typically in Asia, due to the belief women have no economic value); *see also* Matthew McAllester, 'What I Did Was Right', NEWSDAY, May 15, 2000, at 1 (denoting various types of honor crimes).

This Comment focuses on honor killings, a specific type of honor crime. *See e.g.*, Lama Abu-Odeh, *Crimes of Honour and the Construction of Gender in Arab Societies*, in FEMINISM & ISLAM: LEGAL AND LITERARY PERSPECTIVES 141, 141 (Mai Yamani ed., 1996) [hereinafter Abu-Odeh, *Crimes of Honor*] (describing honor killings as a type of honor crime committed against women for committing adultery or engaging in sexual relations prior to marriage); *see* Suzanne Ruggi, *Commodifying Honor in Female Sexuality: Honor Killings in Palestine*, 2 MIDDLE EAST REP. 12, 12 (Spring 1998) (defining honor killing as the execution of a woman for illicit sexual activity).

14. The word "person" is chosen because honor killings, while predominantly

male relative because she has allegedly engaged in illicit sexual activity, including instances where a woman has been raped.<sup>16</sup> Honor killings in Jordan are typically committed by brothers and nephews who are under the age of eighteen. In Jordan, families often chose young relatives because juvenile offenders serve shorter prison terms than adult males, the crime is not noted on a criminal record, and the juveniles are taught a trade while serving their prison terms.<sup>17</sup>

Currently, Jordan has the highest rate of honor killings in the world.<sup>18</sup> Honor killings comprise approximately fifty-five percent of all documented crimes against women and one-quarter of all homi-

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carried out by male family members, have rarely been executed by female family members as well. See Ilene R. Prusher, *Small Steps, But the Pace Quickens*, CHRISTIAN SCI. MONITOR, Aug. 7, 2000, at 1 (reporting the case of a Jordanian girl who killed her own mother for reasons of honor). It should be noted, however, that brothers, uncles, husbands, male cousins, and other male relatives commit almost all honor killings. See Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 141; see also Lama Abu-Odeh, *Comparatively Speaking: The "Honor" of the "East" and the "Passion" of the "West"*, 1997 UTAH L. REV. 1, 1 (1997) [hereinafter Abu-Odeh, *Comparatively Speaking*] (describing a male relative, usually a brother, as the typical perpetrator of honor killings).

15. See Thomas, *Deaths That Dishonour*, *supra* note 1, at 2 (finding that most honor killings are committed by youthful males).

16. See KAREN L. KINNEAR, WOMEN IN THE THIRD WORLD 24 (Contemporary World Issues Series 1999) (explaining that in the view of Arab men, regardless of whether a woman is a victim of rape, premarital sexual relations ruin a woman's moral and physical attributes). Moreover, in Arab society, rape is usually considered the woman's fault because she has probably done something to cause a man to become attracted to her. See JAN GOODWIN, PRIZE OF HONOR: MUSLIM WOMEN LIFT THE VEIL OF SILENCE ON THE ISLAMIC WORLD 339-40 (1994) [hereinafter GOODWIN] (discussing an instance in which an Egyptian woman was sexually assaulted and blamed for the incident because she wore a long skirt and was returning from work rather than staying at home with her children).

17. See Thomas, *Deaths That Dishonour*, *supra* note 1, at 2 (explaining the logic behind a family's decision to choose brothers and young family members as the relative that will commit an honor killings). According to Thomas, although many Arab citizens perceive the practice of honor killings as acceptable, it is interesting that families divert the responsibility to young family members who will not suffer a tarnished record and have time to out live the incident. Moreover, she believes the incident could seemingly be more easily justified based on the young age and inexperience of a younger male. See *id.*

18. See Int'l Women's Law Group, *supra* note 10, at 4 (finding that due to Jordan's small population, it has the highest rate of honor killings in the world).

cides.<sup>19</sup> Many more honor killings occur,<sup>20</sup> however, due to a lack of comprehensive reporting,<sup>21</sup> the private nature of honor killings,<sup>22</sup> and its widespread social acceptance.<sup>23</sup>

Recent efforts by Jordanian citizens and the international community to reform Article 340 of Jordan's Penal Code have focused worldwide attention on this issue.<sup>24</sup> Article 340 is the provision of Jordanian law that exonerates or provides brief, reduced<sup>25</sup> prison sentences for perpetrators of honor crimes.<sup>26</sup>

In late 1999, the executive branch of the Jordanian government launched a significant legislative effort in support of a bill that would reform Article 340 of Jordan's Penal Code.<sup>27</sup> Even with extensive ex-

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19. See Jehl, *supra* note 1, at 4 (reporting that official Jordanian statistics show honor killings constitute approximately one in four homicides).

20. See Vanessa Lesnie, *Dying for the Family Honor* 27 HUM. RTS. J. 12, 12 (2000) (concluding that reporting mechanisms are weak and often crimes go unreported); see also Report on Jordan Human Rights Practices 1995, Mar. 1996, U.S. DEPT. OF STATE (on file with author) (reporting actual number of honor killings is highly underestimated).

21. See *id.* at 12. (finding that women's lack of reporting may largely underestimate the number of known honor killings). But see Jehl, *supra* note 1, at 1 (finding that Jordan is one of the few Arab countries with somewhat credible crime statistics).

22. See Hillary Charlesworth, *What are "Women's International Human Rights"?*, in HUMAN RIGHTS OF WOMEN 58, 72 (Rebecca J. Cook ed., 1994) (explaining that the private nature of violence against women precludes proper investigation and attention to the issue because it is often hidden among family members).

23. See Jehl, *supra* note 1, at 4 (illustrating that some Arab males do not want to kill their female relatives, but often feel forced to do so due to intense social pressure).

24. See *infra* notes 27-31 and accompanying text (discussing international attention to honor killings during debate over amendment to Article 340 of the Jordanian Penal Code).

25. See Jehl, *supra* note 1, at 4 (noting sentences as low as six months are common prison terms for killings based on honor).

26. See *infra* notes 99-104 and accompanying text (explaining the specific provisions of Article 340).

27. See Dima Hamdan & Rana Hussein, *Lower House Rejects Proposal to Cancel Article 340 of Penal Code*, JORDAN TIMES, Nov. 22, 1999, at 1 (on file with author) [hereinafter Hamdan & Hussein, *Lower House Rejects Proposal*] (describing recent legislation proposed by the executive branch would require those who commit adultery to be sentenced to one to three years in prison). An individ-

ecutive support,<sup>28</sup> and passage by the Upper House of Parliament, the bill ultimately failed.<sup>29</sup> Although activists in Jordan and the international community are still advocating for an amendment to Article 340, the most current draft of the bill fails to correct the discriminatory legal treatment contained within the Jordanian Penal Code.<sup>30</sup> The most recent draft of the bill only provides for mandatory minimum

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ual who is married can also be sentenced to higher terms of two or three years under the draft bill. *See id.*

28. *See* Rana Hussein, *Prince Ali, Ghazi Lead Protestors Calling for Abolition of Article 340 of Penal Code*, JORDAN TIMES, (on file with author) [hereinafter Hussein, *Prince Ali*] (observing that their Royal Highnesses Prince Ali and Prince Ghazi demonstrated in front of Parliament and the Prime Minister in favor of abolition of Article 340). Prince Ali stated he felt ashamed that Article 340 exists. *See id.*; *see also* Jamal Halaby, *Jordan's Conservative Society Trying to Combat Honor Killings*, ASSOCIATED PRESS NEWSWIRE, July 2, 2000, at 1, available at 2000 WL 5543698 [hereinafter Halaby, *Jordan's Conservative Society*] (explaining the high degree of opposition in Parliament to changing Article 340); *see also* Hamdan & Hussein, *Lower House Rejects Proposal*, *supra* note 27, at 1 (noting that Queen Rania has spoken publicly against honor killings). *See generally* Jan Goodwin, *Heir Jordan*, HARPER'S BAZAAR, June 1, 2000, at 161, available at 2000 WL 16692316 (reinforcing Queen Rania's commitment to eradicating the practice of honor killings).

29. *See* Hussein, *Prince Ali*, *supra* note 28, at 1 (reporting that the lower house of Parliament twice rejected a government-proposed amendment to Article 340, in November and December of 1999, despite a national petition that garnered 15,000 signatures supporting abolition of Article 340); *see also* Jamal Halaby, *Jordan Seeks Cessation of Honor Killings*, ORANGE COUNTY REGISTER, July 7, 2000, at 1, available at 2000 WL 4840122 [hereinafter Halaby, *Jordan Seeks Cessation*] (reporting that the high level of international attention led the Jordanian Parliament to consider a draft bill to replace Article 340 later in 2000). As of October 15, 2000 there was no reported movement in Parliament on the proposed draft bill. *See* Telephone Conversation with Embassy of Jordan (Oct. 15, 2000); *see also* Hamdan & Hussein, *Lower House Rejects Proposal*, *supra* note 27, at 1 (reporting that the lower house of Parliament unanimously voted to reject a draft bill to replace Article 340 and that deputies of the lower house opposed to the draft bill argue that repealing Article 340 would eradicate [Islamic] ethics and promote adultery). *But see* Rana Hussein, *Majali: Government, House Acted Hastily on Issue of Article 340*, Dec. 19, 1999, at 2 (on file with author) [hereinafter Hussein, *Majali: Government*] (identifying that the speaker of the lower house later stated the bill should have been referred to the Legal Committee for debate instead of being voted down unanimously).

30. *See* Dina Hamdan, *House Ends Ordinary Session*, JORDAN TIMES, NOV. 22, 2000, at 2 (on file with author) (relating that recent legislation proposed by the executive branch only imposes brief prison sentences for honor killings).



incarceration for anyone who commits adultery—the bill does not address the practice of honor killings.<sup>31</sup>

Internationally, Jordan has signed and ratified<sup>32</sup> the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”).<sup>33</sup> Under Jordanian law, ratification of an international treaty is self-executing and, thus, the treaty automatically becomes part of national law.<sup>34</sup> Therefore, Jordan has an affirmative obligation to abide by all CEDAW provisions, unless it has made a reservation to a particular article.<sup>35</sup> In addition, CEDAW requires nations that have ratified the convention to undertake affirmative measures to change laws, practices, and customs that are discriminatory to women.<sup>36</sup>

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31. See *id.* (noting that the provisions of the proposed draft bill mandate prison sentences of one to three years for anyone convicted of committing adultery).

32. See Convention on the Elimination of All Forms of Discrimination Against Women, *States that Have Signed, Ratified, Acceded, or Succeeded to the Convention*, Jan. 5, 1998, available at [gopher://gopher.un.org/00/ga/cedaw/RATIFICA%09%09%2B](http://gopher://gopher.un.org/00/ga/cedaw/RATIFICA%09%09%2B) [hereinafter CEDAW online] (reporting that Jordan signed CEDAW on Dec. 3, 1980 and ratified CEDAW on July 1, 1992).

33. See Convention on the Elimination of All Forms of Discrimination Against Women, *opened for signature* Mar. 1, 1980, 27 U.S.T. 1909, T.I.A.S. No. 8289, 1249 U.N.T.S. 14, available at [gopher://gopher.un.org:70/00/ga/cedaw/convention](http://gopher://gopher.un.org:70/00/ga/cedaw/convention) [hereinafter CEDAW].

34. See *Women's Anti-Discrimination Committee Concludes Consideration of Jordan's Reports*, Jan. 27, 2000, at 4 (on file with author) [hereinafter *Women's Committee Concludes Consideration*]; see also Women, Law & Development International and Human Rights Watch Women's Rights Project, WOMEN, LAW & DEVELOPMENT OF INTERNATIONAL WOMEN'S HUMAN RIGHTS; STEP BY STEP (Margaret A. Schuler & Dorothy Q. Thomas eds., 1997) [hereinafter STEP BY STEP] (explaining self-executing treaties are implemented into the national law of a country as soon as the country ratifies an international agreement).

35. See Division for the Advancement of Women, Reservations to the Convention on the Elimination of Discrimination Against Women, at 2, available at <http://www.un.org/womenwatch/daw/cedaw/reservations.htm> [hereinafter CEDAW Reservations] (specifying that States party to CEDAW are allowed to make reservations to CEDAW, although such reservations must not be contradictory to the object and purpose of the convention). But see Abdullahi Ahmed An-Na'im, *State Responsibility Under International Human Rights Law to Change Religious and Customary Laws* in HUMAN RIGHTS OF WOMEN, *supra* note 22, 168-69 (Rebecca J. Cook ed., 1994) (arguing that even a country that has ratified CEDAW arguably has obligations because of CEDAW's lack of legitimate enforcement mechanisms).

36. See *infra* notes 203-15 and accompanying text (setting forth Jordan's af-

This Comment addresses the escalating international problem of honor killings and argues that Jordan is violating its binding international legal obligations under CEDAW.<sup>37</sup> Part I provides an overview of the social origins of honor killings.<sup>38</sup> It explains the interrelation between a woman's sexuality and her family's honor.<sup>39</sup> Additionally, Part I provides a background of the current problem of honor killings in Jordan, which is exacerbated by Jordan's Penal Code because the law exonerates or grants reduced sentences to Jordanian males who commit honor killings.<sup>40</sup> Part I also discusses the significance of Jordan's discriminatory laws governing honor killings, including a brief comparison of Jordan's laws in relation to those in other Middle Eastern countries.<sup>41</sup>

Part II explains the history and purpose of CEDAW and its importance to the debate surrounding honor killings in Jordan. This section also analyzes the purpose for drafting CEDAW, and CEDAW's provisions that are most relevant to the commission of honor killings regulated under Article 340 of the Jordanian Penal Code.<sup>42</sup> In addition, Part II describes the provisions of CEDAW that prohibit State Parties from making distinctions and exclusions between men and women in general, in the court system, and in family relations under Articles 1, 2(c), and 16(1).<sup>43</sup> Part II further discusses provisions of CEDAW that mandate Jordan remove discriminatory

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firmative obligations under CEDAW, such as the elimination of customary practices discriminatory to women).

37. See *infra* notes 216-87 and accompanying text (asserting that Jordan's laws violate CEDAW).

38. See *infra* notes 60-94 and accompanying text (articulating social origins of honor killings).

39. See *id.*

40. See *infra* notes 95-144 and accompanying text (providing text and analysis of Article 340 and discussion of honor killings in Jordan).

41. See *infra* notes 146-52 and accompanying text (discussing Jordan's laws pertaining to honor killings and comparing Jordan's law with laws of other Middle Eastern countries).

42. See *infra* notes 288-97 and accompanying text (explaining the drafting history of CEDAW and its provisions most relevant to the treatment of honor killing under the Jordanian Penal Code).

43. See *infra* notes 186-99 and accompanying text (mandating State Parties remove all discriminatory laws and treat women identically with men under the law).

laws and grant women identical legal status with men, including Articles 2(g), 15(1), and 15(2).<sup>44</sup> Finally, Part II sets forth the affirmative obligations of State Parties under Article 2 and, specifically, the obligation to eradicate discriminatory practices that originate in a nation's culture and tradition, regulated under Articles 2(f) and 5(a).<sup>45</sup>

Part III of this Comment asserts that Article 340 of Jordan's Penal Code and the Court of Cassation's application of Article 98 further exacerbate the practice of honor killings which violates CEDAW.<sup>46</sup> Part III analyzes the application of Article 340 and Article 98 to honor killings as discriminatory to women under CEDAW's Article 1 and 16(1) and argues that the Jordanian court system discriminates against women under Article 2(c) through improper application of Article 98 to male perpetrators of honor killings.<sup>47</sup> Specifically, it demonstrates how Article 340 is a *prima facie* violation of Articles 2(g), 15(1), and 15(2) of CEDAW.<sup>48</sup> Part III further argues that Jordan has not accurately reported the problem of honor killings to the Committee established under CEDAW and has failed to take the proper affirmative measures under Articles 2, 2(f), and 5(a) of CEDAW to eradicate honor killings.<sup>49</sup> Moreover, Part III asserts that Article 340 and application of Article 98 to honor killings contradicts

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44. *See infra* notes 200-08 and accompanying text (requiring that State Parties prevent distinctions made on the basis of sex and ensure that the court system protects women from discrimination).

45. *See infra* notes 209-15 and accompanying text (setting forth the obligation of State Parties to remove customs, practices, and social and cultural patterns of conduct between men and women that endorse superiority or inferiority of either sex).

46. *See infra* notes 216-87 and accompanying text (setting forth Jordan's violations of CEDAW).

47. *See infra* notes 222-50 (describing how application of both Article 340 alone, and through the provocation rule under Article 98, discriminate against women through drawing a distinction and by excluding women from receiving exoneration and legal excuse).

48. *See* CEDAW, *supra* note 33, arts. 2(g), 15(1), and 15(2) (mandating that State Parties repeal all laws discriminatory to women and grant women an identical legal capacity with men).

49. *See* CEDAW, *supra* note 33, arts. 2, 2(f), and 5(a) (mandating that State Parties take specific steps to end cultural practices discriminatory to women).

the intent of CEDAW's drafters and maintains that the drafters' purpose was to prohibit honor killings under CEDAW.<sup>50</sup>

Part IV proposes several recommendations for changing the current application of Article 340 and the Article 98 provocation rule to honor killings, which would ultimately elevate the social standing of Jordanian women.<sup>51</sup> First, the Jordanian Court of Cassation, Jordan's highest court, must return to its previous, pre-1964 precedent and abolish Article 340 in order to eliminate exoneration and reduced prison sentences for the commission of honor killings.<sup>52</sup> Second, CEDAW should be amended to include a specific provision stating that honor killings are discriminatory to women.<sup>53</sup> Third, the Jordanian government must modify the root of honor killings—tradition and culture—by working with the international community.<sup>54</sup> To further these goals, the international community must take the responsibility to educate Jordanian women about their legal rights through grassroots work in local structures, in an attempt to reform traditional practices that discriminate against women.<sup>55</sup>

## I. BACKGROUND

An analysis of honor killings first requires an understanding of the social origins of the crime. It is important to understand the reason-

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50. See *infra* notes 288-97 and accompanying text (arguing that CEDAW's framers intended to protect against honor killings).

51. See *infra* notes 317-62 and accompanying text (outlining recommendations for improving conditions for Jordanian women, including lobbying for the courts' return to pre-1964 precedent, adding a specific provision prohibiting honor killings to CEDAW, and educating Jordanian women of their rights to bring about legal change).

52. See *infra* notes 323-38 and accompanying text (outlining why a change by the judiciary is the only way to completely eliminate lenient sentences for honor killings).

53. See *infra* notes 339-46 and accompanying text (explaining why CEDAW must be amended to contain a specific provision prohibiting honor killings).

54. See *infra* notes 347-62 and accompanying text (concluding that educating women as to their legal rights and educating men and women about the interrelationship between cultural practices and violence against women is necessary to bring about cultural and social change, in addition to enforcement of revised laws).

