

## NOTE

### THEY KILLED HER FOR GOING OUT WITH BOYS: HONOR KILLINGS IN TURKEY IN LIGHT OF TURKEY'S ACCESSION TO THE EUROPEAN UNION AND LESSONS FOR IRAQ

#### I. INTRODUCTION

*"We killed her for going out with boys."*<sup>1</sup>

Sait Kina's thirteen year old daughter, Dilber Kina, "talked to boys on the street" and repeatedly tried to run away from home.<sup>2</sup> In June 2001, during what would become her final attempt to leave, she was caught by her father in their Istanbul apartment. Using a kitchen knife and an ax, he beat and stabbed his daughter "until she lay dead in the blood-smeared bathroom of the . . . apartment."<sup>3</sup> Kina then "commanded one of his daughters-in-law to clean up the [blood]" and had his sons discard the corpse.<sup>4</sup> Upon his arrest, Kina told authorities that he had "fulfilled [his] duty."<sup>5</sup> Kina's daughter-in-law said, of the killing: "He did it all for his dignity."<sup>6</sup>

*"Your sister has done wrong. You have to kill her."*<sup>7</sup>

In a village in eastern Turkey, male family members held a meeting concerning the behavior of their twenty-five year old female family member. She, a Sunni Muslim, disobeyed her father by marrying a man who was an Alevi Muslim. Her father spent four months teaching his sixteen year old son how to hunt and shoot before he ordered his son to kill his own sister. The youth resisted, and was beaten. In fall 1999, he finally succumbed to this pressure, went to his sister's home and shot her in the back while she was doing housework.<sup>8</sup> He was told by his father: "You are young. This is your task. You will only stay in prison a few weeks."<sup>9</sup> The boy served eleven months in prison.<sup>10</sup>

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1. Molly Moore, *In Turkey, 'Honor Killing' Follows Families to Cities: Women Are Victims of Village Tradition*, WASH. POST, Aug. 8, 2001, at A01, available at <http://www.library.cornell.edu/colldev/mideast/dilberk.htm> (quoting Sait Kina).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.* (quoting Sait Kina).

6. *Id.* (quoting Birgul Kina).

7. *Id.* (quoting a Turkish father's direction to his sixteen-year-old son).

8. *Id.*

9. *Id.*

An “honor killing” or “honor crime” is the murder of a girl or woman by her family members due to their disapproval of her alleged sexual misbehavior, which they perceive as defying societal gender norms.<sup>11</sup> Honor crimes in Turkey are most prevalent in the rural areas of the east and southeast, but are not limited to those areas.<sup>12</sup> They also occur in Turkish cities such as Istanbul and Izmir, as well as in Turkish immigrant communities outside of Turkey.<sup>13</sup> A woman is killed in the name of honor when she does something or is thought to have done something that falls outside of her traditional social role in Turkish society.<sup>14</sup> Women are especially targeted for interacting with men outside of their family or for any perceived or actual sexual behavior.<sup>15</sup>

The conception of “honour” (honor) is rooted in a social system that imposes a particular behavioral code on women and girls.<sup>16</sup> A man’s “honour” consists of two main components: His reputation is determined by his own actions in the community (“seret”) and the chastity or virtue of the female members of his family (“namus”).<sup>17</sup> When a man’s namus is threatened, he is encouraged to act to defend it. If a man’s namus is lost because of sexual conduct on the part of his female family members, he kills the female party to regain his honor.<sup>18</sup> The killer is usually a husband, a brother, an uncle, a father or a son of the woman who allegedly sullied the family’s honor.<sup>19</sup> The decision to murder is often sanctioned by a group of family elders who decide to punish the woman

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10. *Id.*

11. Dicle Kogacioglu, *The Tradition Effect: Framing Honor Crimes in Turkey*, 15 DIFFERENCES 118, 118 (2004).

12. While honor killings are thought to occur most in the southeast, there are no national or regional statistics on the occurrence of honor crimes. Kogacioglu suggests that even if the killings are more frequent in the southeast, other practices such as “limits imposed on women’s rights to travel or to receive education” are persistent throughout the country, even in more urban areas like Istanbul. *Id.* at 129-30. Other forms of violence in the name of honor (for example, beatings rather than outright killings) are prevalent throughout the country. Attributing these crimes only to the southeast carries with it an ethnic implication, as the southeast is primarily inhabited by Kurds. Kurdish guerilla forces have repeatedly conflicted with the Turkish military, and thus attributing honor crimes primarily to an area inhabited by Kurds, contributes to a larger process of Kurdish ethnic stigmatization. *Id.* at 130. “This enables other parts of the country to be imagined as somehow immune to the problem.” *Id.*

13. CARIN BENNINGER-BUDEL & LUCINDA O’HANLON, WORLD ORGANISATION AGAINST TORTURE (OMCT), VIOLENCE AGAINST WOMEN IN TURKEY: A REPORT TO THE COMMITTEE AGAINST TORTURE, in VIOLENCE AGAINST WOMEN: 10 REPORTS/YEAR 2003, at 339, 350 (2004) [hereinafter VIOLENCE AGAINST WOMEN].

14. *Id.* at 350-51.

15. *Id.* at 351.

16. *Id.* at 352.

17. *Id.*

18. *Id.*

19. *See id.*

and then determine what form that punishment should take.<sup>20</sup>

Though honor crimes are often dismissed as being part of “tradition,” it should be clear that honor crimes are human rights abuses. Not only do these crimes involve murder, but also “[t]he condoned violence that exists under the Honor Crime umbrella . . . includes . . . attempted murder, acid attacks, and female infanticides.”<sup>21</sup> Thus, a wide array of illicit, violent activity stems from the practice of honor killing. Honor crimes stand in violation of a number of international human rights, including: “the right to life and security of the person; freedom from torture and cruel, inhuman and degrading treatment; and the right to equality before the law and to equal protection of the law.”<sup>22</sup>

In order for Turkey to fulfill the Copenhagen Political Criteria (“Copenhagen Criteria”),<sup>23</sup> which is necessary for its accession to the European Union (“EU”), this Note will argue that honor killings must be eliminated in Turkey. Successfully attacking the problem of honor killings in Turkey is in the interests of both the EU and the United States. Were honor killings to be eliminated in Turkey and women’s rights improved more generally throughout the country, Turkey’s accession to the EU would provide an example of a “modern” Arab state where women are treated equally under the law and in practice. This example would serve the American interest in providing a concrete model for Iraq, where, following the U.S.-U.K. invasion, honor killings and domestic violence continue to be pervasive social problems.<sup>24</sup>

In order to facilitate this change, the EU and the United States should extensively fund women’s rights organizations in Turkey that are dedicated to fighting against the existence of honor killings. A nationwide campaign against honor killings has been recently launched in Turkey,<sup>25</sup> and EU-U.S. funding would help immensely with these efforts. Educational outreach programming directed both at families—

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20. See Moore, *supra* note 1.

21. Ferris K. Nesheiwat, *Honor Crimes in Jordan: Their Treatment Under Islamic and Jordanian Criminal Laws*, 23 PENN ST. INT’L L. REV. 251, 254 (2004).

22. AMNESTY INT’L, IRAQ: DECADES OF SUFFERING 16 (2005) [hereinafter AMNESTY, IRAQ], available at <http://web.amnesty.org/library/Index/ENGMDE140012005?open&of=ENG-IRQ>.

23. Conclusions of the Presidency, European Council in Copenhagen (June 21, 1993), at 12-16 [hereinafter Copenhagen Council Criteria]; see also Erich Hochleitner, *The Political Criteria of Copenhagen and Their Application to Turkey*, 1-3 (Austrian Inst. for European Sec. Policy, Working Paper, 2005).

24. ActionLA & PeaceNoWar.net, Kurdish Women Action Against Honour Killing (“KWAHK”), Women in Iraq: Womens Rights Are in Danger, <http://www.kwahk.org/articles.asp?id=43>.

25. *Turkey: 2005 Progress Report*, at 32, COM (2005) 561 final (Nov. 9, 2005) [hereinafter *2005 Report*].

especially in the more rural areas where tribal rule still dominates—and at local law enforcement authorities should be a crucial part of this fight. Additionally, developing and implementing basic socioeconomic programs as well as increasing the number of shelters or safe spaces for potential victims to turn to, would also be effective ways of targeting the problem of honor crimes. Such programming could be made possible through a combined EU-U.S. funded effort.

Part II of this Note will provide a brief history of Turkey's relations with the EU. This section will also discuss the basis for Turkey's accession to the EU, including both the EU's interest in having Turkey join as a member state and that which Turkey stands to gain by joining the EU.

Part III of this Note will address the criteria for Turkey's accession, focusing particularly on its compliance with women's equality and human rights requirements. This section will consist of a discussion of the Copenhagen Criteria and Accession Partnership guidelines and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Part IV of this Note will address reforms that Turkey has instituted in order to comply with these criteria. This section will include the perspectives of the European Commission ("EC"), Turkish authorities and American authorities. It will address the changes to Turkey's Penal Code that have been heralded as a major step in eliminating honor killings and will also briefly discuss changes in Turkey's Civil Code and Constitution that are relevant to expanding women's rights in Turkey.

Part V of this Note will then point out problems that persist in light of the above changes and problems with the changes themselves, specifically with the reforms to the Penal Code. This section will also discuss the defense of provocation and the idea of the defense of honor as a mitigating consideration in American criminal law. It will further address other factors that contribute to the overarching problem of honor killings, including: judicial practice; the tendency of Westerners, the international community and Turkish judges to attribute these killings to "tradition;" the fact that there are no networks of institutions to aid victims; and a brief discussion of the EU's gender mainstreaming approach.

Part VI of this Note will propose that the EU extensively fund grassroots efforts in Turkey that address a number of factors that contribute to the persistence of honor crimes. This method, when combined with legal reforms, will be more effective in addressing the problem of honor killings than legal changes alone. This section will end with a discussion of the situation from an American perspective,

suggesting that Turkey could serve as an invaluable model for Iraq. The United States and the EU share an interest in making Iraq and Turkey, respectively, models of a “modern” Arab state.

## II. ACCESSION

### A. *History of Turkey’s Relations with the EU and Roots of Accession*

Turkey first applied for European Exchange Commission (“EEC”) membership in 1959.<sup>26</sup> The EEC established an association between Turkey and itself that would suffice until conditions for accession were established.<sup>27</sup> Notwithstanding Turkey’s military coup in 1960,<sup>28</sup> the EEC and Turkey formalized their association in 1963 with the Ankara Agreement, which contained a membership perspective.<sup>29</sup> The key aspect of the Ankara Agreement was the establishment of “three phases of a Customs Union which would serve as an instrument to foster real integration between the EEC and Turkey.”<sup>30</sup> Additionally, a Financial Protocol<sup>31</sup> and a Council of Association,<sup>32</sup> a group that meets to discuss the work of the association, were established. Due to numerous military coups throughout 1971-1980, the EEC and Turkey did not normalize relations until 1983, when a civil government was established in Turkey.<sup>33</sup> Turkey’s eligibility for membership, its recognition as a European country, was affirmed in 1987, but further action was postponed because the EU “was not able to accept any new member[s] before concluding its internal market integration in 1992.”<sup>34</sup> Although 1995 marked the formation of a customs union,<sup>35</sup> it was not fully

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26. Observatory of European Foreign Policy, Institut Universitari d’Estudis Europeus, EU-Turkish Relations Dossier, [http://selene.uab.es/\\_cs\\_iuee/english/Obs/m\\_investigacion.html](http://selene.uab.es/_cs_iuee/english/Obs/m_investigacion.html) (last visited Feb. 9, 2007) [hereinafter EU-Turkish Relations].

