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Male Asylum Applicants Who Fear Becoming the Victims of Honor Killings: The Case for Gender Equality

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MALE ASYLUM APPLICANTS WHO FEAR BECOMING THE VICTIMS OF HONOR KILLINGS: THE CASE FOR GENDER EQUALITY

Caitlin Steinke†

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INTRODUCTION

Ahmet Yildiz was a twenty-six-year-old gay man living in Turkey. In 2008, he came out to his family and friends. Shortly thereafter, he began receiving death threats from his family, so he filed a complaint with the prosecutor’s office.¹ The office refused to inves-

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¹ Nicholas Birch, *Was Ahmet Yildiz the Victim of Turkey’s First Gay Honour Killing?*,

tigate the complaint or provide any protection for Yildiz.² Three months after the complaint was filed, Yildiz was killed after being shot five times upon leaving his apartment to go buy ice cream.³ Prosecutors believe that it was Yildiz's father who traveled 600 miles to find and murder his son.⁴ Soon after the murder, prosecutors suspected that Yildiz's father was on the run and possibly hiding in northern Iraq.⁵ Yildiz's father has still not been located, and has been tried *in absentia* in a trial that continues "at a glacial pace."⁶

An honor killing is a form of premeditated murder with a unique motivation: to cleanse the dishonor that has been cast upon the perpetrator's family as a result of the actions (real or perceived) of the victim.⁷ If Ahmet Yildiz had come to the United States and filed for asylum, claiming that he feared becoming the victim of an honor killing at the hands of one of his family members in Turkey, would his claim have been recognized as legitimate? Or would the court, relying on the fact that honor killings are predominately directed towards women, find Yildiz's claim lacking in merit because he was male?

This Note examines the unique dimensions of honor killing asylum claims and focuses on the claims brought by men who fear becoming the victims of such violence. While honor killings certainly have an overwhelming gender element (as women are most often the victims), men have also been victims of this form of violence.⁸ Much of the current legal scholarship dealing with the threat of an honor killing as a basis for asylum has argued that asylum law largely ignores the many forms of persecution and threats of persecution that women face simply because they are women.⁹ However, men are not only killed by their family members

INDEPENDENT (July 19, 2008), <http://www.independent.co.uk/news/world/europe/was-ahmet-yildiz-the-victim-of-turkeys-first-gay-honour-killing-871822.html>.

² Dan Bilefsky, *Soul-Searching in Turkey After a Gay Man Is Killed*, N.Y. TIMES (Nov. 25, 2009), <http://www.nytimes.com/2009/11/26/world/europe/26turkey.html?pagewanted=all>.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Pelin Turgut, *Turkish Taboos Challenged by Success of Gay 'Honor Killing' Movie*, TIME (Feb. 28, 2012), <http://www.time.com/time/world/article/0,8599,2107434,00.html>.

⁷ See AMNESTY INTERNATIONAL USA, CULTURE OF DISCRIMINATION: A FACT SHEET ON "HONOR" KILLINGS 1 (2012) [hereinafter CULTURE OF DISCRIMINATION], available at http://www.amnestyusa.org/sites/default/files/pdfs/honor_killings_fact_sheet_final_2012.doc.

⁸ See *infra* Part I.B.

⁹ See, e.g., Crystal Doyle, *Isn't "Persecution" Enough? Redefining the Refugee Definition to Provide Greater Asylum Protection to Victims of Gender-Based Persecution*, 15 WASH. & LEE

for their homosexuality, but for marrying or dating women against the wishes of the women's families. This Note argues that the courts should not view honor killings as a form of persecution that targets women exclusively, but as a form of persecution that subjects an individual to the ultimate act of violence solely because of a sense of shame that that individual's action (or unconfirmed, rumored action) has brought upon another individual or family.

Part I provides a comprehensive background about honor killings, including their cultural significance, circumstances in which men are the victims of honor killings, and how honor killings differ from domestic violence.

Part II focuses on asylum claims that have been based on the fear of becoming the victim of an honor killing. This Part analyzes the unique difficulties posed by these claims and includes a survey of all such cases that have been heard by the U.S. Courts of Appeals. It also includes an overview of the honor killings claims that have been brought by male applicants. This Part demonstrates that thus far, not only have the rulings rendered by the circuit courts in honor killing asylum cases been entirely inconsistent, but for male applicants, the very definition of "honor killings" used by the court can significantly influence the outcome of the case.

Finally, Part III argues that while there should indeed be a heavier focus on recognizing the various forms of gender-based persecution suffered by female asylum seekers, courts should not limit the definition of "membership in a particular social group" to *women* who are threatened by honor killings. By focusing exclusively on women's rights and construing "membership in a particular social group" so narrowly as to only include women, the courts risk creating an untenable distinction between the male and fe-

J. CIVIL RTS. & SOC. JUST. 519 (2009) (arguing that the underlying purpose of asylum would be better served through the elimination of the causal nexus requirement between the persecution and one of the "five grounds," especially since women claiming asylum predicated on gender-based persecution are disproportionately disadvantaged by this requirement); Valeria Plant, *Honor Killings and the Asylum Gender Gap*, 15 J. TRANSNAT'L L. & POL'Y 109 (2005) (highlighting arguments that adding "gender" as a protected ground for asylum would be almost entirely symbolic, but that recognizing a state's failure to protect a victim as a form of persecution and providing asylum adjudicators with more gender-sensitivity training would significantly improve the chances of women gaining asylum); Shira T. Shapiro, *She Can Do No Wrong: Recent Failures in America's Immigration Court to Provide Women Asylum from "Honor Crimes" Abroad*, 18 AM. U. J. GENDER SOC. POL'Y & L. 293 (2010) (arguing not only that courts hearing honor killing asylum claims should pay more attention to the meaning of honor killings specifically within the context of the applicant's country of origin, but that the courts should also prohibit a female applicant's delayed report of sexual abuse from harming her credibility).

male victims of this form of persecution. However, by defining “honor killings” in a gender-neutral way, the courts would avoid creating such an indefensible distinction while properly keeping the focus of their inquiry on the reality of honor killings in the applicant’s country of origin and the credibility of the threat faced by the applicant. This effort can and should be supported by federal agencies, such as the Department of State and the U.S. Citizenship and Immigration Services, whose own human rights terminology helps influence these asylum decisions.

I. HONOR KILLINGS

Human Rights Watch calls honor killings “the most extreme form of domestic violence, a crime based in male privilege and prerogative and women’s subordinate social status.”¹⁰ Before examining how the courts analyze asylum claims based on the fear of persecution in the form of an honor killing, it is important to understand the underlying purpose of such violence. After examining honor killings in general, this section highlights that honor killings are not directed exclusively at women, a fact that is essential to the underlying validity of this type of asylum claim brought by a male applicant. This section concludes by focusing on the crucial distinctions between honor killings and domestic violence, distinctions that must not be ignored when analyzing an honor killing asylum claim.

A. *The Cultural Significance*

The United Nations Population Fund estimates that worldwide, 5,000 women and girls are the victims of honor killings each year.¹¹ Many honor killings go unreported, making it extremely difficult to acquire accurate statistics.¹² It is especially difficult to obtain accurate statistics since honor killings are often viewed as private family affairs¹³ instead of crimes worthy of condemnation by society at large. Additionally, since honor killings are motivated by cleansing the dishonor and shame brought upon the family, co-

¹⁰ HUMAN RIGHTS WATCH, HONORING THE KILLERS: JUSTICE DENIED FOR ‘HONOR’ CRIMES IN JORDAN 1 (2004) [hereinafter HONORING THE KILLERS], available at <http://www.hrw.org/reports/2004/04/19/honoring-killers>.

¹¹ CULTURE OF DISCRIMINATION, *supra* note 7, at 1.

¹² AUSTRIAN CTR. FOR COUNTRY OF ORIGIN & ASYLUM RESEARCH & DOCUMENTATION (ACCORD), PAKISTAN: HONOUR KILLING OF MEN A-6813, at 2 (2009) [hereinafter ACCORD, PAKISTAN: HONOUR KILLING OF MEN], available at <http://www.unhcr.org/refworld/docid/4a5604292.html>.

¹³ Shapiro, *supra* note 9, at 310.

operating with researchers would only bring more attention to the family's tarnished reputation.¹⁴ A study conducted by the Aurat Foundation exemplifies these principles; it found that of the 1,636 honor killings believed to have occurred in Pakistan between 2008 and 2011,¹⁵ less than two percent were registered with the local police authorities.¹⁶

Honor killings are widely reported across the Middle East and South Asia, although they occur all around the world.¹⁷ Those who carry out and support such crimes share a deeply held belief in the importance of maintaining family honor, which is viewed as a shared responsibility.¹⁸ In cultures where women's lives literally depend on keeping their honor intact, men are expected to "fiercely defend" the honor of themselves and their families, "so as not to be reduced to women."¹⁹ Furthermore, the murder of a woman for any suspected transgression of social norms is a powerful way of demonstrating control over the entire female population, as "[o]ne only has to kill a few girls and women to keep the others in line."²⁰

Unni Wikan, a social anthropologist and professor at the University of Oslo, defines an honor killing as "a murder carried out as a commission from the extended family, to restore honor after the family has been dishonored. As a rule, the basic cause is a rumor that any female family member has behaved in an immoral way."²¹ It takes only a rumor or insinuation to defile honor, as it is the public perception of honor that matters.²² In Jordan, for example, about ninety percent of honor killings are based on mere suspicion or rumor of an illicit sexual relationship.²³

¹⁴ Phyllis Chesler, *Are Honor Killings Simply Domestic Violence?*, 16 MIDDLE E. Q. 61 (2009), available at <http://www.meforum.org/2067/are-honor-killings-simply-domestic-violence>.

