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## Honor Killing and the Indigenous Peoples: Cultural Right or Human Right Violation

### Keywords

Indigenous Peoples, Asylum, Comparative Law, Gender, Immigration Law, Human Rights Law, Women

## HONOR KILLING AND THE INDIGENOUS PEOPLES: CULTURAL RIGHT OR HUMAN RIGHT VIOLATION?

Sarah Alsabti\*

### I. INTRODUCTION

Many sources define honor killing as the premeditated murder of a girl or a woman.<sup>1</sup> The murderer who commits this crime is usually one of the girl's or woman's family members like her brother, father, or a combination of male agnates.<sup>2</sup> The murderer commits this crime to restore the family's social reputation.<sup>3</sup> The killer believes he is preserving the family's honor by using methods like shooting, stoning, burning, burying alive, strangling, smothering, and knifing the victim to death.<sup>4</sup>

This premeditated murder is the result of the woman's unacceptable behavior. An example of unacceptable behavior would be an extra-marital sexual relationship.<sup>5</sup> Another example would be a pre-marital relationship with a male that is not approved by the family for the single woman.<sup>6</sup>

Honor killing is not a new phenomenon. In fact, honor killing has existed since Ancient Roman times.<sup>7</sup> Since that time, honor killings have been recorded in many countries.<sup>8</sup> This global phenomenon has occurred in developed countries as well as developing countries.<sup>9</sup> Honor killings have taken place in many countries such as the United States, Afghanistan, Brazil, Israel, Egypt, Pakistan, Palestine, and Jordan.<sup>10</sup>

Unfortunately, honor killing is not just part of human history; it still exists in the current century. In 2000, the United Nations Population Fund (UNFPA)

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1. AMIR H. JAFRI, HONOUR KILLING DILEMMA, RITUAL, UNDERSTANDING 18 (2008).

2. *Id.*

3. *Id.*

4. *Impunity for Domestic Violence, 'Honour Killings' Cannot Continue – UN Official*, U.N. NEWS CENTRE (Mar. 4, 2010), <http://www.un.org/apps/news/story.asp?NewsID=33971&Cr=violence+against+women&Cr1#.VwyD6l-cGDt>.

5. AMIN A. MUHAMMAD, PRELIMINARY EXAMINATION OF SO-CALLED 'HONOUR KILLINGS' IN CANADA 2 (Dep't. of Justice Can., 2010).

6. *Id.*

7. *Id.* at 18.

8. *Id.* at 17.

9. *Id.* at 18.

10. *Id.* at 17–20.

concluded that there are at least 5,000 honor killings worldwide every year.<sup>11</sup> When the issue of honor killing is discussed under the international spotlight, Jordan and Pakistan are the two countries that garner the most attention.<sup>12</sup>

Honor killing is a part of Jordan's contemporary society. The population of Jordan is estimated to be 6.5 million inhabitants.<sup>13</sup> A recent report by Rana Hussein estimates that there are about twenty honor killings every year in Jordan.<sup>14</sup> My motivation to write this Article stems from the death of these twenty individuals. This Article focuses on the honor killing situation in Jordan. Section II of this Article discusses domestic law and the cultural context. Part A of Section II illustrates honor killing in the Arabic culture, including an interview with a murderer and his judge to illustrate the society's power. Part B of Section II describes the domestic law in Jordan which does not provide deterrent punishment or sufficient protection for women. Section III is a cultural relativism legal analysis. This section begins by explaining the ideas of cultural relativism and universalism. This section includes some of the international laws that address the indigenous people and their right to practice honor killing in their culture. It includes two international laws: International Labor Organization Convention No.169<sup>15</sup> and United Nations Declaration on the Rights of Indigenous Peoples.<sup>16</sup> Section IV focuses on the international human rights legal analysis. This section starts with general information about the United Nations and its point of view about the violence against women in general and honor killing specifically. Then it describes the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the Declaration on the Elimination of Violence Against Women, and United Nations resolutions. The last section of this Article, Section V, explains Jordan's efforts to follow the international legal community's decisions and recommendations to solve the honor killing issue.

## II. DOMESTIC LAW AND CULTURAL CONTEXT.

This section is a spotlight on Jordan's current situation. It includes information about the Jordan cultural context and the domestic law that addresses honor killing.