27. *Id.*

28. *Id.*

29. Agreement Establishing an Association Between the European Economic Community and Turkey, Sept. 12, 1963, 1963 J.O. (L 361) 1, 5 [hereinafter Ankara Agreement]; see also *Communication from the Commission to the Council and the European Parliament: Recommendation of the European Commission on Turkey’s Progress Towards Accession*, at 2, COM (2004) 656 final (Oct. 6, 2004) [hereinafter *EC Recommendation*].

30. EU-Turkish Relations, *supra* note 26; see also Representation of the European Commission to Turkey, EU-Turkey: Historical Overview, <http://www.deltur.cec.eu.int/english/eu-turkey.html> (last visited Feb. 9, 2007) [hereinafter Historical Overview].

31. Ankara Agreement, *supra* note 29, at 23-24 (setting forth Protocol No. 2, Financial Protocol); see also EU-Turkish Relations, *supra* note 26.

32. Ankara Agreement, tit. 1, art. 6, *supra* note 29, at 7.

33. EU-Turkish Relations, *supra* note 26.

34. *Id.*

35. *EC Recommendation*, *supra* note 29, at 2.

implemented.<sup>36</sup>

Turkey's membership was deferred because of its failure to meet the Copenhagen Criteria,<sup>37</sup> and also due to hostility from countries such as Sweden and influential non-governmental organizations that argued that Turkey could not be a European country.<sup>38</sup> National governments and organizations espoused the position that because Turkey was a Muslim nation, it was fundamentally incompatible with the rest of Europe.<sup>39</sup> Turkey was further characterized as having a "democratic deficit," which inhibited efforts to view Turkey as European.<sup>40</sup> The debate continues to this day.<sup>41</sup>

Despite this opposition, in December 1999, at the Helsinki Council, the EU officially recognized Turkey's candidacy for accession.<sup>42</sup> This decision stemmed in large part from an improvement in Turkey's relations with Greece and from the election of leftist parties in the majority of EU states,<sup>43</sup> rather than a significant improvement in the treatment of Turkish women or an enunciated commitment to human rights on Turkey's part.<sup>44</sup> Following the approval of Turkey's accession candidacy, economic integration between Turkey and the EU rapidly expanded.<sup>45</sup> Political integration, or human rights reforms, did not occur at the same rate.<sup>46</sup> Nevertheless, in 2002, the EC reported: "[I]f the European Council in December 2004, on the basis of a report and a recommendation from the [EC], decides that Turkey fulfills the Copenhagen political criteria, the EU will open accession negotiations with Turkey without delay."<sup>47</sup> In 2004, the EC reaffirmed its

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36. See EU-Turkish Relations, *supra* note 26.

37. *Id.*; see Copenhagen Council Criteria, *supra* note 23, at 12-16; *infra* Part III.A.

38. EU-Turkish Relations, *supra* note 26.

39. *Id.*

40. *Id.*

41. See Roger Cohen, *Why Turkey Matters*, INT'L HERALD TRIB., Oct. 1, 2005, at 2 (discussing European opposition to the idea that Turkey is part of Europe).

42. *EC Recommendation*, *supra* note 29, at 2.

43. Greece's EU membership in 1981 served to block Turkey's accession efforts on a number of occasions. See EU-Turkish Relations, *supra* note 26. Greece's objection to the EC's proposed cooperation package, "Matutes Package," prohibited the Council from adopting it. Greece and Turkey have historically been engaged in ongoing disputes over Cyprus, as well as aerial and maritime space and the continental shelf. *Id.* The rise of the Simitis government in Greece as well as the solidarity resulting from earthquakes in 1999 decreased Greek opposition to Turkish accession and contributed to the EU's acceptance of the Turkish candidacy at the Helsinki Council of December 1999. *Id.*

44. See *id.*

45. See *id.* (explaining how in 1999, Turkey became both a primary export destination of and an exporter to the EU).

46. *Id.*

47. *EC Recommendation*, *supra* note 29, at 2 (quoting conclusions of the Copenhagen European Council).

commitment to begin negotiations<sup>48</sup> and on October 3, 2005, negotiations with Turkey resumed.<sup>49</sup>

### B. *Interests in Accession*

The EU has both an economic<sup>50</sup> and a more symbolic interest in Turkey's membership. The EC has declared: "Turkey would be an important model of a country with a majority Muslim population adhering to such fundamental principles as liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law."<sup>51</sup> The EC is insistent that Turkey is and always has been a vital part of Europe:

For major periods of European history, Turkey has been an important factor of European politics. Turkey is [a] member of all important other European organisations and has since the Second World War played an important role in contributing to the shaping of European policies.<sup>52</sup>

The EU's "geo-strategic" position has been echoed in recent comments by Tony Blair.<sup>53</sup> Turkey can serve as a bridge between the Middle East and the West, which is especially needed in light of recent terrorist attacks.<sup>54</sup> Jonathan Eyal, a political analyst from London's Royal United Services Institute observed: "For Blair this is a seminal test, . . . He believes the only way to manage the Middle East is to show that Europe stands ready to embrace the most westernized and modern of Muslim states."<sup>55</sup> The British foreign secretary, Jack Straw, made a similar statement: "Anchor Turkey in the West and we gain a beacon of democracy and modernity, a country with a Muslim majority which will be a shining example across the whole of its neighboring region."<sup>56</sup>

This position has also been adopted by the United States.<sup>57</sup> On a trip to Istanbul in June 2004, President Bush spoke at length about the example that Turkey could provide for the entire Middle East, especially

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48. *Id.*

49. *2005 Report*, *supra* note 25, at 4.

50. See Sübidey Togan, *Economic Implications of EU Accession for Turkey*, in *TURKEY: ECONOMIC REFORM & ACCESSION TO THE EUROPEAN UNION* 311, 311 (Bernard Hoekman & Sübidey Togan eds., 2005) (discussing Turkish economics); see also STATE PLANNING ORGANISATION, T.R. PRIME MINISTRY, *THE LIKELY EFFECTS OF TURKEY'S MEMBERSHIP UPON THE EU* 24-40 (2004), available at <http://ekutup.dpt.gov.tr/ab/uyelik/etki/olasi-i.pdf>.

51. *EC Recommendation*, *supra* note 29, at 4.

52. *Id.* at 2.

53. Cohen, *supra* note 41.

54. *Id.*

55. *Id.* (quoting Jonathan Eyal).

56. *Id.* (quoting Jack Straw).

57. *Id.*

for Iraq.<sup>58</sup> Bush also stressed the United States's enthusiastic support for Turkey's entry into the EU.<sup>59</sup> The President told his Turkish audience:

Your country, with 150 years of democratic and social reform, stands as a model to others, and as Europe's [sic] bridge to the wider world. Your success is vital to a future of progress and peace in Europe and in the broader Middle East—and the Republic of Turkey can depend on the support and friendship of the United States.<sup>60</sup>

Thus, while European powers such as Germany are less enthusiastic about Turkey's membership,<sup>61</sup> the measure has the staunch support of the United States and Great Britain. There can be no doubt that the West, as a whole, has a significant interest in Turkey's EU accession.<sup>62</sup>

Turkey, itself, also has a significant interest in becoming a member of the EU.<sup>63</sup> Many of the benefits of membership are economic.<sup>64</sup> However, Turkey has a more symbolic interest in membership as well. Turkey is officially committed to entrance into the EU because it signifies that Turkey is committed to EU values and is a truly modern state. Turkish Prime Minister Recep Tayyip Erdoğan's website reports: "The Turkish Government regards EU membership as a new step forward, a milestone confirming the founding philosophy of and Atatürk's vision for the Republic. For the Turkish nation, conforming to contemporary values is a way of life and an ideal to be pursued."<sup>65</sup> Thus, the official position of the Turkish government is that Turkey shares the western interest in becoming a "beacon" of modernity. As Turkey's Minister of Foreign Affairs told EU ambassadors in November 2005, "both Turkey and the EU stand to gain tremendously from our

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58. George W. Bush, Remarks by the President in Istanbul, Turkey (June 29, 2004) [hereinafter Bush, Remarks], available at <http://www.whitehouse.gov/news/releases/2004/06/20040629-4.html>.

59. *Id.*

60. *Id.*

61. See Cohen, *supra* note 41 (discussing German now-chancellor Angela Merkel's recent expression of the opinion that Turkish membership is an "overstretch" and that a Turkish status of "privileged partnership" rather than full membership would be preferable).

62. See *id.* (discussing the interests of Europe and the United States in accession); see also Bush, Remarks, *supra* note 58 (discussing the American interest in accession).

63. See Abdullah Gül, Deputy Prime Minister and Minister of Foreign Affairs of Turkey, Speech delivered at the Luncheon held with EU Ambassadors (Nov. 9, 2005), available at [http://www.mfa.gov.tr/MFA/PressInformation/Speeches/Speeches2005/Speech\\_9November2005.htm](http://www.mfa.gov.tr/MFA/PressInformation/Speeches/Speeches2005/Speech_9November2005.htm) (discussing Turkey's desire to join the EU).

64. See Harry Flam, *Economic Effects of Turkey's Membership on the European Union*, in TURKEY: ECONOMIC REFORM & ACCESSION TO THE EUROPEAN UNION, *supra* note 50, at 341, 351.

65. Basın-Yayın ve Enformasyon Genel Müdürlüğü [Directorate General of Press and Information], EU National Programme, <http://www.byegm.gov.tr/on-sayfa/ab/eu-np.htm> (last visited Feb. 9, 2007) [hereinafter National Programme] (unofficial translation).



integration process and from its finalization when Turkey becomes a member . . . . The European public wants the EU to be a truly global actor. Turkey's accession to the EU will be an asset in this respect.<sup>66</sup> Thus, key Turkish political actors clearly see accession as being mutually advantageous for both Turkey and the EU.

### III. THE ACCESSION CRITERIA AND TURKEY'S COMPLIANCE EFFORTS

#### A. *Criteria for Accession*

Before this vision can be accomplished, Turkey has had to and is still in the process of instituting a variety of reforms. In order to be a member of the EU, Turkey must comply with the entire body of EU legislation and standards, collectively called the *acquis communautaire*.<sup>67</sup> The EC declared that Turkey should prepare a national program for adoption of these standards,<sup>68</sup> including a timetable for achieving the priorities and objectives established in the Accession Partnership.<sup>69</sup>

“The first Accession Partnership for Turkey was decided in March 2001” and later revised in 2003.<sup>70</sup> The purpose of the Accession Partnership is to give Turkey guidelines and financial assistance to qualify for accession, stressing the areas in which Turkey needs to improve.<sup>71</sup> This Note is primarily concerned with requirements regarding human rights and equality between men and women.<sup>72</sup>

All candidate countries, including Turkey, must meet the Copenhagen Criteria, established by the Copenhagen European Council.<sup>73</sup> A nation's ability to meet these criteria establishes its position among the ranks of countries marked by the “stability of institutions guaranteeing democracy, the rule of law, human rights and respect for

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66. Gül, *supra* note 63.

67. Togan, *supra* note 50, at 311.

68. See NATIONAL PROGRAMME FOR ADOPTION OF THE ACQUIS, SUMMARY OF THE NATIONAL PROGRAMME [hereinafter EU NATIONAL PROGRAMME], available at Embassy of the Republic of Turkey, London, Turkey and the EU—Publications, [http://www.turkishembassy-london.org/EUdocs/NPAA\\_executive\\_summary.pdf](http://www.turkishembassy-london.org/EUdocs/NPAA_executive_summary.pdf).

69. Council Decision 2003/398, On the Principles, Priorities, Intermediate Objectives and Conditions Contained in the Accession Partnership with Turkey, Annex, 2003 O.J. (L 145) 40, 42 (EC) [hereinafter Accession Partnership].