55. See *id.* (explaining the necessity of education and grassroots activism in changing deeply rooted cultural beliefs about the role of women).

ing underlying the belief held by many Arabs, including Jordanians, that "[w]hen one's honor is tainted, blood is shed, whereas when blood is shed, honor is not lost."<sup>57</sup> This section illustrates the various social causes that have advanced the concept of honor crucial to Jordanian society.<sup>58</sup>

#### A. HONOR KILLINGS: SOCIAL AND CULTURAL ORIGINS

Although Article 340 of the Jordanian Penal Code, analyzed in Part III of this Comment,<sup>59</sup> is discriminatory to women, there is a complex set of traditional, social, and cultural factors that explain the practice of honor killings.<sup>60</sup> In much of Arab society, including Jordan, sex outside of marriage is illegal<sup>61</sup> and socially unacceptable.<sup>62</sup> As a result, Jordanian women are expected to actively guard their sexuality before marriage.<sup>63</sup> Specifically, Arab society perpetuates the

57. Abir Hamdar, *Testimonies on Honor Crimes*, XVII AL-RAIDA 22, 23 (2000) (illustrating that killing the source of dishonor is the only method of regaining a family's status); see also Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 154 (stating that a bond of honor connects the female to her male relatives). A woman's to her father and brother are the strongest because of the possibility her husband can opt to divorce her. See *id.*

58. See *infra* notes 60-94 and accompanying text (highlighting the various social forces, such as male and female gender roles, that create an acceptance of honor killings).

59. See *infra* notes 216-58 and accompanying text.

60. See *infra* notes 61-94 and accompanying text.

61. See Jehl, *supra* note 1, at 5 (reporting that premarital sex is a criminal offense in Jordan; however, if a girl under the age of eighteen is raped, the crime will be classified as rape).

62. See Suzanne H. Hammond, *Essay*, CIVIL SOCIETY 17, 19 (1998) (explaining that various acts by females can harm a family's honor and that the female family member's chastity is the most important form of honor because once lost it cannot be salvaged).

63. See BOUTHAINA SHAABAN, BOTH RIGHT AND LEFT HANDED 77 (1988) (explaining that "honour" is the preservation of a females' virginity for her future husband). Further, from a very young age, girls are taught that they must preserve and protect their chastity because a woman's lack of virginity could bring dishonor to the family. See *id.* at 9; see also Ruggi, *supra* note 13 at 13 (explaining that honor killing occurs because a woman has "misused" her sexuality). In fact, if a woman is not a virgin, numerous procedures have been utilized to return a her to her original state of virginity. See GOODWIN, *supra* note 16, at 279 (noting that women can choose hymen restoration, which is a medical operation performed throughout Islamic countries to reconstruct a woman's hymen). The procedure is

belief that any deviance from marital sexual relations is shameful and thereby brings dishonor to the family of a woman that engages in such activity.<sup>64</sup> Therefore, a woman's sexuality directly correlates to the honor of her family and the level of honor society associates with the family.<sup>65</sup> Moreover, the practice of honor killings is exacerbated by the strong emphasis placed on close familial relationships throughout the Middle East.<sup>66</sup>

In addition to affecting the honor of her family, a woman's sexuality is also an important symbol of her own worth.<sup>67</sup> Traditionally, a woman is expected to preserve her chastity and thus, her intact hymen indicates fulfillment of her pledge to abstain from sex prior to

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common in Jordan, although illegal, because it is viewed as a method of defrauding a potential husband. See Jehl, *supra* note 1, at 8 (observing that a Jordanian gynecologist who performs hymen restoration argues that such restoration is imperative in order to save women's lives from honor related deaths). Ancient rituals in some Middle Eastern cultures went as far as bringing an animal into the nuptial bedroom, sacrificing the animal, and using the blood as proof that the woman's hymen was ruptured. See M.E. COMBS-SCHILLING, *SACRED PERFORMANCES: ISLAM, SEXUALITY, AND SACRIFICE* 209 (1989) (describing that a groom hides an animal in his robe and sacrifices it to preserve the perception that the bride's own blood is on the marital sheets).

64. See GOODWIN, *supra* note 16, at 279 (discussing how gynecologists often examine "blushing" young brides in order to assure male relatives she is a virgin if she did not bleed during initial sexual intercourse with her husband). If a woman does not maintain her virginity prior to sexual relations with her husband, male relatives can kill her even after she is married. See *id.*

65. See Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 149 (describing how a woman's chastity correlates to her level of respect in society). Further, the wedding night is a time of judgment for a woman to prove to society she has remained virtuous. See *id.*; see also COMBS-SCHILLING, *supra* note 63 at 209 (explaining the tradition of a bride's sister parading and dancing around with a new bride's bloody undergarments on her head). Even today, hotel employees report that newlywed couples often steal their marital sheets because some elder relatives insist on viewing the evidence of the new wife's virginity. See *id.*

66. See Hammond, *supra* note 62, at 17 (arguing that cohesive family structures throughout the Middle East prevents accurate assessment of the extent of honor killings). The topic of honor killing has traditionally been taboo and since politicians grant deference to males who head the family the problem has often been ignored because those males are often responsible for honor killings. See *id.* at 17-18. As a result, drawing attention to the topic has been difficult. See *id.*; see generally Rana Husseini, *Crimes of Honor*, XVII AL-RAIDA 19, 19 (2000) (finding that the family unit is extremely important in Middle Eastern life).

67. See Jehl, *supra* note 1, at 1 (observing that a women's intact hymen indicates her commitment to her family's honor and to her future husband).

marriage.<sup>68</sup> The loss of a female family member's virginity adversely affects her social standing and also negatively impacts the marriage prospects of her female relatives.<sup>69</sup> Arab males view a female who has allegedly engaged in sex outside of marriage as less feminine and of little worth as a potential wife because she has not maintained her traditional feminine virtues.<sup>70</sup>

Moreover, there is a close relationship between a woman's status and society's role in actively monitoring her sexual practices.<sup>71</sup> The relationship between a woman's sexuality and her social status can be traced to various indigenous tribes.<sup>72</sup> Tribal and traditional customs often translate into modern practices in contemporary Arab society. Such customs demand that women and men conduct themselves in a specific manner.<sup>73</sup> First, in order to prove her chastity to society, a woman must constantly affirm that she is not interested in

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68. See Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 149 (finding that the hymen is the sociological sign of her positive attributes).

69. See Hamdar, *supra* note 57, at 23 (noting that if a dishonored female is not killed, her sisters are also disgraced and will be less likely to marry because they are not viewed with the same desirability as a woman who is a virgin); see also Husseini, *supra* note 66, at 20 (asserting that all family members will be negatively affected by a female's lack of virginity prior to marriage); see also Abu-Odeh, *Comparatively Speaking*, *supra* note 14, at 3 (arguing that dishonor injures the entire family).

70. See Ruggi, *supra* note 13, at 13 (reporting that many Arab males find females who have been raped as worthless because they no longer retain their virginity, an attribute that a new bride will ideally possess).

71. See Jehl, *supra* note 1, at 1 (describing how a woman's chastity is a concern of everyone in society); see also Lesnie, *supra* note 20, at 12 (noting that a family will be ostracized from society if there is even a mere suspicion that a woman in the family is not virtuous).

72. See LILA ABU-LUGHOD, *VEILED SENTIMENTS* 118 (1986) (explaining how women were traditionally viewed as incapacitated by menstruation and childbirth and thus, unable to gain the same level of honor as a man). Moreover, female association with nature was perceived as a sign of weakness that caused their inferior status. See *id.* at 124. Tribal cultures not only viewed a woman who strayed sexually as a dishonor to her family, but also as a threat to the entire social structure by undermining the female role of reproduction and the male role of protecting a woman's chastity. See *id.* at 119.

73. See Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 171 (asserting that a woman must act and dress in a particular fashion to prove her lack of interest in losing her virginity prior to marriage).

sex or her own sexuality.”<sup>74</sup> This burden of constant affirmation requires that post-pubescent women must avoid all men who are not of their direct family lineage.<sup>75</sup> Experts on Arab society explain that because of such socialization and behavioral norms, a woman’s identity is largely dependent on her intact virginity.<sup>76</sup> Second, the Arab male’s role is well-defined by his ability to protect the virginity of his female relatives, who are viewed as in need of male protection” in or-

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74. See ABU-LUGHOD, *supra* note 72, at 152 (declaring that the more a woman denies her own sexuality, the more honor she will possess); see also Shaaban, *supra* note 63, at 125-26 (noting that Arab women often never enjoy marital sexual relations because they are socialized to be “holy virgins” who shy away from anything sexual); see also Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 171 (arguing that although most modern Arab women engage in traditional belly-dance, an activity requiring very sexual movements of the hips and breasts, women ensure that they do not dance too seductively). Abu-Odeh further notes that many women (because they are virgins) are not aware of their own sexual attractiveness. See *id.* at 172.

75. See Attiya Dawood, *Karo-kari: A Question of Honor, But Whose Honor?*, 2 FEMINISTA! 3-4, 1 (2000) (last visited Mar. 31, 2001) <http://www.feminista.com/v2n3/dawood.html> (observing how a thirteen-year old girl is warned by a respected elder male to avoid calling out to him because it could be perceived by her male family members as a sexual advance). Abu Odeh asserts that a woman’s constant struggle to protect her virginity through her actions results in the creation of a “social hymen.” See Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 150 (arguing that because of a woman’s special attention to her own sexuality, a social hymen inhibits women’s actions and confines women to prescribed social spaces). A social hymen defines limitations on women’s behavior and a violation of any such limitation can result in an honor crime. See *id.*; see also Ruggi, *supra* note 13, at 13 (asserting that it is shameful for a woman to be seen with a male who is not a relative).

76. See Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 150 (explaining that a young girl is constantly made aware of her sexuality and the dishonor that her lack of virginity could bring to the family). A girl learns at an early age that her actions will cause negative gossip if she does various things, such as going to a café with a boy. Girls are often restricted to the company of females at the onset of puberty to avoid such gossip. See *id.*

77. See *id.* at 151 (reaffirming that males must protect their female relatives who are viewed as vulnerable to sexual predators and in need of male help). Maintaining gender roles correlates to the social status and perception of women as well. See Sawsan el-Messiri, *Self-Images of Traditional Urban Women in Cairo* in WOMEN IN THE MUSLIM WORLD 532-35 (Lois Beck and Nikki Keddie eds., 1978) (citing examples that illustrate how the female gender role requires her to act within a confined space that later correlates to a male’s perception of her social status and marriage prospects). For example, one Arab male thought of proposing to a woman until he saw her in a photograph with another man. Because he thought



der to maintain the family's honor.<sup>78</sup> A man's ability to protect his female relatives' honor defines his social status and his masculinity.<sup>79</sup> Male peers will view him as inferior if he cannot adequately protect a female relative's honor.<sup>80</sup>

Due to society's strong convictions regarding female sexuality, Arab families view a female who dishonors her family as a problem that can only be rectified by killing the woman who caused the shame.<sup>81</sup> An honor killing occurs when a male family member kills the "deviant female" in an attempt to restore his family's honor.<sup>82</sup>

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it was unacceptable for his own sister to be photographed with men outside the family, he expressed his disgust at the woman's behavior and indicates he would no longer view her as a respectable wife. Thus, the female gender role of acting within confined gender space later correlates to a male's perception of her social status. *See id.* at 532-33.

78. *See* Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 153 (arguing that men in the Arab world gain honor from protecting the virginity of female relatives). Arab males frequently express their views about what their sisters can or cannot do. *See id.* at 152; *see also* Ruggi, *supra* note 13, at 13 (noting that a woman's virginity is the property of her father, which must be guarded by him and other male family members until her marriage).

79. *See* Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 152 (asserting that it is accepted practice for a husband or male family member to know where a wife or female relative is at all times, who she meets, and what she does, or he is viewed as incapable of controlling her, and viewed negatively as controlled by his her).

80. *See* Gilliam Tett, 'Guardians of the Faith?': *Gender and Religion in an (ex) Soviet Tajik Village in* MUSLIM WOMEN'S CHOICES: RELIGIOUS BELIEF AND SOCIAL REALITY, 128, 137 (Camillia Fawzi El-Solh and Judy Mabro eds., 1994) (arguing that females shame male relatives by engaging in illicit sexual activity because society will perceive the males as incapable of protecting and defending them); Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 151-54 (explaining that a male becomes identified as a female because of his lack of ability to protect his female relatives, a duty which is identified with masculinity).

81. *See* SHAABAN, *supra* note 63, at 9 (recounting a story where a mother warns her daughter that the loss of virginity equates with the loss of her life). *But see* Jehl, *supra* note 1, at 2 (asserting that the belief that a family's honor will be regained through honor killing is backward because everyone will end up speaking about the fact that the family killed their daughter, again bringing up the fact that the family was initially dishonored).

82. *See* Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 142 (explaining that honor killings occur when females are murdered for failing to follow socialized sexual norms). According to Mohammed Ajjarmeh, Chief Judge of the High Criminal Court in Jordan, many males who commit honor killings actually suffer from such intense social pressure. They ultimately have no choice but to kill. *See* Jehl, *supra* note 1, at 4 (announcing that sometimes there are two victims of honor

Supporters of such crimes believe that adulterous women are at fault because they are weak and unable to control their sexuality. Therefore, supporters often argue women perpetuate adultery in society.<sup>83</sup> Male family members view it as their duty to cleanse the family name by killing the female relative for her disobedience.<sup>84</sup> These societal convictions have caused some Jordanian women to share the belief that they should be killed for reasons of honor. Some women believe they are not worthy of life after committing a socially taboo sexual act.<sup>85</sup> While honor killings are predominantly committed by men and there are no known cases of men as victims of honor killings, in one instance, a Jordanian girl killed her mother for honor-related reasons.<sup>86</sup> Although Jordanian law also provides an excuse for killing the adulterous male for reasons of honor, it is rarely invoked in this situation because the female is believed to be at fault for the misconduct.<sup>87</sup>

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killings, the murdered and the murderer, because society essentially forces a family to kill).

83. See Donna Abu-Nasr, *Making it Dishonorable to Kill for 'Honor' Law: Reformers are Trying to Dismantle Customs That Let Men Murder Women They Suspect of Soiling the Family Name*, L.A. TIMES, Jul. 9, 2000, at 4 [hereinafter Abu-Nasr, *Making it Dishonorable*] (reporting a statement of a male member of Parliament, Mohammed Kharabsheh, head of the Parliament's Legal Committee, to whom an amendment to Article 340 would be sent if it was not voted down outright). Kharabsheh argues that women are seen as a threat to society because women alone cause adultery and that without adulterous females, society would not face this problem since "men will become good on their own." See *id.*

84. See Hamdar, *supra* note 57, at 22 (explaining how males in one family had a family contract to kill any female who dishonored the them).

85. See Abu-Nasr, *Making it Dishonorable*, *supra* note 83, at 5 (explaining a twenty-one year old Jordanian girl argued she "didn't deserve to live" after dating a male neighbor and surviving her father's attempt to choke her with rope and her two younger brothers' attempt to drench her with kerosene and set her on fire). She now must live in hiding and regrets bringing dishonor to her family for living with her boyfriend before marriage. See *id.*

86. See Prusher, *supra* note 14, at 1 (reporting a case where a Jordanian girl killed her divorced mother because the mother's dating habits brought dishonor to the family). Salwa, a fifteen-year-old girl, was pressured by her grandmother to kill her mother. Further, Salwa asserts her own marriage prospects would have been severely restricted if she did not do so because the family's honor was suffering. See *id.*

87. See Ruggi, *supra* note 13, at 13 (explaining that in the instance of rape, only the woman is punished because the man is considered innocent). According to Ruggi, it is a woman's responsibility to maintain the honor of her family. See *id.*

One major problem caused by honor killings is that a great number of them are actually mistaken honor killings. Lack of verification as to whether illicit sexual activity actually occurred results in a high percentage of mistaken honor killings, because male suspicion of immoral activity is often based on rumor and is factually unfounded.<sup>88</sup> For example, Jordanian doctors who verify the virginity of females upon request of male family members often examine the same woman in the office weeks later—this time to perform her autopsy after her life has been taken due to such rumors.<sup>89</sup> Thus, the prevalent belief that the female is at fault for any adulterous misconduct perpetuates honor killing regardless of the innocence or guilt of the female who has allegedly dishonored her family. After committing an honor killing, a male relative, if actually charged with a crime, can successfully argue in court that the killing was a crime of honor and is thereby exonerated.<sup>90</sup> Should an honor killing fail, the laws often punish the victim, rather than punishing the perpetrators.<sup>91</sup> Equally significant, the law encourages multiple crimes because rape victims are typically killed by their own families since society be-

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88. See Int'l Women's Law Group, *supra* note 10, at 1 (highlighting a recent study, which verified that twenty-nine of thirty victims of honor killings were actually virgins). For example, a woman was recently killed for reasons of honor because she talked to a man during her wedding party. See 20 Jordanian Women Died in 2000 in "Honour Killings", AGENCE FRANCE-PRESSE Dec. 31, 2000, at 1, available at 2000 WL 24790096 (articulating the situation of a recent honor killing where a woman was beaten to death and buried at her own wedding party).

89. See Jehl, *supra* note 1, at 6 (observing a recent example of a Jordanian doctor who conducted an exam of a girl who was suspected of eating in a restaurant with a man and whom he later examined to determine the cause of her death). Although the doctor found the girl medically was a virgin, she and her sister were killed by their father and two brothers who could not believe the girls were innocent of illicit sexual activity, prohibited by Jordanian law. See *id.*

90. See art. 340, Jordanian Penal Code (no. 16 1960), cited in Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 143 (acknowledging legal excuse that provides Jordanian males with the opportunity to avoid severe legal punishment by arguing he committed a crime for reasons related to honor).

91. See Nafisa Shah, *Honour Killings: Code of Dishonour* DAILY DAWN KARACHI, Nov. 19-25, 1998, at 7 (on file with author) (emphasizing that honor killings are contradictory in that what should be criminal, the attempted murder of a woman, is viewed as an act of punishment for the individual who broke the honor code).

lieves the woman is at fault for the rape.<sup>92</sup> Due to the fact that most honor killings occur when a male family member *suspects* a female relative has engaged in illicit or adulterous sexual activity,<sup>93</sup> the mistaken honor killing further illustrates the tragedy of social pressure and the role of honor in dictating the behavior of all family members.<sup>94</sup>

#### B. HONOR KILLINGS IN JORDAN AND THE JORDANIAN PENAL CODE

As honor killings occur at a higher rate in Jordan than in any other Middle Eastern country,<sup>95</sup> an examination of Jordan is extremely important to a discussion of honor killings.<sup>96</sup> There are several reasons for analyzing honor killings and evaluating Jordanian law, specifically Articles 340 and 98 of the Jordanian Penal Code, in Jordan. First, reports indicate that honor killings are increasing throughout the Middle East, indicating a worsening situation for women, and that the practice is becoming the most common type of murder in Jordan.<sup>97</sup> Second, Jordan's documentation of criminal and court

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92. See Husseini, *supra* note 66, at 19 (explaining one instance where Kifaya, a young girl, raped by a twenty-one year old brother was eventually killed by her own family). Prior to her death, Kifaya suffered the slitting of her throat by her older brother Khalid, a marriage and subsequent divorce to a man fifty years her senior, and was finally murdered by her family. Her entire family blamed Kifaya for seducing her brother, although she was forced to have sex with him against her will. *See id.*

93. See Hammond, *supra* note 66, at 18 (recognizing that ninety-five percent of all reported honor killings are based on male suspicion).