¹⁵ See MALIHA ZIA LARI, A PILOT STUDY ON: 'HONOUR KILLINGS' IN PAKISTAN AND COMPLIANCE OF LAW 38 (2011), available at http://www.af.org.pk/pub_files/1366345831.pdf.

¹⁶ See *id.* at 42. The study used four Pakistani districts as the sample group. *Id.*

¹⁷ CULTURE OF DISCRIMINATION, *supra* note 7, at 1.

¹⁸ See *id.* at 2.

¹⁹ Rachel A. Ruane, *Murder in the Name of Honor: Violence Against Women in Jordan and Pakistan*, 14 EMORY INT'L L. REV. 1523, 1532 (2000).

²⁰ Phyllis Chesler, *Worldwide Trends in Honor Killings*, 17 MIDDLE E. Q. 3 (2010), available at <http://www.meforum.org/2646/worldwide-trends-in-honor-killings>.

²¹ Chesler, *Are Honor Killings Simply Domestic Violence?*, *supra* note 14.

²² Ruane, *supra* note 19, at 1531–32 (arguing that because it is the public perception of honor that matters, it is irrelevant whether women accused of illicit conduct are actually guilty of such, which is why most women are never given the opportunity to defend themselves from these allegations).

²³ Kathryn Christine Arnold, Comment, *Are the Perpetrators of Honor Killings Getting*

Human Rights Watch describes honor killings as “the most tragic consequence and graphic illustration of deeply embedded, society-wide gender discrimination.”²⁴ As would be expected in any culture that encourages men to control women’s independence and sexuality through violence, the sword rarely cuts both ways. Al Sisiwar, an Arab Women’s group, recognizes that there exists “a deeply-rooted double standard in Islamic culture that forbids pre-marital sex by both genders but seldom punishes men who transgress.”²⁵ Yet, while more rare than female victims of honor killings, men can find themselves the targets of those who feel that their honor has been tarnished.

B. Male Victims of Honor Killings

In 2004, the number of female honor killing victims in Pakistan was more than twice the amount of male victims.²⁶ But while the vast majority of honor killing victims worldwide are women, about seven percent are men.²⁷ Most male victims are killed by the family of the woman alleged to have been conducting an illicit relationship with the man.²⁸ And while the murder of Ahmet Yildiz has been categorized by some as Turkey’s first gay honor killing, a researcher of honor crimes in Turkey has confirmed that other men

Away with Murder? Article 340 of the Jordanian Penal Code Analyzed Under the Convention of the Elimination of All Forms of Discrimination Against Women, 16 AM. U. INT’L L. REV. 1343, 1369 (2001).

²⁴ HONORING THE KILLERS, *supra* note 10, at 1.

²⁵ Kenneth Lasson, *Bloodstains on a “Code of Honor”: The Murderous Marginalization of Women in the Islamic World*, 30 WOMEN’S RTS. L. REP. 407, 440 (2009). Lasson argues that the lack of worldwide public awareness about the prevalence of honor killings, as well as the hesitation by governments to prosecute those complicit in religiously motivated violence against women, is contributing to the violent repression of women in Islamic countries. Indeed, while Western cultures strongly condemn honor killings, some human rights advocates argue that the increase of globalization and immigration has led to a motivation among some in the West to use cultural relativism, political correctness, and themes of “tolerance” to justify certain foreign cultural traditions and practices that they would otherwise deem to be unequivocal violations of international human rights. Chesler, *Worldwide Trends in Honor Killings*, *supra* note 20. There can be no justification for honor killing in any open society that values human rights and the equality of women. Indeed, the Canadian government informs new immigrants upon arrival that “Canada’s openness and generosity do not extend to barbaric cultural practices that tolerate spousal abuse, ‘honour killings,’ female genital mutilation or other gender-based violence. Those guilty of these crimes are severely punished under Canada’s criminal laws.” *Id.*

²⁶ ACCORD, PAKISTAN: HONOUR KILLING OF MEN, *supra* note 12, at 3. Pakistan is one of the few countries that consistently publishes statistics related to honor killings in the country, and many such studies are carried out by the Human Rights Commission of Pakistan. Lasson, *supra* note 25, at 419.

²⁷ Chesler, *Worldwide Trends in Honor Killings*, *supra* note 20.

²⁸ *See id.*

have been victims of honor killings in the country.²⁹

According to Mazhar Bagli, a Turkish sociologist who has interviewed nearly 200 people convicted of honor killings, Ahmet Yildiz's murder was the first time that the term "honor killing" was being used to describe a murder motivated by the homosexuality of the victim.³⁰ Even so, Bagli believed that such a motivation did not necessarily disqualify the murder as an honor killing, since "[h]onour killings cleanse illicit relationships. For women, that is a broad term. Men are allowed more sexual freedom, but homosexuality is still seen by some as beyond the pale."³¹ While Yildiz's parents loved their son, his decision to be honest about his homosexuality was "the ultimate affront to both religious and filial honor."³²

Men are not often individually targeted for honor killings; eighty-one percent are killed along with their female companion.³³ The honor killing of a couple is often carried out by the family of the accused woman and is done to protect and restore that family's honor.³⁴ Between January and November 2009 in Pakistan, there were twenty-two incidents of both members of a male-female couple killed for honor, most often at the hands of a family member of the female.³⁵ In January 2010, a young couple was clubbed to death by the woman's family because the family did not approve of their marriage.³⁶ Both bodies were left hanging in the couple's village to ensure that the community was aware that the family had restored its honor.³⁷ There was even an incident in 2009 where a family who disapproved of their daughter's marriage killed *only* the husband.³⁸

Between January and March 2009, there were fifty-three reported honor killings in the Sindh province of Pakistan, thirteen of

²⁹ Palash R. Ghosh, *Honor Killings: The Scourge of Turkey*, ASSYRIAN INT'L NEWS AGENCY (Oct. 7, 2011, 9:06:25 PM), <http://www.aina.org/news/20110710160625.htm>.

³⁰ Birch, *supra* note 1.

³¹ *Id.*

³² Bilefsky, *supra* note 2.

³³ Chesler, *Worldwide Trends in Honor Killings*, *supra* note 20.

³⁴ See ACCORD, PAKISTAN: HONOUR KILLING OF MEN, *supra* note 12, at 4.

³⁵ HUMAN RIGHTS COMM'N OF PAKISTAN, STATE OF HUMAN RIGHTS IN 2009, at 196–204 (Adnan Adil ed., 2010), available at <http://hrcp-web.org/hrcpweb/wp-content/ar/pdf/ar09e.pdf>.

³⁶ HUMAN RIGHTS COMM'N OF PAKISTAN, STATE OF HUMAN RIGHTS IN 2010, at 207 (Najam U Din ed., 2011), available at <http://hrcp-web.org/hrcpweb/wp-content/pdf/ar/ar10e.pdf>.

³⁷ *Id.*

³⁸ *Id.* at 204.

which had male victims.³⁹ This was a vast decrease from the first few months of 2008, when there were 550 reported honor killings in the same province, 96 of which had male victims.⁴⁰ Over a period of ten months in 2007, a staggering 104 men were reported killed in the Sindh province for “harming family honour.”⁴¹

The name for “honor killing” varies around the world, but in the Sindh province it is referred to as *karo kali*, whereby *karo* refers to the dishonored man and *kali* refers to the dishonored woman.⁴² Another term used to describe an honor killing is *tor tora*, which is used in the North-West Frontier Province of Pakistan; *tor* refers to the accused man and *tora* to the accused woman.⁴³ These translations demonstrate that communities in Pakistan, in which honor killings are tragically common, understand the murders to be directed at both women and men.

C. Honor Killings versus Domestic Violence

For purposes of an asylum claim, it is important to understand the distinction between honor killings and domestic violence. For asylum seekers who fear being returned to a country in which they will suffer domestic violence, the main difficulty is that asylum courts generally view such abuse not as persecution but as a form of private violence.⁴⁴ Thus, while this Note is not intended to lend itself to the argument against recognizing domestic violence as a form of persecution worthy of asylum, it is important to distinguish honor killings from forms of violence *considered* to be purely “private,” such as domestic violence.

According to the Office of Violence Against Women, an agency of the U.S. Department of Justice, domestic violence is “a pattern of abusive behavior that is used by an intimate partner to gain or maintain power and control over the other intimate partner.”⁴⁵ Honor killings, however, are strikingly different. They are

³⁹ ACCORD, PAKISTAN: HONOUR KILLING OF MEN, *supra* note 12, at 1–2.

⁴⁰ *Id.* at 4.

⁴¹ *Id.* at 2.

⁴² *See id.*

⁴³ *Id.*

⁴⁴ *See, e.g.,* Marisa Silenzi Cianciarulo, *Batterers as Agents of the State: Challenging the Public/Private Distinction in Intimate Partner Violence-Based Asylum Claims*, 35 HARV. J.L. & GENDER 117, 120 (2012) (arguing that American asylum courts are hesitant to extend asylum to a woman who comes from a male-dominated society that condones and encourages violence against women because they view her abuse “not [as] a political act but merely an unfortunate situation that has occurred due to various psychological and social factors”).