70. *Id.*

71. *Id.*

72. *See id.*

73. 2004 Regular Report on Turkey's Progress Towards Accession, at 11, COM (2004) 656 final (Oct. 6, 2004) [hereinafter 2004 Report]; see also Hochleitner, *supra* note 23, at 1.

and protection of minorities.”<sup>74</sup> Meeting these Criteria is a large step towards EU membership.

Additionally, members of the EU are strongly encouraged to comply with the European Convention for the Protection of Human Rights and Fundamental Freedoms,<sup>75</sup> which Turkey ratified in 1954.<sup>76</sup> Relevant human rights requirements include

[a] Respect[ing] the judgments of the European Court of Human Rights.

....

[b] Guarantee[ing] in law and in practice the full enjoyment of human rights and fundamental freedoms by all individuals without discrimination and irrespective of language, race, colour, sex, political opinion, religion or belief in line with relevant international and European instruments to which Turkey is a party.

....

[c] Strengthen[ing] the independence and efficiency of the judiciary and promot[ing] consistent interpretation of legal provisions related to human rights and fundamental freedoms in line with the European Convention on Human Rights.

...[and]

[d] Extend[ing] the training of law enforcement officials on human rights issues and modern investigation techniques, in particular as regards the fight against torture and ill-treatment, in order to prevent human rights violations.<sup>77</sup>

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74. Accession Partnership, *supra* note 69, at 42.

75. Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221 [hereinafter ECHR]. Although each of the current EU member states is also a party to the ECHR, the Court of Justice of the European Community, the supreme EU court, has held that the treaty establishing the European Community does not allow the Community to accede to the ECHR. Opinion 2/94, 1996 E.C.R. I-01759. In light of this decision, the EC convened to draft a charter embodying the notions embraced by the ECHR. Council Charter of Fundamental Rights of the European Union 2000/01, 2000 O.J. (C 364) 1, 8 [hereinafter EU Charter]. While the EU has yet to formally adopt uniform provisions reflecting the ECHR and its protocols, its rigid commitment to their spirit was manifested in the short term priorities of Turkey’s accession in Accession Partnership, *supra* note 69, at 43.

76. European Court of Human Rights—Basic Texts, Dates of Ratification of ECHR, <http://www.echr.coe.int/ECHR/> (follow “Basic Texts” hyperlink; then follow “Dates of ratification of the European Convention on Human Rights and Additional Protocols” hyperlink) (last visited Feb. 9, 2007).

77. Accession Partnership, *supra* note 69, at 43-44; *see also* ECHR, *supra* note 75, arts. 1, 2-

Turkey is also required to “[e]xtend the training of judges and prosecutors on the application of the European Convention on Human Rights and the case law of the European Court of Human Rights.”<sup>78</sup>

Both of these provisions, as well as the proposed (but recently rejected) European Constitution,<sup>79</sup> would require Turkey to adhere to basic tenets of human rights and would also prohibit discrimination on the basis of sex in Turkey.<sup>80</sup> When a woman, not her male lover, is murdered by her male family members in order to purify the family’s honor, her fundamental human right to life has been violated. When, but for the fact that her gender is female, she would not be the subject of such an attack, she is being discriminated against because of her sex. When society turns a blind eye, tacitly or explicitly condoning or ignoring her male family members’ actions, and neither the law nor her community condemns the murder and punishes the murderer, her fundamental human rights are being violated. When a woman is not free to engage in sexual behavior outside of marriage without the threat of violence from her male family members, this violates her fundamental freedoms of dignity and equality in being able to express her sexuality without gender-based victimization. The existence, and more importantly, the tolerance of honor killings in Turkey is completely incompatible with the Copenhagen Criteria and the European Convention for the Protection of Human Rights and Fundamental Freedoms and is indicative of gender discrimination.

### B. Turkey’s Efforts to Comply

Despite the prevalence of honor killings in Turkey and the continued reports of violence against women and family violence,<sup>81</sup> the

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3, 42-46.

78. Accession Partnership, *supra* note 69, at 44.

79. Provisional Consolidated Version of the Draft Treaty Establishing a Constitution for Europe (CIG) 86/04 of June 25, 2004, at 1 [hereinafter European Constitution] (proposing adoption of the European Constitution with EU Charter, *supra* note 75, as one of its provisions). The EU Charter recognizes a number of rights. These rights are categorically organized under the titles of “Dignity,” “Freedoms,” “Equality,” “Solidarity,” “Citizens’ Rights,” and “Justice.” EU Charter, *supra* note 75, chps. I, II, III, IV, V, VI. The Charter recognizes such rights as the “right to the integrity of the person . . . [with the] right to respect for his or her physical and mental integrity,” and the “[p]rohibition of torture and inhuman or degrading treatment or punishment . . . [that] [n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment.” *Id.* arts. 3(1), (4). In addition: “Equality before the law” specifies that “[e]veryone is equal before the law.” *Id.* art. 20.

80. *See id.* art. 23 (requiring that “[e]quality between men and women must be ensured in all areas”).

81. *2005 Report*, *supra* note 25, at 32 (discussing the persistence of violence against women and honor crimes in Turkey).

EC and the United States have praised Turkey's efforts to generally comply with the Copenhagen Criteria.<sup>82</sup> As of 2003, the Copenhagen European Council "strongly welcomes the important steps taken by Turkey towards meeting the Copenhagen criteria."<sup>83</sup> The EC concluded in 2004 that Turkey has recognized the primacy of international and European law and aligned itself to a large extent with international rulings and conventions.<sup>84</sup> In its *2004 Regular Report on Turkey's Progress Towards Accession*, the EC stressed Turkey's new ratification of international conventions, such as the International Covenant on Civil and Political Rights<sup>85</sup> and the International Covenant on Social and Cultural Rights,<sup>86</sup> as evidence of its progress.<sup>87</sup> While the EC recognized that "implementation of the reforms is uneven,"<sup>88</sup> it concluded that Turkey was ready to begin accession negotiations.<sup>89</sup>

The EC's *2005 Progress Report* is more critical than its *2004 Report* of Turkey's efforts in the areas of human rights and women's equality.<sup>90</sup> The EC concluded in November 2005: "There has been little progress regarding women's rights . . ." <sup>91</sup> Evidence of this lack of progress is found in the areas of domestic violence and honor killings, which remain major problems in Turkey.<sup>92</sup> The EC concludes its *2005 Report* with an acknowledgement that "[g]reater attention is being paid to women's rights, but violence against women remains a matter of serious concern."<sup>93</sup> Thus, even the EC acknowledged that reforms have not resulted in change as quickly as members had hoped a year earlier. The EC's *2006 Progress Report* similarly concludes: "The legal framework is overall satisfactory, but implementation remains a challenge."<sup>94</sup> While the EC is pleased with Turkish efforts to address the problem of honor killings through both legal reform and a wider nationwide domestic violence campaign, it also acknowledges that even

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82. See *2004 Report*, *supra* note 73, at 54; see also Bush, Remarks, *supra* note 58 (observing that Turkey is "moving rapidly to meet the criteria for membership").

83. Accession Partnership, *supra* note 69, at 40.

84. *2004 Report*, *supra* note 73, at 54.

85. International Covenant on Civil and Political Rights, Mar. 23, 1976, 999 U.N.T.S. 171.

86. International Covenant on Economic, Social and Cultural Rights, Jan. 3, 1976, 999 U.N.T.S. 3.

87. See *2004 Report*, *supra* note 73, at 16.

88. *Id.* at 12 (quoting *2003 Regular Report on Turkey's Progress Towards Accession*, COM (2003) 676 final (Nov. 5, 2003)).

89. See Presidency Conclusions, Brussels European Council (Dec. 16, 2004), at 4-6.

90. *2005 Report*, *supra* note 25, at 41.

91. *Id.* at 32 (emphasis omitted).

92. *Id.*

93. *Id.* at 42.

94. *Turkey: 2006 Progress Report*, at 18, COM (2006) 649 final (Nov. 8, 2006) [hereinafter *2006 Report*].

with new changes to the Penal Code, “sentences issued by courts reflect a mixed picture.”<sup>95</sup> Despite the “lack of reliable data” on honor crimes, the EC is concerned with the fact that these crimes have continued, particularly in east and southeast Turkey.<sup>96</sup>

Turkey is, however, officially committed to full compliance with the EU criteria. The Turkish State Minister and Chief Negotiator at the EU accession negotiations, Ali Babacan, stated on October 12, 2005 that the first pillar of the EU negotiation process would consist of “implementation of . . . all the Copenhagen political criteria [and] the deepening and the refining of political reforms.”<sup>97</sup> This implementation of the Copenhagen Criteria is to be monitored by a Reform Monitoring Group led by Abdullah Gül, the Turkish Foreign Minister and Deputy Prime Minister.<sup>98</sup> Thus, Turkish authorities have committed themselves publicly to complete compliance.

The Turkish government resolved to complete legislative materials relevant to the Copenhagen Criteria “in letter and spirit” by June 2004.<sup>99</sup> The process by which Turkey intends to implement these criteria is through a number of “harmonization packages,” which is a term for a draft law approved by Parliament in a single voting session that amends more than one code or law simultaneously.<sup>100</sup> These packages are designed to bring Turkey in line with EU requirements by amending groups of Turkish laws.<sup>101</sup> The Turkish government is optimistic about its ability to comply with EU criteria. As Abdullah Gül stated in November 2005: “We are now entering a process of complete harmonization. We are determined to pursue our reform agenda with a special focus on implementation.”<sup>102</sup> In the women’s rights arena, this agenda has included the appointment of a Directorate General for the Status of Women, who is responsible for coordinating efforts to attack the problem of honor crimes.<sup>103</sup>

The U.S. government has consistently praised Turkish efforts to comply with the EU criteria, as indicated by President Bush’s

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95. *Id.*

96. *Id.*

97. Ali Babacan, State Minister and Chief Negotiator on the EU Accession Process, Press Conference in Ankara, Turkey (Oct. 12, 2005), <http://www.fulltextnews.com/detay.php?id=462&PHPSESSID=3b0635b9ff43e3f03ff23705b17bafcd>.

98. *Id.*

99. *See* EU NATIONAL PROGRAMME, *supra* note 68.

100. *EC Recommendation, supra* note 29, at 3; EU NATIONAL PROGRAMME, *supra* note 68; Kogacioglu, *supra* note 11, at 134.

101. *EC Recommendation, supra* note 29, at 3; EU NATIONAL PROGRAMME, *supra* note 68.

102. Gül, *supra* note 63.

103. *2006 Report, supra* note 94, at 18.

encouraging speech, quoted above.<sup>104</sup> Other sectors of the U.S. government have echoed the President's optimism.<sup>105</sup> The U.S. Bureau of Democracy, Human Rights and Labor has advanced this view: "The [Turkish] Government generally respected the human rights of its citizens" and "the [Turkish] Government adopted extensive human rights-related legal reforms designed to crack down on torture and 'honor killings.'"<sup>106</sup> While the U.S. government concluded that "it is too early to assess what impact these reforms will have on actual government practices," the tone of its report remains positive.<sup>107</sup> This report is consistent with the State Department's previous country report, in which the U.S. government praised Turkey for its positive approach to its human rights record and recent democratic reforms, stating that Erdoğan's government had developed a "zero tolerance" torture policy.<sup>108</sup>

#### IV. TURKISH LEGAL REFORM

##### A. *Changes in the Turkish Penal Code*

The initial optimism of the EC, Turkey and the United States is in large part due to reforms to Türk Ceza Kanunu (Turkish penal code or "TCK") that were scheduled to take effect on June 1, 2005. Former Article 462, a provision stipulating mitigating defenses for homicide, is particularly relevant in the honor killing context. The provision, which has been revoked as part of Turkey's efforts to comply with EU guidelines, covered "Special Aggravating Provocations"<sup>109</sup> and stated that a situation was "provocation if the perpetrator had discovered or was convinced that one of his first-degree relatives [was] involved in an illicit relationship."<sup>110</sup> Punishment for murder in this scenario could be

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104. See Bush, Remarks, *supra* note 58.