94. See *supra* notes 59-93 and accompanying text (explaining how a woman's failure to maintain her chastity defines the status of all family members and that fear of social dishonor dictates the roles of all family members).

95. See *Women Lawyers Want 'Karo Kari' Declared as Murder*, BUSINESS RECORDER Nov. 23, 2000, available at 2000 WL 28927240 (listing countries that practice honor killing as the following: Afghanistan, Bangladesh, Brazil, Ecuador, Egypt, India, Iran, Iraq, Israel, Lebanon, Morocco, Nepal, Palestine, Pakistan, Peru, Sweden, Syria, Turkey, Uganda, United Kingdom, and Yemen).

96. See Fadi Moghaizel, *Crimes of Honor: Crimes of Horror*, XVII AL-RAIDA 17 (2000) (explaining that Jordan has more honor killings per capita than any other country in the world).

97. See "Honor Killings" Increasing in Pakistan, Jordan and Turkey, AGENCE FRANCE-PRESSE, Apr. 10, 2000, at 1, available at 2000 WL 2771116 (providing the statement of Radhika Coomaraswamy, Special Rapporteur for Violence

documents is considered superior to many other Middle Eastern countries and provides a more accurate analysis of the problem.<sup>98</sup> Jordan also presents an interesting case study of honor killings because it highlights the social and cultural forces behind the practice.

Jordanian law regulates honor killings under Article 340 of the Jordanian Penal Code. Article 340(i) states, "[h]e who catches his wife, or one of his female unlawfs"<sup>99</sup> committing adultery with another, and . . . kills, wounds, or injures one or both of them, is exempt from any penalty."<sup>100</sup> Article 340(ii) further states, "[h]e who catches his wife, or one of his female ascendants or descendants or sisters with another in an unlawful bed, and he kills or wounds or injures one or both of them, benefits from a reduction of penalty."<sup>101</sup>

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Against Women, who reported a "sudden increase" in the number of honor killings in Jordan, Pakistan and Turkey); see Pat Lancaster et al., *Standing Up to Be Counted*, THE MIDDLE EAST, Sept. 1, 1995, at 2, available at 1995 WL 14950200 (finding that in the past ten years, honor killings are the most frequent type of murder in Jordan); see also Int'l Women's Law Group, *supra* note 10, at 4 (finding a forty-three percent increase in honor killings committed in Jordan from 1996-1997).

98. See Jehl, *supra* note 1, at 3 (finding Jordan is one of the few Arab countries with somewhat credible crime statistics).

99. See Abu-Odeh, *Comparatively Speaking*, *supra* note 14, at 3 & n.35 (noting that the phrase "female unlawful" denotes any female relative in both ascending and descending familial lineage). The Ottoman Code, from which Jordan devised much of its current law, utilizes the term "female unlawfs" to denote females who men can justifiably kill with full exemption from penalty. See *id.*; see also Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 144 (explaining the origin and scope of women covered under the term female unlawfs); see also art. 548, Syrian Criminal Code cited in Moghaizel, *supra* note 96, at 17 (acquitting a male for killing his wife, sister, the partner, and female relatives in both ascending and descending lines of the family who allegedly engage in illicit sexual activity); see also art. 252, Omani Criminal Code cited in Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 144 (acquitting or reducing the sentence for all males who kill a female wife, sister, daughter, or mother and the partner who engage in illicit sexual behavior). The Ottoman Code, which is one provision that Jordan used to draft Article 340, utilizes the term "female unlawfs" to denote females who men can justifiably kill with full exemption from penalty. See *id.*

100. Art. 340, Jordanian Penal Code (no. 16 1960), cited in Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 143 (stating clause (i) of Article 340).

101. *Id.* The French Penal Code, which Jordan also utilized to write its Penal Code, utilizes the words "ascendante, descendentante," denoting that the wife, female ascendants, descendants, and sister are all included under the law. See *id.* at 143-44. The French Code, in conjunction with the aforementioned Ottoman Code,

Although Article 340(i) allows a male who witnesses actual adultery complete exoneration from penalty, Article 340(ii) only provides a male leniency for witnessing his female relative in an "unlawful bed," which is a term that denotes the bed of a man who is not her husband.<sup>102</sup> Both Article 340(i) and 340(ii) require a male's *firsthand observance* of a female in a sexually suggestive situation.<sup>103</sup> Logically, Article 340(ii), as written, only grants a male leniency for observing a female relative in the bed of another man without witnessing any sexual activity.<sup>104</sup>

Currently, Jordan has one of the most lenient penal codes in the Middle East, as its scope is greater than most other Middle Eastern laws that regulate honor killings. Although Jordan's executive branch has introduced legislation to amend Article 340,<sup>105</sup> conservative members of Parliament continuously block amendments to change

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provide the basis for Article 340 of the Jordanian Penal Code's expansive excuse for males who kill a female relative who is allegedly involved in illicit sexual practices. *See id.*

102. *See* Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 154 (noting the distinction between Article 340(i) and Article 340(ii)). Such a distinction would not have been made in a traditional world of honor because both types of murder would be fully excused. *See id.* at 154-55.

103. *See* Jehl, *supra* note 1, at 4 (finding a male can be exonerated for murder if he is a witness to a female relative's adulterous act).

104. *See* Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 154 (indicating a bifurcation in the Jordanian Penal Code differentiates between exoneration, which is granted for witnessing *flagrante delicto*, and lenient sentences, which are provided for witnessing a female in an unlawful bed).

105. *See* Hamdan & Hussein, *Lower House Rejects Proposal*, *supra* note 27, at 2 (describing recent legislation proposed by the executive branch that would require individuals who commit adultery to be sentenced to one to three years in prison). The legislation also requires a married person be sentenced to at least two years; it mandates a three year sentence for both adulterers if the crime was committed in the home of a non-adulterous spouse. *See id.*

In addition, the Jordanian government has recently established the first center for women with the United Nations Development Fund for Women ("UNIFEM") in response to the increasing number of reported honor killings. *See* Thomas, *Deaths That Dishonour*, *supra* note 1, at 3 (reporting UNIFEM will help open new women's refuge for battered women); *see also* Karen Thomas, *Women's Rights: A Question of Honor: Arab and Muslim Women are Taking the Initiative in the Latest Campaign to End So-Called Honor Killings*, ARABIES TRENDS, Jan. 1, 2000, at 3, available at 2000 WL 12110714 [hereinafter Thomas, *A Question of Honor*] (observing that a new women's center will open later in 2000).

Article 340 of Jordan's Penal Code.<sup>106</sup> Resistance by conservative members of the lower house of Parliament, the Chamber of Deputies, has ultimately blocked amendments to Jordan's Penal Code.<sup>107</sup> The blockage of remedial legislation runs counter to the fact that Jordan is considered the most liberal Arabic country, with a socially progressive executive branch and a high level of education among women.<sup>108</sup> Conservative forces repeatedly defeat amendments to Article 340 and assert that honor killings are linked to, or supported by, the Islamic religion.<sup>109</sup> Although untrue, misinterpretation of the Islamic faith among Arab citizens is a primary misconception that perpetuates honor killings.<sup>110</sup> In addition, proponents of honor killings argue that advocates of amending Article 340 are influenced by

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106. See Prusher, *supra* note 14, at 3 (recognizing that Jordan is usually identified as the most liberal nation in the Middle East); see also McAllester, *supra* note 13, at 2 (identifying Jordan as a traditional society experiencing changes due to a liberal royal family, a high level of education, and a location near the Mediterranean basin). Further, Internet access and technology has allowed remote communities to participate in women's issues. See Prusher, *supra* note 14, at 3 (noting that the Internet has increased women's awareness of alternatives to a strict, Islamic life).

107. See Hussein, *supra* note 66, at 20 (commenting on the views of some members of the lower house of the Jordanian Parliament). Hussein reports that one member, Mahmoud Kharabsheh, argued that Article 340 is necessary to prevent moral corruption. See *id.*; Howard Schneider, *Women in Egypt Gain Broader Divorce Rights; Wide Coalition Pushed for Legal Equality*, WASH. POST, Apr. 15, 2000, at 1-3 (finding that the process of amending discriminatory laws is often a battle between conservative and less conservative portions of society); see generally, Halaby, *Jordan Seeks Cessation*, *supra* note 29, at 1 (arguing that Parliament is composed primarily of conservative Bedouin tribe members).

108. See Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 166-67 (noting that although many Jordanian women are educated, education is primarily viewed as a means to better a woman's role as a mother and wife). Further, clearly defined gender roles delineate that women should rarely cross into the public sphere. See *id.* at 167. The home and religion are the primary domains of Jordanian women, and a woman's work is always secondary to her role family role. See *id.*

109. See Hussein, *supra* note 66, at 19 (explaining fundamental Islamics often support Article 340 honor killings because they rely on misconstrued interpretations of the Islamic faith); see also Jehl, *supra* note 1, at 6 (finding many Arab males feel they are carrying out the law of Islam by killing shameful female relatives). In reality, Islamic law calls for four male witnesses or repeated confessions from the accused to prove an act of adultery. See *id.* at 7.

110. See Moghaizel, *supra* note 96, at 16 (arguing many Islamics adopt what they desire from religion and reject contrary components of the faith).

Western nations who seek to corrupt traditional morals.<sup>111</sup> Further, some supporters of Article 340 have argued that honor killings are only a problem among the poor. This argument is also unfounded.<sup>112</sup> Although the majority of honor killings occur among lower income, rural, or tribal citizens, the crimes actually occur across the socio-economic spectrum.<sup>113</sup>

Even if the lower house of Parliament could be convinced to approve amendments to Article 340, the Court of Cassation presents a major impediment to reforming widespread acceptance for honor killings. The court's practice is to apply a provocation rule to perpetrators of honor killings, which would still apply regardless of legislation abolishing Article 340.<sup>114</sup> For this reason, legislative action by the Chamber of Deputies is insufficient to reform Jordanian law.<sup>115</sup>

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111. See Hamdan & Hussein, *Lower House Rejects Proposal*, *supra* note 27, at 1 (arguing many deputies of Parliament are opposed to abolishing or amending Article 340 of the Jordanian Penal Code because they believe others are attempting to demoralize Jordanian society); see also Hussein, *supra* note 66, at 19 (setting forth the Islamic Action Front political party's argument that advocates of abolishing Article 340 are supported by a Western plot).

112. See Jehl, *supra* note 1, at 3 (asserting upper class citizens do not admonish the practice of honor killings). Reports indicate that lawyers, physicians, politicians, and clerics all endorse honor killings. See *id.* In one example, the al-Goul family describes their descent from a highly regarded, prominent family to social disgrace and ostracism by their own family. The al-Goul's reduced social standing occurred because their daughter was suspected of infidelity. After being told they must kill their daughter, the family finally shot her. See *id.* at 1; see also McAlister *supra* note 13, at 3-4 (describing an economist who killed his wife because someone informed him his wife was unfaithful).

113. See Jehl, *supra* note 1, at 3. But see *Jordanian Women Killed 'For Honour'*, PAKISTAN PRESS INTERNATIONAL SERVICES LIMITED, Apr. 25, 2000, at 1, available at 2000 WL 18962593 (noting that the National Jordanian Campaign to Eliminate Crimes of Honour reported most honor killings occur among poor, uneducated Jordanians).

114. See Hamdan & Hussein, *Lower House Rejects Proposal*, *supra* note 27, at 2 (describing recent legislation proposed by the executive branch). The draft legislation, however, does not prohibit the judiciary from applying Article 98 to honor killings, regulated under Article 340. Therefore, the judiciary has the ultimate power to determine whether or not a male who is found guilty of a crime of honor receives a reduced sentence. See *id.*; see also Interview with Lama Abu-Odeh, Professor of Law, Georgetown University Law Center, Washington, DC (Sept. 4, 2000) [hereinafter Abu-Odeh Interview] (explaining the judiciary's control of Article 340's implementation through the Article 98 general provocation rule).

115. See *infra* notes 317-62 and accompanying text (emphasizing a changed law



Specifically, honor killings in Jordan are significant because the Jordanian Court of Cassation has widened the scope of individuals and the types of behavior it exonerates and for which it provides reduced prison sentences.<sup>116</sup> For the last two decades, the Court of Cassation has greatly expanded the scope of Article 340 by applying Article 98 of Jordan's Penal Code to honor killings.<sup>117</sup> Article 98 is a general provocation rule that allows courts to provide lenient sentences for killings of passion.<sup>118</sup> Unless the courts are prohibited from applying Article 98 to honor killings, or the use of Article 98 is restricted to extreme cases, the discriminatory treatment of female victims of honor crimes will not abate.<sup>119</sup>

Article 98 states, "[h]e who commits a crime in a fit of fury caused by an unlawful and dangerous act on the part of the victim benefits from a reduction in penalty."<sup>120</sup> The Court of Cassation's application of Article 98 has greatly expanded the scope of Article 340 by removing the requirement that a woman's alleged sexual impropriety actually be witnessed, as specified under Article 340.<sup>121</sup> Further, the court's application of Article 98 allows judges to grant lenient sentences and total exoneration to perpetrators of honor killings by classifying the murder victim's act, whether it is adultery, rape, or an-

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will not necessarily curb the Court of Cassation's application of Article 98 to honor killings).

116. See Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 159 (discussing the Court of Cassation's revised position applying Article 98 to honor killings).

117. See *id.*

118. See Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 159 (discussing the Jordanian Penal Code's Article 98 application for killings "committed . . . in a fit of fury.").

119. See Interview with Abu-Odeh, *supra* note 114 (emphasizing that Jordanian courts have the ultimate power to decide whether or not to apply Article 98, regardless of whether Article 340 is amended or abolished).

120. See art. 98, Jordanian Penal Code, *cited in* Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 159 (noting the language Jordanian courts apply to honor killings under Article 98).

121. See *id.* (explaining Article 98, as applied, further expands the scope of leniency by removing the immediacy requirement and potential exoneration); see also Rana Hussein, *Sheikh Tamimi Outlines Islam's Position on Honour Crimes*, Sept. 19, 1999, at 1 (on file with author) (addressing the illusion that Article 340 is the full problem with the Jordanian Penal Code and explaining that Article 98 is the provision of the law often invoked by Jordanian courts).

other act, as unrightful and dangerous.<sup>122</sup> Although the Court of Cassation, which applies Article 98, typically evaluates the nature of the act, the passage of time, and the killer's knowledge of the victim's act, the court has greatly expanded the scope of individuals that qualify for a reduction in penalty.<sup>123</sup>

Article 98 provides that crimes committed in the heat of passion should receive lesser criminal punishment than premeditated crimes.<sup>124</sup> The Court of Cassation's decision to apply Article 98 to honor killings has been inconsistent. First, the Court of Cassation explicitly rejected the application of Article 98 to honor killings in decisions prior to 1964, and arguably long before that, although a lack of documentation makes it impossible to prove.<sup>125</sup> In its pre-1964 precedent, the court clearly articulated that application of Article 98 is contrary to Jordanian law because a victim's act of adultery does not amount to an unrightful or dangerous act and Article 98 is only a general provision, whereas Article 340 is the specific provision that should be applied to honor killings.<sup>126</sup> In a dramatic 1964 decision,

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122. See Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 158 (explaining the Court of Cassation's justification for lack of consistency in applying Article 98 to honor killings).

123. See *id.* at 158 (explaining the Court of Cassation's tolerance for expanding the number of males that qualify for a reduction in penalty). A revival of Islamic fundamentalism is one explanation of the Jordanian court's changed position. See Jehl, *supra* note 1, at 7 (noting the rise in Islamic fundamentalism in the last twenty years corresponds to society's increased emphasis on chastity); see also Abla Amawi, *Jordan's Leila Sharaf: An Interview*, in ARAB WOMEN: BETWEEN DEFIANCE AND RESTRAINT, 26, 29 (Suha Sabbagh ed., 1996) (describing how women face increased difficulty as a result of re-emergence of "conservative right-wing forces" in the 1980's and 1990's).

124. See Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 161 (explaining that application of Article 98 is premised upon acceptance that honor killings are committed in a heat of passion).

125. See *id.* at 158 (differentiating the Court of Cassation's present application of Article 98 and its decisions from 1953-1965 where it reasoned against applying Article 98 to crimes specified in Article 340). Abu-Odeh indicates there are very few court records prior to 1964. See *id.*

126. See Cassation Criminal 53/53, 578 (1953), cited in Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 158 (holding "[t]he shameless behavior of the victim [of an illegitimate pregnancy] is not considered an unrightful act for the purposes of Article 93 [the historical origin of Article 98], and cannot be seen as calling for a reduction of the penalty . . ."). In addition to finding that a woman's actions do not give rise to application of Article 98, the court also held that Article 98 is too gen-

however, the Court of Cassation rejected all previous case law and applied Article 98 to honor killings.<sup>127</sup>

Second, by applying Article 98 to honor killings, the Court of Cassation completely disregards the purpose of Article 98 as a provocation defense, and improperly applies the rule to situations that are premeditated murder.<sup>128</sup> Although Article 340 regulates honor killing, the application of Article 98 allows a male to claim that his lost honor caused him to act in an uncontrollable rage.<sup>129</sup> This logic is flawed since almost all honor killings occur after concerted planning and without actual observance of illicit sexual activity that might

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eral to be applied to Article 340. *See id.* at 158-59.

127. *See* Cassation Criminal 59/64 1036 (1964), *cited in* Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 159 (holding that although Article 340(ii) only allows for a reduction of penalty in a case in which the defendant catches one of his sisters, ascendants or descendants in an unlawful bed, Article 98 benefits a defendant if he has committed his crime in a "fit of fury"). More powerfully, in 1975, the Court of Cassation specifically stated:

The fact that the law has provided for a reduction of penalty in a specific case does not mean that the court cannot apply the general rules provided for in Articles 97, 98, as well. The general rules are applied when the provisions dealing with the specific cases do not. The victim's act of adultery is a material act that touches the defendant's honour and that is why it is not violation of the law to grant him a reduction of penalty.

*Id.* at 159-60.