### A. *Honor Killing in the Arabic Culture.*

Human sacrifice is a historical aspect of cultures around the world. The reasons for human sacrifice vary.<sup>17</sup> Some victims are sacrificed for social order, while others

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11. *Id.* at 3.

12. 'HONOUR' CRIMES, PARADIGMS, AND VIOLENCE AGAINST WOMEN 199 (Lynn Welchman & Sara Hossain eds., 2005).

13. Manuel Eisner & Lana Ghuneim, *Honor Killing Attitudes Among Adolescents In Amman, Jordan*, 39 AGGRESSIVE BEHAV. 405, 406 (2013).

14. *Id.*

15. Indigenous and Tribal Peoples Convention, C169 Sept. 5, 1991, [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C169](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169).

16. G.A. Res. 61/295, Declaration on the Rights of Indigenous Peoples (Sept. 13, 2007).

17. Philip Ball, *How Human Sacrifice Propped Up the Social Order*, NATURE (Apr. 4, 2016),

are sacrificed for religious reasons.<sup>18</sup> What motivates one to commit an honor killing – is it social or religious? Interestingly, most honor killing crimes that are perpetrated worldwide (mainly in patriarchal societies or communities) emanate from cultural, not religious, roots.<sup>19</sup>

Researchers from the Cambridge University's Institute of Criminology produced a study about honor killing.<sup>20</sup> They interviewed males and females in Jordan's capital, Amman.<sup>21</sup> They found that 40% of boys and 20% of girls believed that the honor killing of a woman who is "dishonoured" or has shamed the family is justified.<sup>22</sup>

In Arabic societies, women refraining from any kind of sexual practice before marriage is ideal.<sup>23</sup> The hymen gives the woman a stamp of virtue and respectability.<sup>24</sup> This makes the wedding night very important for Arabic women because on this night the husband will test and announce his judgment on his wife and her family's virtue.<sup>25</sup> This is why some believe the loss of virginity is a reason to kill the woman and clear her family's shame.

In Arab culture, protecting the female's virginity is a part of the male's responsibility.<sup>26</sup> Therefore, the man has to guard and defend against any incursions of his female family member's virginity.<sup>27</sup> Any failure of this protection requires him to kill the woman to save the family's reputation or he is no longer thought of as a man.<sup>28</sup>

Husseini interviewed a murderer who committed an honor killing crime as well as his judges. This interview gives a better understanding of the local culture in Jordan.<sup>29</sup>

Sarhan killed his sister Yasmin, who was raped by her brother-in-law.<sup>30</sup> Yasmin turned to the police rather than her family.<sup>31</sup> Sarhan went to the police station and tried to bail his sister out. The police refused his request because they thought that he might kill her because she lost her virginity.<sup>32</sup> After a few days, Sarhan found his

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<http://www.nature.com/news/how-human-sacrifice-propped-up-the-social-order-1.19681>.

18. *Id.*

19. Parliamentary Assembly, *Resolution 1327: So-called 'Honour Crimes'* (2003), <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17106&lang=en>.

20. Eisner & Ghuneim, *supra* note 13.

21. *Study: Jordan 'Honour Killing' Support Strong*, ALJAZEERA (June 20, 2013), <http://www.aljazeera.com/news/middleeast/2013/06/201362054127558357.html>.

22. Eisner & Ghuneim, *supra* note 13, at 405.

23. Lama Abu Odeh, *Honor Killings and the Construction of Gender in Arab Societies*, 58 AM. J. COMP. L. 911, 916–17 (2010).

24. *Id.*

25. *Id.*

26. *Id.* at 919.

27. *Id.*

28. *Id.*

29. RANA HUSSEINI, *MURDER IN THE NAME OF HONOR* 9–13 (2009).

30. *Id.*

31. *Id.*

32. *Id.*

sister at their family home. Without saying a word, he killed her using an unlicensed gun and then turned himself in. Sarhan killed his sister to cleanse his family honor.<sup>33</sup>

Sarhan justified killing his sister by saying that it was better that one person died, opposed to the whole family suffering shame and disgrace, even though she lost her virginity from being raped.<sup>34</sup> He illustrated his point by comparing it to a box of apples: "If you have one rotten apple, would you keep it or get rid of it?"<sup>35</sup> "I just got rid of it," he said. Then he added, "I killed her because she was no longer a virgin."<sup>36</sup>