⁴⁵ OFFICE ON VIOLENCE AGAINST WOMEN, U.S. DEP’T OF JUSTICE, ABOUT THE OFFICE

uniquely motivated by moral and behavioral codes “that typify some cultures, often reinforced by fundamentalist religious dictates.”⁴⁶ They are rarely committed spontaneously, in a fit of rage, by a single individual, but instead often involve careful planning by multiple family members.⁴⁷ According to Zaynab Nawaz, who has worked on the women’s rights programs with both Amnesty International and Open Society Foundations, “[f]emales in the family—mothers, mothers-in-law, sisters, and cousins—frequently support the attacks. It’s a community mentality.”⁴⁸ And ultimately, the purpose of the killing fits within a clear framework of the restoration of family honor.⁴⁹

Perhaps the most glaring distinction between honor killings and domestic violence is that those who carry out honor killings generally do so in an environment in which they are expected to perform this act of restoring dishonor to their family’s tarnished reputation. Honor killings will not be eradicated until there is a cultural shift and the relevant societies no longer encourage or approve of such violence. Until then, male relatives have the approval from an accused woman’s family and large sections of the population to beat, stab, and shoot the accused woman.⁵⁰ For example, not only did the prosecutor’s office refuse to take Ahmet Yildiz’s complaints of death threats seriously, but Yildiz’s family refused to attend his burial, which, sadly is a very common response by the family of an honor killing victim.⁵¹ By contrast, the American legal system and the American public rarely tolerate the murder of daughters, sisters, and mothers for their sexual conduct—real or perceived.⁵²

Since domestic violence involves the abuse of one intimate

ON VIOLENCE AGAINST WOMEN (n.d.), <http://www.ovw.usdoj.gov/docs/about-ovw-fact-sheet.pdf> (last visited Apr. 4, 2013).

⁴⁶ Chesler, *Worldwide Trends in Honor Killings*, *supra* note 20.

⁴⁷ Chesler, *Are Honor Killings Simply Domestic Violence?*, *supra* note 14.

⁴⁸ Hillary Mayell, *Thousands of Women Killed for Family “Honor,”* NAT’L GEO. NEWS (Feb. 12, 2002), http://news.nationalgeographic.com/news/2002/02/0212_020212_honorkilling.html.

⁴⁹ Chesler, *Are Honor Killings Simply Domestic Violence?*, *supra* note 14.

⁵⁰ See HONORING THE KILLERS, *supra* note 10, at 2 (explaining that not only does the society at large stand by while male relatives physically harm accused women, but the police themselves often treat these men as vindicated in their actions, and as such, honor crimes are rarely investigated by law enforcement).

⁵¹ Birch, *supra* note 1.

⁵² See Lama Abu-Odeh, *Comparatively Speaking: The “Honor” of the “East” and the “Passion” of the “West,”* 1997 UTAH L. REV. 287, 291 (1997); Chesler, *Are Honor Killings Simply Domestic Violence?*, *supra* note 14 (explaining that Americans generally perceive batterer-murderers as criminals, not heroes).

partner by another, there are rarely multiple victims. However, when it comes to honor killings, the targeted woman is not always the sole victim. Studies show that in Islamic countries, nearly one quarter of honor killings involve additional victims, including the woman's husband, fiancé, children, siblings, or parents.⁵³

Examining the differences between honor killings and domestic violence is not only crucial to understanding how honor killings can be prevented and dealt with; the distinction between these two forms of violence is specifically important when it comes to framing this type of persecution for asylum purposes. As the next section of this Note explains, not all violence is viewed as "persecution," and one crucial distinction relates to the exclusively private nature of the harm and the absence of government involvement, both of which can be difficult hurdles for asylum applicants with honor killing claims.

II. ASYLUM CLAIMS BASED ON THE THREAT OF AN HONOR KILLING

Ruling on asylum claims often involves having an immigration judge "examine the fear of 'potential' harm based on a cultural and societal practice that is so foreign to the American way of life."⁵⁴ This is especially true in the case of honor killings, and the decisions of U.S. courts denying these asylum claims reflect "a deep ignorance regarding the severity and prevalence of honor killings abroad."⁵⁵ Yet despite the lack of understanding of the practice and the cultural traditions that allow it to persist, the unique nature of honor killings makes it particularly difficult for these claims to meet the strict standards under asylum law. This section begins with an overview of the necessary elements of an asylum claim and then focuses on the outcomes of the honor killing cases that have been heard by the U.S. Courts of Appeals, exploring the difficulties faced by potential honor killing victims in satisfying these factors. It concludes with an overview of the honor killing asylum claims that have been brought by male applicants.

A. *The Elements of an Asylum Claim*

In order to be eligible for asylum, the applicant must show that his or her "life or freedom" would be threatened if the applicant were to return to his or her country of origin because the applicant would be persecuted on account of his or her race, relig-

⁵³ Chesler, *Worldwide Trends in Honor Killings*, *supra* note 20.

⁵⁴ Shapiro, *supra* note 9, at 295 (footnote omitted).

⁵⁵ *Id.* at 307.

ion, nationality, membership in a particular social group, or political opinion.⁵⁶ The Board of Immigration Appeals (BIA) has defined “persecution” as including “a threat to the life or freedom of, or the infliction of suffering or harm upon, those who differ in a way regarded as offensive.”⁵⁷ Similarly, the United Nations High Commission for Refugees’ *Handbook on Procedures and Criteria for Determining Refugee Status* states that persecution *always* includes “a threat to life” or “[o]ther serious violations of human rights.”⁵⁸

The applicant can demonstrate a “well-founded fear of future persecution” by showing that (1) the applicant has suffered from past persecution, (2) there is a reasonable possibility that the applicant will be persecuted, or (3) the applicant’s home country has a pattern or practice of persecuting other individuals who are members of a statutorily defined group of which the applicant is also a member.⁵⁹

B. Case Survey

The research for this Note concluded that, at the level of the circuit courts, there has been a total of twenty-two cases in which the applicant claimed asylum based on the fear of becoming the victim of an honor killing.⁶⁰ Of these twenty-two cases, the claims were brought by twelve men⁶¹ and ten women.⁶² The majority of

⁵⁶ See 8 U.S.C. § 1231(b)(3)(A) (2012).

⁵⁷ *Matter of Acosta*, 19 I. & N. Dec. 211, 222 (B.I.A. 1985), 1985 WL 56042, *overruled by* *Mogharrabi*, 19 I. & N. Dec. 439 (B.I.A. 1987) (overruling *Matter of Acosta* insofar as it held that the “clear probability” of persecution standard for withholding of removal was equal to the “well-founded fear” of persecution standard for asylum).

⁵⁸ U.N. High Comm’r for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, ¶ 51, U.N. Doc. HCR/1P/4/Eng/Rev.1 (Jan. 1992), available at <http://www.unhcr.org/refworld/docid/3ae6b3314.html>.

⁵⁹ 8 C.F.R. § 208.13(b)(1), (b)(2)(i) and (iii) (2013).

⁶⁰ This case survey was conducted by entering the following search query in the WestlawNext database, setting “All States” and “All Federal” as the jurisdictions: “*asylum*” AND “*honor killing*.” It is quite possible that there are more cases in which the persecution feared by the asylum applicant was the same as an honor killing in every way except in name. However, the only feasible way to conduct this case survey was to only include the cases in which the applicant or the court used the term “honor killing” to describe the form of persecution.

⁶¹ See *Jabri v. Holder*, 675 F.3d 20, 22 (1st Cir. 2012); *Bal v. Att’y Gen. of U.S.*, 406 F. App’x 640, 641 (3d Cir. 2011); *Ahmed v. Holder*, 611 F.3d 90, 93 (1st Cir. 2010); *Al Bustami v. Holder*, 385 F. App’x 719, 720 (9th Cir. 2010); *Ghouri v. Holder*, 618 F.3d 68, 68 (1st Cir. 2010); *Abdelghani v. Holder*, 309 F. App’x 19, 20 (7th Cir. 2009); *Al-Ghorbani v. Holder*, 585 F.3d 980, 983 (6th Cir. 2009); *Jamil v. Att’y Gen. of U.S.*, 327 F. App’x 336, 337 (3d Cir. 2009); *Khalili v. Holder*, 557 F.3d 429, 431 (6th Cir. 2009); *Haimour v. Gonzales*, 165 F. App’x 594, 595 (10th Cir. 2006); *Wawi v. Ashcroft*, 91 F.

the claims were brought by Jordanian⁶³ and Pakistani people.⁶⁴ Two claims were brought by Lebanese⁶⁵ and Turkish people, respectively,⁶⁶ and the remaining claims were brought by individuals from Yemen,⁶⁷ Syria,⁶⁸ Iraq,⁶⁹ Egypt,⁷⁰ and Indonesia.⁷¹ While most of the claims were brought by individual applicants, five of them were brought jointly with at least one other immediate family member.⁷²

Asylum was denied in all twenty-two cases. However, withholding of removal was explicitly granted to the claimants in two cases.⁷³ Furthermore, in three cases, the court remanded the cases for reconsideration of the applicants' claims.⁷⁴ Thus, in seventeen of the twenty-two honor killings cases that have been heard by the circuit courts, the applicants' claims for relief from removal were denied.