*See also* Cassation Criminal 5/67 221 (1967,) *cited in* Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 159 (finding that the defendant's knowledge of his daughter's act of adultery, which occurred simultaneously with killing her, allows the father an exemption because the act occurred in a "fit of fury"). Moreover, in this particular case, the court held that the daughters act "constitutes an unrightful attack on the defendant's honour and it is dangerous within the meaning of Article 98." *Id.*

128. *Compare* Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 161 (arguing the Court of Cassation has essentially tolerated application of a rule that is often not applicable to the circumstances of each individual case of honor killing), *with* Victoria Nourse, *Passion's Progress: Modern Law Reform and the Provocation Defense*, 105 YALE L.J. 1331, 1335 (1997) (arguing that women are the most frequent victims of the US legal excuse for crimes of passion as they are invoked most frequently by males who kill females). For example, juries have returned manslaughter verdicts based on a passion defense for murder charges. One court held that a male accused of murder acted in a heat of passion when he killed his wife because she moved furniture out of their jointly owned house. *See id.* at 1332.

129. *See supra* note 127 (identifying the Jordanian Court of Cassation's current jurisprudential interpretation of Article 98's application to honor killings).

cause one to commit a crime based on experiencing a heat of passion or rage.<sup>130</sup> In fact, often elaborate family planning occurs before a family commits an honor killing.<sup>131</sup> Again, a family can only regain their honor by killing the disgraced female, which further accounts for the lack of male honor deaths.<sup>132</sup> The court has not enforced the requirement that honor killing occur simultaneously with discovering or observing a female's illicit sexual activity, as was intended under Article 340.<sup>133</sup> The court's post-1964 decisions, therefore, have granted reduced punishment to Jordanian males who commit honor killings through an improper application of Article 98.<sup>134</sup>

More than ninety percent of honor killings occur based on *suspicion* or *rumor* of illicit sexual relations.<sup>135</sup> By allowing a man to kill a woman for sexual impropriety he did not witness, courts have permitted the practice to continue based on many excuses, including

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130. See Lamis Andoni, *There are Still No Excuses*, JORDAN TIMES, at 1 (on file with author) (arguing that honor killings are really a societal justification of deliberate murder).

131. See Hamdar, *supra* note 57, at 22-24 (detailing one example of an elaborate family plan to kill Najiyeh, who informed her mother she had been raped by a family friend staying at their home); see also Jehl, *supra* note 1 (describing a family plan to kill pregnant daughter).

132. See Hamdar, *supra* note 57, at 24 (explaining that even though his brother divorced a woman who was accused of looking at another man, she must be killed because looking at her would be a bad influence on his children while they grew up); see also, *supra* notes 59-94 (explaining that the only option to restore family honor is to kill the accused female).

133. See Cassation Criminal 19/68 494 (1968) cited in Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 160 (holding that a killing committed two days after the defendant learned his sister was engaging in adultery occurred in a fit of fury and was not, therefore, premeditated); see also Cassation Criminal 58/73 849 (1973) cited in Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 160 (finding that a boy who killed his sister after one day is justified under Jordanian law, as opposed to premeditated murder because the court found that the boy did not have time to "cool off").

134. See Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 161 (concluding that there is no established pattern to the Court of Cassation's application of Article 98 to honor killings).

135. See *supra* notes 88-89 (explaining that most honor killings are committed based on rumor of sexual impropriety which makes them premeditated since they are rarely committed in reaction to watching a female commit adultery with another man).

rumor.<sup>136</sup> The court's justification of honor killing encourages criminal behavior because it allows Jordanian men to use honor killings as a pretext for the commission of other crimes by killing a female relative and successfully arguing she was involved in illicit sexual activity.<sup>137</sup> The court's improper application of Article 98 also increases the likelihood that if a man is actually sentenced, the prison term will likely be *de minimis*<sup>138</sup> because Article 98 allows for sentences as low as six months and usually only as much as two years.<sup>139</sup> In practice, males who kill females for reasons of honor almost always receive reduced sentences.<sup>140</sup> The low number of males actually prosecuted for honor killing combined with honor killings officially classified as "disappearances" further perpetuates the practice.<sup>141</sup> Ironically,

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136. See Abu-Odeh, *Comparatively Speaking*, *supra* note 14, at 7 (explaining Article 98, as applied, allows a male to be acquitted for honor killings days after the fact). Abu-Odeh contrasts honor killings with crimes of passion in the United States, arguing that mainly daughters and sisters are killed in the Arab world, in contrast to predominantly wives who are killed in the United States. Further, Abu-Odeh criticizes assertions that crimes of passion are rare in the United States, and that honor killings are common in the Middle East. See *id.* at 8.

137. See Thomas, *A Question of Honor*, *supra* note 105, at 2, (finding that the leniency of Jordanian courts is causing false claims which have been discovered by Amnesty International). Typically, such claims are based on some type of financial interest, such as property. See *id.*

138. See Jehl, *supra* note 1, at 4 (noting sentences as low as six months are frequent due to Jordanian courts increased application of Article 98).

139. See Patrick Goodenough, *Middle East Women Campaign Against 'Family Honor' Killings*, CONSERVATIVE NEWS SERVICE IN-DEPTH, Mar. 8, 2000 (on file with author) (reporting cases where Jordanian males served sentences of six months for killing female relatives). For example, one Jordanian, Sirhan, spent only six months in prison for shooting his sister in the chest. Sirhan killed her because there were reports that a family member raped her. *Id.* Mohammed Abed similarly served a six-month term for killing his nineteen-year-old sister because she went out to eat and received gifts and spending money from a man. *Id.*

In contrast, those that commit murder in Jordan are usually sentenced to life imprisonment or the death penalty. See Alanna Mitchell, *Girl's Murder A Turning Point*, THE GLOBE AND MAIL, Jan. 11, 2001, at 1 (declaring murder, as opposed to honor killing, is treated very seriously in Jordan, rarely occurs, and is stringently investigated by police).

140. See Thomas, *Deaths That Dishonour*, *supra* note 1, at 3 (reporting the case of a man who killed his sister whose charge was reduced from premeditated murder to manslaughter, and resulted in one year in prison).

141. See Lesnie, *supra* note 20, at 12 (explaining that social pressure by the community encourages local police to ignore reports of honor killings and prevents

women who survive attempted honor killings are usually punished with permanent detention in criminal penitentiaries, due to the Jordanian government's belief that it is only in prison that such women can be protected from their families.<sup>142</sup> Inevitably, women released from detention will be murdered instantaneously by their male family members, regardless of oral and written promises to the contrary.<sup>143</sup> Thus, the courts' acceptance of honor killing through the application of Article 98 further legitimizes honor killing.<sup>144</sup>

### C. JORDANIAN LAW IN RELATION TO OTHER MIDDLE EASTERN COUNTRIES

Even though honor killing occurs in other Middle Eastern countries, Jordan's Penal Code exonerates and allows shorter prison terms more frequently than many other Middle Eastern countries.<sup>145</sup> Article 340 is lenient in several respects. First, it allows the legal system to completely exonerate a male who kills a female relative for reasons

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prosecution of honor killings); *see also* Thomas, *A Question of Honor*, *supra* note 105, at 2 (finding families who commit honor killings often report that their daughters eloped or are missing). *See generally* Press Release, Human Rights Watch, Jordanian Law Excuses Murder (Aug. 11, 1999) (on file with author) (indicating widespread lack of prosecution for honor killings).

142. *See Jordan's Women Prisoners Prefer Jail to Freedom at Home*, AGENCE FRANCE-PRESSE, July 7, 2000, at 1, available at 2000 WL 2830339 [hereinafter *Jordan's Women Prisoners*] (disclosing women often spend indefinite, state-sanctioned time in prison due to fear they will be killed by family members). The article notes that thirty-five of two hundred-fourteen women prisoners in Jordan are in protective custody because of such fear. *See id.*; *see also* McAllester, *supra* note 13, at 3 (describing intolerable conditions woman experience in Jordanian prisons). One woman being held for her own safety reported she was forced to sleep on a mattress in a room of fifty incarcerated criminals. *See id.*

143. *See* Hussein, *supra* note 66, at 21 (discussing that once released, male relatives kill or abuse the accused woman). In one instance, a woman named Jasmin was killed by her brother after walking into her home the day she was released from prison, although her father signed a contract promising not to harm her. Jasmin was in detention because a close relative had raped her. *See id.*

144. *See infra* notes 121-43 and accompanying text (discussing the effects of the Court of Cassation's application of Article 98 to honor killings).

145. *See infra* notes 145-52 and accompanying text (explaining how complete exoneration and coverage of all female relatives distinguishes Jordanian law from other Middle Eastern laws); *see also* Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 144-45 (outlining the differences between Article 340 of the Jordanian Penal Code and similar exemptions under the laws of other Middle Eastern countries).

of honor.<sup>146</sup> The Jordanian Penal Code Article 340(i) provides a total, rather than partial, excuse for a male who kills a female relative after catching her in the act of committing adultery.<sup>147</sup>

Second, whereas Jordan's Article 340 provides all male relatives a legal excuse,<sup>148</sup> other countries in the Middle East provide a legal excuse only to a husband who commits an honor killing.<sup>149</sup> Additionally, Jordanian law applies not just to a man's wife, as is the practice

146. See art. 340, Jordanian Penal Code (no. 16 1960), *cited in* Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 143 (stating that Article 340 allows for exemption and leniency in prison sentences for crimes committed for reasons of honor). Article 340 of the Jordanian Penal Code dates to the Ottoman Code Penal Code of 1858 and the French Penal Code of 1810. See *id.*; see also Abu-Odeh, *Comparatively Speaking*, *supra* note 14, at 3 (reiterating that the Jordanian Penal Code utilized French and Ottoman terminology "wife or female unlawful"). The full text of Article 188 of the Ottoman Code States:

He who has seen his wife or any of his female unlawfs with another in a state of "ugly" adultery and then beat, injured, or killed one or both of them will be *exempt from penalty*. And he who has seen his wife or one of his female unlawfs with another in an unlawful bed and then beat, injured or killed one or both of them, will be excused.

See Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 144 (emphasis added). Here, adultery stems from the word "zina" in Islamic law, which denotes illicit sexual relations between men and women, regardless of whether or not they are married. See *id.*

147. Compare art. 340(i), Jordanian Penal Code *cited in* Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 143 (granting a male an exemption from penalty under Article 340(i) for killing after catching his wife or "female unlawful" in the act of adultery), with art. 340, Syrian Criminal Code no. 48 (1949) *cited in* Moghaizel, *supra* note 96, at 17 (providing acquittal for a male who kills a female relative because of her illicit sexual behavior), and Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 144 (explaining that the Jordanian, Syrian, and Lebanese laws provide for total excuse and reduced penalty); see also art. 153, Kuwaiti Criminal Code, *cited in* Moghaizel, *supra* note 96, at 17 (allowing a male who kills his wife, daughter, mother, or sister a reduced penalty, which cannot exceed three years of prison in addition to a possible fine); see also art. 237, Egyptian Criminal Code No. 58 (1937), *cited in* Moghaizel, *supra* note 96, at 17 (providing a reduced sentence for a male who kills his wife and her partner); see also Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 144 (stating that criminal laws in Kuwait, Egypt, Tunisia, and Libya provide reduced sentences for males who kill female relatives, as opposed to total exemption from penalty).

148. See *supra* notes 99-104 and accompanying text (describing the practice of granting an exemption or excuse to any male who kills any female relative).

149. See *id.*; see also *supra* note 147 (providing examples of both the Kuwaiti and Egyptian criminal codes which only allow excuse to husbands).

of many Middle Eastern laws, but to all female relatives.<sup>150</sup> Since Article 340 allows all male relatives leniency for committing honor killings, applies to the killing of any female relative and allows for total exemption from penalty, these factors combine to provide one of the broadest categories of excuses for honor killings.<sup>151</sup> Thus, Jordanian law is particularly discriminatory to women because of the lack of legal deterrent and the wide scope of males who will benefit from the it.<sup>152</sup>

## II. THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

CEDAW, which provides legal standards governing almost the entire field of women's rights, is integral to bringing forth change in countries, such as Jordan, that enforce discriminatory laws.<sup>153</sup> Although there are barriers to implementation and enforcement of CEDAW, it represents the most comprehensive legal document that broadly addresses women's international legal rights.<sup>154</sup> Currently, CEDAW lacks a specific provision prohibiting honor killings.<sup>155</sup>

150. See Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 145 (explaining that the use of the term "female unlawfals" broadens the scope of Article 340(i) to include all female relatives).

151. See Article 340, Jordanian Penal Code, *cited in* Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 143 (allowing coverage of all female relatives, as well as providing for a total excuse under some circumstances).

152. See *supra* notes 145-52 (describing the broad scope of Article 340 in relation to other Middle Eastern countries).

153. See Marsha A. Freeman, *The Human Rights of Women Under the CEDAW Convention: Complexities and Opportunities of Compliance*, 91 AM. SOC'Y INT'L L. PROC. 377, 381 (1997) (explaining that CEDAW is unique as a human rights treaty because it is the only document devoted solely to women's rights on a procedural and substantive level).

154. See Julie A. Minor, *An Analysis of Structural Weaknesses in the Convention on the Elimination of All Forms of Discrimination Against Women*, 24 GA. J. INT'L & COMP. L. 137, 139 (1994) (asserting that despite flaws, CEDAW remains the premier document outlining women's international rights).

155. See Sarah C. Zearfoss, Note, *The Convention for the Elimination of All Forms of Discrimination Against Women: Radical, Reasonable, or Reactionary?*, 12 MICH. J. INT'L L. 903, 916 (1991) (asserting that CEDAW does not address domestic violence, pornography, rape, and other issues); see also *infra* notes 340-



CEDAW does provide, however, numerous provisions that protect the legal rights of women, which inherently prohibit the practice of honor killings.<sup>156</sup>

### A. BACKGROUND

Between its inception in 1946 until 1973, the United Nations ("UN") lacked a strong policy on women's issues.<sup>157</sup> In 1972, in response to pressure from the UN Commission on the Status of Women ("the Commission") and various non-governmental organizations, the UN Secretary-General invited UN Member States to express their views on various women's issues.<sup>158</sup> At that time, the Commission was interested in creating a document that would define the legal rights of women,<sup>159</sup> and a document that would have the legal force of a treaty,<sup>160</sup> which is the strongest internationally binding

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47 (arguing that CEDAW should be amended to include a provision prohibiting honor killings).

156. See *infra* notes 182-215 (outlining CEDAW's provisions relevant to honor killings).

157. See Margaret Plattner, *The Status of Women Under the International Human Rights Law and the 1995 UN World Conference on Women, Beijing, China*, 84 KY. L.J. 1249, 1251 (1996) (suggesting that international human rights treaties promulgated at the UN's inception have not been effective because they often become subordinate to "realpolitik" and sovereignty issues); see also Jennifer L. Ulrich, *Confronting Gender-Based Violence With International Instruments: Is a Solution to the Pandemic Within Reach?*, 7 IND. J. GLOBAL LEGAL STUD. 629, 640 (2000) (denoting lack of United Nations documents protecting women's rights prior to CEDAW).

158. See Res. 5 (XXIV), 52 U.N. ESCOR Supp. (No. 6) at 70, UN Doc. E/5109 and E/CN.6/568 (1972) [hereinafter 52 U.N. ESCOR Supp.]; see also Rebecca J. Cook, *Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women*, 30 VA. INT'L L. 643, 663 (1990) [hereinafter Cook, *Reservations*] (summarizing the sequence of events leading to the creation of CEDAW).

159. See Marsha A. Freeman, *The Human Rights of Women in the Family: Issues and Recommendations for Implementation of the Women's Convention*, in WOMEN'S RIGHTS, HUMAN RIGHTS 149, 150 (Julie Peters & Andrea Wolper eds., 1995) [hereinafter Freeman, *Human Rights of Women in the Family*] (noting that goal of establishing legal rights for women under CEDAW was the subject of long debates during the drafting of CEDAW); see also Ulrich, *supra* note 157, at 640 (identifying the Commission's goal of establishing a legally binding document).

160. See 52 U.N. ESCOR Supp., para. 23 (discussing arguments in favor of adoption of a single international treaty); see also Cook, *Reservations*, *supra* note

document.<sup>161</sup> Further, the Commission wanted to compose a uniform international standard for defining discrimination against women.<sup>162</sup> To facilitate the drafting of an international convention on women's issues, the Commission established a working group in conjunction with the United Nations Economic and Social Council ("ECOSOC").<sup>163</sup> The result was the adoption of the first draft language of CEDAW in November 1967.<sup>164</sup>

Currently, CEDAW is the most comprehensive international document on women's rights.<sup>165</sup> It was entered into force on September 3, 1981, after being ratified by twenty nations.<sup>166</sup> CEDAW builds on previous international treaties, but also extends and solidifies the

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158, at 665 (stating that one incentive for creating CEDAW was to address the problem of de facto forms of discrimination against women).

161. See Hillary Charlesworth, *Women's Human Rights Defined* in MAKING HER RIGHTS A REALITY: WOMEN'S HUMAN RIGHTS AND DEVELOPMENT 35, 36 (Gillian Moon ed., 1996) [hereinafter Charlesworth, *Women's Human Rights Defined*] (arguing that treaties are the most effective forms of internationally binding documents).

162. See Plattner, *supra* note 157, at 1254 (noting that the Commission's concern that a legally binding and comprehensive document had not been established to protect women against discrimination).

163. See 52 U.N. ESCOR Supp., *supra* note 158, at 25-26; see also Natalie Kaufman Hevener, INTERNATIONAL LAW AND THE STATUS OF WOMEN 194, 215 (1983) (explaining ECOSOC's involvement in the passage of CEDAW).

164. See G.A. Res. 2263, U.N. GAOR 22nd Sess., Supp. No. 16, at 1, U.N. Doc. A167716 (1967).

165. See Malvina Halberstam, *U.S. Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women*, in WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW 2, *supra* note 11, at 141 n.2 (comparing women's rights protected by international conventions other than CEDAW); see also Cook, *Reservations*, *supra* note 158, at 644 (characterizing CEDAW as the most important international legal instrument for women); see also Ulrich, *supra* note 157, at 640 (emphasizing that CEDAW has established a worldwide standard for women's rights). But see Margareth Etienne, *Addressing Gender-Based Violence in an International Context*, 18 HARV. WOMEN'S L.J. 139 (1995) (arguing that despite the comprehensive nature of CEDAW, its actual effect is limited).

166. See CEDAW, *supra* note 33, art. 27 (stating that the convention enters into force thirty days after a nation deposits its ratification or accession instrument with the Secretary-General); Halberstam, *supra* note 165, at 141 (noting that the Convention became effective after it was ratified by twenty nations as required under Article 27 of CEDAW); see also Ulrich, *supra* note 157, at 641 (stating CEDAW was adopted by the General Assembly of the United Nations on Sept. 18, 1979).

legal rights of women.<sup>167</sup> Significantly, CEDAW is unique because it promotes the eradication of all types of discrimination against women and mandates that States party to CEDAW meet a series of affirmative obligations.<sup>168</sup>

The objectives of CEDAW are primarily carried out by the Committee on the Elimination of Discrimination Against Women ("the Committee"), which was established by Article 17 to enforce compliance with CEDAW through a self-reporting system.<sup>169</sup> Pursuant to Article 17(1), the Committee is comprised of twenty-three experts who possess an understanding of the women's issues covered under CEDAW.<sup>170</sup> The Committee's three central functions include reviewing reports, issuing recommendations, and developing links to other organizations.<sup>171</sup>

First, the Committee is primarily responsible, under Article 18, for reviewing reports submitted by States party to CEDAW.<sup>172</sup> Article 18

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167. See Susan Feanne Toepfer & Bryan Stuart Wells, *The Worldwide Market for Sex: A Review of International and Regional Legal Prohibitions Regarding Trafficking in Women*, 2 MICH. J. GENDER & L. 83, 102 (1994) (finding that CEDAW built on previous goals for international women's rights and extended provisions of other treaties).