The interviewer challenged Sarhan by pointing out that his act was punishable by God and prohibited in Islam.<sup>37</sup> Sarhan's answer was, "I know that killing my sister is against Islam and it angered God, but I had to do what I had to do and I will answer to God when the time comes."<sup>38</sup> He then added that people refused to talk to him or his family as further justification.<sup>39</sup> "They told us to go cleanse our honor; then we were allowed to talk to them. Death is the end to disgrace."<sup>40</sup> He illustrated his words by saying that society would not stop talking about his family even if they married his sister.<sup>41</sup> He said they would only stop talking when she was dead.<sup>42</sup>

Sarhan added, "I took the stand and told the judges that I had to kill my sister, because if I did not kill her, it would have been like killing more than thousand men from my tribe." He admitted that before he killed his sister Yasmin, he sat with his family members and around eight hundred men of his tribe and they reached this decision together – that people would look down on him if he did not kill her because she was not a girl anymore and her death was the only way to erase the shame.<sup>43</sup> He added that he loved his sister deeply, but he was forced to kill her.<sup>44</sup>

On the other hand, the interviewer asked the judge to explain how Sarhan's punishment was only six months in jail, especially when the girl was raped.<sup>45</sup> The interviewer also asked how Article 98 of the Penal Code applied in this case.<sup>46</sup> Article 98 applies when a killer commits his crime while in a state of great fury.<sup>47</sup> Here, it should not have applied because Sarhan planned to commit his crime. In other words, he was not in a great fury.

The judge said, "[t]he rape happened within the family, so it was clearly a family affair. Sarhan killed his sister after family encouragement, so this murder was

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33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

a product of our culture.”<sup>48</sup>

### *B. The Domestic Law in Jordan*

The Arabic culture is not the only reason to commit this crime. The domestic law in Jordan plays an essential role in honor killings. The Penal Code in Jordan’s domestic law includes some articles that give an excuse to the murderers. Those articles are Article 98 and Article 340.<sup>49</sup>

#### **1. Article 98**

Article 98 of the Penal Code is most often used on behalf of criminals in honor killings.<sup>50</sup> This article is utilized when a person commits a dangerous act in a state of great fury (or “fit of fury”).<sup>51</sup>

Though both genders can benefit from this article, it is usually used to benefit men because the family usually waives their rights in honor killing crimes.<sup>52</sup>

This article reduces the penalty to a minimum of one year in prison.<sup>53</sup> It is also reducible to a maximum of two years and to a minimum of six months for other felonies.<sup>54</sup> Moreover, if the victim’s family “waives” its right to file a complaint, the courts may further halve the sentence.<sup>55</sup> This means a killer can walk away as a free man after the verdict immediately if he spends the duration of his sentence in prison while awaiting his trial.<sup>56</sup>

#### **2. Article 340**

Article 340 of the Penal Code states that:

1. He who surprises his wife or one of his female *maharms* (“unlawfuls”) in the act of committing unlawful sexual intercourse with somebody and kills, wounds or injures one or both of them, shall benefit from the exonerating/ exempting excuse (“udhr muhill”).
2. He who surprises his wife or one of his ascendants or descendants or siblings with another in an unlawful bed, and kills or wounds or injures one or both of them, shall benefit from the mitigating excuse (“under mukhaffaf”).<sup>57</sup>

A major turning point in Jordanian law occurred in 2001 when Jordan’s government amended Article 340 by way of temporary legislation, in the absence of

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48. *Id.*

49. KATHLEEN PERATIS, HONORING THE KILLERS: JUSTICE DENIED FOR “HONOR” CRIMES IN JORDAN 15, 18 (Human Rights Watch, 2004).

50. *Id.* at 18.

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. ‘HONOUR’ CRIMES, PARADIGMS, AND VIOLENCE AGAINST WOMEN, *supra* note 12, at 201.

a sitting parliament. The article after it was amended became:

1. There shall benefit from the mitigating excuse ("udhr mukhaffaf") whosoever surprises his wife or one of his ascendants or descendants in the crime of adultery or in an unlawful bed, and kills her immediately or kills the person fornicating with her or kills both of them or attacks her or both of them in an assault that leads to death or wounding or injury or permanent disability.
2. Shall benefit from the same excuse the wife who surprises her husband in the crime of adultery or in an unlawful bed in the marital home and kills him immediately or kills the woman with whom he is fornicating or kills both of them or attacks him or both of them in an assault that leads to death or wounding or injury or permanent disability.
3. The right of lawful defence shall not be permitted in regard to the person who benefits from this excuse nor shall the provisions of "aggravated circumstances" ("zuruf mushaddida") apply.<sup>58</sup>