A common reason given by the courts for the denial of the

App'x 493, 493 (6th Cir. 2004); *Suhardy v. Ashcroft*, 263 F.3d 162 (Table), 2001 WL 803648, at *1 (5th Cir. 2001).

⁶² See *Abraham v. Holder*, 647 F.3d 626, 628 (7th Cir. 2011); *Sarhan v. Holder*, 658 F.3d 649, 651 (7th Cir. 2011); *Suradi v. Holder*, 437 F. App'x 549, 550 (9th Cir. 2011); *Badawy v. Att'y Gen. of U.S.*, 390 F. App'x 165, 166 (3d Cir. 2010); *Reda v. Att'y Gen. of U.S.*, 366 F. App'x 415, 417 (3d Cir. 2010); *Fatima v. Att'y Gen. of U.S.*, 332 F. App'x 784, 784 (3d Cir. 2009); *Dia v. Mukasey*, 292 F. App'x 468, 469 (6th Cir. 2008); *Vellani v. U.S. Att'y Gen.*, 296 F. App'x 870, 871 (11th Cir. 2008); *Aziz v. Gonzales*, 478 F.3d 854, 856 (8th Cir. 2007); *Yaylaci v. Gonzales*, 175 F. App'x 33, 33-34 (7th Cir. 2006).

⁶³ See *Jabri*, 675 F.3d at 22; *Sarhan*, 658 F.3d at 651; *Suradi*, 437 F. App'x at 550; *Al Bustami*, 385 F. App'x at 720; *Abdelghani*, 309 F. App'x at 20; *Khalili*, 557 F.3d at 431; *Haimour*, 165 F. App'x at 595; *Wawi*, 91 F. App'x at 493.

⁶⁴ See *Ahmed*, 611 F.3d at 92; *Ghouri*, 618 F.3d at 68; *Fatima*, 332 F. App'x at 784; *Jamil*, 327 F. App'x at 337; *Vellani*, 296 F. App'x at 871.

⁶⁵ See *Reda*, 366 F. App'x at 416; *Dia*, 292 F. App'x at 469.

⁶⁶ See *Bal*, 406 F. App'x at 641; *Yaylaci v. Holder*, 175 F. App'x at 34.

⁶⁷ See *Al-Ghorbani v. Holder*, 585 F.3d 980, 983 (6th Cir. 2009).

⁶⁸ See *Abraham v. Holder*, 647 F.3d 626, 628 (7th Cir. 2011).

⁶⁹ See *Aziz v. Gonzales*, 478 F.3d 854, 856 (8th Cir. 2007).

⁷⁰ See *Badawy v. Att'y Gen. of U.S.*, 390 F. App'x 165, 166 (3d Cir. 2010).

⁷¹ See *Suhardy v. Ashcroft*, 263 F.3d 162 (Table), 2001 WL 803648, at *1 (5th Cir. 2001).

⁷² See *Sarhan v. Holder*, 658 F.3d 649, 651 (7th Cir. 2011) (applicant's husband); *Ahmed v. Holder*, 611 F.3d 90, 93 (1st Cir. 2010) (applicant's wife); *Al Bustami v. Holder*, 385 F. App'x 719, 720 (9th Cir. 2010) (applicant's wife); *Al-Ghorbani*, 585 F.3d 980 at 983 (applicant's brother); *Yaylaci v. Gonzales*, 175 F. App'x 33, 33 (7th Cir. 2006) (applicant's husband and child).

⁷³ See *Sarhan*, 658 F.3d at 651; *Al-Ghorbani*, 585 F.3d at 984. The Seventh Circuit in *Sarhan* held that the female applicant was entitled to withholding of removal but remanded the case to the BIA to determine whether such relief extended to her husband as well. *Sarhan*, 658 F.3d at 651.

⁷⁴ See *Jabri v. Holder*, 675 F.3d 20, 26 (1st Cir. 2012); *Suradi v. Holder*, 437 F. App'x 549, 553 (9th Cir. 2011); *Al Bustami*, 385 F. App'x at 721.

claims was that the applicant had not presented enough evidence to show that he or she would actually be killed if deported.⁷⁵ The courts also denied the claims because of the applicant's lack of credibility,⁷⁶ the frivolous nature of the claim,⁷⁷ and a complete lack of evidence supporting any element of the claim.⁷⁸ However, several of the claims were denied after the courts concluded that the applicants had not met their burden of proving that their claims satisfied the various legal elements of an asylum claim.

i. Showing Membership in a Particular Social Group

A fundamental, yet difficult, argument an asylum applicant may have to make is that he or she will be persecuted on the basis of his or her membership in a particular social group. Like other forms of persecution that occur in the private sphere, honor killing claims pose the additional difficulty of proving the persecutor's intent, since the threat of death must be on account of the applicant's membership in a particular social group rather than purely personal reasons.⁷⁹

The BIA has interpreted "particular social group" to be defined "by common characteristics that members of the group either cannot change, or should not be required to change because such characteristics are fundamental to their individual identities."⁸⁰ Proving membership in a particular social group is complicated by the BIA's resistance to "classify[ing] people who are targets of persecution as members of a particular social group when they have little or nothing in common beyond being

⁷⁵ See *Abraham v. Holder*, 647 F.3d 626, 634 (7th Cir. 2011); *Bal v. Att'y Gen. of U.S.*, 406 F. App'x 640, 643 (3d Cir. 2011); *Ghouri v. Holder*, 618 F.3d 68, 70 (1st Cir. 2010); *Reda v. Att'y Gen. of U.S.*, 366 F. App'x 415, 418 (3d Cir. 2010); *Abdelghani v. Holder*, 309 F. App'x 19, 20 (7th Cir. 2009); *Fatima v. Att'y Gen. of U.S.*, 332 F. App'x 784, 786 (3d Cir. 2009); *Dia v. Mukasey*, 292 F. App'x 468, 471 (6th Cir. 2008); *Wawi v. Ashcroft*, 91 F. App'x 493, 494 (6th Cir. 2004).

⁷⁶ See *Abraham*, 647 F.3d at 633; *Dia*, 292 F. App'x at 471; *Aziz v. Gonzales*, 478 F.3d 854, 858 (8th Cir. 2007).

⁷⁷ See *Aziz*, 478 F.3d at 858.

⁷⁸ *Ahmed v. Holder*, 611 F.3d 90, 96 (1st Cir. 2010); *Badawy v. Att'y Gen. of U.S.*, 390 F. App'x 165, 167 (3d Cir. 2010).

⁷⁹ See *Doyle*, *supra* note 9, at 531 (arguing that discounting forms of persecution that occur within the private sphere, such as domestic violence, forced marriage, honor killings, and female genital mutilation as "private" violence not worthy of asylum protection is an outdated view that is inconsistent with the recognition of gender-based persecution, which so often occurs in the private sphere).

⁸⁰ *Fauziya Kasinga*, 21 I. & N. Dec. 357, 366 (B.I.A. 1996) (determining that having intact genitalia was fundamental to the applicant's identity).

targets.”⁸¹ That is to say, an asylum applicant cannot use the threat of a particular form of persecution as the characteristic that unites him or her with other individuals facing the threat of that same form of persecution. Additionally, the BIA prohibits courts from simply creating a particular social group; it must be a group currently recognized in that country as a social subdivision in the culture.⁸²

Some have postulated that “particular social group” has become “a malleable catch-all category for claims not falling squarely within one of the other enumerated grounds.”⁸³ Indeed, the BIA’s designation of the applicant’s “particular social group” in *Fauziya Kasinga*,⁸⁴ championed as the first asylum case recognizing female genital mutilation (FGM) as a form of persecution, was limited to “young women of the Tchamba-Kunsuntu Tribe who ha[d] not had FGM, as practiced by that tribe, and who oppose[d] the practice.”⁸⁵ That holding has been criticized for “the narrowness of the recognized social group and the opinion’s failure to provide rules for similar future cases” as well as the appearance that the BIA defined the social group so narrowly “in order to aid the [BIA] in granting asylum by alleviating fears of a potential slippery slope.”⁸⁶

It is thus unsurprising that the “particular social group” element of an asylum claim would prove to be equally troublesome in honor killing cases. This obstacle was unsuccessfully faced by the asylum applicant in *Haimour v. Gonzales*.⁸⁷ While he was living in Jordan, Haimour had committed adultery with an engaged woman.⁸⁸ After their sexual relationship became known to the wo-

⁸¹ *Gatimi v. Holder*, 578 F.3d 611, 616 (7th Cir. 2009) (citing, as an example, debtors of the same creditor).

⁸² See *R-A-*, 22 I. & N. Dec. 906, 918 (B.I.A. 1999) (denying asylum to a Guatemalan woman whose husband physically and sexually abused her because the claimant had not shown that women in Guatemala who suffered from spousal abuse viewed themselves as being members of a particular social group, nor did the men who abused their wives recognize their female victims as a social group).

⁸³ Plant, *supra* note 9, at 118. See also Arthur C. Helton, *Persecution on Account of Membership in a Social Group as a Basis for Refugee Status*, 15 COLUM. HUM. RTS. L. REV. 39, 45 (1983) (arguing that “particular social group” was indeed *intended* to be a catch-all provision that “could include all the bases for and types of persecution which an imaginative despot might conjure up”).