168. See CEDAW, *supra* note 33, arts. 2-4; see generally Jo Lynn Southard, *Protection of Women's Human Rights Under the Convention on the Elimination of All Forms of Discrimination Against Women*, 8 PACE INT'L L. REV. 1, 7 (1996) (explaining that CEDAW sets forth mandatory affirmative obligations such as taking all means necessary to eliminate customary and social practices that discriminate against women).

169. See CEDAW, *supra* note 33, art. 27 (specifying the requirements for members of the Committee); see also Dame Silvia Cartwright, *The Committee on the Elimination of Discrimination Against Women in WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW 2*, *supra* note 11, at 177 (discussing the Committee and identifying obstacles to its work).

170. See CEDAW, *supra* note 33, art. 27 (denoting the qualifications of members of the Committee); see also Cartwright, *supra* note 169, at 167 (emphasizing that all members of the Committee have a serious commitment to issues that affect women). Further, Cartwright discusses that members come from an "equitable geographical distribution." See *id.*; see also Division for the Advancement of Women, *Members of the CEDAW Committee—2000*, at 2, <http://www.un.org/womenwatch/daw/cedaw/memebers.htm> (last visited Mar. 30, 2001) (listing current members of the Committee, their countries of origin, and tenure).

171. See *infra* notes 172-77 (outlining the various functions of CEDAW).

172. See CEDAW, *supra* note 33, art. 18(1) (specifying the Committee's pri-

requires State Parties to submit a report to the United Nations within one year after the treaty enters into force in the state concerned and at least every four years thereafter.<sup>173</sup> The reports must describe measures of compliance with CEDAW and measures taken by the state to eradicate discrimination against women.<sup>174</sup> Second, the Committee develops suggestions and general recommendations based on reports and other issues under Article 21.<sup>175</sup> Third, Article 22 allows the Committee to develop links with specialized agencies in order to include other UN bodies that address issues falling under the purview of the Committee.<sup>176</sup> Furthermore, Article 23 permits the Committee to allow either a State Party or another international convention that is more effective at eradicating discrimination to supercede CEDAW.<sup>177</sup>

## B. RELEVANT CEDAW ARTICLES

This section examines the CEDAW articles that are most relevant to the problem of honor killings.<sup>178</sup> General obligations under CEDAW are specified in Articles 1-4 of CEDAW.<sup>179</sup> Articles 5-16 discuss State Parties' specific obligations as signatories to CEDAW.<sup>180</sup> Jordan has obligations under Articles 1, 2, 2(c), 2(f),

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mary responsibility).

173. *See id.* (stating that State Parties must submit reports to the Secretary-General of the United Nations on any measures taken with respect to CEDAW). The Committee can also request a report from a State Party. *See id.*

174. *See id.* at art. 18(2) (explaining that the reports may indicate any obstacles that State Parties encountered that have affected its fulfillment of its obligations under the convention).

175. *See CEDAW, supra* note 33, art. 21 (allowing Committee to clarify and expand jurisprudential interpretation of CEDAW).

176. *See CEDAW, supra* note 33, art. 22 (stating that specialized agencies are entitled to be present during consideration of matters that fall within the scope of their activities and to submit reports upon the Committee's invitation).

177. *See CEDAW, supra* note 33, art. 23 (allowing national legislation or international conventions that are more effective at gaining equality between men and women to supercede CEDAW's provisions).

178. *See infra* notes 178-215 and accompanying text (analyzing various relevant CEDAW articles).

179. *See CEDAW, supra* note 33, arts. 1-4 (listing general CEDAW articles).

180. *See id.*, arts. 5-16 (providing specific obligations pertaining to the measures State Parties must undertake to eliminate all types of discrimination against

2(g), 5(a), 5(f), 15(1), 15(2), and 16(1) to end their legal policy of excusing honor killings.<sup>181</sup>

All countries that sign and ratify CEDAW are bound to fulfill its legal obligations,<sup>182</sup> specifically the provisions that explicitly require State Parties to take certain actions, unless a country has made a reservation to a particular provision.<sup>183</sup> One of the primary reasons for drafting CEDAW was to ensure that women are protected from discrimination through a legally binding instrument.<sup>184</sup> Moreover, the framers explicitly debated whether to establish a uniform legal standard and developed CEDAW around the premise that legally-based uniformity is a central goal of CEDAW.<sup>185</sup>

### 1. Article 1, 2(c), and Article 16(1)

Article 1 of CEDAW defines discrimination against women as

any distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise of 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, civil, or any other field.<sup>186</sup>

The language of Article 1, emphasizing that discrimination will not be tolerated in "any other field," recognizes that women have equal rights with men in the private sphere, including family relations.<sup>187</sup> This provision is significant because most violence against

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women). For example, Article 6 regulates the trafficking of women, which is a specific type of discrimination against women. *See id.*

181. *See infra* notes 186-258 (denoting the CEDAW provisions that Jordan has violated by enforcing Article 340 of the Jordanian Penal Code).

182. *See* CEDAW Reservations, *supra* note 35 (mandating State Parties must meet obligations under CEDAW in the absence of a reservation otherwise).

183. *See* CEDAW Reservations, *supra* note 35, at 1 (showing that Jordan has only made reservations to arts. 9(2), 15(4), 16(1)(c), 16(1)(d), and 16(1)(g)).

184. *See supra* notes 159-62 and accompanying text.

185. *See* Plattner, *supra* note 157, at 1254 (calling attention to the major goals of the Commission).

186. CEDAW, *supra* note 33, art. 1.

187. *See id.*; Minor, *supra* note 154, at 139 (arguing that CEDAW's unique

women takes place in the private sphere.<sup>188</sup> Although there is a larger debate surrounding the public-private distinction not explored in this Comment, CEDAW's prohibition of any activity discriminatory to women in the private sphere is sufficient to support the argument that Jordan must repeal discriminatory laws, including Article 340.<sup>189</sup>

Article 1 also forces State Parties to take responsibility for discriminatory laws, regardless of the their intent in passing such law.<sup>190</sup> The issue under CEDAW is not whether a State Party knew that it created a discriminatory law, but whether it in fact created a discriminatory law, thus holding the State Party responsible for laws that adversely affect women.<sup>191</sup> Therefore, a woman does not have to prove discriminatory intent of State Parties' laws or practices because the discriminatory effect of a law is sufficient to violate CEDAW.<sup>192</sup>

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definition of discrimination grants women protection in the private sphere, unlike many other human rights documents).

188. See *Gender Action*, OFFICE OF WOMEN IN DEVELOPMENT NEWSLETTER (U.S. Agency for Int'l Development, Washington, D.C.), Vol. 1, No. 4, at 2 (1997) (on file with author) (reporting that most violence against women occurs in the home because it is acceptable and shielded from government action). Further, the State, through inaction, commits a violation of the internationally recognized human rights of women by ignoring honor crimes in the domestic life of women. See Radhika Coomaraswamy & Lisa M. Kois, *Violence Against Women in WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW* 1, *supra* note 12, at 177, 185 (arguing that State Parties violate internationally binding conventions through denying women their basic human rights).

189. See Zearfoss, *supra* note 155, at 917 (advancing various arguments that CEDAW may never influence private actions, regardless of the language of CEDAW's provisions). See generally, Celina Romany, *State Responsibility Goes Private: A Feminist Critique of the Public/Private Distinction in International Human Rights Law*, in *HUMAN RIGHTS OF WOMEN*, *supra* note 22, at 85, 86 (arguing that distinctions that delineate a private family sphere for women heighten a hierarchical model of the family, which increases patriarchy, coercion, and force against women).

190. See LOUIS HENKIN, *HUMAN RIGHTS* 360 (Foundation Press 1999) (denoting that a State Party is liable for the discriminatory effects of laws and practices, regardless of whether that nation passed the law with the intent to discriminate).

191. See *id.*

192. See *id.* (explaining that CEDAW requires ratifying nations to be responsible for distinctions, exclusions, or restrictions which have a discriminatory effect on women in their country); see also Minor, *supra* note 154, at 139 (arguing that the word "effect" eliminates the need to prove discriminatory intent).

Similar to Article 1, Article 2(c) protects women from discriminatory application of the law.<sup>193</sup> Recognizing the strong symbiosis between the enforcement of women's rights and the judiciary, Article 2(c) mandates that courts protect women from discrimination and administer the law equally to men and women.<sup>194</sup> Article 2(c)'s importance cannot be understated in relation to honor killings in Jordan because, as previously explained, the courts are responsible for enforcing and interpreting Jordanian law governing honor killings.<sup>195</sup>

Article 16 is another provision of CEDAW that obligates State Parties to remove discriminatory laws and practices against women and is particularly applicable to honor killings because it regulates the area of family relations.<sup>196</sup> Article 16 specifically states that State Parties shall take all appropriate measures to end discrimination against women in all matters relating to marriage and family.<sup>197</sup> Since honor killings stem from male and female gender roles within the family, Article 16(1) is relevant to the discussion of honor killings.<sup>198</sup> Additionally, many honor killings occur due to rumor of adultery, which is a matter inextricably linked to the marriage bond.<sup>199</sup>

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193. See CEDAW, *supra* note 33, art. 2(c) (requiring State Parties "[t]o establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.").

194. See *id.*; see also Southard *supra* note 168, at 42 (denoting the necessity that the judiciary enforce the law in compliance with CEDAW).

195. See *supra* notes 114-44 and accompanying text (explaining the role of the Jordanian Court of Cassation in interpreting Article 340 and in the court's application of Article 98 to honor killings).

196. See CEDAW, *supra* note 33, art. 16(1) (requiring that State Parties take measures to prevent discrimination in marriage and family relations).

197. See *id.*, art. 16(1) (stating "State Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations . . .").

198. See *supra* notes 76-80 and accompanying text (explaining the social origins of honor killings stem directly from the female role of protecting her sexuality, the male role of protecting females from male predators, and the strong role of honor to Jordanian and Arabic families).

199. See *supra* notes 93-94, 135-36 and accompanying text (explaining that rumor of illicit sexual relations is the most common reason for honor killings). Thus, married women who are killed for reasons of honor are usually suspected of adultery and this deviance is considered grounds for killing her. See *id.*

## 2. Article 2(g), 15(1), and 15(2)

Article 2(g) of CEDAW requires a State Party to repeal all national penal provisions that constitute discrimination against women.<sup>200</sup> Thus, upon ratifying CEDAW, State Parties that maintain discriminatory laws must take affirmative action to change them, either legislatively or through other means.<sup>201</sup> In addition to requiring State Parties to change discriminatory penal codes, Article 15(1) and 15(2) of CEDAW require State Parties to grant women equality before the law and the legal capacity and opportunity to exercise such rights.<sup>202</sup>

## 3. Affirmative Obligations Under Articles 2, 2(f), and 5(a)

### a. Article 2

CEDAW's affirmative obligations are a distinct feature of the convention.<sup>203</sup> Article 2 of CEDAW specifies that State Parties must take affirmative actions to condemn all forms of discrimination against women and to pursue, by all appropriate means, a policy of eliminating such discrimination.<sup>204</sup> For example, Article 2(f) delineates that States party to CEDAW must "take all appropriate measures including legislation" to abolish or change all existing laws, practices, and customs that discriminate against women, indicating that State Parties must take whatever affirmative measures are necessary

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200. See CEDAW, *supra* note 33, art. 2(g).

201. See Desiree Bernard, *The Work of the Committee on the Elimination of Discrimination Against Women: Its Focus on Nationality, Custom, Culture, and the Rights of the Girl-Child* Hong Kong Judicial Colloquium on Women's Rights 77 (on file with author) (requiring State Parties to change discriminatory penal laws and take measures beyond legislation to abolish practices that are discriminatory to women).

202. See *id.* arts. 15(1) & 15(2) (requiring State Parties treat women equally under the law and grant women the same opportunity to utilize that capacity).

203. See HENKIN, *supra* note 190, at 360 (indicating that CEDAW's requirement that ratifying nations remove cultural customs and practices is one of the more well-known affirmative obligations under CEDAW).

204. See CEDAW, *supra* note 33, art. 2 (relating the obligations of State Parties).



to complete these objectives.<sup>205</sup> Further, the Committee emphasized that the heart of CEDAW lies within Article 2 and Article 16.<sup>206</sup> Article 2 is central to the object and purpose of CEDAW, because it focuses on explaining that State Parties must enforce the elimination of discrimination against women, indicating that State Parties must do whatever possible to achieve this goal.<sup>207</sup> Thus, by ratifying CEDAW, State Parties have agreed to take steps to eliminate discrimination against women. Failing to do so violates CEDAW.<sup>208</sup>

b. Articles 2(f) and 5(a)

Arguably one of the most revolutionary obligations under CEDAW is that State Parties must correct cultural customs and practices, in addition to cultural patterns of conduct between men and women, which promote any type of discrimination or stereotyped roles for men and women.<sup>209</sup> CEDAW not only directly states that women are entitled to de jure legal treatment,<sup>210</sup> but CEDAW also grants women de facto relief by specifying that States must eradicate discrimination inherent in customs and traditions.<sup>211</sup> Articles 2(f) and

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205. See Southard, *supra* note 168, at 31 (asserting that, despite such requirements, what is appropriate is questionable depending on who is enforcing CEDAW).

206. See CEDAW Reservations, *supra* note 35, at 1 (identifying that Article 2 and Article 16 are the two articles central to the purpose of CEDAW). For this reason reservations should not be made that contradict those articles. See *id.*

207. See *id.* (stating the importance of affirmative measures undertaken by countries that ratify CEDAW).

208. See *id.* (finding states that sign CEDAW agree to take affirmative measures to comply with CEDAW).

209. See CEDAW, *supra* note 33, arts. 2(f) (stating that under Article 2(a), State Parties must take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs, and practices which constitute discrimination against women). Article 5(a) then states that State Parties must modify social and cultural patterns to achieve the elimination of the inferiority or the superiority of either of the sexes, or of stereotyped roles for men and women. *Id.*

210. See CEDAW, *supra* note 33, arts. 1, 2(f), 2(g), and 15(1) (mandating that State Parties change laws that discriminate against women).

211. See *id.*, arts. 3, 2(a), 5(a) & 16(1) (requiring State Parties to change political, social, economic, or cultural laws or practices which discriminate against women); see also Cartwright, *supra* note 169, at 166 (identifying that CEDAW allows State Parties to adopt temporary measures to cure de facto discrimination against women under Article 4(1)).

5(a) require that State Parties abolish customary and religious practices that discriminate against women.<sup>212</sup> In effect, this makes all State Parties responsible for taking affirmative action to eradicate discrimination through measures beyond simply enacting legislation.<sup>213</sup> CEDAW implies in Article 5(a) that State Parties should also attempt to change traditional attitudes through education.<sup>214</sup> Thus, Articles 2(a) and 5(f) require that State Parties eradicate the social origins of discrimination, which is particularly applicable to honor killings.<sup>215</sup>

### III. LEGAL ANALYSIS OF RELEVANT CEDAW ARTICLES

#### A. VIOLATIONS OF CEDAW

The international community's awareness of Jordan's CEDAW violations increases their significance because international advocacy may compel Jordan to come into compliance with CEDAW. Jordan's compliance with CEDAW has the potential to positively affect the lives of Jordanian women.<sup>216</sup> This section explains how Jordan is currently violating various CEDAW provisions. First, Jordanian court application of Article 340 and Article 98 is both discriminatory to women and violates CEDAW Articles 1, 2(c) and 16(1).<sup>217</sup> Second,

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212. See CEDAW, *supra* note 33, arts. 2(f) & 5(a) (stating that State Parties need to take appropriate measures to eradicate discriminatory laws and customs against women); see also Kirsten M. Backstrom, Note, *The International Human Rights of the Child: Do They Protect the Female Child?*, 30 GEO. WASH. J. INT'L L. & ECON. 541, 579 (1997) (explaining that CEDAW recognizes cultural issues and the importance of teaching the community to recognize discriminatory practices embedded in culture and tradition).

213. See *id.*

214. See *id.* (arguing that Article 5(a), because it is directed at social and cultural patterns of conduct, implies that State Parties must educate its citizens that such discriminatory attitudes contravene international law under CEDAW).

215. See *supra* notes 59-94 and accompanying text (analyzing social origins of honor killings and complex factors that perpetuate honor and justification for excuse based on honor).

216. See *infra* notes 222-97 and accompanying text (illustrating that discriminatory practices against women in Jordan adversely affect their lives).

217. See *infra* notes 222-50 and accompanying text (providing examples of Jor-

Article 340 of the Jordanian Penal Code creates a *prima facie* violation of CEDAW Articles 2(g), 15(1), and 15(2).<sup>218</sup> Third, the Jordanian government's failure to self-report accurately under Article 27 violates CEDAW, as does Jordan's failure to assertively implement their affirmative obligations under Articles 2 and 2(f).<sup>219</sup> Each of the arguments discussed emphasizes how Jordanian law violates CEDAW either on its face, through the Jordanian court's application of the law to honor killings, or through the Jordanian governments failure to fulfill their affirmative CEDAW obligations.<sup>220</sup> This section then explains that the drafters of CEDAW intended to prevent honor killings, regardless of the fact that CEDAW does not contain a specific provision prohibiting the practice.<sup>221</sup>

*1. Violations Due to Court Application of Article 340 and Article 98 of the Jordanian Penal Code*

*a. Articles 1 and 16(1)*

Article 340 violates the entire purpose of CEDAW, articulated in Article 1, which prohibits State Parties from discriminating against women.<sup>222</sup> More specifically, CEDAW explicitly prohibits discrimination against women within family relations under Article 16(1).<sup>223</sup> Killing women clearly meets the definition of discrimination under Article 1 of CEDAW.<sup>224</sup> Honor killing is a clear form of distinction,

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dan's violations of Articles 1, 2(c), and 16(1) of CEDAW).

218. See *infra* notes 251-58 and accompanying text (concluding that discriminatory laws still exist in Jordan).

219. See *infra* notes 271-87 and accompanying text (detailing the Jordanian government's failure to comply with CEDAW).

220. See *infra* notes 222-97 and accompanying text (depicting Jordan's discriminatory practices against women).

221. See *id.*

222. See CEDAW, *supra* note 33, art. 1 (articulating the definition of discrimination against women chosen by CEDAW's drafters was established to prevent all types of discrimination against women).