The amendment grants female attackers the same reduction in penalty as men.<sup>59</sup>

### III. CULTURAL RELATIVISM LEGAL ANALYSIS

Until World War II, the protection of human rights of individuals was a sovereign prerogative of the state and, therefore, a domestic matter rather than an international concern.<sup>60</sup> This led to many atrocities during World War II.<sup>61</sup> These atrocities motivated scholars and politicians to develop theories relating to human rights, including cultural relativism and universalism.<sup>62</sup>

Cultural relativism and universalism are two essential theories in defining international human rights related to indigenous peoples.<sup>63</sup> Cultural relativism means that the culture is the norm by which the content of rights enjoyed by a community is determined.<sup>64</sup> Cultural relativists argue that the content of human rights in international human rights instruments reflects the values of countries that have more power over the substance of international human rights law.<sup>65</sup> In other words, the Western states.

On the other hand, under universalism, human rights are universal, absolute,

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58. PENAL CODES OF ARAB STATES (Lynn Welchman trans.), *reprinted in* EXTRACTED PROVISIONS FROM THE PENAL CODES OF ARAB STATES RELEVANT TO 'CRIMES OF HONOUR' (2013).

59. Peratis, *supra* note 49, at 16.

60. Elizabeth M. Zechenter, *In the Name of Culture: Cultural Relativism and the Abuse of the Individual*, 53 J. OF ANTHROPOLOGICAL RES. 319, 319 (1997).

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

and inalienable.<sup>66</sup> Universalism gives priorities to individuals rather than groups.<sup>67</sup> Under this concept, individuals (humans) are the only possible holders of rights.<sup>68</sup> This means that rights attach to every individual, regardless of that individual's culture, race, ethnicity, gender, or age.<sup>69</sup>

The following are some examples of international conventions that address indigenous people, their communities, and their freedom and right to practice their culture.

*A. International Labor Organization Convention No.169.*

In 1989, more than twenty-five years ago, the International Labor Organization (ILO) adopted the Indigenous and Tribal Peoples Convention.<sup>70</sup> Article 2 of this convention states that governments shall cooperate with the concerned peoples to protect their rights and to guarantee respect for their integrity.<sup>71</sup> This action includes measures to promote the full realization of the social and cultural rights of these peoples.<sup>72</sup> This realization includes respect for social and cultural identities, customs, traditions, and institutions.<sup>73</sup> In applying the provisions of this convention, the convention parties must respect the social, cultural, religious and spiritual values, and practices of these peoples.<sup>74</sup> Moreover, Article 7 of this convention states that the peoples have the right to decide their own priorities for the process of development.<sup>75</sup> They also have the right to control their own economic, social, and cultural development to the extent possible.<sup>76</sup> In other words, the culture's supporters could argue that the ILO Convention affords protection to the indigenous peoples to commit honor killings because they are a part of traditional custom and because they have the right to govern themselves in autonomy. In fact, the convention states that this is the government's responsibility with the indigenous communities' participation.<sup>77</sup> Moreover, the convention states that "[i]ndigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions of the convention shall be applied without discrimination to male and female members of these peoples."<sup>78</sup>

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66. CLAIRE CHARTERS, *UNIVERSALISM AND CULTURAL RELATIVISM IN THE CONTEXT OF INDIGENOUS WOMEN'S RIGHTS* 10 (P. Morris et al. eds., 2003).

67. *Id.*

68. *Id.*

69. *Id.*

70. Convention Concerning Indigenous and Tribal Peoples in Independent Countries, June 27, 1989, 28 I.L.M. 1382.

71. *Id.* art. 2(1).

72. *Id.* art. 2(2)(b).

73. *Id.*

74. *Id.* art. 5.

75. *Id.* art. 7(1).

76. *Id.*

77. *Id.* art. 2.

78. *Id.* art. 3(1).