⁸⁴ 21 I. & N. Dec. 357 (B.I.A. 1996).

⁸⁵ *Id.* at 358.

⁸⁶ Plant, *supra* note 9, at 119–20. Indeed, Plant points out that it is not likely that the Togolese themselves would recognize the social group created by the BIA in *Kasinga*, a prerequisite that the BIA has determined to be a crucial factor in any court-created social group. See *id.* at 120; *R-A-*, 22 I. & N. Dec. at 918.

⁸⁷ 165 Fed. App’x 594 (10th Cir. 2006).

⁸⁸ *Id.* at 595.

man's fiancé, the fiancé's family vowed to kill Haimour for bringing disgrace upon them.⁸⁹ When Haimour appealed to the Tenth Circuit, he argued that he would be persecuted on account of his membership in the following social group: "a person who has had sexual relations outside marriage and thereby brought dishonor upon the Abu Al-Fadel tribe or family."⁹⁰ The court rejected Hamour's proposed social group for two reasons. First, the court reasoned that being an adulterer is not a protected characteristic.⁹¹ Second, the woman's fiancé did not want to kill *all* men who had committed adultery; his threats were limited to Haimour, which in turn made Haimour's claimed social group "limited to himself."⁹²

The BIA made a similar argument when it held that an applicant's proposed social group was limited to herself since her brother had only threatened to kill her for her alleged adultery and not *every* woman who had similarly dishonored their families.⁹³ However, the Seventh Circuit rejected this reasoning on appeal, instead making the following analogy: a neo-Nazi who burns down the home of an African-American family does not do so because of a personal dispute with the family,⁹⁴ but because of the family's race and the perceived suffering to the neo-Nazi if no action is taken. Thus, it is important that the courts take into account the cultural context in which honor killings occur rather than focusing solely on the private parties involved.

That case posed a further problem for the applicant's proposed social group—should it matter whether the targeted individual actually committed the act for which she will be persecuted? The female applicant feared becoming the victim of an honor killing after she had been accused of adultery, which she claimed was a rumor invented by a vindictive in-law.⁹⁵ The Immigration Judge and the BIA had rejected the applicant's claim that she was a member of a particular social group for asylum purposes, holding that "Muslim women *falsely* accused of adultery" did not satisfy the statute.⁹⁶ However, the Seventh Circuit reversed the decision on appeal and granted withholding of removal to the applicant, holding that "the truth or falsity of the accusations against the woman who

⁸⁹ *Id.*

⁹⁰ *Id.* at 597.

⁹¹ *Id.* at 598.

⁹² *Id.*

⁹³ *See Sarhan v. Holder*, 658 F.3d 649, 656 (7th Cir. 2011).

⁹⁴ *See id.* at 656–57.

⁹⁵ *See id.* at 651.

⁹⁶ *Id.* at 654 (emphasis in original).

is targeted for an honor killing makes no difference.”⁹⁷ The court instead determined that the applicant’s social group was “women in Jordan who have (allegedly) flouted repressive moral norms, and thus who face a high risk of honor killing.”⁹⁸

ii. Showing that the Government Is Unwilling or Unable to Prevent the Harm

Navi Pillay, the High Commissioner for Human Rights at the United Nations, believes that honor killings are often viewed as a form of private family violence that is not included in the framework of international human rights, but that the same crimes would be condemned and punished if they were committed against strangers instead of family members.⁹⁹ The perception of honor killings as a form of revenge carried out by one private actor against another poses a significant difficulty for asylum claimants because “[a]sylum is not available to an alien who fears retribution *solely* over personal matters.”¹⁰⁰ Without demonstrating a nexus to a government system of persecution, “[p]urely personal retribution is, of course, not persecution.”¹⁰¹

Because there must be a nexus between the government and the persecution—the persecution can be directly or indirectly attributed to the government, through the government’s affirmative action or lack thereof—asylum seekers facing a threat of persecution that is commonly seen as a private act of violence are tasked with using the language of the public sphere to frame such violence.¹⁰² “Persecution is something a *government* does, either di-

⁹⁷ *Id.*

⁹⁸ *Id.* at 655.

⁹⁹ See *Impunity for Domestic Violence, ‘Honour Killings’ Cannot Continue – UN Official*, UN NEWS CENTRE (Mar. 4, 2010), <http://www.un.org/apps/news/story.asp?NewsID=33971&Cr=violence+against+women&Cr1> (“[T]here is a clear State responsibility . . . to prevent, protect and provide redress—regardless of sex, and regardless of a person’s status in the family.”).

¹⁰⁰ See *Zoarab v. Mukasey*, 524 F.3d 777, 781 (6th Cir. 2008) (emphasis added) (denying asylum because the harm feared by the applicant at the hands of an Emirati prince who owned a bank in which the applicant had invested was a result of the applicant’s outburst as an angry investor, not as a political dissident).

¹⁰¹ See *Grava v. INS*, 205 F.3d 1177, 1181 n.3 (9th Cir. 2000) (finding that the death threats faced by a Filipino law enforcement officer who acted as a “whistleblower” by uncovering and testifying about government corruption could constitute persecution).

¹⁰² See Lucy Akinyi Orinda, *Securing Gender-Based Persecution Claims: A Proposed Amendment to Asylum Law*, 17 WM. & MARY J. WOMEN & L. 665, 673–74 (2011) (explaining that asylum law tends to protect people from “public” harm instead of rape and other forms of sexual abuse, which are considered forms of “private” violence because they are committed in the “private” sphere).

rectly or by abetting (and thus becoming responsible for) private discrimination by throwing in its lot with the deeds or by providing protection so ineffectual that it becomes a sensible inference that the government sponsors the misconduct.”¹⁰³ In sum, persecution can be inflicted by a government or a private party that the government is “unwilling or unable to control.”¹⁰⁴

However, the Sixth Circuit has held that a claimant cannot prove that a government is unwilling or unable to control honor killings in the country simply by proving that honor killings exist in the country.¹⁰⁵ While still living in Turkey, every aspect of Mehriban Yaylacicegi’s life was controlled by her two brothers, who would abuse her when she disobeyed their orders or led them to believe she had done so.¹⁰⁶ When Yaylacicegi used the phone without her brothers’ permission, they attacked her with a knife; when she showed up at home not wearing the traditional Muslim clothing demanded by her brothers, they beat her until she could no longer move or speak.¹⁰⁷ After she came to the United States with her new husband, she converted to Christianity. She feared that if she returned to Turkey, her brothers would surely kill her for abandoning the religious beliefs they had previously imposed on her.¹⁰⁸

Despite presenting evidence of the prevalence of honor killings in Turkey and law enforcement’s minimal effort to prevent or prosecute the crimes, Yaylacicegi was unable to convince the court that she faced persecution. Such a precedent makes it especially difficult for applicants to prove that their home governments are accountable for the threatened persecution. Since mere proof that honor killings occur in a country is not sufficient, the asylum claimant must demonstrate a direct link between the occurrence of honor killings and the government’s unwillingness or inability to prevent them.¹⁰⁹

The foreign judiciary’s response to honor killings in the applicant’s country of origin is an important factor. For example, Mustafa Bal’s in-laws, who disapproved of his marriage to a woman in

¹⁰³ See *Hor v. Gonzalez*, 400 F.3d 482, 485 (7th Cir. 2005) (emphasis in original) (denying asylum to an Algerian man who feared being killed by a rebel group because the applicant was not only aligned with the government, but the government was trying to thwart the rebel group’s efforts).

¹⁰⁴ *Fauziya Kasinga*, 21 I. & N. Dec. 357, 365 (B.I.A. 1996).

¹⁰⁵ See *Yaylacicegi v. Gonzales*, 175 F. App’x 33, 35–36 (7th Cir. 2006).

¹⁰⁶ See *id.* at 34.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 35.

¹⁰⁹ See *id.* at 36 (holding that Yaylacicegi had not persuaded the court that the Turkish government was unwilling or unable to protect her from an honor killing).

their family, had beaten and threatened to kill him.¹¹⁰ Nonetheless, the Third Circuit denied Bal's honor killing asylum claim because Turkey had outlawed honor killings and imposed life imprisonment for the crime, which the court believed showed that the Turkish government *would* be able or willing to prevent his murder.¹¹¹

A common source of information used by both parties for evidence of a government's unwillingness or inability to prevent honor killings is the U.S. State Department's Country Reports on Human Rights Practices. Yet in the case of honor killing asylum claims, the use of these reports has been very favorable to the U.S. government in opposing the claimants' arguments for relief from removal. For example, even though an expert testified that the Turkish police usually would not become involved in preventing honor killings, the Immigration Judge who initially denied Mehriban Yaylacicegi's asylum claim relied on the U.S. State Department's 2002 Country Report on Human Rights Practices in Turkey, which showed that the applicant could obtain protection from the civil authorities in the country.¹¹²

The U.S. government's use of similar evidence relating to the Jordanian government's response to honor killings led to similar results. In 2009, the Sixth Circuit held in *Khalili v. Holder*¹¹³ that Hamdi Al Khalili, a Jordanian male, failed to show that the Jordanian government was unwilling or unable to prevent him from becoming the victim of an honor killing at the hands of his wife's family.¹¹⁴ Khalili testified that he believed the government would not protect him because "usually they don't interfere [with] honor things."¹¹⁵ The court found the State Department's 2005 Country Report on Human Rights Practices in Jordan instructive in its decision; the report concluded that of the fifteen honor crimes reported in 2004, the Jordanian authorities had prosecuted all of them.¹¹⁶ The court acknowledged the reality that the Jordanian legal system provided loopholes and lenient sentences for those accused of honor crimes, yet held that the "societal trend" toward the condemnation of honor crimes weakened

¹¹⁰ See *Bal v. Att'y Gen. of U.S.*, 406 F. App'x 640, 642–43 (3d Cir. 2011).