223. See *id.*, art. 16(1) (setting forth rights of women in marriage and family relations).

224. See *id.*, art. 1 (defining discrimination against women as any restriction made on the basis of sex that impairs a woman's recognition, enjoyment, or exercise of her human rights and fundamental freedoms in any field).

exclusion, or restriction made on the basis of sex. Such killing obviously impairs a Jordanian woman's recognition and enjoyment of her rights since she is dead and can no longer exercise any rights.<sup>225</sup> Further, many Jordanian women who survive attempted honor killings suffer diminished civil rights because of their gender, since they are unable to leave state detention centers freely or exercise any choices in their daily lives.<sup>226</sup> More broadly, most Jordanian women experience discrimination by virtue of being female because they fear being killed for honor if they act inappropriately or inconsistently with their male family members' expectations.<sup>227</sup> Although distinctions are allowed under CEDAW for legitimate biological differences between men and women or to compensate women for past discrimination, CEDAW prohibits any distinction that negatively affects women's rights.<sup>228</sup> Article 340 clearly fits in the latter category as men are allowed to murder women without fear of significant punishment due to a law that distinguishes between the sexes for no legitimate reason.<sup>229</sup>

By making a discriminatory distinction in family relations, Article 340 violates Jordan's affirmative obligation under Article 16(1) to grant women equality in all matters relating to family and mar-

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225. *See id.* (defining discrimination against women as any differentiation, exclusion, or restriction in the rights or exercise of the rights of women).

226. *See Jordan's Women Prisoners*, *supra* note 142 (explaining that women who survive attempted honor killings often spend indefinite terms in prison under government protection). Women are not allowed to leave the detention centers at their own will and often treated like children. *See* Letter from Regan E. Ralph, Executive Director, Women's Rights Division, Human Rights Watch 2 (Aug. 9, 1999) (on file with author) (denoting that women may only leave detention centers with male relatives who often are the same individuals threatening their lives).

227. *See supra* notes 73-77 and accompanying text (explaining Arab women learn at an early age that their gender prevents them from undertaking various activities and defines how they must act in most social situations).

228. *See* Southard, *supra* note 168, at 29-30 (articulating that affirmative action and special policies regarding pregnancy are allowed under CEDAW because they are based on biological distinctions and are also necessary to overcome past discrimination).

229. *See id.* (indicating the second part of CEDAW's definition of discrimination indicates that any distinction made between males and females must be based on legitimate objectives).

riage.<sup>230</sup> Article 340 deals specifically with family relations because it allows a husband, brother, or other male relative to kill a female relative based on a belief that the family honor requires it.<sup>231</sup> By failing to provide the same legal rights to women who kill a male relative, Article 340 grants men a family right not available to women, and thereby violates CEDAW.<sup>232</sup>

In addition, CEDAW prohibits exclusions, as opposed to distinctions, on the basis of sex.<sup>233</sup> Article 340 excludes Jordanian women from invoking Article 340 to obtain exoneration or a reduction in a prison term.<sup>234</sup> For example, a Jordanian woman who kills her husband in a fit of rage after finding him in bed with another woman could not raise an Article 340 defense, although any of her male relatives could if the situation were reversed.<sup>235</sup> Although Jordan supports male acts of honor killing, it does not support a similar honor defense for women.<sup>236</sup> There are no known instances of courts that

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230. See CEDAW, *supra* note 33, art. 16(1) (setting forth that State Parties should take all measures to ensure equality between men and women in areas of marriage and family relations).

231. See Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 159-60 (explaining that Article 340 and Article 98 are privileges only given to males).

232. See *id.* (illustrating that, under the Jordanian Penal Code, Jordanian women do not have the same legal privileges as men).

233. See Southard, *supra* note 168, at 29-30 (explaining that excluding women is another type of discrimination prohibited under CEDAW).

234. See Goodenough, *supra* note 139, at 2 (emphasizing a State Department official's statement that women cannot use Article 340 for any type of honor crime against a man, even if a man tries to rape, sexually harass, or impinge their honor in any way).

235. See Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 159-60 (allowing legal benefit to males, but not females). Whether or not allowing Jordanian women the Article 340 justification is in the best interests of Jordanian society or constitutes a violation of other internationally binding documents is not part of the discussion of this Comment. But see Moghaizel, *supra* note 96, at 17 (distinguishing United Arab Emirates' Article 237 of the Federal Law no. 3 of 1978, which allows a wife, as well as a husband, to receive a reduced sentence for killing their spouse or partner who commits adultery in the home). However, the law still applies disproportionately to females, discriminating against women because it allows a male to receive a reduced sentence for killing not only his wife, but his daughter, sister, and the adulterous partner, whereas females are only eligible for the excuse in their capacity as wives. See *id.*

236. See *id.* (providing examples of legislative discrimination in Jordan).

have applied Article 340 to a woman who has committed an honor killing of a man, although there is also no indication such crimes occur in a quantifiable number.<sup>237</sup> In addition to being discriminatory to women, the Jordanian Penal Code encourages, rather than deters, crime because males know the sanctions under Article 340 will be minor.<sup>238</sup> Jordanian law therefore violates CEDAW because it facially permits men to commit honor killings but does not afford the same legal right to women.<sup>239</sup>

Similarly, Article 98 of the Jordanian Penal Code, which creates a fit of fury excuse to honor killings, also violates Article 1 of CEDAW.<sup>240</sup> Article 1 of CEDAW prohibits the application of laws in a manner that creates an exclusion on the basis of sex.<sup>241</sup> Only males can benefit from the court's application of Article 98 because Article 340 does not address honor killings of Jordanian men by women or allow female relatives to benefit from its tenets.<sup>242</sup>

b. Article 2(c)

In addition to preventing discriminatory application of the law, Article 2(c) of CEDAW further enunciates that the judiciary must protect women from discrimination.<sup>243</sup> The Jordanian court's applica-

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237. See Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 159-60 (indicating that there is no data on honor killings committed by women).

238. See Int'l Women's Law Group, *supra* note 10, at 4 (arguing that the Jordanian legal system is responsible, in part, for the occurrence of honor killings).

239. See Article 340, Jordanian Penal Code (no. 16 1960), *cited in* Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 143 (permitting only men to invoke Article 340, which provides exoneration or lenient sentences to males).

240. See CEDAW, *supra* note 33, art. 1 (setting forth the definition of discrimination under CEDAW).

241. See Southard, *supra* note 168, at 27 (stating that one type of distinction prohibited by CEDAW is the classification of adultery as a crime if committed by a woman, but not if committed by a man).

242. See art. 98, Jordanian Penal Code, *cited in* Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 158-61 (discussing application of Article 98); *see also* art. 340, Jordanian Penal Code, *cited in* Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 143 (omitting women from the benefit of the provision).

243. See CEDAW, *supra* note 33, art. 2(c) (establishing legal protection for women and assurance that national tribunals and public institutions do not discriminate against women).

tion of Article 340 violates CEDAW because the court is applying a prima facie discriminatory law.<sup>244</sup> Moreover, the court blatantly violates Article 2(c) because it applies Article 98 in a manner that justifies the honor killings of women. Thus, the court willingly accepts giving men an unfair legal advantage.<sup>245</sup> This unfair advantage is illustrated further by the Jordanian police's failure to investigate or recommend prosecution of honor killings.<sup>246</sup> Thus, women may face discrimination at multiple levels of the justice process.<sup>247</sup> As previously mentioned, discrimination by courts that favors granting legal excuses to men encourages men to disobey the law and promotes crime because honor killing can serve as a disguise for other criminal acts against women.<sup>248</sup> In effect, women lack an adequate legal remedy for the crime of adultery.<sup>249</sup> The court system's failure to provide women with the same legal capacity as men under Articles 1 and 16(1), combined with its inequitable application of Article 98 under Article 2(c) violates CEDAW.<sup>250</sup>

## 2. *Prima Facie Violations of Articles 2(g), 15(1), and 15(2)*

Article 340 of the Jordanian Penal Code violates CEDAW because

244. *See id.* (prohibiting courts from enforcing discriminatory laws, here Article 340); *see also infra* notes 251-58 (arguing Jordan facially violates CEDAW).

245. *See art. 340, Jordanian Penal Code (no. 16 1960), cited in Abu-Odeh, Crimes of Honor, supra* note 13, at 143 (demonstrating Court of Cassation's willingness to grant males lenient sentences).

246. *See supra* note 141 (revealing that local police often do not report honor killings and that prosecutors decline to charge the perpetrators with commission of a crime).

247. *See id.* (revealing the discrimination women endure from police and prosecutors).

248. *See supra* note 137 (emphasizing Court of Cassation's discriminatory administration of the law [through Article 98] and that implementation of law that is discriminatory on its face [through Article 340] encourages the commission of other crimes against women because men can argue that the woman dishonored him, when the crime is actually committed to acquire property or for other self-serving reasons).

249. *See Article 98, Jordanian Penal Code, cited in Abu-Odeh, Crimes of Honor, supra* note 13, at 143 (finding that women lack legal rights that men possess to remedy acts of adultery).

250. *See supra* notes 222-50 (demonstrating application of legal justification can only be invoked by males or applied by Jordanian courts to males).

Jordan has failed to meet its obligations under CEDAW, Article 2(g).<sup>251</sup> Article 2(g) requires State Parties to repeal any national laws that discriminate against women.<sup>252</sup> In Jordan, only men can invoke Article 340 or Article 98 as a defense for an honor killing.<sup>253</sup> Since women do not have access to this same freedom from punishment if they kill their husbands for reasons of honor, Article 340 discriminates against them by allowing only men to be exonerated or to receive lenient punishments.<sup>254</sup> In addition, Article 340 inherently discriminates against women because it justifies killing women and not men, which is a form of discrimination.<sup>255</sup>

Jordan further violates CEDAW on its face because it does not allow women to be equal under the law with men, as mandated by Article 15(1) and 15(2).<sup>256</sup> Similar to Article 2(g), Article 15(1) and 15(2) require State Parties to reform their legal systems such that women are granted identical legal remedies under the law.<sup>257</sup> In Jordan, women do not have the same opportunity to invoke Article 340 or a heat of passion defense under Article 98. Thus, Jordanian women do not have an equal opportunity to exercise their legal rights, which is in direct violation of CEDAW Article 15(2).<sup>258</sup>

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251. See art. 340, Jordanian Penal Code (no. 16 1960), cited in Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 143 (allowing males to receive exoneration or lenient prison terms for killing female family members).

252. See CEDAW, *supra* note 33, art. 2(g).

253. See *supra* notes 99-104 and accompanying text (explaining scope of Article 340 and Article 98). But see McAllester, *supra* note 13, at 1 (contrasting the typical fifteen-year minimum sentence for murder in Jordan).

254. See Article 340, Jordanian Penal Code (no. 16 1960), cited in Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 143 (allowing males special benefit under the law for adulterous and illicit sexual acts of female unlawfals).

255. See *id.* (specifying that only women may be killed for reasons of honor).

256. See CEDAW, *supra* note 33, arts. 15(1)-15(2) (mandating that State Parties must grant women equal legal rights with men and equal opportunity to exercise their rights).

257. Compare *id.* (requiring equal rights for both sexes), with CEDAW *supra* note 33 art. 2(g) (requiring the repeal of all laws discriminatory to women).

258. See CEDAW, *supra* note 33, art. 15(2) (requiring equal legal rights and treatment for women).



3. *Violations Due to Ineffective State-Reporting Under Article 18 and Failure to Implement Affirmative Obligations Due to Problems of Interpretation Under Articles 2 and 2(f)*

In addition to the previously mentioned violations, Jordan has also failed to take the proper affirmative measures mandated by CEDAW. First, Article 18 requires State Parties to submit reports to the Committee one year upon ratification and thereafter, every four years.<sup>259</sup> Jordan's reports, in addition to being late, fail to acknowledge the practice of honor killings.<sup>260</sup> Second, due to ambiguity of the rights enumerated under CEDAW, countries such as Jordan can argue affirmative obligations are unclear, presenting the Committee with a patent enforcement problem.<sup>261</sup>

a. *State-Reporting Violations by Jordan*

Although CEDAW is a revolutionary Convention, its effectiveness depends on accurate self-reporting. State Parties, such as Jordan, inhibit the effectiveness of the Committee and CEDAW by not accurately depicting the conditions for women in their representative countries.<sup>262</sup> In Jordan's first report, submitted on November 10, 1997, the Jordanian government stated that no practices based on gender-based inferiority or superiority exist.<sup>263</sup> Jordan also casually

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259. See CEDAW, *supra* note 33, arts. 18(a)-18(b) (specifying deadlines for reports and indicating State Parties may also be required to supply reports at any time, if requested by the Committee).

260. See *Consideration of Reports Submitted by States Parties Under Article 18 of The Convention on the Elimination of All Forms of Discrimination Against Women*, Committee on the Elimination of Discrimination Against Women (CEDAW), Nov. 19, 1997, at 3, available at <http://www.un.org/womenwatch/daw/cedaw/22sess.htm> (last visited Mar. 30, 2001) (listing past due State Party reports that have not been submitted to the Committee for consideration). Jordan's report was due on July 31, 1997 and was not received as of November 19, 1997. See *id.*

261. See Minor, *supra* note 154, at 149 (explaining that lack of accuracy of State Party reports can compromise CEDAW's effectiveness).

262. See Andrew C. Byrnes, *The Other Human Rights Treaty Body: The Work on the Committee on the Elimination of Discrimination Against Women*, 14 YALE J. INT. L. 1, 5 (1989) (asserting that State Parties often hide true conditions in their own self-interest); see also Minor, *supra* note 154, at 149 (arguing that reports are often biased because government offices prepare the reports).

263. See *Report of the Convention on the Elimination of All Forms of Discrimi-*

mentioned Article 15 of CEDAW, which mandates State Parties must grant women equality before the law, without mention of its own laws—such as Article 340—that discriminate against women.<sup>264</sup>

In addition to Jordan's inaccurate reporting, CEDAW Committee members failed to effectively question Jordanian officials about Jordan's deficient report.<sup>265</sup> A Committee member responsible for questioning Jordanian officials did express concern over amending the Jordanian law that justifies murder in certain instances, such as adultery.<sup>266</sup> The Committee, however, failed to explicitly condemn Article 340 or censure the Jordanian government for legally endorsing the practice of honor killings.<sup>267</sup> Instead, the comment was ignored, illustrating both the weakness of the self-reporting mechanism and the Committee's deficient role in enforcing Jordan's CEDAW obligations.<sup>268</sup> The fact that the Committee failed to pursue the issue

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*nation Against Women: Initial Reports of State Parties - Jordan*, Committee on the Elimination of Discrimination Against Women (CEDAW), Nov. 10, 1997, at 6, (on file with author) [hereinafter *Report*] (reporting the results of Jordan's initial report to CEDAW and noting that there are no existing practices or laws based on inferiority of either sex, although there are customs and traditions where men are head of the family and men and women play different roles); see also Press Release, Committee on the Elimination of Discrimination Against Women, *Committee on the Elimination of Discrimination Against Women Takes Up The Reports of Jordan*, (Jan. 20, 2000) at 2 (on file with author) [hereinafter Press Release] (finding that Jordan's initial report asserts the majority of Jordanian laws give women equal rights with men and thus, there are no practices based on gender related superiority).

264. See *Report*, *supra* note 263, at 5, 23 (discussing the fact that women played no role in creating or benefiting from the law before the Jordanian Constitution states "Jordanians shall be equal before the law[.]" was passed in 1953). The Constitution, however, does not make special mention of women. See *id.*

265. See Press Release, *supra* note 263, at 1 (mentioning Committee members' concern over Jordan's legal exemption for adultery, but failing to address the fact that Article 98 as applied and Article 340 of Jordanian law are discriminatory to women).

266. See *id.* (reporting expert's recognition of crimes of passion throughout the world, but expressing concern with reference to extenuating circumstances for adultery).

267. See *id.* (failing to mention Article 340 or administrative and judicial practices exacerbating the problem).

268. See Cartwright, *supra* notes 169, 170-71 (discussing that only two experts are assigned to each State Party report and granted the sole responsibility to question officials representing State Parties). The Committee only meets for three weeks annually and reviews more State Party reports than any other human rights

of Article 340 and honor killings in Jordan is especially noteworthy because the Committee was on notice of the problem of honor killings due to a high level of international media attention prior to the it's consideration of the report.<sup>269</sup> The Jordanian government's failure to acknowledge the problem of honor killings to the Committee is therefore a major inhibition to the effectiveness of the Committee.<sup>270</sup>

b. Problems of Interpretation Due to Ambiguous Affirmative Obligations Under Articles 2 and 2(f) and Lack of a Specific Provision Prohibiting Honor Killings

Broadly, in reference to honor killings, there are several problems of interpretation under CEDAW. First, CEDAW is ambiguous as to the goals State Parties must accomplish to meet their affirmative obligations.<sup>271</sup> Jordanian critics of CEDAW may argue that it is impossible for State Parties to meet their affirmative obligations set forth under Article 2 of CEDAW because the language is watered down by terminology such as "by all appropriate means and without delay" and "agree to pursue."<sup>272</sup> Jordan can assert that requiring parties to

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treaty body.

269. See Hamdan, *supra* note 30, at 1 (reporting march of 5,000 people demonstrating against cancellation of Article 340 exemption for honor killing); see also Hussein, *supra* note 66, at 20 (reporting Their Royal Highnesses Prince Ali and Prince Ghazi's feelings of shame over existence of Article 340); see also Kuwaiti Stabs Colleague in "Honour" Killing, AGENCE FRANCE-PRESSE, Aug. 29, 2000, at 1, available at 2000 WL 24699219 (reporting on honor killing); see also Hamdan & Hussein, *Lower House Rejects Proposal* *supra* note 27 at 1 (reporting Lower House rejection of a repeal of Article 340); see also Hussein, *Majali: Government*, *supra* note 29, at 1; see also Jehl, *supra* note 1, at 1; see also Thomas, *Deaths That Dishonor* *supra* note 1, at 2.

270. See *supra* notes 262-69.

271. See Southard, *supra* note 168, at 32 (arguing that Article 2, governing general obligations, does not create specific measures for State Parties to follow with the exception of Article 2(f), which requires ratifying nations change discriminatory customs, and that the Committee therefore lacks the necessary requirements for effectiveness); see also Elizabeth Dietz, *Violence Against Women in the United States: An International Solution*, 13 ARIZ. J. INT'L & COMP. L. 551, 578-98 (arguing that Article 2 leaves room for significant interpretation by State Parties as to which measures must reasonably be implemented).

272. See Dietz, *supra* note 271, at 576-77 (arguing that "agree to pursue" is ineffective terminology because State Parties can simply argue that they are not pursuing a measure since they find it is not a "reasonable" means to implement CEDAW).