*B. United Nations Declaration on the Rights of Indigenous Peoples*

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is one of the most recent conventions addressing the rights of indigenous peoples. On September 13, 2007, UNDRIP confirmed that indigenous peoples are equal to all other peoples<sup>79</sup> and stated the importance of respecting the right of all peoples to be different.<sup>80</sup>

According to Article 3 of UNDRIP, indigenous peoples have the right to self-determination. By virtue of that right, indigenous peoples are free to determine their political status and freely pursue their economic, social, and cultural development.<sup>81</sup>

In addition, Article 5 states that indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social, and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social, and cultural life of the State.<sup>82</sup>

Honor killing is a part of the indigenous peoples' culture in Jordan. By applying these articles to honor killing, honor killing supporters can argue that honor killing is a major part of the indigenous peoples' culture in Jordan and indigenous peoples have the right to self-determine whether they want to continue using this practice or not.

Yet, after reading the whole convention, it is clear that some of the remaining articles conflict directly, or implicitly, with the commission of honor killing. For example, Article 44 states that "[a]ll the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals."<sup>83</sup> Additionally, Article 7 states that "[i]ndigenous individuals have the rights to life, physical and mental integrity, liberty, and security of person."<sup>84</sup> This article states a right to life for the indigenous peoples, but what if the main norm to achieve this culture is by killing the victim and losing a life? Moreover, Article 22 provides that "[s]tates shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination."<sup>85</sup> The honor killing in Jordan's culture represents a stark contrast with this article, leading to the threshold question of whether honor killing is a right of the peoples under UNDRIP. Is it a form of the indigenous peoples' right to self-determination or a form of violence and discrimination?

Article 34 states that "[i]ndigenous peoples have the right to promote, develop, and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices, and, in the cases where they exist, juridical systems

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79. G.A. Res. 61/295, annex, U.N. Declaration on the Rights of Indigenous Peoples (Sept. 13, 2007).

80. *Id.*

81. *Id.* art. 3.

82. *Id.* art. 5.

83. *Id.* art. 44.

84. *Id.* art. 7(1).

85. *Id.* art. 22(2).

or customs, in accordance with international human rights standards.”<sup>86</sup> In other words, international human rights standards have to be followed by indigenous peoples when they promote or develop their customs, spirituality, and traditions. To give a better explanation, the next section will address international human rights laws.

#### IV. INTERNATIONAL HUMAN RIGHTS LEGAL ANALYSIS

The United Nations (U.N.) came into existence on October 24, 1945.<sup>87</sup> The U.N. is an international political body run by western states; consequently, it values the western traditional beliefs more than the indigenous peoples’ traditional beliefs and norms.<sup>88</sup> However, U.N. Secretary General Kofi Annan expressed the U.N.’s attitude regarding violence against women by saying “[v]iolence against women is perhaps the most shameful human rights violation. It knows no boundaries of geography, culture or wealth. As long as it continues, we cannot claim to be making real progress towards equality, development, and peace.”<sup>89</sup>

Violence against women takes many forms, such as rape, honor killings, and female infanticide.<sup>90</sup> As a result, many of the current international declarations, covenants, conventions, and resolutions push states to take a firm stance against honor killing. Ultimately, honor killing is a violation to the international human right to life, bodily integrity, and equality.

##### A. *Universal Declaration of Human Rights.*

In 1948, the U.N. promulgated the Universal Declaration of Human Rights<sup>91</sup> which set forth, for the first time, that fundamental human rights must be universally protected.<sup>92</sup> This declaration is considered one of the most important reference points for cross-cultural discussion of human freedom and dignity in the world today.<sup>93</sup>

The Universal Declaration of Human Rights begins by confirming that people are equal in dignity and rights.<sup>94</sup> Article 2 emphasizes the importance of avoiding distinctions based on sex by stating that everyone has the rights and freedoms set forth in this declaration, without distinction of any kind.<sup>95</sup> Article 3 states that

86. *Id.* art. 34.

87. History of the United Nations, UN, <http://www.un.org/en/sections/history/history-united-nations>.

88. Meetings Coverage, U.N., Econ. and Soc. Council, Rights Violations of Indigenous Peoples ‘Deep, Systematic and Widespread’, Special Rapporteur Tells United Nations Permanent Forum, HR/5016 (Apr. 22, 2010).

89. U.N. WOMEN, VIOLENCE AGAINST WOMEN FACT SHEET NO. 4 (Apr. 14, 2016), <http://www.un.org/womenwatch/daw/followup/session/presskit/fs4.htm>.