¹¹¹ *Id.* at 643.

¹¹² See *Yaylacicegi v. Gonzales*, 175 F. App'x 33, 35 (7th Cir. 2006).

¹¹³ 557 F.3d 429 (6th Cir. 2009).

¹¹⁴ See *id.* at 436.

¹¹⁵ *Id.* at 431–32.

¹¹⁶ *Id.* at 436.

Khalili's claim.¹¹⁷

Yet two years after *Khalili*, both the Seventh and Ninth Circuits determined that the Jordanian government *was* unable or unwilling to prevent the honor killings anticipated by two Jordanian women who brought asylum claims. First came *Suradi v. Holder*,¹¹⁸ in which Iman Khalil Suradi claimed that due to the extramarital affairs she had had while in the United States, both her husband and her own family had threatened to kill her in order to cleanse the dishonor she had brought upon them.¹¹⁹ Like the Sixth Circuit's holding in *Khalili*, the Immigration Judge in Suradi's case had found that the Jordanian government was not unwilling or unable to prevent her honor killing, since the U.S. State Department's Country Report on Human Rights Practices in Jordan showed that the Jordanian authorities had prosecuted all of the honor crimes that had been reported in 2008.¹²⁰ Yet on appeal, the Ninth Circuit held that it was error to place such heavy reliance on that report, since honor killings are drastically underreported (and often unreported) and just because the government had prosecuted the sixteen reported honor killings did not mean that there had only been sixteen honor killings.¹²¹ Additionally, the court noted that the Jordanian media had reported on far more than sixteen honor killings, which further weakened the reliance on the statistics from the State Department's report.¹²²

The Ninth Circuit further held that even if the Jordanian government did prosecute every single honor killing that was committed in the country, it would not show that the government was able or willing to *prevent* them from occurring in the first place.¹²³ The court relied on a Human Rights Watch report that concluded that "[p]olice rarely investigate 'honor' killings, seldom take any initiative to deter these crimes, and typically treat the killers as vindicated men."¹²⁴ And as for the lenient sentences for honor killings in Jordan, the Ninth Circuit noted that the government had blocked efforts at reform, with the Jordanian parliament itself refusing to repeal the leniency provisions because it believed that tougher sanctions would encourage more adultery in the coun-

¹¹⁷ *See id.*

¹¹⁸ 437 Fed. App'x 549 (9th Circ. 2011).

¹¹⁹ *See id.* at 551–52.

¹²⁰ *See id.* at 552.

¹²¹ *See id.*

¹²² *See id.*

¹²³ *See id.*

¹²⁴ *Id.* at 552–53.

try.¹²⁵ The Ninth Circuit ultimately held that both the Immigration Judge and the BIA had “misread” the State Department’s report, and thus remanded Suradi’s case for further factfinding.¹²⁶

Three months later, in *Sarhan v. Holder*,¹²⁷ the Seventh Circuit granted withholding of removal to “Disi,” a Jordanian woman who also alleged that she would become the victim of an honor killing if returned to her home country.¹²⁸ Disi’s story is a complicated tragedy that begins with an intense level of animosity between her and her sister-in-law, Nuha.¹²⁹ While Disi and her husband were living in the U.S., Nuha started a rumor in Jordan that Disi had committed adultery, thus bringing dishonor upon the family.¹³⁰ Upon hearing the allegation, Disi’s brother decided that when Disi returned to Jordan, he would kill her in order to restore the family’s honor.¹³¹ He not only told his parents about his plan, but visited Disi in Chicago in order to personally relay the message.¹³²

Disi testified that her brother had told her that while the laws of the United States would not permit him to kill her on American soil, it was a different story in Jordan.¹³³ The Seventh Circuit noted that Disi’s brother “cannot be deterred from murdering his sister in response to the rumors Nuha started,” as he was completely obsessed with family honor, and regardless of whether the rumors were true, his reputation had been harmed in such a way that “truth no longer matters.”¹³⁴

The Seventh Circuit’s very explanation of honor killings incorporated the “unwilling or unable government” element of the asylum claim; it stated that in countries where honor killings are commonplace, “government offers little protection for the victims; and killers receive light punishment, if charges are not dropped altogether.”¹³⁵ The court explained that Disi’s brother’s determination to kill his sister for the shame associated with the circulating rumor was in large part due to the passive encouragement of a

¹²⁵ *See id.* at 553.

¹²⁶ *See id.*

¹²⁷ 658 F.3d 649 (7th Cir. 2011).

¹²⁸ *See id.* at 651.

¹²⁹ *See id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *See id.* at 651–52.

¹³³ *See id.* at 652 (“[W]hen you come back to Jordan, I’m going to kill you. Here [in the United States], I can’t do, because there is a penalty for this, but in Jordan, nobody can do for another killing.”).

¹³⁴ *Id.* at 651.

¹³⁵ *Id.*

society that deemed the violence permissible and justified, as well as a government that “has withdrawn its protection from the victims.”¹³⁶

As was the case in both *Khalili* and *Suradi*, the U.S. government argued against relief from removal by using the State Department’s Country Report on Human Rights Practices in Jordan; and like the other reports, the one used in Disi’s case showed that the Jordanian authorities had prosecuted all of the seventeen honor crimes that had been reported in 2007.¹³⁷ Yet the Seventh Circuit labeled the information “unconvincing,” instead holding that “[p]rosecution at times is an empty gesture” and calling the six-month sentences for honor killings “little more than a slap on the wrist.”¹³⁸ By focusing on the punishment for honor killings, rather than the rate of prosecution, the court was able to support the contention that leniency in the judicial system supports the government’s toleration of the violence.

iii. Showing an Inability to Relocate

The Eighth Circuit has held that, for purposes of an asylum claim, “[r]elocating to another part of the country does not mean living in hiding.”¹³⁹ Yet in *Vellani v. United States Attorney General*,¹⁴⁰ the Eleventh Circuit held that the applicant had not proven that her honor killing could not be avoided by simply relocating within her country of origin.¹⁴¹ After becoming engaged in her home country of Pakistan, Zehra Vellani joined her fiancé in the U.S., where he forced her to perform oral sex on him.¹⁴² But when Vellani refused to have sexual intercourse with her fiancé, he told her brother that he would not marry Vellani because she had a boyfriend and was a “loose woman.”¹⁴³ Consequently, Vellani’s brother moved his family away from the home he had shared with his sister in Pakistan, claiming that he did not want his sister’s dishonor affecting the honor of his own daughter.¹⁴⁴ Vellani testified that after her fiancé falsely accused her of having a boyfriend, her brother

¹³⁶ *Id.* at 656.

¹³⁷ *Id.* at 658.

¹³⁸ *Id.*

¹³⁹ See *Agbor v. Gonzales*, 487 F.3d 499, 505 (7th Cir. 2007) (finding that the applicant, whose mother-in-law threatened to poison the applicant if she did not undergo FGM, would not have been able to safely relocate in Cameroon).

¹⁴⁰ 296 F. App’x 870 (11th Cir. 2008).

¹⁴¹ See *id.* at 877.

¹⁴² *Id.* at 872.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

threatened to kill her.¹⁴⁵

Despite this, the Eleventh Circuit held that “it is irrelevant that honor killings occur throughout Pakistan, as Vellani has not argued that people throughout Pakistan wish to kill her to avenge the dishonor of her family.”¹⁴⁶ The court stressed that it was only Vellani’s brother, and no other family members or members of the community, who had threatened to kill her; furthermore, Vellani’s brother had not threatened to track her down wherever she was in Pakistan.¹⁴⁷

Thankfully, the result was different for Disi, the claimant in *Sarhan v. Holder*.¹⁴⁸ In granting withholding of removal to Disi, the Seventh Circuit held that it would not be possible for her to relocate to another part of the country in order to avoid becoming the victim of an honor killing.¹⁴⁹ The court stressed that Disi’s home country of Jordan, which is the size of Maine, was so small that the only way Disi could avoid her brother—who intended to “track her down no matter where she is within Jordan”¹⁵⁰—was to “live in hiding,” an ongoing action that simply does not constitute mere “relocation.”¹⁵¹ While the decision in *Sarhan* is certainly commendable, its fault lies in the gendered definition of “honor killing” used by the court, since the way in which this form of persecution is framed can place male applicants at a severe disadvantage at having their honor killing asylum claims recognized.

C. Honor Killing Asylum Claims Brought by Men

When the Seventh Circuit granted withholding of removal to Disi, it expressly distinguished its holding from the Sixth Circuit’s decision to deny any form of relief to the male applicant in *Khalili v. Holder*.¹⁵² “The obvious difference between that case and this one is that the petitioner in the Sixth Circuit was not a female, and the problem we have identified is one that concerns *violence by men against women*.”¹⁵³ Similar minimization of the risk of honor killings

¹⁴⁵ *Id.* at 874.

¹⁴⁶ *Id.* at 877.