105. See BUREAU OF DEMOCRACY, HUMAN RIGHTS & LABOR, U.S. DEP'T OF STATE, SUPPORTING HUMAN RIGHTS AND DEMOCRACY: THE U.S. RECORD 2004-2005, at 156 (2005) [hereinafter U.S. RECORD 2004-2005].

106. *Id.*

107. *Id.*

108. BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, U.S. DEP'T OF STATE, SUPPORTING HUMAN RIGHTS AND DEMOCRACY, THE U.S. RECORD 2003-2004, at 151 (2004).

109. Canan Arin, SEELINE—Constitutional Report: Turkey, <http://web.archive.org/web/20051116232521/www.seeline-project.net/reports/Turkey.htm> (last visited Feb. 12, 2007).

110. Kogacioglu, *supra* note 11, at 122-23 (translating Article 462); see also Leyla Pervizat, 'Honor Killings' in Turkey: A Scapegoat: Article 462, FEMPOWER (European Information Centre Against Violence/WAVE Office, Vienna, Austria), Mar. 2001, at 10, 11 & n.5 (translating that language as "[i]f a relative surprises a family member in the act of adultery, or immediately before the act, or immediately after the act," then the sentence reduction would be applied).

reduced by one-eighth of the original sentence.<sup>111</sup> Another translation of Article 462 is:

Regarding the perpetrators who commit the offenses specified in the two foregoing Chapters, against the wife, husband, sister or offspring, at the time the victim is caught in the act of adultery or illegal sexual intercourse, or while the victim was about to commit adultery or engage in illegal sexual intercourse, or while the victim was in a situation showing, free from any doubt, that he or she has just completed the act of adultery or sexual intercourse; or against another person caught participating in such acts with one of the aforesaid relatives, or against both, the punishment prescribed for the offense shall be reduced to 7/8 and heavy imprisonment shall be changed to imprisonment. In view of heavy life imprisonment, imprisonment for four to eight years shall be imposed, and in view of death, imprisonment for five to ten years shall be imposed.<sup>112</sup>

This article was meant to describe crimes of passion<sup>113</sup> or what would be equivalent to the defense of extreme emotional disturbance or provocation in U.S. law. The idea that it is acceptable to kill a woman for perceived or actual deviance from her socially proscribed sexual role is far from new. Ancient Roman law prescribed that men could justifiably kill their wives for committing adultery.<sup>114</sup> The rationale for this law was that Roman men needed to be able to ensure that their male children were really theirs. These children were set to inherit the father's property and possessions, as well as his reputation, and thus it was important to be certain about their "pedigree."<sup>115</sup>

The principle that a woman's adultery served as a valid mitigating factor in assessing a murder charge also found its way into American common law.<sup>116</sup> Adultery was viewed as "provocation" and thus, if a man found another man committing adultery with his wife and murdered that man, his murder charge would be reduced to manslaughter.<sup>117</sup> The wife's male lover was considered by one court to be a "murderer of the peace and respectability of a family[,] . . . one who forcibly attacks habitation and property" and is responsible for "the destruction of female

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111. Kogacioglu, *supra* note 11, at 123.

112. Canan Arin, SEELINE—Criminal Code Report: Turkey, <http://web.archive.org/web/20051116232344/http://www.seeline-project.net/CCR/TurkeyCCR.htm> (last visited Feb. 12, 2007).

113. *Id.*

114. JOHN KAPLAN, ROBERT WEISBERG & GUYORA BINDER, CRIMINAL LAW: CASES AND MATERIALS 335 (5th ed. 2004).

115. *Id.*

116. *Id.* at 332.

117. *Id.* (citing *Reed v. State*, 62 Miss. 405 (1884)).

innocence.”<sup>118</sup> These personal assaults on the husband were viewed as understandably provoking him to kill the perpetrator: the male lover.

In some courts, the mitigation defense was extended to apply when a man killed his wife, rather than her lover: “And in principle there can be no difference in the degree of the crime, whether the betrayed husband slays the faithless wife or her guilty paramour. In either event the crime proven has uniformly been held to be, not murder, but manslaughter.”<sup>119</sup> The idea here is that seeing one’s wife in the act of adultery with another man would give rise to a reasonable and understandably passionate rage, and thus serve to provoke the murder of her or her lover.<sup>120</sup> By the mid-nineteenth century, American courts no longer required that the man actually see his wife in the act.<sup>121</sup> If a reasonable, sensible man could conclude from the circumstances that his wife was committing adultery, the mitigation defense could apply.<sup>122</sup>

The provocation defense originated in the American context as an honor code.<sup>123</sup> In some states, husbands who claimed to have committed murder to protect their honor were acquitted.<sup>124</sup> Juries were thus able to apply the mitigation to manslaughter rule in “honor defense” cases.<sup>125</sup> As in the Turkish context, American husbands who were also murderers were seen as protecting not only their own honor but their wives’ as well.<sup>126</sup> The Supreme Court of Georgia reasoned in 1860: “[I]f the wife is too weak to save herself, is it not the privilege of the jury to say whether the strong arm of the husband may not interpose, to shield her and defend her from pollution?”<sup>127</sup> Thus male violence, his “strong

118. *Biggs v. State*, 29 Ga. 723, 728-29 (1860).

119. *Rowland v. State*, 35 So. 826, 827 (Miss. 1904).

120. See KAPLAN, WEISBERG & BINDER, *supra* note 114, at 333.

121. *Id.*

122. *Price v. State*, 18 Tex. Ct. App. 474, 482-83 (1885) (holding that homicide is justifiable where the husband sees his wife and her lover “in such a position as to indicate with reasonable certainty to a rational mind that they had just then committed the adulterous act, or were then about to commit it”). The husband does not have to be an “eye-witness to [the] physical coition of his wife with the other party” in order for the defense to apply. *Id.*

123. See Victoria Nourse, *Passion’s Progress: Modern Law Reform and the Provocation Defense*, 106 YALE L.J. 1331, 1339 (1997) (explaining the early approach to the “passion” defense as one in which “the ‘passion’ depended upon the victim’s wrong, in which the law assumed the victim partially deserved her fate”).

124. KAPLAN, WEISBERG & BINDER, *supra* note 114, at 335-36.

125. *Id.* at 336; See, e.g., *Commonwealth v. Whitler*, 2 Brewster 388, 393 (Pa. Ct. Oyer & Terminer 1868) (acquitting a husband who found his wife in bed with another man and killed that man with an axe on the grounds that “the frenzy which would take possession of a man under the circumstances would be tantamount to insanity, and would make him irresponsible for the time being”).

126. See *Biggs v. State*, 29 Ga. 723, 726, 728-29 (1860) (equating the seduction of another man’s wife to “robbery” of her purity and innocence).

127. *Id.* at 729.



arm,” was considered justified when honor was at stake.

The idea that female innocence or virtue was to be protected at all costs and that the protection of virtue, even in the case of consensual, extramarital sexual relations, may justifiably require violence was a prominent concept in American nineteenth century thinking: “What is the annihilation of houses or chattels by fire and faggot compared with the destruction of female innocence; robbing woman of that priceless jewel which leaves her a blasted ruin?”<sup>128</sup> Under this logic, what man would be able to keep his cool in the face of such an extreme assault on his honor and that of his wife? Murder in this context becomes reasonable and legitimate.

Similar assumptions about gender roles are at play in the Turkish context. The American defense of provocation could hypothetically apply to a female murderer who caught her husband in the act of adultery, but this has very rarely happened.<sup>129</sup> In fact, most American women murderers who kill their husbands do so out of self-defense, while American men kill their wives because of perceived rejection or because their wives refuse to be dominated by their husbands.<sup>130</sup> Because the historical rationale for this law was grounded in the idea of male dominance and male protection of his property (wife and children), it is not surprising that the mitigation defense typically is not used by female defendants.<sup>131</sup> In the Turkish context, while on its face, Article 462 could be applied to both men and women, in practice this article was only applied to male perpetrators, and thus served to officially permit or encourage honor crimes.<sup>132</sup> Article 462 was traditionally combined with Article 51, the general mitigating clause, in order to reduce sentences for honor killings.<sup>133</sup>

Article 51, still valid Turkish law, is also comparable to the American concept of provocation. It states that if a perpetrator “has committed murder because of ‘uncontrollable grief’ or as a result of provocation, the sentence may be reduced by two-thirds.”<sup>134</sup> Article 462 has been revoked as part of Turkey’s effort to comply with EU guidelines but Article 51 has not.<sup>135</sup>

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128. *Id.* at 728-29.

129. KAPLAN, WEISBERG & BINDER, *supra* note 114, at 335.

130. *See id.*

131. *Id.* at 334-35.

132. Arin, *supra* note 112; Pervizat, *supra* note 110, at 10.

133. *Id.*

134. Kogacioglu, *supra* note 11, at 123.

135. SECRETARIAT GEN. FOR EU AFFAIRS, REPUBLIC OF TURK. MINISTRY OF FOREIGN AFFAIRS, POLITICAL REFORMS IN TURKEY 20 (2004) [hereinafter POLITICAL REFORMS IN TURKEY]; Kogacioglu, *supra* note 11, at 123.

A final penal code reform relevant to this issue is that Article 453 was amended to impose heavier sanctions for the “honour killings of children.”<sup>136</sup> The sentence for honor killings of children has now been increased from four-to-eight years to eight-to-twelve years.<sup>137</sup> “Infanticide for family honor,” the language used in Article 453, is the Turkish legal term that distinguishes this crime from that of manslaughter, which carries a sentence of twenty-four to thirty years.<sup>138</sup>

### B. Other Legal Reforms

In order to comply with the Copenhagen Criteria, Turkey enacted other legal reforms including amendments to the civil code that grant women more legal rights in marriage.<sup>139</sup> In his justification for the amendments, Justice Minister Mahmut Esat Bozkurt wrote that these amendments “bolstered the social status of Turkey’s women, providing them with the same rights as any other citizen.”<sup>140</sup> Additionally, on May 7, 2004, the Turkish Constitution was amended to include Article 10: “Equality before the Law.”<sup>141</sup> This article now states: “Men and women shall have equal rights. The State has the duty to ensure that this equality is put into practice.”<sup>142</sup> Thus, women’s equality with men is now legally protected in Turkish law.

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136. POLITICAL REFORMS IN TURKEY, *supra* note 135, at 20.

137. PARLIAMENTARY ASSEMBLY, COUNCIL OF EUROPE, HONOURING OF OBLIGATIONS AND COMMITMENTS BY TURKEY para. 262 (2004), <http://assembly.coe.int/Documents/WorkingDocs/doc04/EDOC10111.htm>.

138. Kogacioglu, *supra* note 11, at 123.

139. *See, e.g.*, Basın-Yayın ve Enformasyon Genel Müdürlüğü, The Amendments to the Turkish Civil Code, <http://www.byegm.gov.tr/on-sayfa/new-civil-code.htm> (last visited Feb. 15, 2007). Amendments to the Civil Code recognize that: the “legal residence” of a married couple is no longer the husband’s residence alone (Article 21); a couple can now get married in the province where either party resides, rather than just the husband’s province (Article 134); a divorced woman can keep her former spouse’s name and a married woman is now allowed to keep her maiden name though she must also take her husband’s name (Article 173); the husband is no longer the de facto legal “head of the family” (Article 186); both parties can participate in the determination of the marital residence (Article 186) and a wife can now get a job without her husband’s permission (Article 192). *Id.*

140. *Id.*

141. Press Release, Department for Political Affairs, Secretariat General for EU Affairs, Constitutional Amendments 1 (May 10, 2004) (on file with the *Hofstra Law Review*).