90. *Id.*

91. G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

92. *Id.*

93. Mary Ann Glendon, *Knowing the Universal Declaration of Human Rights*, 73 NOTRE DAME L. REV. 1153, 1153 (1998).

94. Universal Declaration of Human Rights, *supra* note 91, art. 1.

95. *Id.* art. 2.

everyone has the right to life, liberty, and security of person.<sup>96</sup>

Without a doubt, honor killing is seen as a clear violation to this declaration. On the other hand, some argue that regardless of what people believe, the cultural group whose practice is in question should be given respect for universal human rights norms, just as states are accorded the same respect.<sup>97</sup> Westerners view honor killing as a barbaric and illegal practice because they do not understand the value of this act in the indigenous culture. Cambridge University statistics states that one of every five indigenous women in Jordan believes that executing the honor killing of a woman is justified,<sup>98</sup> even when they themselves could be a potential victim. The reason for their attitude about honor killing is their understanding and value of the customs and notions of honor.<sup>99</sup>

*B. The International Covenant on Civil and Political Rights.*

The International Covenant on Civil and Political Rights (ICCPR) entered into force on March 23, 1976.<sup>100</sup> This covenant confirmed the right to life as a universal declaration of human rights by stating that no one shall arbitrarily be deprived of his life<sup>101</sup> and that this right to life shall be protected by law.<sup>102</sup> This covenant also states the right to security of person and liberty.<sup>103</sup>

On the other hand, the same covenant states, under Article 27, that minorities have the right to practice their own culture, religion, or language, and that the States shall protect this right.<sup>104</sup> However, does that give minorities the right to practice any culture, even if the culture violates one of the rights that the covenant protects? In other words, does this mean honor killing is legal if minorities commit it as a part of their culture, even if it is against the right to life and the right to security of person?

In fact, General Comment No. 28 states that persons belonging to minorities and enjoying rights under Article 27 should not violate the right to the equal enjoyment by women of any covenant rights or the right to equal protection of the law.<sup>105</sup>

Obviously, honor killing is not protected by this covenant because it includes the equal enjoyment by women of any covenant rights, or the right to equal protection of the law.

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96. *Id.* art. 3.

97. S. JAMES ANAYA, *INDIGENOUS PEOPLES IN INTERNATIONAL LAW* 133 (2d ed. 2004).

98. Eisner & Ghuneim, *supra* note 13, at 405.

99. John Alan Cohan, *Honor Killings and the Cultural Defense*, 40 CAL. W. INT'L L. J. 177, 225 (2010).

100. International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 172 (entered into force Mar. 23, 1976).

101. *Id.* art. 6(1).

102. *Id.*

103. *Id.* art. 9(1).

104. *Id.* art. 27.

105. Human Rights Comm., *General Comment No. 28: The Equality of Rights Between Men and Women (Article 3)*, U.N. Doc. CCPR/C/21/Rev.1/Add.10, ¶ 32 (Mar. 29, 2000).

C. *The Convention on the Elimination of All Forms of Discrimination Against Women.*

In 1979, the U.N. General Assembly adopted the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>106</sup> This convention entered into force on September 3, 1981.<sup>107</sup>

Since that year, ratifying state parties are obligated to enforce CEDAW domestically.<sup>108</sup> The state must establish a policy of eliminating discrimination against women from any person, organization or enterprise.<sup>109</sup> The first article of CEDAW states that “the term ‘discrimination against women’ shall mean 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 by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field.”<sup>110</sup> While CEDAW did not state that violence against women is a form of discrimination, the Committee on the Elimination of Discrimination against Women (the Committee) did<sup>111</sup> by stating that any act that affects women disproportionately or any violence based on gender is seen as a form of discrimination that Article 1 of the CEDAW prevents.<sup>112</sup>

Regarding honor killings specifically, CEDAW General Recommendation 19 states measures necessary to overcome family violence.<sup>113</sup> One of these measures is legislation removing the defense of honor in regard to the murder or assault of a female family member.<sup>114</sup>

In 2007, the Committee suggested replacing protective custody (incarceration) with other measures to protect actual and potential honor killings victims without depriving them of their liberty.<sup>115</sup> The Committee also urged Jordan to eliminate reductions in penalties that can benefit perpetrators of honor killings.<sup>116</sup>

106. *Short History of CEDAW Convention*, UN (May 11, 2016), <http://www.un.org/womenwatch/daw/cedaw/history.htm>.