“take all appropriate means” is unclear because it is subject to the interpretation of the Jordanian government’s determination of what is appropriate.<sup>273</sup>

Such an argument is not supported by CEDAW’s central tenets. The affirmative obligations that are articulated under Article 2 require State Parties to take all appropriate means to achieve the objectives of CEDAW and are essential to CEDAW’s effectiveness.<sup>274</sup> Jordan’s lack of recognition, or arguably Jordan’s misinterpretation, of its affirmative obligations under Articles 2(f) and 5(a), which require State Parties abolish customary and religious practices that discriminate against women, is a violation of CEDAW.<sup>275</sup> Articles 2(f) and 5(a) are the most relevant affirmative obligations to honor, specifically in Jordan, because the practice of honor killing is based on custom, tradition, and social pressure.<sup>276</sup> These articles also dictate CEDAW’s firm commitment to eliminating forms of discrimination that are not legally based, but are socially sanctioned.<sup>277</sup> Society tends to encourage honor killing and might support the practice even if Article 340 is abolished.<sup>278</sup> Due to the potential for honor killings to continue after Article 340 is changed, CEDAW’s commitment to eradicating social and customary legislation is particularly significant to Jordan because its misinterpretation of affirmative obligations will prevent effective enforcement of CEDAW.

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273. See Southard, *supra* note 168, at 32 (asserting that what is appropriate is questionable depending on who is enforcing CEDAW).

274. See Rebecca J. Cook, *State Responsibility for Violations of Women’s Human Rights*, 7 HARV. HUM. RTS. J. 125, 163 (1994) [hereinafter, Cook, *State Responsibility*] (explaining that State Parties’ active attempts to fulfill the objectives of CEDAW increases CEDAW’s effectiveness and that affirmative obligations require State Parties to pursue CEDAW’s goals).

275. See CEDAW, *supra* note 33 arts. 2(f) & 5(a) (identifying that art. 2(a) and art. 5(f) require ratifying nations of CEDAW to eliminate any custom, tradition, or religion that will prevent members from fulfilling the objectives of CEDAW).

276. See *supra* notes 59-94 and accompanying text (describing the social forces that cause honor killing).

277. See Cook, *State Responsibility*, *supra* note 274, at 167 (indicating that much of discrimination against women occurs due to customs and traditions that are endorsed by society).

278. See *infra* notes 259-70 and accompanying text (asserting modification of the customary and social origins of honor killings is essential to ending the practice).

Second, CEDAW lacks a specific provision prohibiting honor killings, which can cause State Parties to misinterpret the general articles of CEDAW that denounce all practices that are discriminatory to women.<sup>279</sup> Thus, Jordan may argue that honor killings are not prohibited by CEDAW and ignore their responsibility to condemn the practice, as CEDAW is not specific to honor killings in Articles 5-16, which denounce particular practices.<sup>280</sup> This potential reliance is of concern because State Parties that only look to the specific Articles 5-16 will lack an understanding that all discriminatory practices are prohibited by CEDAW, not only the activities specifically mentioned in CEDAW.<sup>281</sup> Since honor killings and other types of violence against women are not explicitly accounted for in CEDAW, and General Recommendation No. 19 (discussed *infra*, Part III.B.2.) is not binding on State Parties,<sup>282</sup> Jordan may argue that honor killings are not prohibited under CEDAW.<sup>283</sup>

These arguments, however, have significant flaws. First, CEDAW unequivocally prohibits laws that are *prima facie* discriminatory to women.<sup>284</sup> As previously discussed, Article 340 of the Jordanian Penal Code is a *prima facie* violation of CEDAW under Articles 15(1), 15(2), and 2(g).<sup>285</sup> Ultimately, though, any arguments set forth by

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279. See Zearfoss, *supra* note 155, at 913 (explaining that, for example, CEDAW's failure to clearly address abortion rights could cause State Parties to assume abortion is not protected under CEDAW).

280. See *id.* (arguing that Article 2 general obligations will be ineffective because they lack specificity).

281. See Southard, *supra* note 168, at 5 (stressing that CEDAW's lack of emphasis will cause States party to CEDAW to rely on Articles 5-16, thus assuming compliance with the specific articles is enough to meet national obligations under CEDAW).

282. See Katherine M. Culliton, *Finding a Mechanism to Enforce Women's Right to State Protection From Domestic Violence in the Americas*, 34 HARV. INT'L L.J. 507, 528 (1993) (explaining that General Recommendation No. 19 is a legal interpretation, but is not binding).

283. See Southard, *supra* note 168, at 5 (arguing that nations ratifying CEDAW will assume compliance with CEDAW by simply removing measures specifically mentioned as discriminatory under Articles 5 - 16).

284. See *supra* notes 251-58 and accompanying text (finding Article 340 is a *prima facie* violation of CEDAW due to Jordan's failure to change discriminatory penal laws).

285. See *id.*

Jordanian critics premised on a lack of CEDAW's specificity are undermined by the Article 2 good-faith belief each State Party inherently endorses by ratifying CEDAW.<sup>286</sup> Although Jordan's reports were deficient and the Committee's questions to Jordanian representatives vague, State Parties to CEDAW agreed to undertake necessary measures to eradicate discrimination against women. Therefore, Jordan cannot assert technical arguments based on interpretation to justify its discrimination against women in the practice of honor killings.<sup>287</sup>

## B. THE DRAFTERS OF CEDAW INTENDED TO PROHIBIT VIOLENCE AGAINST WOMEN

### 1. Article 1 and 16(1)

CEDAW broadly protects women from violence in the private sphere.<sup>288</sup> Specific CEDAW articles and its drafting history support the argument that the convention extends to protection from discrimination in women's private lives.<sup>289</sup> Even though CEDAW does not specifically prohibit honor killings, its drafters intended to prevent discrimination against women in the private sphere, which in-

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286. See CEDAW Reservations, *supra* note 35, at 3 (remarking that CEDAW's members cannot assert that culture, religion or other issues prevent their nation's compliance with CEDAW because they have already agreed to the core premise that CEDAW is established to eradicate discrimination against women).

287. See *id.* (finding that a State party to CEDAW cannot rely on national cultural practice and incompatible national laws to justify CEDAW violations).

288. See Cook, *Reservations*, *supra* note 158, at 667 (observing that CEDAW requires State Parties to take affirmative obligations to abolish discrimination in private and civil areas).

289. See Minor, *supra* note 154, at 139 (explaining that CEDAW is unique because it recognizes discrimination outside of the public sphere, which infers the need for protection of discrimination that occurs in the private sphere); see also Cartwright, *supra* note 169, at 166 (explaining that CEDAW requires that States party to CEDAW regulate all areas of discrimination against women in both public and private areas); see also Southard, *supra* note 168, at 15 (emphasizing that traditionally women's rights in the private sphere have been left untouched in international documents); see also Freeman, *Human Rights of Women in the Family*, *supra* note 159, at 160 (emphasizing that CEDAW has recognized that the valuation of women's rights is of international importance).

cludes, by extension, honor killings.<sup>290</sup> Article 340 violates various provisions of CEDAW that prohibit violence against women that occurs in the private sphere.<sup>291</sup> The drafting history of the convention illustrates that the drafters committed themselves to preventing discrimination against women in the private and family sectors.<sup>292</sup> First, Article 1 of CEDAW specifies that discrimination will not be tolerated "in any other field," which implies that the private sphere is included.<sup>293</sup> Second, Article 16(1) addresses areas that relate to the family. Although Jordan has opted out of several provisions of Article 16, it has ratified 16(1)(a), (b), (e), (f), and (h).<sup>294</sup> Jordan is in violation of Article 16(1) because Article 340 inherently discriminates against women by only allowing exoneration and leniency for criminal liability for male members of the family.<sup>295</sup> Thus, Article 340 does not allow female family members the same rights as male family members under Article 16(1).<sup>296</sup> Jordan's recognition that

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290. See *supra* notes 10-23 and accompanying text (discussing how honor killings are a type of violence against women that occurs in the private sphere).

291. See CEDAW, *supra* note 33, art. 16(1) (asserting that State Parties shall take all appropriate measures to eliminate discrimination against women in familial relations and ensure that men and women have the same right to enter into marriage); see Southard, *supra* note 168, at 11 (arguing that CEDAW recognizes dowry deaths, female genital mutilation, and other cultural traditions that occur in the private arena as abuses of women's rights). See *id.* Arguably, honor killings are analogous to such traditional practices and are also protected under CEDAW, but they are also more serious violations because honor killings involve a woman's death. See *id.*

292. See CEDAW, *supra* note 33, art. 16(1); see also *infra* notes 222-50 and accompanying text (protecting women from discrimination in family matters by imposing responsibility on State's over private, family matters); see also Theodor Meron, *The Meaning and Reach of the International Convention on the Elimination of All Forms of Racial Discrimination*, 79 AM. J. INT'L L. 283, 286-91 (1985) (discussing that during the drafting of CEDAW, UNESCO continuously emphasized countries must be required to take affirmative measures to address discrimination in the private, family area).

293. See Minor, *supra* note 154, at 139 (arguing that the language "any other field," which is included in the convention, indicates that it recognizes discrimination outside the public sphere).

294. See CEDAW Reservations, *supra* note 35, at 1 (stating Jordan has ratified art. 16(1), although it opted out of art. 16(c), art. 16(d), and art. 16(g)).

295. See *supra* notes 231-50 (describing Article 340's discriminatory effect on women).

296. See *id.* (denoting inequality between men and women).

women are protected from discrimination in the private sphere and enjoy the same familial rights as men implies that women should also be provided the same legal remedies for adultery as their husbands.<sup>297</sup>

## 2. *The Committee's General Recommendation No. 19 – Violence Against Women Violates CEDAW*

Since there is no explicit provision in CEDAW preventing violence against women, in 1994 the Committee clarified its position on the subject in a prominent recommendation entitled General Recommendation No. 19.<sup>298</sup> Although violence against women is not specifically mentioned in CEDAW,<sup>299</sup> General Recommendation No. 19 explicitly states that the Committee considers violence against women in the family a violation of the convention.<sup>300</sup>

297. See Zearfoss, *supra* note 155, at 912-13 (arguing that provisions of Article 16 indicate that CEDAW's drafters intended to prevent violence against women).

298. See General Recommendation No. 19, U.N. GAOR, Committee on the Elimination of All Forms of Discrimination Against Women, 11th Sess., paras. 7(a) – 7(h), U.N. Doc. A/47/38 (1992), available at <http://www.un.org/womenwatch/daw/cedaw/recomm.htm> [hereinafter General Recommendation No. 19] (describing gender based violence as a form of discrimination against women that violates several provisions of CEDAW); see also Dietz, *supra* note 271, at 577-78 (finding that violence against women violates article 15(1) of CEDAW by failing to grant women equality under the law); see also Elizabeth Misiaveg, *Important Steps and Instructive Models in the Fight to Eliminate Violence Against Women*, 52 WASH. & LEE L. REV. 1109, 1119 (1995) (identifying that the violence against women violates CEDAW's right to equality in the family, right to liberty and security of person, and right not to be subjected to torture or to cruel, inhumane, or degrading treatment).

299. See CEDAW, *supra* note 33, arts. 1-30 (identifying that CEDAW does not mention violence against women). But see Dietz, *supra* note 271, at 563 (asserting violence against women violates a woman's right to equality before the law, in addition to the right to life and the right to be free from torture). Moreover, honor killings have not been mentioned at all in any international documents until the year 2000 at the Beijing Five-Plus Convention. See Rina Jimenez-David, *Gains and Losses*, THE PHILIPPINE DAILY INQUIRER, June. 13, 2000, at 2, available at 2000 WL 21224239 (indicating that the Beijing Five-Plus conference denounced honor killings and called for stricter measures to combat violence against women).

300. See General Recommendation No. 19, *supra* note 298, at para. 6 (defining discrimination against women and including physical violence against women); see also *supra* notes 220-50 and accompanying text (finding that violence against women in the family violates CEDAW and the intent of CEDAW).



The Committee directly articulated that killing a woman because of her sexuality is a form of gender-based violence that violates CEDAW and the intent of its drafters.<sup>301</sup> The Committee has further asserted that violence against women is a type of discrimination under Article 1.<sup>302</sup> Moreover, the Committee has focused on how traditional attitudes towards women cause violence in the family.<sup>303</sup> Arguably, the intent of CEDAW is clear; however further specification of types of violence is still probably necessary to ensure CEDAW's effectiveness.<sup>304</sup>

Furthermore, General Recommendation No. 19 reaffirms that State Parties are also responsible for private behavior if they do not act with due diligence to prevent violence against women or punish acts of violence against women.<sup>305</sup> The Committee specifically stated that while State Parties may argue many traditional practices such as dowry deaths, acid attacks, and forced marriage are justifiable on the basis of protecting or controlling women, such violence directly prohibits women from enjoying their fundamental rights and freedoms.<sup>306</sup> Honor killings fit exactly into the category of traditional practices enumerated by the Committee in General Recommendation No. 19 because such practices are committed by males and to prevent

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301. See General Recommendation No. 19, *supra* note 298, at para. 6 (announcing gender based violence is a form of discrimination against women); see also Culliton, *supra* note 282, at 528 (indicating that CEDAW's intent is to interpret the provisions of the convention).

302. See General Recommendation No. 19, *supra* note 298, at paras. 1, 11 (defining violence against women as discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men).

303. See *id.* *supra* note 298 at para. 11 (condemning practices such as dowry deaths, acid attacks, and female circumcision that are often justified by men based on the argument that women need to be protected or controlled); see also Misia-veg, *supra* note 298, at 1118 (explaining that General Recommendation No. 19 recognizes the role discrimination plays in causing violence against women).

304. See Southard, *supra* note 168, at 7 (emphasizing that CEDAW does not mention specific types of gender violence such as rape, battering, veiling, female genital mutilation, or female infanticide).

305. See General Recommendation No. 19, *supra* note 298, para. 9 (emphasizing that State Parties are required to take affirmative action under Articles 2(e), 2(f), and 5 to end discrimination in the private sphere).

306. See *id.*, para. 11 (asserting that the affect of physical violence, which is used to subordinate women, results in the deprivation of women's equal enjoyment, exercise, and knowledge of human rights and fundamental freedoms).

women from straying sexually.<sup>307</sup> Further, honor killings are committed for the underlying purpose of eradicating dishonor to the family.<sup>308</sup> In addition to fear of death, honor killings curtail the daily activities of Jordanian women because they must avoid any activity that might be construed as sexual.<sup>309</sup>

General Recommendation No. 19 also sets forth specific recommendations that State Parties can undertake to combat violence against women.<sup>310</sup> The recommendation specifically prohibits penal provisions, such as Article 340, by recommending that State Parties should enact laws to exclude the defense of family honor for assault or murder of female family members.<sup>311</sup> Since General Recommendation No. 19 is not binding on State Parties, there is still a need for a specific CEDAW provision that addresses honor killings.<sup>312</sup> In addition to removing honor defense legislation, General Recommendation No. 19 further recommends that State Parties pass laws against family violence,<sup>313</sup> report and identify attitudes, customs, and practices that cause violence against women,<sup>314</sup> and create effective legal measures and compensatory provisions to protect women from all types of violence and abuse in the family and workplace.<sup>315</sup> There-

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307. *See supra* notes 59-94 (identifying the reasons honor killings are practiced for the good of all society).

308. *See id.* (identifying the core basis for committing honor killings: returning the family's honor).

309. *See supra* notes 73-77 and accompanying text (denoting that women are confined to activities which do not lead to sexually suggestive possibilities including talking with men, going to cafés or restaurants with men, calling out to men, or enjoying the company of men who are not family members).

310. *See* General Recommendation No. 19, *supra* note 298, para. 24(r)(ii) (enunciating one of CEDAW's specific recommendations is for State Parties to remove laws that allow an honor defense).

311. *See id.*

312. *See* Culliton, *supra* note 282, at 528 (explaining that General Recommendations of the Committee are legal interpretations, but are not binding on State Parties).

313. *See* General Recommendation No. 19, *supra* note 298, para. 24(b) (creating recommendation that members of CEDAW create laws against abuse, rape, sexual assault, and other types of gender-based violence).

314. *See id.*, para. 24(e) (emphasizing self-reporting by State Parties and identification of measures taken to prevent violence against women).

315. *See id.*, para. 24(r)(i)(iii) (discussing that State Parties must ensure the

fore, even without a prohibition against honor killing, the Committee and the drafters have made clear jurisprudential interpretations of CEDAW that ensure honor killings are prohibited.<sup>316</sup>

#### IV. RECOMMENDATIONS

The most effective solutions to the problem of honor killings take into account the reality that ending the practice is a multi-step process.<sup>317</sup> Arguably, the solution proposed by international human rights activists that Article 340 should be amended has failed thus far to prohibit honor killing, or to recognize that Article 340 of the Jordanian Penal Code is a clear violation of CEDAW.<sup>318</sup> A future amendment to Article 340 will likely retain a discriminatory effect on Jordanian women, because Jordan's executive branch must compromise with the conservative members in the lower house of Parliament that oppose prohibiting legal protection for honor killings.<sup>319</sup>

This section will discuss several steps that Jordan should undertake to begin to eradicate the socially accepted practice of honor killing. In particular, the Court of Cassation must implement its pre-1964 precedent condemning honor killing as undeserving of legal excuse.<sup>320</sup> In addition, CEDAW must specifically prohibit the practice of honor killings because it is the premier authority on international

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country provides the proper civil and penal sanctions to protect women).

316. See *supra* notes 288-97 (indicating that the Committee and the drafters of CEDAW are committed to preventing the practice of honor killing).

317. See generally STEP BY STEP, *supra* note 34, (outlining numerous steps to reforming human rights violations through measures such as advocacy, investigation and education).

318. See *supra* notes 30-31 and accompanying text (explaining the provisions of proposed amendments to Article 340 have not outlawed honor killings, but only imposed minimum prison sentences).

319. See Jordan's Parliamentary System, at 18 (on file with author) (discussing the composition of the current Parliament as being comprised of sixteen members of the conservative Islamic Action Front Party and four members from the conservative Jordanian National Group and only seven members of other more liberal parties).

320. See *infra* note 324-29 and accompanying text (arguing that Article 340 violates CEDAW and that legal action would be required to terminate the application of the Article).

women's rights.<sup>321</sup> Finally, the international community must educate Jordanian women about their international legal rights. Jordanian men and women must understand the correlation between stereotypical social attitudes and discrimination against women.<sup>322</sup>

#### A. RETURN TO A PRE-1964 JUDICIAL INTERPRETATION OF ARTICLE 340 AND ABOLISH ARTICLE 340

The most effective method for ending the discriminatory application of Article 340 is for the Jordanian government to force the Jordanian Court of Cassation to implement the pre-1964 interpretation of Article 340<sup>323</sup> by rejecting application of the general provocation rule, Article 98, to honor killings.<sup>324</sup> Changing Article 340, while symbolically important and necessary in order to comply with CEDAW,<sup>325</sup> will not end the Court of Cassation's ability to apply Article 98 to honor killings.<sup>326</sup> Further, an amended Article 340 is important, but by itself, will not guarantee a change in cultural prac-

321. See *infra* notes 157-77 and accompanying text (asserting that CEDAW is seriously committed to eliminating social and customary practices that promote violence against women).