142. *Id.*

## V. REMAINING PROBLEMS

### A. Turkish Penal Code

Between their implementation in June 2005 and the publication of the *2005 Report*, the revisions to the Penal Code were reported to have had an effect in only a few cases.<sup>143</sup> Notably, “in August 2005, the [Turkish] Court of Cassation overturned the decision of a lower court, which had reduced a prison sentence in relation to an honour crime because the perpetrator was . . . ‘provoked’ by the victim.”<sup>144</sup> The decision suggested that the new Penal Code did not stipulate that sentences for honor crimes should be reduced.<sup>145</sup> Unfortunately, this is merely the decision in one case and may not necessarily reflect the current state of the law, let alone its practice. As explained above, Article 462 was mostly used in conjunction with Article 51, which has not been repealed. Article 51 states that “if a suspect has committed murder because of ‘uncontrollable grief’ or as a result of provocation, the sentence may be reduced by two-thirds.”<sup>146</sup> This has left a loophole in the law in that the general mitigation provision could readily be applied to honor crimes without Article 462.<sup>147</sup>

A similar loophole remains in U.S. law. Section 210.3 of the Model Penal Code (adopted by about a third of the states),<sup>148</sup> specifies that murder may be mitigated to manslaughter when:

a homicide which would otherwise be murder is committed under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse. The reasonableness of such explanation or excuse shal [sic] be determined from the viewpoint of a person in the actor’s situation under the circumstances as he believes them to be.<sup>149</sup>

Feminists have deeply criticized this newfound personalization of the provocation defense as promoting continued gender bias.<sup>150</sup> The loophole that remains is that men who kill their wives may be able to use

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143. *2005 Report*, *supra* note 25, at 32.

144. *Id.*

145. *Id.*

146. See Kogacioglu, *supra* note 11, at 123.

147. Sebnem Arsu, *Turks to Fight ‘Honor Killings’ of Women*, N.Y. TIMES, May 16, 2005, at A13.

148. MODEL PENAL CODE § 210.3 cmt. 3 (1980).

149. MODEL PENAL CODE § 210.3(b) (1980).

150. See Nourse, *supra* note 123, at 1384-89 (describing a feminist critique of provocation reform and the liberal response to it).

their wife's separation, dancing with another person, bringing a divorce action or seeking a protective order, as grounds for a provocation mitigation defense.<sup>151</sup>

An inconsistency arises when American law recognizes a woman's right to divorce her husband or go dancing, and then the provocation defense can be used to mitigate a sentence for killing a woman who engaged in one of these legally protected acts.<sup>152</sup> In this way, the provocation defense that remains on the books in the United States can still be used by batterers to control their partners and thus serves as a broader societal tool that can be used to control women as a class, despite the fact that American laws officially protect women's rights.

In response to the legal loophole in Turkish law, and due to the work of women's rights organizations in Turkey, the Turkish Penal Code was amended to include two more provisions that are applicable to honor crimes.<sup>153</sup> Article 29, formerly known as the Unjust Provocation article and now called the Unjust Acts article suggests that sentence reductions for unjust provocation do not apply to honor crimes.<sup>154</sup> "However, the Justification [of Article 29] goes on to say that this may not be the case in all honor killings" and thus, still allows for the possibility that the mitigation defense will be used in some cases.<sup>155</sup> As in the American context,<sup>156</sup> where a mitigation defense exists in the law, it can be applied to male-on-female gender-based violence, even if that violence was a Turkish "honor crime."

Additionally, Article 82 covers aggravating circumstances for homicide and has been amended to include "killings in the name of custom."<sup>157</sup> The provision's applicability is narrowed by the use of the word "custom" instead of "honor," as different varieties of honor crimes may not be covered.<sup>158</sup> In addition, Article 82 allows for the "unjust act"

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151. *Id.* at 1332-33.

152. *Id.* at 1334.

153. ELA ANIL ET AL., WOMEN FOR WOMEN'S HUMAN RIGHTS (WWHR), TURKISH CIVIL AND PENAL CODE REFORMS FROM A GENDER PERSPECTIVE: THE SUCCESS OF TWO NATIONWIDE CAMPAIGNS 62 (2005).

154. *Id.* at 62-63.

155. *Id.* at 63.

156. *See, e.g.*, *People v. Berry*, 556 P.2d 777, 782 (Cal. 1976). In this case, a husband murdered his wife by strangling her with a telephone cord. The husband's claim of provocation, supported only by his own and his psychiatrist's testimony, was based on incidents in which his wife allegedly told him that she was in love with another man. A police record existed showing that the husband had choked his wife on at least one other occasion. *Id.* at 779.

157. ANIL ET AL., *infra* note 165, at 63.

158. *Id.* Substituting "custom" instead of "honor killings" implies that these crimes occur only in parts of Turkey where people adhere to these "customs." Those regions that adhere to "customs" in this context are those governed, at least in part, by feudal law. *See* Arin, *supra* note 109.

provocation defense to be used in a case where a “killing[] in the name of custom” has occurred.<sup>159</sup> Thus, while these amendments are significant steps in the right direction, they do not completely eliminate the possibility of sentence reductions for honor crimes. It is unlikely, in light of the U.S. example, that we can expect Turkey to eliminate the possibility of sentence reductions for honor crimes entirely. As previously described, a defense for extreme emotional disturbance or provocation still exists in American law and can be used to reduce sentences in cases of male-on-female spousal violence.<sup>160</sup>

Another problematic aspect of the Turkish Penal Code is that the concept of “family honor” remains prevalent throughout it. For example, Article 453 was amended to increase the sentence of perpetrators for committing “infanticide for family honor” but only by four years.<sup>161</sup> Additionally, Article 475 calls for a reduction in punishment between one-third to one-sixth of the regular sentence for child abandonment “if members of [a] ‘dishonored’ family abandon an illegitimate child.”<sup>162</sup>

Articles 453 and 475 were historically used in combination with other mitigating provisions that provided for reductions in sentencing based on age—to exploit these provisions, the family council would designate a young family member to commit the crime.<sup>163</sup> If the murderer was less than eleven years old, he would not be charged for murder at all.<sup>164</sup> If he was between eleven and eighteen years old, he would be given a reduced sentence and his male family members would not be charged.<sup>165</sup> Under the amended Turkish Penal Code, due to pressure from women’s rights groups, Article 38 now states that both the perpetrator and the person who forced him to commit the crime are punished equally.<sup>166</sup> Most importantly, if the person who commits the crime under the American equivalent of duress is a minor, then the adult who forced the child is given a longer sentence.<sup>167</sup>

While this is another significant step in the right direction, there are numerous other problematic provisions that remain in the Turkish Penal

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159. ANIL ET AL., *infra* note 165, at 63. Successfully alleging an “unjust act” defense will not result in a sentence of life in prison. *Id.*

160. See Nourse, *supra* note 123, at 1334-35 (noting that leaving or separating from spouse often constitutes provocation and that trial courts have applied the defense to the defendant’s violent battering of his partner).

161. See *supra* note 138 and accompanying text.

162. Kogacioglu, *supra* note 11, at 123.

163. *Id.*

164. ANIL ET AL., *supra* note 153, at 63.

165. *Id.*

166. *Id.*

167. *Id.*

Code. For example, Article 430 states that if a person abducts a minor “with the intention of marriage” or “through force, violence, threats or fraud and under lascivious feeling,” the punishment is merely five to ten years.<sup>168</sup> Article 423 imposes a six month to two year sentence for promising to marry a woman over fifteen years old, “removing” her virginity, and breaking that marriage promise thereafter.<sup>169</sup> Both of these provisions perpetuate the idea that a woman’s autonomy is not protected by the law.

Whether a man “intends” to marry a woman should not affect the legal punishment for kidnapping her. Such reasoning assumes that the woman has no agency, that her intentions do not matter and that her value as a person is substantially less than that of a male person. The virginity removal law also detracts from a woman’s autonomy by assuming that no woman would engage in pre-marital sex without the promise of marriage. The law also presumes that a woman’s worth is directly tied to her virginal status by punishing a man for “removing” that status. Again the law presupposes that the woman has no control over this virginity removal.

In this way, a law which at first seems like it may be beneficial to women—the idea of a man promising to marry a woman, having sex with her and then breaking that promise suggests that the woman in question was manipulated, used or defrauded—may not really benefit women at all. Instead, because these laws perpetuate the stereotype of women as sexually passive victims they effectively allow male-dominated society to regulate women’s sexuality.

The remaining problematic penal code provisions shed light on the fact that it is crucial that Article 462 not become the “scapegoat” for a much larger problem. Even before the reform of the penal code, judges did not usually think about or even apply Article 462.<sup>170</sup> In a study of 200 cases in which judicial rationale included reference to “defence of honour,” only three cases were tried under Article 462.<sup>171</sup> In short, despite the repeal of Article 462, honor killings persisted.<sup>172</sup> In the American context, Victoria Nourse suggests that legal reform cannot eliminate the possibility that the same stories of male-on-female violence and the same power dynamics found within them will find new “doctrinal homes,” regardless of changes in the law itself.<sup>173</sup> She also

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168. Arin, *supra* note 112.

169. *Id.*

170. See Pervizat, *supra* note 110, at 10.

171. *Id.*

172. See *id.* (citing the Judicial Statistics of the State Institute of the Statistics).

173. Nourse, *supra* note 123, at 1405.

points out that eliminating the passion defense altogether is not an appropriate solution. Emotions are often relevant in determining whether there was malicious intent in a murder trial and thus are useful in ascertaining guilt.<sup>174</sup> Nourse argues:

All one [American] can do is make it clear to juries, in this and other contexts, that they cannot find the defendant guilty of a lesser crime (whether that crime is second degree murder, passion manslaughter, or reckless homicide) simply because of the decedent's departure or moving out or dancing; that they cannot do this lest they contradict the law's own commitments to such freedoms for all. There is no assurance of justice here, only hopes that we may, at least, see some partialities in law's own mirror.<sup>175</sup>

In the Turkish context, Article 29, the Unjust Acts article, which suggests that the Turkish provocation defense should not apply to honor crimes, is a small step in this direction. It seems however that much broader social reform is necessary. In law and in practice, Turkish society must recognize that women have the right to socialize with whomever they want, go out, talk to men that are not related to them and engage in day-to-day interactions without having to fear a violent attack from their own family members. Resistance to this type of idea makes it no surprise that problems in implementing the reforms and problems with judicial practice remain prevalent, despite the change in the law.<sup>176</sup>

#### *B. Implementation, the Judiciary and Prosecution*

The disconnection between reforming laws to comply with international changes and implementing those changes on the ground is often large. As Nüket Kardam writes: "The 'translation' of international norms to national and local levels remains elusive, and there are many gaps between global norms and local responses when it comes to implementation."<sup>177</sup> The 2004 Report on Turkey identified the general problem that "[o]n the ground, implementation of the reforms is uneven. In some cases, executive and judicial bodies entrusted with the implementation of the political reforms relating to fundamental freedoms adopted by Parliament have narrowed the scope of these reforms by establishing restrictive conditions, hindering the objectives initially

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174. *Id.* at 1404-05.

175. *Id.* at 1405.