107. *Id.*

108. Rachel A. Ruane, *Murder in the Name of Honor: Violence Against Women in Jordan and Pakistan*, 14 EMORY INT’L L. REV. 1523, 1563–64 (2000).

109. *Id.*

110. Convention on the Elimination of All Forms of Discrimination against Women, *opened for signature* Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].

111. Comm. on the Elimination of Discrimination Against Women, *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women*, 47th Sess., Oct. 4–22, 2010, U.N. Doc. CEDAW/C/2010/47/GC.2 (2010).

112. U.N. Div. for the Advancement of Women, U.N. Econ. Comm’n for Europe, U.N. Stat. Div., Rep. of the Expert Group Meeting, *Indicators to Measure Violence Against Women* 5 (Oct. 2007).

113. Comm. on the Elimination of Discrimination against Women, *General Recommendation No. 19: Violence Against Women*, 11th Sess., U.N. Doc. A/47/38 (Jan. 29, 1992).

114. *Id.* ¶ 24(r)(ii).

115. *Law and Policy on “Honor” Killings and Crimes*, ADVOCATES FOR HUMAN RIGHTS (last updated Nov. 2008), [http://www.stopvaw.org/law\\_and\\_policy3.html](http://www.stopvaw.org/law_and_policy3.html).

116. *Id.*

*D. Declaration on the Elimination of Violence Against Women.*

The Declaration on the Elimination of Violence Against Women (DEVAW) was promulgated on December 20, 1993.<sup>117</sup> The Declaration starts by defining the term "violence against women" to mean "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."<sup>118</sup>

DEVAW confirmed the exercise of due diligence to investigate and prevent violence against women in accordance with national legislation.<sup>119</sup> It also punishes acts of violence against women, even if those acts are perpetrated by the state or by private persons.<sup>120</sup>

Some politicians in Jordan have claimed that committing honor killing is one of their traditional practices. To illustrate, MP Mahmud al-Kharabsha, a member of Jordan's House of Representatives, said he accepted the logic of honor killings as an alternative means to clean the society of corruption.<sup>121</sup> In other words, because it is a genuine manifestation of a community's culture, it is not a legal subject of scrutiny from an international human rights perspective. Nevertheless, in adopting DEVAW, the U.N. General Assembly opposed this idea, urging states to eliminate discriminatory treatment of women and not invoke tradition, custom, or religious consideration to avoid this obligation.<sup>122</sup>

*E. U.N. Resolutions*

While the international society is working to eliminate honor killing and sees it as a sort of discrimination and violation against women, some of the indigenous people in Jordan see it as way to restore the social equilibrium and avoid feuds in local culture.<sup>123</sup> From their perspective, the local culture requires the shedding of blood to wash away the shame of sexual dishonor.<sup>124</sup>

Consequently, change has to begin from the inside. That is the idea that the United Nations General Assembly Resolution 55/66 entitled, "*Working towards the elimination of crimes against women committed in the name of honor*," endorsed<sup>125</sup> by stating that it is necessary to involve society leaders like educators, religious leaders, chiefs, traditional leaders, and the media in public education.<sup>126</sup> It also

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117. G.A. Res. 48/104, U.N. Doc. A/RES/48/104, Declaration on the Elimination of Violence against Women (Dec. 20, 1993).

118. *Id.* art. 1.

119. *Id.* art. 4(c).

120. *Id.*

121. Yotam Feldner, "Honor" Murders – Why the Perps Get Off Easy, MIDDLE E. Q. 41 (Dec. 2000).

122. Comm. on the Elimination of Discrimination against Women, *supra* note 113, ¶ 24(e).

123. Cohan, *supra* note 99, at 225.

124. *Id.* at 225–26.

125. *Sources of International Law Related to "Honour" Crimes and Killings*, UN WOMEN, <http://www.endvawnow.org/en/articles/729-sources-of-international-law-related-to-honour-crimes-and-killings.html>.