322. See *infra* notes 348-62 and accompanying text (discussing the benefits of the Court of Cassation's pre-1964 precedent).

323. See Abu-Odeh, *Crimes of Honor*, *supra* note 13, at 158 (discussing the Court of Cassation's decisions from 1953-1965 when the court did not apply Article 98 to killings specified in Article 340 and argued against the application of Article 98).

324. See Abu-Odeh Interview, *supra* note 114, at 1, (distinguishing the abolition of Article 340 from simply changing the Court of Cassation's method of applying Article 98 to Article 340). In Jordan, the executive branch should lobby the judiciary to modify wide application and a political compromise can end the discriminatory application of Article 340. See *id.*; see also STEP BY STEP, *supra* note 34, at 124 (arguing that the most effective strategies for change combine political and legal action).

325. See *supra* notes 216-87 and accompanying text (arguing Article 340 and the application of Article 340 violate CEDAW).

326. See Rana Hussein, *Lower House Again Rejects Canceling Article 340 of Penal Code*, JORDAN TIMES, at 2 (on file with author) (describing recent legislation proposed by the executive branch). However, the draft legislation does not prohibit the judiciary from applying Article 98 to the specific crime of honor killing, which is regulated under Article 340. See *id.* As previously mentioned, the judiciary has the ultimate say in whether a male who is found guilty of a crime of honor receives a reduced prison sentence. See *id.*

tice.<sup>327</sup> Thus, amending Article 340 is insufficient in itself to eradicate honor killings because the court, as the final interpreter of the law,<sup>328</sup> will maintain the same power to grant leniency to men who commit honor killings against female relatives.<sup>329</sup>

Advocacy by the Jordanian government is particularly feasible in the case of honor killings because the court's pre-1964 precedent specifically rejects applying a general provocation rule to Article 340 situations.<sup>330</sup> Thus, the judicial branch of the Jordanian government can justify its changed position by relying on a re-examination of pre-1964 decisions.<sup>331</sup> The recent public outcry<sup>332</sup> against Article 340 also gives the judiciary the impetus for examining prior precedent, making it more feasible to gain further support from the already

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327. See Margaret Schuler, *Introduction*, in EMPOWERMENT AND THE LAW 1,24 (M. Schuler ed., 1986) [hereinafter, Schuler, EMPOWERMENT] (explaining that changing the law is insufficient by itself absent adequate enforcement structures). Schuler argues that education is necessary to deal with the cultural component of the law. See *id.* She argues that the law itself must change, the structures must support the law, and the attitudes and behaviors of a nation's citizens must be changed education and efforts to empower people by teaching them how to utilize such rights. See *id.*

328. See Andrew Byrnes, *Human Rights Instruments Relating Specifically to Women, With Particular Emphasis on the Convention Elimination of all Forms of Discrimination Against Women*, Hong Kong Judicial Colloquium on Women's Rights, 39, 49 (on file with author) (noting that a judiciary's interpretation of national law is a major factor affecting whether a country will enforce international obligations).

329. See Schuler, EMPOWERMENT, *supra* note 327, at 24 (finding that structures which enforce the law must ultimately uphold the law in a non-discriminatory fashion).

330. See *supra* notes 114-34 and accompanying text (discussing the Court of Cassation's pre-1964 precedent, which prohibited the application of Article 98 to honor killings). In the rationale of the court, application of Article 98 to Article 340 was unacceptable and prohibited. See *id.*

331. See *id.* (discussing the Court of Cassation's prior precedent, which rejects application of Article 98 for killings of honor).

332. See Jamal Halaby, *Jordan Tries to End a Deadly Custom*, THE SEATTLE TIMES, July 6, 2000, at 1, available at 2000 WL 5543698 (reporting that international organizations are pressuring Jordan to amend Article 340 and end honor killings) [hereinafter Halaby, *Jordan Tries to End Custom*]; see *Jordanian Women Killed 'For Honour'*, PAKISTAN PRESS INTERNATIONAL SERVICES LIMITED, Apr. 25, 2000, at 1, available at 2000 WL 18962593 (asserting that the National Jordanian Campaign to Eliminate Honour Killings garnered thousands of signatures advocating in favor of a bill which would amend Article 340).

willing executive branch<sup>333</sup> and Jordanian citizens<sup>334</sup> that reverting to previous precedent and the rationale of previous courts is necessary.<sup>335</sup>

After the Jordanian government obtains assurance from the courts that honor killings will not be legally excused, Article 340 should be abolished for several reasons. First, Jordan must comply with its international obligations under CEDAW.<sup>336</sup> Second, Article 340 should be abolished, not amended, because a new law will serve as a symbolic acknowledgement that the Jordanian government recognizes Article 340 is discriminatory to women.<sup>337</sup> Potentially, this acknowledgement may begin to shift public opinion from somewhat passive acceptance of honor killings to an educated resistance against honor killings as a violation of women's basic rights.<sup>338</sup>

#### B. ADD A SPECIFIC PROVISION ON HONOR KILLINGS TO CEDAW

In addition to changing the Court of Cassation's application of Jordanian law, CEDAW must be strengthened.<sup>339</sup> First, as CEDAW

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333. See *supra* notes 27-31, 105, and accompanying text (noting the executive branch's strong support for reforming Article 340).

334. See STEP BY STEP, *supra* note 34, at 119 (describing an appreciative constituency is one important factor that will allow successfully advocacy and change of a particular issue); see also Halaby, *Jordan Tries to End Custom*, *supra* note 332, at 1 (stating that thousands of Jordanian citizens signed a petition to urge Parliament to accept a bill to reform Article 340); Letter from the National Jordanian Campaign to Eliminate the so called "Crimes of Honour" at <http://www.hrw.org/campaigns/jordan/jordan-cmpgn.htm> (last visited Mar. 30, 2001) (campaigning against lenient sentences for honor killings).

335. See *supra* notes 114-34 and accompanying text (noting that the Jordanian Court of Cassation previously refused to grant leniency for honor killings).

336. See *supra* notes 203-15 (explaining that States party to CEDAW must meet affirmative obligations, including the removal of practices and laws which are discriminatory to women based on cultural or social practices).

337. See Schuler, EMPOWERMENT, *supra* note 327, at 19 (noting that legal constraints often mean the difference between life and death for women).

338. See *id.* at 24 (identifying reformation of discriminatory laws as one method of changing attitudes and affecting unjust social policy if the proper individuals are involved in the implementation of the changed law); see also STEP BY STEP, *supra* note 34, at 122 (identifying legal reform or passage of laws methods of combating discriminatory laws and customary practices).

339. See Southard, *supra* note 168, at 11 (arguing that each new charge of dis-

remains the premier treaty governing international women's rights, it must contain a specific provision prohibiting honor killings to dispel the argument among some State Parties that CEDAW does not address honor killings.<sup>340</sup> Second, CEDAW's Committee should encourage State Parties to re-examine the rights of women under the convention and compel State Parties to meet their affirmative obligations to eradicate discrimination against women.<sup>341</sup> Third, specific language condemning the practice of honor killing will help bring an end to honor killings internationally, because women, specifically those in the Middle East, will understand that such killings are prohibited under international law.<sup>342</sup> This understanding will encourage women's disapproval of the practice of honor killings and will potentially inspire individual complaints under CEDAW's Optional Protocol.<sup>343</sup>

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crimination against women must be analyzed separately under CEDAW); *see also* Etienne, *supra* note 165, at 144 (arguing that the goals of CEDAW cannot be reached unless countries submit to all the convention's provisions).

340. *See supra* notes 271-87 and accompanying text (arguing that without specificity, State Parties will fail to comply with CEDAW based on the premise that they must only prevent discrimination in the areas mentioned under specific articles of CEDAW); *see also* An-Na'im, *supra* note 35, at 167 (asserting that international obligations are not specific enough without specific treaty provisions). An-Na'im argues that the exact nature of the obligation is always debatable for parties to bound to international agreements. *See id.* He asserts that because of State sovereignty, there is no official check on State Parties that argue they are not responsible for meeting their obligations under CEDAW. *See id.* For example, unlike contractual agreements, which levy fines on members that breach, there is no motivation for nations to comply with human rights requirements. *See id.* at 169.

341. *See* Christine Ainetter Brautigam, *Mainstreaming a Gender Perspective In the Work of the United Nations Human Rights Treaty Bodies*, 91 AM. SOC'Y INT'L L. PROC. 389, 391 (1997) (finding that State Parties are unaware of the rights specified under human rights treaties, therefore leading to confusion over what obligations must be undertaken and additionally limiting implementation of such treaties).

342. *See* Hammond, *supra* note 66, at 18 (explaining that because Jordanian women are not aware of their own basic human rights they have been taught to accept the practice of honor killings which is now collectively accepted).

343. *See United Nations Economic and Social Council Commission on the Status of Women: Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women*, Adopted Mar. 12, 1999, 38 I.L.M. 763, 43rd Sess., Agenda Item 6, at 1, U.N.Doc. E/CN.6/1999/WG/L.2 (1999) (providing the opportunity for individuals or groups of individuals to bring complaints of CEDAW violations under the jurisdiction of a State Party). Direct prohibition of

Another potential advantage to strengthening the language in CEDAW is that a provision prohibiting honor killings will define the role of the Committee. It will empower the Committee to undertake an active role in preventing honor killing and prevent State Parties from ignoring the practice of honor killings when complying with the weak self-reporting mechanism.<sup>344</sup> In the case of Jordan, the weakness of the self-reporting mechanism is highlighted by the fact that Jordan's report failed to mention Article 340, a clearly discriminatory law.<sup>345</sup> An additional CEDAW provision governing honor killings will aid the Committee in its efforts to effectively admonish State Parties for violations of CEDAW that occur as a result of honor killings.<sup>346</sup>

### C. EDUCATE MEN AND WOMEN ABOUT THEIR LEGAL RIGHTS – THE POTENTIAL TO CHANGE CULTURAL NORMS DISCRIMINATORY TO WOMEN

After reforming court jurisprudence and adding a provision to CEDAW, women and men must be educated to bring about change in traditional attitudes that affect individual practices in the private sphere.<sup>347</sup> First, international grassroots advocacy is necessary in Jor-

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honor killings in CEDAW will make arguing such a case easier, because individuals can assert that honor killings are a *prima facie* violation of CEDAW; see Southard, *supra* note 168, at 32 (asserting that the individuals are more likely to assert claims of discrimination if each type of discrimination is spelled out in CEDAW); see also Thalif Deen, *Rights: "Unholy Alliance" Against Women's Rights*, INTER PRESS SERVICE, June 6, 2000, at 1-2, available at 2000 WL 4091515 (explaining the Optional Protocol makes it easier for individuals to submit complaints of violations to CEDAW and allows the Committee to initiate inquiries into situations of grave, systematic violations against women).

344. See Julie Ernst, *U.S. Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women*, 3 MICH. J. GENDER & L. 299 (1995) (finding that State Parties, in order to avoid criticism from the Committee, typically project the best possible situation in their country, rather than admit the truth about the status of women).

345. See *Report*, *supra* note 263, at 5 (failing to mention Article 340 or other discriminatory Jordanian laws).

346. See Charlesworth, *Women's Human Rights Defined*, *supra* note 161, at 39 (arguing that the current Committee members lack assertiveness in questioning the validity of reports submitted by State Parties).

347. See Shuler, *EMPOWERMENT*, *supra* note 326, at 25-27 (arguing that education is necessary to help bring about women's awareness of their legal rights and



dan to help women understand that international law provides them with the opportunity to affect change in the legal and social norms of their society.<sup>348</sup> International aid, as opposed to national aid, will promote women's awareness of how equitable law functions as a deterrent to discriminatory practices. Further, the Jordanian government may not take further measures voluntarily.<sup>349</sup> If the international community can convince women and men that the law, in this case Article 340, should be changed, such alterations can be used as a stepping stone to reform the underlying belief that honor killings are justifiable.<sup>350</sup> Studies indicate that changes in the law can be used to alter internal values because the laws are a reflection of what society believes.<sup>351</sup>

Second, women and men who are educated about their legal rights can help modify the cultural practices in Jordan.<sup>352</sup> Both men and

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the ability to utilize legal rights). Thus, through educating women about their legal rights, an awareness can develop which will begin to transform the public will. This transformation must be articulated by Jordanian citizens in the form of political demands, which can serve as a catalyst for change in society. *See id.*

348. *See* Ratna Kapur, *From Theory to Practice: Reflections on Legal Literacy Work with Women in India*, in *LEGAL LITERACY: A TOOL FOR WOMEN'S EMPOWERMENT*, 93, 110 (Margaret Schuler & Sakuntala Kadirgamar-Raajasingham eds., 1992) [hereinafter *LEGAL LITERACY*] (explaining that once women are aware of their rights, they can apply that awareness to utilizing their international legal rights, thus modifying social norms that are discriminatory to women); *see also* Southard, *supra* note 168, at 45 (arguing that in order to end discrimination women must break the chain of learned submission that occurs as a function of their culture).

349. *See* Shuler, *EMPOWERMENT*, *supra* note 326, at 25 (arguing that the central purpose of raising awareness about women's legal rights is to promote change in attitudes and behavior); *see also* *LEGAL LITERACY*, *supra* note 348, at 29 (emphasizing that education must be made not on a teacher-learner basis, but through the discussion of situations applicable to women's every day lives). International educators must raise awareness, not imply that Western or other beliefs are superior, or the participants will have no reason to trust and discuss matters with the educator. *See id.* at 29-30.

350. *See* *LEGAL LITERACY*, *supra* note 348, at 28 (concluding that the law can be used as a powerful force in shaping social beliefs). Changing the law by itself is insufficient to affect social change because culture, religion and other forces are what shape individuals' beliefs about what is legally permissible). *See id.* at 29.

351. *See id.*

352. *See* Shuler, *supra* note 326, at 34 (emphasizing that sensitizing men and women about their rights and demystifying the legal system for women will bring about cultural change); *see also* Int'l Women's Law Group, *supra* note 10, at 4

women, after understanding that they possess international legal rights, can begin to understand the connection between cultural practices and violence against women.<sup>353</sup> Long-term solutions are best effectuated when women are aware of their legal rights and are able to actively participate in changing damaging traditional practices.<sup>354</sup> Further, political leaders, almost exclusively male in Jordan, might not perceive certain actions as discriminatory due to their deeply engrained presence in both tradition and culture.<sup>355</sup> Educating men and women will require measures such as seminars, conferences, mass media campaigns, publications of scholarly work and the infiltration of popular literature.<sup>356</sup> Effective communication and education are necessary components of bringing about social change, especially in the case of Jordan where national laws actually support the discriminatory cultural practices of honor killing.<sup>357</sup>

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(recommending that sex education be taught to Jordanian students to help refocus the different gender socialization of boys and girls).

353. See United Nations Fourth World Conference On Women: Declaration and Platform for Action, *Report on 4th Annual Conference on Women*, Sept. 15, 1995, Annex II, at 401, 35 I.L.M. 401 (reporting on education programs that connect violence against women to cultural behaviors); see also Schuler, EMPOWERMENT, *supra* note 326, at 25 (identifying male and female policymakers and legislators as groups which must be educated).

354. See Southard, *supra* note 168, at 65 (asserting that ending discriminatory cultural practices requires active participation by women). It is important to make the distinction between women who have the choice to continue cultural and traditional practices, such as wearing veils or other garments, versus women who do not have choices about their marriage, education and daily life. See *id.* at 89. Jordan must affirm that culture is not the problem, but that inequitable gender-based distinctions, which are imposed by its society deprive women of their basic and fundamental rights. See *id.* at 89-90.

355. See *id.* at 46 (arguing men use words such as intuitive, nurturing, or gentle to characterize women, not necessarily realizing such classifications can impede women's progress and equality). Change can also be hindered because men receive significant benefits from women's lack of participation in politics, employment and education. See Hillary Charlesworth, *Feminist Approaches to International Law*, 85 AM. J. INT'L L. 613, 626 (1991) (finding women's lack of participation in public sphere impairs their equality).

356. See LEGAL LITERACY, *supra* note 348, at 34 (discussing various methods of changing culture).

357. See STEP BY STEP, *supra* note 34, at 126-27 (explaining that strong public education is imperative in nations where citizens are unaware of discriminatory national laws). Nations must design media strategies that educate the public and training must be formulated to teach judges, law enforcement officials, as well as

Moreover, further efforts are necessary to grant women in Jordan access to courts,<sup>358</sup> to train more female attorneys,<sup>359</sup> and to sensitize law enforcement officials about discrimination against women in order to ensure proper enforcement of Jordan's international legal obligations.<sup>360</sup> In its current form, many women lack access to Jordan's legal system.<sup>361</sup> Educating Jordanian women about their legal rights, advocating for changes in the law, and educating men and women about the correlation between social practices and violence against women are all necessary. Combining such education in conjunction with an appropriate legal remedy will ensure women have the necessary structure to enforce their newfound rights.<sup>362</sup>

## V. CONCLUSION

As a signatory of CEDAW, Jordan must bring its national laws into compliance with binding international legal standards. The Court of Cassation's application of Article 98's general provocation rule discriminates against women, in violation of CEDAW. Additionally, Article 340, which legislates honor killings, is a *prima facie* violation of CEDAW. To date, Jordan has failed to successfully take affirmative steps to eradicate discrimination against women who are victims of honor killings. Jordan must abolish Article 340 to come

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women's rights activists. *See id.* at 127-28.

358. *See* Southard, *supra* note 168, at 43-44 (asserting that a change in the law is insufficient without access to female attorneys and the justice system).

359. *See id.* (arguing that without female attorneys, women will not have true access to the judicial system in a culture that discriminates against women).

360. *See* STEP BY STEP, *supra* note 34, at 112 (finding that a lack of acceptance of women's rights among local personal will prevent enforcement of national and international legal obligations); *see also* Judith Armatta, Getting Beyond Law's Complicity, in *Intimate Violence Against Women*, 33 WILLAMETTE L. REV. 774, 822 (1997) (arguing that education and training of legal professionals is necessary because many judges think criminal justice is inapplicable to domestic crime). Judges are the ultimate decision makers in criminal cases and must understand practices that are discriminatory to women in order to end them. *See id.*

361. *See* LEGAL LITERACY, *supra* note 349, at 27 (asserting that women's lack of access to the legal system perpetuates their lack of awareness of their legal rights since the system does not include them).

362. *See id.* (arguing that the failure to provide women with equal legal access will continue to disenfranchise women and prevent legal equality between men and women).

into compliance with CEDAW. More importantly, the Court of Cassation must revert to pre-1964 precedent, which directly rejects application of leniency to honor killings. To help end discriminatory practices and traditions, Jordan must also educate Jordanian men and women about practices that, although based in culture, deprive women of their fundamental rights.