¹⁴⁷ *See id.*

¹⁴⁸ 658 F.3d 649 (7th Cir. 2011).

¹⁴⁹ *See id.* at 661.

¹⁵⁰ *Id.* at 661–62.

¹⁵¹ *See id.* at 661.

¹⁵² 557 F.3d 429, 431 (6th Cir. 2009). Unlike the Immigration Judge and the BIA, which both held that there was no evidence that honor killings extended to men, the Sixth Circuit denied Khalili’s claim on other grounds. *Id.* at 436.

¹⁵³ *Sarhan v. Holder*, 658 F.3d 649, 660 (7th Cir. 2011) (emphasis added).

extending to men has contributed to the denial of the honor killing asylum claims of three other men.

For example, although Yasser Abdelghani testified that several members of his family threatened to kill him because he did not prevent his sister from marrying an American Christian man,¹⁵⁴ the Seventh Circuit denied his claim because the U.S. Department of State's Country Report on Human Rights Practices in Jordan defined an honor crime as the "violent assault with intent to kill *against a female* by a relative for her immodest behavior or alleged sexual misconduct."¹⁵⁵

Similarly, the Sixth Circuit (in a decision prior to *Khalili*) denied any relief from deportation for Mohammed Al Wawi, who claimed that his extramarital affair with a woman made him fear that the woman's family would kill him in order to preserve their honor.¹⁵⁶ The court held that Wawi had not offered any objective evidence supporting his contention that honor killings extended to men.¹⁵⁷

Khurram Jamil also failed to convince the Third Circuit that honor killings extended to men.¹⁵⁸ Jamil's wife wanted a divorce, and Jamil complied; Jamil's former father-in-law, however, was outraged because he believed that Jamil had instigated the divorce.¹⁵⁹ The former father-in-law was associated with the Pakistani military and he sent soldiers to Jamil's house several times to look for Jamil and threaten his family.¹⁶⁰ Jamil feared that his former father-in-law would kill him if he returned to Pakistan, especially after the soldiers promised Jamil's father that they would make sure he never saw Jamil again.¹⁶¹ Nonetheless, the Third Circuit emphasized that the U.S. State Department's Country Report on Human Rights Practices in Pakistan described honor killings as usually involving women.¹⁶²

Yet there have been two instances in which the circuit courts have remanded the cases for further consideration where the applicants who feared honor killings were male. In *Jabri v. Holder*,¹⁶³ a Jordanian man feared that his grandfather perceived his conver-

¹⁵⁴ See *Abdelghani v. Holder*, 309 F. App'x 19, 20 (7th Cir. 2009).

¹⁵⁵ *Id.* at 22 (emphasis in original).

¹⁵⁶ See *Wawi v. Ashcroft*, 91 F. App'x 493, 494 (6th Cir. 2004).

¹⁵⁷ See *id.*

¹⁵⁸ See *Jamil v. Att'y Gen. of U.S.*, 327 F. App'x 336, 337 (3d Cir. 2009).

¹⁵⁹ *Id.* at 337-38.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² See *id.* at 339.

¹⁶³ 675 F.3d 20 (1st Cir. 2012).

sion from Islam to Christianity as a disgrace to the family name, which the applicant feared may provoke an honor killing if he were to return to Jordan.¹⁶⁴ Without making any mention of whether honor killings can legitimately extend to men, the First Circuit remanded the case on the issue of the applicant's inconsistent testimony.¹⁶⁵ In *Al Bustami v. Holder*,¹⁶⁶ a couple jointly alleged a fear of becoming victims of an honor killing at the hands of the wife's family because the couple had had sex before they got married.¹⁶⁷ The Ninth Circuit remanded the case for reconsideration of the husband's withholding of removal claim, which had been denied even though his wife's claim had been granted.¹⁶⁸

Furthermore, in *Al-Ghorbani v. Holder*,¹⁶⁹ the Sixth Circuit explicitly granted withholding of removal to both applicants, a pair of brothers from Yemen.¹⁷⁰ The Al-Ghorbani brothers feared for their lives after one of the brothers had married a woman of a much higher social class against the direct orders of the woman's father, who also happened to be a general in the Yemeni army.¹⁷¹ While the BIA dismissed the anticipated honor killing as nothing less than a "personal vendetta . . . for marrying [the General's] daughter without his permission,"¹⁷² the Sixth Circuit held that the fear of persecution was based on the brothers' membership in a social group "that opposes the repressive and discriminatory Yemeni cultural and religious customs that prohibit mixed-class marriages and require paternal consent for marriage."¹⁷³ By examining the decisions of the circuit courts in honor killing asylum cases, and specifically focusing on the definition of "honor killing" used by the courts, it becomes clear that for male applicants, a gendered definition of this form of violence can be extremely detrimental to their claims. The final section of this Note examines the impact of these definitions more closely and advocates for a gender-neutral definition of "honor killing" in asylum cases.

¹⁶⁴ See *id.* at 22–23.

¹⁶⁵ See *id.* at 26.

¹⁶⁶ 385 F. App'x 719 (9th Cir. 2010).

¹⁶⁷ See *id.* at 720.

¹⁶⁸ See *id.*

¹⁶⁹ 585 F.3d 980 (6th Cir. 2009).

¹⁷⁰ See *id.* at 983–84. *Sarhan* and *Al-Ghorbani* are the only cases in which a circuit court has granted withholding of removal to the applicant bringing an honor killing asylum claim.

¹⁷¹ *Id.* at 984–85.

¹⁷² See *id.* at 991.

¹⁷³ *Id.* at 996.

III. ANALYZING HONOR KILLING ASYLUM CLAIMS IN GENDER-NEUTRAL TERMS

Violence against women has long been ignored as the basis for legitimate asylum claims; the purpose of this Note is certainly not to detract from the milestones that have been reached in granting asylum to women seeking a safe haven from gender-based persecution. However, it is important to continue to expand the protections offered by asylum law while keeping in mind that being part of the small exception to the rule should not invalidate an otherwise legitimate fear of persecution. In early 2012, the U.S. Department of Justice redefined rape to be gender-neutral; explaining this decision, Senior Advisor to President Obama, Valerie Jarrett said, “[d]efinitions matter because people matter.”¹⁷⁴ Like rape, honor killings are predominately committed against women, but they are not *exclusively* committed against women, unlike FGM or forced abortion, for example. This distinction is of paramount importance.

The holdings in the circuit court cases highlight glaring inconsistencies in the evaluation of honor killing asylum claims.¹⁷⁵ Yet there is an added level of unpredictability regarding the question of whether men’s honor killing claims can ever be as valid as women’s (or valid at all). As the evidence shows, distinguishing the validity of the claim based on the sex of the applicant is entirely unwarranted, since it is clear that honor killings are not exclusively aimed at women.¹⁷⁶ As such, relief from removal on the basis of the fear of an honor killing should not be limited to female applicants. Male asylum applicants who fear becoming the victims of honor killings should be afforded the opportunity to prove their case in the same manner as similarly situated female applicants.

For courts that disregard the possibility of male victims of honor killings, it is not that the standard is higher for these male applicants, but that it is impossible. This is unacceptable, and undermines the very purpose of asylum. It is thus necessary for the courts to apply a gender-neutral definition of honor killing, a decision that should be encouraged by the federal agencies whose own decisions and publications are authoritative in asylum cases.

¹⁷⁴ *US Updates Definition of Rape*, REDORBIT (Jan. 9, 2012), <http://www.redorbit.com/news/health/1112451614/us-updates-definition-of-rape/>.

¹⁷⁵ See *supra* Part II.B.

¹⁷⁶ See *supra* Part I.B.

A. *The Responsibility of Asylum Courts*

There is of course a certain level of unpredictability that is to be expected when it comes to asylum claims, yet it is quite inappropriate for there to be an additional dimension of inconsistency for asylum claims brought by men, instead of women, for the same form of persecution. It is unclear why the Sixth Circuit did not question the sex of the Al-Ghorbani brothers or why it did not define an honor killing in gendered terms,¹⁷⁷ yet this recent honor killing holding should set the stage for future asylum cases premised on the fear of this form of persecution.

It would certainly level the playing field for asylum applicants and remove the inconsistencies among the circuits if the courts began examining honor killings in the same way as the *Al-Ghorbani* court, which chose to focus on the underlying cultural and societal concepts of family honor, the way it can be tainted, and the acceptable ways in which honor can be restored.¹⁷⁸ The court did not define honor killings as “violence against women” or in other gendered terms; instead of focusing on the sex of the potential honor killing victims, the court stressed that “Yemeni society recognizes a father’s right to control who his daughter marries and permits a father to punish—and even kill—those who defy this tradition and insult the family honor.”¹⁷⁹

Thus, in determining the “particular social group” of which the Al-Ghorbani brothers were members, the Sixth Circuit focused on the motivation of the perpetrator of the violence, which is central to the understanding of any honor killing. When it comes to evaluating an honor killing asylum claim, the courts should of course continue to analyze the strength of the claim with respect to the legal elements described earlier in this Note.¹⁸⁰ But the courts should also focus on (1) whose honor has supposedly been tainted, (2) what action (real or perceived) was the cause of the perceived dishonor, and (3) whether that action is seen as so dishonorable within the applicant’s country of origin that murder is the acceptable remedy for restoring the honor. Ultimately, the focus should be on the nexus between the applicant’s allegedly dishonorable actions and the motivation of the potential murder; neither the sex

¹⁷⁷ See *Al-Ghorbani v. Holder*, 585 F.3d 980, 983–84 (6th Cir. 2009) (granting withholding of removal to two brothers who feared becoming the victims of honor killings if deported to Yemen).