176. EUR. PARL. DOC. (A6-0175) 4 (June 10, 2005) [hereinafter EUROPEAN PARLIAMENT].

177. NÜKET KARDAM, TURKEY'S ENGAGEMENT WITH GLOBAL WOMEN'S HUMAN RIGHTS 30 (2005).

pursued.”<sup>178</sup>

The U.S. government recognized this problem, saying: “The [Turkish] Constitution provides for an independent judiciary; however, the judiciary was sometimes subject to outside influences.”<sup>179</sup> Judges still systematically interpret laws in ways that privilege family honor: “The value placed on family honor at the expense of women’s welfare is evident both in legal text and legal practice; it is not the problem of just a few problematic codes.”<sup>180</sup> Interviews with Turkish civil court judges have shown that they were open about their value of family honor and the fact that they take it into account daily when dealing with cases:

They said they were certainly against the victimization of women in these cases, yet they sympathized with their colleagues in the criminal courts who routinely ordered reduced punishments for perpetrators of honor crimes. Civil court judges saw their colleagues as “appropriately” taking social norms into consideration when judging.<sup>181</sup>

Additionally, one of these civil court judges has remarked: “[I]t wouldn’t be appropriate to hand [the wife in a custody case] the child if she sleeps around all the time. She has to behave in socially accepted ways, in line with what is customarily considered to be a good mother. Honor, after all, is a very important virtue.”<sup>182</sup> These comments illustrate the systematic moral evaluation of women in terms of their “honor” in the courts.

Given this context, it is not surprising that implementation of the penal reforms has continued to be a serious problem in Turkey.<sup>183</sup> In the more recent *2006 Report*, the EC concluded that implementation of penal reforms in the courts presents a “mixed picture.”<sup>184</sup> The EC reports that while the courts imposed life sentences consistent with legal reforms in some cases, they continued to administer lighter sentences in others, especially if the perpetrators were minors.<sup>185</sup> It is clear that prevalent social attitudes do not change automatically with the law. On the contrary, they likely contribute to the persistence of family violence in Turkey, which includes honor crimes as well as domestic violence, and

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178. *2004 Report*, *supra* note 73, at 12 (quoting EC’s *2003 Report*).

179. U.S. RECORD 2004-2005, *supra* note 105, at 156.

180. Kogacioglu, *supra* note 11, at 124 (citation omitted).

181. *Id.*

182. *Id.*

183. *See 2005 Report*, *supra* note 25, at 32.

184. *2006 Report*, *supra* note 94, at 18.

185. *Id.*



forcing young women into marriage.<sup>186</sup> Turkey's lack of statistics as well as a lack of effective protection for victims or potential victims frustrates efforts to directly address this problem.

Low-ranking state officials and the local police have widespread sympathy for the perpetrators of honor crimes.<sup>187</sup> These low-ranking officials also engage in abuse and intimidation of women activists.<sup>188</sup> It is this injustice, combined with the inability and unwillingness of judges at the local level to meet international human rights standards or even to comply with newer Turkish legal reforms,<sup>189</sup> that perpetuates the fact that one can commit an honor crime with the expectation of light sentencing or none at all. There is also evidence that high-ranking officials have engaged in sexual abuse, rape and even torture of women in their custody,<sup>190</sup> which further perpetuates the persistence of human rights abuses and reinforces the idea that going to the police may not be a safe option for a woman in fear for her life.

Additionally, there are only approximately thirty shelters for victimized women in all of Turkey.<sup>191</sup> If a woman did feel that her life was at risk and sought to take preventive measures, she would not easily be able to seek refuge. The absence of shelters or other non-familial safe spaces is especially problematic in the context of honor killings, where violence is almost exclusively inflicted on the victim by members of her own family. Seeking protective shelter with extended family members is likely impossible. These circumstances severely inhibit preventive efforts and also make it difficult for women to get help after violence occurs. Throughout southeast Turkey, parents have continually chosen to not register girl babies at birth, making it impossible for authorities to locate these women if they fall victim to an honor crime and

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186. *See id.* (observing that these circumstances are a premiere cause of "suicides committed by women due to the influence of the family").

187. *See* Kurdish Media, Ongoing Violence Against Kurdish Women in Turkey: What the EU-Turkey Accession Talks Offer Women, Feb. 4, 2006, <http://www.kurdmedia.com/news.asp?id=11281>.

188. *Id.*

189. *See id.*

190. *See, e.g.,* KWAHK, Turkey: The Women Who Have Spoken Out, Mar. 9, 2003, <http://www.kwahk.org/articles.asp?id=16>. In 1996, Zeynep Avci, a twenty-one year old Kurdish woman, was tortured while detained in Izmir over the course of twenty-five days in violation of the Turkish Penal Code's mandate of fifteen days maximum detention. Her torture included electric shock, rape by an officer of high rank and being forced to sit with an object in her anus, causing anal bleeding. No action was taken against the perpetrators of this torture in Turkey. Furthermore, when Avci's case went to the ECHR, Turkish authorities alluded to previous alleged sexual misconduct to try to detract from her credibility. *Id.*

191. *2006 Report, supra* note 94, at 18 & n.11. This figure is "tentative." There are only seventeen shelters instituted by the Social Services and Child Protection Institute. *Id.*

disappear.<sup>192</sup>

Another problem is that Turkish women do not necessarily know what rights they possess: “[W]omen are not necessarily informed about their rights even if laws are passed and even if they are, they may be powerless in the face of competing social norms of gender that promote women’s inferiority to men.”<sup>193</sup> Furthermore, women in Turkey remain largely uneducated and illiterate.<sup>194</sup> The combination of ignorance surrounding the law on the part of the judiciary, local police, state officials and Turkish women themselves; general societal views about women’s proper role in Turkish society and the value placed on honor and the lack of effective preventive or protective structures frustrates any implementation of recent legal reforms.

In light of recent penal code changes and a movement to change societal attitudes about honor crimes, the crimes themselves have begun to take a different form—suicide.<sup>195</sup> The preliminary report of the U.N. Special Rapporteur on Violence against Women states that honor crimes are one of the causes of suicides among Turkish women and that these suicides are often ignored by authorities, particularly in southeast Turkey.<sup>196</sup> For example, in Batman, Turkey, a city in the southeast, there have been 102 suicide attempts by women between 2000 and 2006.<sup>197</sup> One woman who attempted suicide, seventeen year old Derya, had a romantic relationship with a boy in school.<sup>198</sup> When her mother found out, she warned Derya that her father was going to kill her. Despite the fact that Derya’s own aunt had been killed by her grandfather for allegedly sullyng the family’s honor, Derya ignored her mother’s warning.<sup>199</sup> Then she started to get text messages from her uncles and brothers, sometimes fifteen a day, threatening her life: ““You have blackened our name. . . . Kill yourself and clean our shame or we will kill you first.””<sup>200</sup> Derya decided that she had no other option but death, so she unsuccessfully tried to kill herself numerous times: by drowning herself in the Tigris River, hanging herself and cutting her wrists with a knife.<sup>201</sup> Derya revealed: ““My family attacked my personality, and I felt

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192. *Id.*

193. KARDAM, *supra* note 177, at 30.

194. 2006 Report, *supra* note 94, at 18.

195. *Id.*

196. *See id.*

197. Dan Bilefsky, ‘Virgin Suicides’ Save Turks’ ‘Honor’, INT’L HERALD TRIB., July 13, 2006, at 1.

198. *Id.*

199. *Id.*

200. *Id.* (quoting her family members’ order).

201. *Id.*

I had committed the biggest sin in the world. . . . I felt I had no right to dishonor my family, that I have no right to be alive. So I decided to respect my family's desire and to die."<sup>202</sup> Only by fleeing to a women's shelter was Derya able to save her life.<sup>203</sup>

Derya's case is an example of an emerging trend of "honor suicide" in Turkey.<sup>204</sup> In response to the penal code reforms, families have replaced pressure on younger male family members to kill their female family members, with pressure on their female family members to kill themselves. This pressure often consists of locking a girl in a room for an extended period of time with nothing but rat poison, a gun or a rope and telling her that the only salvation from disgrace for her and her family is suicide. Families also continue to kill their female relatives themselves, but disguise the death as suicide.<sup>205</sup> As Derya aptly put it, as long as gender inequality is explicitly and implicitly sanctioned in Turkey, these crimes will continue: "In my village and in my father's tribe, boys are in the sky while girls are treated as if they are under the earth."<sup>206</sup> Notably, Derya blames family paranoia surrounding their female relatives for the persistence of this problem: "As long as families do not trust their daughters, bad things will continue to happen."<sup>207</sup> The tendency to replace "honor killings" with "honor suicide" is a disturbing reaction to reforms that Turkey has enacted in the interest of accession.

### C. "Tradition"

TEVYE AND PAPAS  
*Who, day and night,*  
*Must scramble for a living,*  
*Feed a wife and children,*  
*Say his daily prayers?*  
*And who has the right,*  
*As master of the house,*  
*To have the final word at home?*

*The Papa, the Papa—Tradition.*  
*The Papa, the Papa—Tradition.*

DAUGHTERS

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202. *Id.* (quoting Derya).

203. *See id.*

204. *Id.*

205. *Id.*

206. *Id.* (quoting Derya).

207. *Id.* (quoting Derya).

*And who does Mama teach  
To mend and tend and fix,  
Preparing me to marry  
Whoever Papa picks?*

*The daughters, the daughters—Tradition.  
The daughters, the daughters—Tradition.*<sup>208</sup>

Another factor that frustrates efforts to target honor killings in Turkey is the fact that the West, the international community more broadly and even many Turkish citizens, including Turkish judges attribute honor killings to “tradition.”<sup>209</sup> This construction of the problem ignores the complexity of the issue and negates structures of inequality and power that contribute to the prevalence of honor killings. The “tradition effect,” the idea that modernization (or increased westernization, for example, accession to the EU) will automatically solve the problem of honor killings, is a dangerous and problematic notion.<sup>210</sup>

The “tradition effect” perpetuates the idea that the existence of honor killings is somehow distinct from the institutions that may perpetuate their existence: “When violence against women is framed as a matter of ‘tradition,’ a distinction is established between, on the one hand, traditions—which are seen to be native, timeless, and unchanging—and on the other, institutions—which appear as contemporary and timely.”<sup>211</sup> This characterization detracts attention from ways that institutions could be changed to attack the problem of honor killings, creates a sense of perpetual, unavoidable victimization of Turkish women and helps to perpetuate the myth that honor killings only occur in less-modern rural areas.

For example, in April 2001, male relatives reportedly shot and killed two sisters (twelve and fourteen years old) and their female cousin (seventeen years old) for allegedly socializing with boys.<sup>212</sup> Ismail Kaya, a relative of the family, was understandably saddened by these events: ““They were children; they were very young.””<sup>213</sup> However, Kaya accepted the violence as natural or part of tradition: ““This is our tradition. Tradition has to be followed.””<sup>214</sup> And so, social and political

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208. Sheldon Harnick, *Tradition*, in JOSEPH STEIN, FIDDLER ON THE ROOF 3-4 (1964).

209. Kogacioglu, *supra* note 11, at 118-20.

210. *Id.* at 120-21.

211. *Id.* at 120.

212. Moore, *supra* note 1.

213. *Id.* (quoting Ismail Kaya).

214. *Id.* (quoting Ismail Kaya).

institutions are viewed by men and women alike as separate from the inevitable violence: “[O]nce tradition is invoked, the complex picture in which honor crimes come to occur, including the involvement of the institution, is ignored.”<sup>215</sup> Modern legal reforms, thus, are viewed as not having any connection to or effect on this “traditional” form of violent social control. Laws change, yet honor crimes continue to occur.