126. *Id.*

addressed creating institutional mechanisms to facilitate safe and confidential reporting for victims and others to report honor crimes.<sup>127</sup> GA Res 55/66 provides for encouraging, supporting and implementing measures to increase the understanding of legal and health professionals of the causes and consequences of honor-based violence.<sup>128</sup> In addition, GA Res 55/66 addresses the importance of providing and facilitating support services, such as appropriate protection, safe shelter, counseling, legal aid, rehabilitation and reintegration into society, for actual and potential victims.<sup>129</sup> These measures are in addition to intensifying legislative efforts.<sup>130</sup>

Moreover, United Nations General Assembly Resolution A/RES/59/165 encourages working towards the elimination of crimes against women committed in the name of honor.<sup>131</sup> GA Res 59/165 strengthens cooperation with intergovernmental and non-governmental organizations. Furthermore, it encourages the media to raise awareness on the issue.<sup>132</sup>

## V. MOVING FORWARD.

Jordan has received clear messages and suggestions from the international community to solve the violation against women that results from honor killing. This section illustrates Jordan's domestic efforts to execute its international obligations. It also illustrates Jordan's efforts to from a legal and social perspective and includes recommendations to help solve the honor killing problem.

### A. Legal Perspective.

In 2001, Article 340 was changed to give the same rights to men and women, which means that any woman or man who kills or attacks his or her partner for the act of committing adultery or being in an "unlawful bed" benefits from a reduction in penalty.<sup>133</sup> This change is an example of gender equality, but it is not sufficient, in and of itself, to eliminate honor killing.<sup>134</sup> This is because the court, as the final interpreter of the law, will continue to use the same power to grant leniency to males who commit honor killings against women relatives.<sup>135</sup>

There are several methods to eliminate honor killings. For example, parliament can repeal the Panel Code articles that give mitigating excuses to the killers or limit the judges' power in applying the mitigating excuse by changing the law. Moreover, judges can decide to apply the mitigating excuse in special conditions only and not

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127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

131. G.A. Res. 59/165, Working Towards the Elimination of Crimes Against Women and Girls Committed in the Name of Honour (Dec. 20, 2004).

132. *Id.* at 3(f).

133. Peratis, *supra* note 49, at 15.

134. Kathryn Christine Arnold, *Are the Perpetrators of Honor Killings Getting Away with Murder? Article 340 of the Jordanian Penal Code Analyzed Under the Convention on the Elimination of All Forms of Discrimination Against Women*, 16 AM. U. INT'L L. REV. 1343, 1402 (2001).

135. *Id.*

expand the application of this article. For example, in applying Article 98, the murderer has to prove he committed his crime during great fury and if the murderer does not prove this, he is precluded from use of the mitigating excuse.

*B. Social Perspective.*

Society plays a major role in the continuance of honor killing. To eliminate honor killing, all society members have to cooperate and fight this culture. Organizations, commissions, individuals, and men as well as women can play an effective role against this problem.

Today, there are organizations and commissions in Jordan that care about women’s rights in general, such as the Jordanian National Commission for Women (JNCW). One of the most important roles of the JNCW was presenting CEDAW’s report to the United Nations’ CEDAW Committee.<sup>136</sup> Unfortunately, there is no domestic organization in Jordan that specializes in the honor killing issue. Establishing a domestic organization that focuses on honor killing will help in solve this issue. Moreover, hiring eligible indigenous people within this organization will give more credibility to this organization because it will help the society to accept the organization’s goal and not see the organization as a movement to westernize the society. This domestic organization should cooperate with all agencies and ministries in Jordan to solve the honor killing issue.

Educating all society members, men and women alike, about their equal rights will help to change the norms discriminatory to women in the society.<sup>137</sup> Obligating teachers to educate children about these rights by adding mandatory lessons about these rights in each level of school, especially the elementary level, will help raise a generation that believes in equality between men and women and shames honor killing.

Ultimately, honor killings have occurred as an essential part of the indigenous people’s culture for hundreds of thousands of years in Jordan. Changing this culture needs more effort than signatures on an international agreement or changing domestic laws. It needs to be treated as a national goal. Each member of this country has an obligation to convince the society members in general and the indigenous people specifically to dispose of this harmful culture. For example, the judge should not use his power to help the honor killing murderers get the mitigating penalty. Teachers should teach their students that there is no honor in killing someone. Mothers should raise their children without any discrimination based on the child’s sex. The final result of all these efforts will be a new generation without honor killing.

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136. *Milestones*, JORDANIAN NAT’L COMM’N FOR WOMEN, [http://women.jo/en/about.php?cat\\_id=9&type=0](http://women.jo/en/about.php?cat_id=9&type=0).

137. Arnold, *supra* note 134, at 1405.