¹⁷⁸ See *id.* at 996–99.

¹⁷⁹ *Id.* at 998.

¹⁸⁰ See *supra* Part II.A.

of the perpetrator nor that of the intended victim (the asylum applicant) should be relevant to this inquiry.

By framing honor killings the way it did, the Sixth Circuit recognized that while honor killings do stem from notions of family honor, unwavering patriarchy, and the violent repression of women, the resulting atmosphere necessarily implicates the men who either passively disregard or outright challenge this system by respecting the individual autonomy of women. These men, who have entered into consensual relationships or taken part in consensual acts with women (whether through marriage, premarital sex, dating, or simple hand-holding) even though society deems the women unfit to make such personal decisions, have effectively taken a stand against the pervasive and long-standing tradition of repressing women. These men deserve the same level of protection and the same respect by our courts as the women who fear becoming the victims of honor killings.

By announcing that he did not share the sexual orientation of the majority, the sexual orientation of the so-called pure and the respectable, Ahmet Yildiz had brought grave shame and dishonor upon his family.¹⁸¹ His life was at risk as he began receiving death threats.¹⁸² However, if he had brought an asylum claim in the United States, there would be no guarantee that the court would find that Yildiz could even be legitimately fearful of becoming the victim of an honor killing.

Perhaps the case of Ahmet Yildiz seems more straightforward because the persecution he feared was based partly on his sexual orientation. But the death threats made against him by his own family members were still made in reaction to shame, dishonor, and wounded pride. The atmosphere of homophobia that allowed for these death threats to be made, and ultimately acted upon, was not restricted within Turkey to the Yildiz family. Like the desire to control the lives of women, the demand for heterosexuality and disgust with homosexuality are deeply rooted in culture and can take generations to overcome. Instead of the sex of the potential victim, courts should examine the societal and cultural concept of honor in the applicant's country of origin and the ways in which it can be so damaged that it can only be restored through murder. As the former UN Special Rapporteur on Violence against Women has stated, honor killings "may not be exclusively committed against females, but they are almost exclusively committed to main-

¹⁸¹ See Birch, *supra* note 1.

¹⁸² See *id.*

tain a rigid, heterosexual, patriarchal gender order that [enforces] female subordination to and male compliance with the prevailing norms.”¹⁸³

B. The Responsibility of Federal Agencies

The responsibility to use a gender-neutral definition in order to accurately describe honor killings should not be limited to the courts hearing asylum claims. The U.S. State Department’s Country Reports on Human Rights are commonly entered into evidence by both parties to an honor killing asylum claim.¹⁸⁴ Yet the State Department has been defining honor killings in gendered terms, which, besides being inaccurate, has contributed to asylum courts’ inability to comfortably extend asylum protection to men who fear becoming the victims of such violence.¹⁸⁵ Asylum courts do view these reports as authoritative; it was precisely because the State Department had defined honor killings as a form of violence against women that the Third and Seventh Circuits denied the asylum claims of two male applicants.¹⁸⁶ It is imperative that the State Department choose its words carefully when describing honor killings in these country reports. It should make every effort to accurately describe this form of violence in a gender-neutral manner while still emphasizing that the majority of honor killing victims are women, although men are also targeted. The State Department is in a unique position to highlight that the murder of these men is no less atrocious and that their fear is no less legitimate than that of women.

Like the State Department, the United States Citizenship and Immigration Services (USCIS) categorizes honor killings as a form of violence often directed at women.¹⁸⁷ In light of the inconsistent circuit court decisions regarding the gendered application of asy-

¹⁸³ Ghosh, *supra* note 29.

¹⁸⁴ See *supra* Part II.B.ii.

¹⁸⁵ See *supra* Part II.C.

¹⁸⁶ See *Jamil v. Att’y Gen. of U.S.*, 327 F. App’x 336, 339 (3d Cir. 2009); *Abdelghani v. Holder*, 309 F. App’x 19, 23 (7th Cir. 2009). These holdings are described in more detail *supra* Part II.C.

¹⁸⁷ See U.S. CITIZENSHIP & IMMIGR. SERVS., ASYLUM OFFICER BASIC TRAINING COURSE: FEMALE ASYLUM APPLICANTS AND GENDER-RELATED CLAIMS 10 (2009), available at <http://www.uscis.gov/USCIS/Humanitarian/Refugees%20&%20Asylum/Asylum/AOBTCLesson%20Plans/Female-Asylum-Applicants-Gender-Related-Claims-31aug10.pdf> (categorizing “honor killings” as one of the “[f]orms of harm that are unique to, or more common to, women,” along with rape or sexual violence, infanticide, FGM, forced abortion, forced marriage, bride burning, trafficking, slavery, and domestic violence).

lum for an honor killing claim, USCIS should consider releasing guidelines for how asylum courts should view a form of persecution that affects men and women at different rates. The first step would be to verify that honor killings are indeed directed at men as well as women. Denmark has already taken the first steps in clarifying the gendered terminology used to describe honor killings.

Like the United States, Denmark may grant asylum based on an honor killing claim if the court finds that the applicant meets the general standard for asylum.¹⁸⁸ When analyzing an honor killing asylum claim, the Danish asylum courts do not generally consider the gender of the applicant to be a factor in the legitimacy of the claim.¹⁸⁹ Instead, the courts focus on “whether the narrative of the applicant is coherent and reasonable and in conformity with known [country of origin] information concerning the applicant’s country of [sic] origin.”¹⁹⁰ This determination is made after “the conduction of a specific, individual assessment” of all the facts.¹⁹¹

In March 2009, the Danish Immigration Service (DIS) began noticing that in addition to the honor killing asylum claims filed by women from the Kurdistan Region of Iraq (“Kurdistan Region”), Kurdish men were also beginning to file such claims in Denmark.¹⁹² Thus, DIS undertook a fact-finding mission to determine the situation of male victims of honor killings in the Kurdistan Region.¹⁹³ The findings revealed that the men who had brought dishonor upon their families or the families of the woman with whom they were conducting an illicit relationship *did* fear for their lives.¹⁹⁴ It is unclear how the Danish asylum courts have incorpo-

¹⁸⁸ See E-mail from Nils Bak, Press Officer, Danish Immigration Serv., to author (May 30, 2012, 10:28 EST) (on file with author).

¹⁸⁹ See E-mail from Hans Peitersen, Chief Advisor, Ctr. of Asylum and Family Reunification of the Danish Immigration Serv., to author (May 31, 2012, 05:40 EST) (on file with author) (“The Danish asylum practice recognizes that both men and women may be the subjects of so-called honor-killings, and assessing claims from men differ little or not at all from assessing claims from women.”).

¹⁹⁰ *Id.*

¹⁹¹ E-mail from Nils Bak, Press Officer, Danish Immigration Serv., to author (May 30, 2012, 10:28 EST) (on file with author).

¹⁹² DANISH IMMIGRATION SERV., HONOUR CRIMES AGAINST MEN IN KURDISTAN REGION OR IRAQ (KRI) AND THE AVAILABILITY OF PROTECTION 2 (2010) (Den.), available at <http://www.nyidanmark.dk/NR/rdonlyres/3E22AAC6-C28F-420B-9EDB-B8D2274D3E2D/0/KRGrapportEresdrabjan2010SLUTRAPPORT.pdf>.

¹⁹³ *Id.*

¹⁹⁴ See *id.* at 3. The report further found that although honor crimes against men do indeed occur in this region, all of the focus on honor crimes and the protection of potential victims is directed exclusively towards women, making it very difficult for potential male victims to find adequate assistance and protection. See *id.* at 9. This has left many of these men in a position where they believed that their only source of

rated these findings into their analysis of honor killing asylum claims, but such an investigation is certainly a step in the right direction that should be emulated by federal agencies in the United States. An inquiry into the phenomenon of honor killings directed at men would not only verify that male applicants could be legitimately fearful of this persecution, but would provide powerful persuasive authority for the courts. Such authority is currently lacking, and its absence is allowing—if not outright encouraging—judicial decision makers to deny asylum to men who fear becoming the victims of this horrific form of violence simply because they are men.

CONCLUSION

Whether a man faces the threat of an honor killing because of his sexual orientation or because of an illicit relationship with a woman, the anticipated murder is still motivated by the dishonor that the man's action has brought upon another individual or family. It cannot be that the fear of murder would be cognizable before some courts and not before others solely based on the sex of the asylum applicant. When the motivation behind a murder is that "[b]lood cleanses honor,"¹⁹⁵ ratios and percentages relating to the sex of the victims simply should not matter. The purpose of asylum will be better served if the courts hearing honor killing asylum claims disregard the fact that the applicant is a member of the minority of honor killing victims and instead analyze whether the applicant has proven that he faces death because of the dishonor that his actions are believed to have brought upon another individual or family. Honor killings are such an astonishing form of violence because of their motivation; it is this same motivation that must be the focus of the courts.

protection existed outside Iraq, prompting them to flee their country and seek asylum protection elsewhere. *Id.* at 14.

¹⁹⁵ Ruane, *supra* note 19, at 1532.