This view is prevalent even in foreign countries with immigrant populations, such as England and Germany.<sup>216</sup> A psychologist who works at a shelter for abused women in Germany stated: “People come to Germany for the privileges of a free society—education, social security—but they don’t always want everything else that comes with it. They don’t want girls doing whatever they want or women revolting against patriarchal order. . . . Nationalities and passports may change, but attitudes don’t.”<sup>217</sup> Even in countries with more established and developed penal law, the notion that honor crimes are intrinsically and almost unavoidably linked to national or ethnic identities or traditions prevails.

The idea that traditional forms of violence against women are beyond the arm of the law is a gendered concept, as illustrated by a comparison to the “tradition” of blood feud.<sup>218</sup> Blood feud is a rivalry between two families where each family kills a male member of the other family. The victims in this “tradition” of violence are always male. There are no legal reductions in Turkish law for blood feud, and in fact, the legal penalty for this crime is increased if the death is found to be the consequence of blood feud. In practice, judges also consistently denounce blood feud. Thus, in law and in practice, Turkish authorities treat this “tradition” of violence against males in the exact opposite way that they have historically viewed honor killings.<sup>219</sup> A “tradition” of violence against males is condemned, whereas a “tradition” of violence against females is viewed as an unchangeable, intrinsic part of Turkish society.<sup>220</sup>

This “tradition effect” is analogous to modern feminist debates about the use of the term “culture.” As Bonnie Honig points out: “When men or states claim that ‘my culture made me do it,’ they are claiming a kind of privacy or privilege that must surely be resisted for the sake of

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215. Kogacioglu, *supra* note 11, at 121.

216. See Christine Spolar, *For Family Honor, She Had to Die*, CHI. TRIB., Nov. 17, 2005, at C1 (reporting on incidents of honor killings by Turkish families living in Berlin, Germany and West London, England).

217. *Id.* (quoting Corinna Ter-Nedden).

218. Kogacioglu, *supra* note 11, at 125.

219. *Id.*

220. See *id.*

both human rights and ‘culture’: neither is well served by it.”<sup>221</sup> Not only is it harmful for perpetrators to use this excuse in attempting to avoid serving adequate time in prison, but it is also harmful when people both inside and outside the culture use this explanation for the phenomenon of honor crimes.

Attributing honor crimes to “tradition” or “culture” leads to the conclusion that the problem is too pervasive to effectively target within the culture itself and also allows outsiders to dismiss the problem as a foreign phenomenon. Blaming honor crimes on “tradition” also leads to offensive ethnic and racial stereotyping. For western feminists, attributing this form of violence to a culture’s “tradition” enables us to detach ourselves from it, evoking the idea that such violence is a part of someone else’s less civilized or less developed culture. As the familiar (to most Americans) lyrics of *Fiddler on the Roof* illustrate, the idea of “tradition” as a justification for upholding gender norms that privilege men over women is really prevalent across cultures, and not solely located in a non-Western context like Turkey.

As previously discussed, American legal history has similarly recognized the idea of male “honor” as directly tied to a female family member’s virtue.<sup>222</sup> American law continues to allow a mitigation defense of extreme emotional disturbance or “provocation” that is used, in some cases, as a justification or mitigating explanation for male-on-female violence.<sup>223</sup> Furthermore, Americans have a long history of ignoring domestic violence or dismissing it as a family matter, making it seem inappropriate for public law to interfere.<sup>224</sup> Acknowledging the “tradition” of tolerating male-on-female violence in our own American culture renders the ascription of honor crimes to a foreign culture’s “tradition” suspect.

The fact of the matter is that male violence exists everywhere and cannot and should not be explained away by the perpetrator’s ethnic or religious affiliation. This argument has gained much validity in feminist camps that seek to make women’s rights human rights,<sup>225</sup> and could

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221. Bonnie Honig, “My Culture Made Me Do It”, in SUSAN MOLLER OKIN, IS MULTICULTURALISM BAD FOR WOMEN? 35, 36 (Joshua Cohen, Matthew Howard & Martha C. Nussbaum eds., 1999).

222. See KAPLAN, WEISBERG & BINDER, *supra* note 114, at 335-36.

223. See, e.g., *People v. Berry*, 556 P.2d 777 (Cal. 1976).

224. For example, the English common law “rule of thumb,” adopted by the American colonies, legally sanctioned domestic violence. See, e.g., VICTOR RIVAS RIVERS, A PRIVATE FAMILY MATTER: A MEMOIR (2005) (recounting the story of the author’s abusive father, the inadequacy of legal remedies and his eventual kidnapping by his own father).

225. See generally Dorothy Q. Thomas & Michele E. Beasley, *Domestic Violence as a Human Rights Issue*, 15 HUM. RTS. Q. 36 (1993) (arguing that in order for domestic violence to be a human

prove useful in this context. Attributing basic human rights violations, such as the murder of women for the sake of “honor,” to “tradition” or “culture” serves to validate or justify practices that would otherwise be condemned as unacceptable.<sup>226</sup> Furthermore, it reinforces the complex social structures, institutions and practices that perpetuate the human rights violations. Rather than focusing on courthouse practice or the unavailability of safe spaces for women who feel that they are in danger of becoming victims of an honor crime, blaming honor crimes on “tradition” leads those both inside and outside the “culture” to, albeit perhaps unintentionally, allow the practice to continue.<sup>227</sup> Viewing women’s rights as human rights may allow attention to be refocused on reforming the institutions that tacitly allow the practice to continue.

#### D. *The EU’s Gender Mainstreaming Approach to Gender Equality*

The EU’s own framework for analyzing gendered issues may also contribute to the persistence of honor killings despite all of the attempts at reform. The EU’s gender mainstreaming approach does not lend itself to in-depth analysis of the honor killing problem, which is seen as only affecting women, not both genders.<sup>228</sup> In her article on gender mainstreaming in the United Nations, Hilary Charlesworth describes the process of gender mainstreaming as a strategy that seeks to prevent issues of gender inequality from being addressed in separate women’s institutions, instead to be addressed in the “mainstream” or “central, normal” institutions.<sup>229</sup> Charlesworth argues that this approach “detracts attention from the ways that sexed and gendered inequalities are woven into the international system” and effectively makes it harder to identify and target problems of gender inequality.<sup>230</sup> Perhaps this approach helps to account for the EU’s focus on general human rights and gender equality, rather than the specific problem of honor killings, a violent

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rights issue, states must apply domestic criminal law in a nondiscriminatory, systematic manner).

226. See generally UMA NARAYAN, *DISLOCATING CULTURES: IDENTITIES, TRADITIONS, AND THIRD-WORLD FEMINISM* 83-157 (1997) (examining misconceptions in the ways that Westerners understand Indian bride-burning and comparing this practice of “death by culture” to domestic violence in the United States); Leti Volpp, Essay, *Blaming Culture for Bad Behavior*, 12 *YALE J.L. & HUMAN.* 89 (2000) (explaining that Americans tend to attribute inhumane practices to “culture” when they occur in non-white, non-Western contexts, and examining this concept in the context of forced child marriages).

227. Kogacioglu, *supra* note 11, at 121 (“With the utterance of tradition, questions of violence against women and of the violation of their most basic rights fade away without being seriously addressed.”).

228. *Id.* at 136-37.

229. Hilary Charlesworth, *Not Waving But Drowning: Gender Mainstreaming and Human Rights in the United Nations*, 18 *HARV. HUM. RTS. J.* 1, 1 (2005).

230. *Id.* at 2.

crime that is only committed against women.

While the goals of the gender-mainstreaming approach are valid—to prevent women’s issues from falling to the wayside or being swept up under the umbrella of a larger problem and then ignored<sup>231</sup>—this approach arguably does not work well in the Turkish context where honor killings are viewed as an issue that only affects women.<sup>232</sup> In Turkey, institutional resources and mechanisms designed to prevent violence against women are either insufficient or do not exist. Thus, basic institutional changes, such as increasing the availability of safe spaces for victims in the form of shelters or hotlines, educating the judiciary on violence against women or training local law enforcement in how to respond to or prevent family violence could significantly combat the problem.<sup>233</sup> The issue of honor killings, thus, directly conflicts with the EU’s current approach: “[T]he issue of honor crimes as it currently stands lands squarely in the arena of specific projects targeting women, which lie in the opposite direction of gender mainstreaming.”<sup>234</sup>

Reframing honor killings as an issue that affects both men and women would allow it to be incorporated into the array of issues addressed by EU gender mainstreaming. However, it may result in the difficulties that Charlesworth has identified. While it is necessary to recognize that Turkish women’s rights are human rights, that is, that every Turkish woman is guaranteed fundamental freedoms under the law, the method that would most effectively enable Turkish women to exercise these freedoms may involve women-specific initiatives, rather than a gender-mainstreaming approach. EU methodology creates a lose-lose situation for victims of honor killings. If the issue of honor killings is reframed as an issue that affects both men and women alike and society as a whole, which I argue, it certainly does, the EU’s gender mainstreaming approach may apply. However, re-conceptualizing the problem in this way may not allow for the kinds of gender-targeted reforms that are necessary to really make a difference.

## VI. A WORKABLE SOLUTION AND U.S. INTERESTS

### A. *What the EU Should Do*

Perhaps the solution to the problem identified above is for the EU

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231. Kogacioglu, *supra* note 11, at 136.

232. *Id.* at 137.

233. *See id.*

234. *Id.*



to fund pre-existing grassroots efforts targeting honor killings in Turkey, rather than forming new EU-run organizations that risk being viewed as foreign, rejected and thus, rendered ineffective. This may avoid the tensions between EU methodology and realistic necessity. Turkish women are arguably in a better position than western bureaucrats to judge what will work in their country and have already advanced suggestions for ways that Europeans can help them in their fight against honor killings.<sup>235</sup>

In fact, Turkey has already begun to see the birth of a national campaign targeting honor killings, specifically, and violence against women, more generally.<sup>236</sup> The nationwide awareness-raising campaign is a result of a governmental and non-governmental joint effort with grant financing from the British Foreign and Commonwealth Office.<sup>237</sup> The campaign consists primarily of television awareness advertisements starring prominent Turkish personalities, billboards and flyers.<sup>238</sup> As of November 2006, “most” newspapers and television stations publicize advertisements that are part of the “Stop Domestic Violence” campaign.<sup>239</sup>

Unfortunately, as previously discussed, help for victims remains limited. Estella Schmid, active in the Peace in Kurdistan campaign, has said that the changes in Turkey have thus far “largely only been of a cosmetic nature.”<sup>240</sup> Deputy director of the Diyarbakir Human Rights Association,<sup>241</sup> Reyhan Yalcindag, has pointed out: “Even if [women] had the courage to file an official complaint, they still must go back to the home where they are targets, and live among the very people they have made charges against.”<sup>242</sup> Thus, without a safe space to shelter potential victims, the ability to file an official complaint is rendered less significant and doing so may even exacerbate violence once a woman returns home. These are problems that could be more effectively addressed by those familiar with them if more funds were available.

In furtherance of the national awareness campaign, other Turkish

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235. See, e.g., Kurdish Media, *supra* note 187 (discussing the events of a “public meeting hosted by Lynne Featherstone [a member of the British Parliament] that took place in the House of Commons” on Jan. 30, 2006).

236. See Arsu, *supra* note 147.

237. *Id.*

238. *Id.*

239. See *2006 Report*, *supra* note 94, at 18.

240. Kurdish Media, *supra* note 187.

241. Diyarbakir is the largest city in southeast Turkey; as of May 2005, there were no shelters there. Arsu, *supra* note 147.

242. *Id.* (quoting Reyhan Yalcindag).

initiatives have been undertaken.<sup>243</sup> In November 2004, the Law Establishing the Directorate General for the Status and Problems of Women was enacted.<sup>244</sup> The Directorate is charged with coordinating efforts to attack the problem of honor crimes.<sup>245</sup> In August 2005, “a regulation was issued on the establishment of an Advisory Board on the Status of Women,” which includes “representatives from all Turkish ministries as well as individuals from relevant academic institutions and NGOs.”<sup>246</sup> This group was set up to advise on the execution of state policies regarding the status of women and to regulate the Directorate General.<sup>247</sup> Other groups were established, including a Parliamentary Committee on Women’s Rights and Gender Equality and a Committee on Violence against Women and Children.<sup>248</sup> The Committee on Violence against Women and Children’s purpose is to study the causes of honor killings and develop ways to prevent them.<sup>249</sup> While these efforts are commendable, as of 2006, the Directorate remained understaffed and the Advisory Board on the Status of Women had not met once during the 2006 reporting period.<sup>250</sup> As the European Parliament has resolved, “a clear mandate and sufficient funding and staff” are necessary to effectively launch Turkey’s nationwide campaign.<sup>251</sup> Time shall tell how effective these bureaucracies will be.

One thing the EU can and should do is to ensure that programs currently receiving or that will in the future receive EU funding are adequately respecting women’s rights. The EU should also ensure that those in charge of developing and implementing strategies for change are extensively familiar with the real concerns and actual living conditions of Turkish women from varying geographic, socioeconomic and cultural backgrounds. Ideally, Turkish women will play an integral role in each part of this process, which will avoid a situation where a Western, foreign power is dictating what life is like and controlling the actions of citizens of another country. This will help prevent resistance to foreign-funded efforts.

Primarily, those working for the EU-funded initiatives should be talking to Turkish women to identify problems and come to solutions that may actually work. Women all over the world are already meeting

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243. See, e.g., *2005 Report*, *supra* note 25, at 32.

244. *Id.*

245. See *2006 Report*, *supra* note 94, at 18.

246. *2005 Report*, *supra* note 25, at 32.

247. *Id.*

248. *Id.*

249. *Id.*

250. *2006 Report*, *supra* note 94, at 19.

251. EUROPEAN PARLIAMENT, *supra* note 176, at 6.

to discuss this problem and what to do about it.<sup>252</sup> EU-funded initiatives could provide a forum for their ideas to be heard. Basic socioeconomic programs would also be a crucial part of this process. As Abdulkirim Adem, mayor of Yalim, stated: “People here are unaware of their rights. Poverty has left them prisoners of the feudal way of life.”<sup>253</sup> For many in more rural areas, disobeying tribal law is not a realistic option. Selahattin Demirtas, from the Diyarbakir Human Rights Association identified this problem: “What father wants to kill his daughter? It is impossible for many to defy the tribe. Its power can crush the love a parent feels for his child.”<sup>254</sup> Education and awareness-raising measures in areas dominated by tribal clans may more effectively address this phenomenon. An influx of trained, local law enforcement authorities would also help, especially when combined with programs that develop strategies to empower Turkish women.<sup>255</sup>

Talking about the problem, something that the discussion surrounding Turkey’s accession to the EU has precipitated, is a first step towards finding ways to attack it.<sup>256</sup> Improving shelters and community services for women who fear that they may become victims of honor killings is a crucial part of the process as well. A focus on both prevention and protection is necessary in this type of context, where change is not quick. Europeans should be encouraged to visit Turkey to see for themselves what is taking place and talk to Turkish women about what to do about it.<sup>257</sup> Speakers have also identified the value of and necessity for collecting evidence and statistics about honor crimes, in order to show Turkish authorities and the world just how extensive the problem is.<sup>258</sup> Additionally, it is clear that in-depth training is needed on the local level to combat both ignorance of the law and bias or prejudice against the victims. The police, low-ranking state officials and judges play a crucial role in implementing any platform for change and should be a focus of EU-funded efforts.<sup>259</sup>

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252. See, e.g., Kurdish Media, *supra* note 187.

253. Ayla Jean Yackley, *Honour Killings Tarnish Turkey’s Rights Drive*, REUTERS, Apr. 26, 2004, available at <http://kwahk.org/articles.asp?id=46> (quoting Abdulkirim Adem).

254. *Id.*

255. For a discussion of different strategies for the empowerment of Turkish women, see Filiz Kardam & Nüket Kardam, *Empowerment Through Training*, in KARDAM, *supra* note 177, at 82, 82-107.

256. Yackley, *supra* note 253.

257. Kurdish Media, *supra* note 187.

258. *Id.*

259. *Id.*

*B. Turkey as a Model for Iraq: What the United States Can Gain*

*“Human rights are defined by a constitution; they’re defended by an impartial rule of law; they’re secured in a pluralistic society. The advance of women’s rights and the advance of liberty are ultimately inseparable.”*<sup>260</sup>

Since the very early stages of the Iraqi project, President Bush has insisted that the position of Iraqi women and women’s rights, generally, are an important part of the development of Iraqi democracy.<sup>261</sup> The Bush Administration has continued to adamantly assert that things have improved for Iraqi women since the U.S.-U.K.-led invasion.<sup>262</sup> For example, recall the moving photos of Iraqi women holding up ink-stained fingers to show that they voted in the recent elections, symbolizing the interconnectedness of democracy and women’s rights and widely circulated throughout the nation’s press. The Bush Administration has, furthermore, consistently maintained that it and the American plan for Iraq stand in direct opposition to the “terrorists” who oppress women and upon whom Bush has waged war.<sup>263</sup>

These bold statements and the claim that women’s rights in Iraq have improved dramatically seem to be at odds with reports from human rights organizations and women’s groups who claim that conditions for Iraqi women actually have worsened in concrete ways since the fall of Saddam and the U.S.-U.K.-led occupation.<sup>264</sup> Just as the EC and prominent Turkish authorities hope that Turkey will provide a model of a truly modern Arab state, so too, the Bush Administration wants Iraq to serve as a model of democracy and women’s rights for the rest of the Arab world. With such closely related goals in mind, the fact that Turkey

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260. U.S. Department of State, United States Supports Women’s Empowerment in Iraq: Fact Sheet, Aug. 15, 2005, <http://usinfo.state.gov/mena/Archive/2005/Aug/15-797327.html> [hereinafter State Department Fact Sheet] (quoting George W. Bush, Remarks at Conference: Efforts to Globally Promote Women’s Human Rights (Mar. 12, 2004)).

261. See, e.g., RESULTS IN IRAQ: 100 DAYS TOWARD SECURITY AND FREEDOM 21-22 (2003), available at <http://www.whitehouse.gov/infocus/iraq/100days/100days.pdf> (discussing steps taken by the United States to involve Iraqi women in the new government).

262. See, e.g., State Department Fact Sheet, *supra* note 260.

263. See, e.g., George W. Bush, Address of the President to the Nation (Dec. 18, 2005), available at <http://usinfo.state.gov/mena/Archive/2005/Dec/19-15664.html> (urging that the fight is one against “a global terrorist movement that exploits Islam in the service of radical political aims—a vision in which books are burned, women are oppressed, and all dissent is crushed”).

264. See, e.g., AMNESTY, IRAQ, *supra* note 22, at 1 (explaining that killings, abduction and rape have increased since the U.S.-led invasion); see also HUMAN RIGHTS WATCH, CLIMATE OF FEAR: SEXUAL VIOLENCE AND ABDUCTION OF WOMEN AND GIRLS IN BAGHDAD I (2003) [hereinafter CLIMATE OF FEAR] (explaining that sexual violence and abduction of women have increased in Baghdad because of a complete lack of public security following the U.S.-led invasion).

is arguably further along in its work towards reaching that goal (albeit with a long way to go), leads to the conclusion that if honor killings were effectively targeted in Turkey, Turkey could in fact serve as a model for Iraq in its own fight against the prevalence of honor crimes.

Iraqi women have historically been active in civil society, and before the Gulf War in 1991, they were able to exercise relatively more rights than women could in neighboring Middle Eastern countries.<sup>265</sup> Prior to 1968, a number of women's organizations were active in Iraq. The Ba'ath party, which took power by coup d'état in 1968, eliminated these pre-existing groups, but established a General Federation of Iraqi Women ("GFIW") that ran more than 250 centers in both rural and urban areas that provided a variety of social programs and training to Iraqi women.<sup>266</sup> While some Iraqi women have criticized this organization as too politically oriented to adequately represent oppressed Iraqi women, women did play prominent roles in the organization, and the organization lobbied for a number of legal reforms to improve conditions for Iraqi women.<sup>267</sup> Ba'ath initiatives also included legislation of compulsory education for women, of literacy initiatives run by the GFIW and of labor and employment laws, including maternity benefits and protection against sexual harassment at work.<sup>268</sup> The number of Iraqi women working outside the home steadily increased during this time period.<sup>269</sup>

Following the Gulf War in 1991, conditions for women worsened for a number of reasons.<sup>270</sup> Saddam's strategic celebration of Islamic tribal traditions; U.N. sanctions that disproportionately affected female children (when faced with the financial necessity of only being able to send one child to school, parents chose the male), and changes in the labor code, criminal justice system and personal status laws hurt the legal status of Iraqi women and also facilitated many of their exits from the workplace and returns to the home.<sup>271</sup> The U.N. reported that from 1991-2001, approximately 4000 women were victims of honor killings

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265. Human Rights Watch, *Background on Women's Status in Iraq Prior to the Fall of the Saddam Hussein Government I* (Nov. 2003) (Human Rights Watch Briefing Paper) [hereinafter HRW Brief], available at <http://www.hrw.org/backgrounder/wrd/iraq-women.pdf>. The Iraqi Provisional Constitution of 1970 gave women formal equality, as well as the rights to vote, go to school, hold political office and own property. *Id.*

266. *Id.*

267. *Id.* at 1-2.

268. *Id.* at 2.

269. *See id.* at 2-3.

270. *Id.* at 3.

271. *Id.* at 3-4. For example, by the end of 2000, less than twenty-five percent of Iraqi women were literate—down from the seventy-five percent literacy rate among women in 1987. *Id.*

in Iraq.<sup>272</sup> A report from KWAHK confirms that this crime occurred frequently throughout the 1990s.<sup>273</sup>

While Kurds in northern Iraq outlawed honor killings<sup>274</sup> and suspended laws allowing for mitigation defenses such as “honourable motivation,”<sup>275</sup> there is no question that these crimes still occur and that their perpetrators often receive light sentences, if they are prosecuted at all.<sup>276</sup> Just as in Turkey, legal reforms, including the removal of a mitigating defense to honor crimes is not enough to eliminate the phenomenon in Iraq. Families may hide or mutilate the bodies to conceal evidence, choose not to prosecute or bribe officials for protection.<sup>277</sup> Police protection is far from adequate<sup>278</sup> and safe houses, though growing, are still few and far between.<sup>279</sup>

The instability and violence that characterized Iraq following the official end of the war have, without a doubt, had a concrete negative effect on the lives of Iraqi women.<sup>280</sup> While Iraqi women face newer horrors such as being kept virtual prisoners in their homes because of the dangers of walking outside at night, and a rise in sexual violence and the abduction of Iraqi girls and women,<sup>281</sup> the older practice of honor killings remains a prevalent problem.<sup>282</sup> Perpetrators of honor killings, like other criminals, were not prosecuted in the chaos following the war.<sup>283</sup> In fact, the lack of a functional judicial system in the wake of the 2003 war led tribal authorities to assume larger roles in conflict resolution, including proceedings for honor crimes.<sup>284</sup> The decisions of tribal councils often do not reflect an engagement with or respect for women’s rights. For example, in 2004 in al-’Amara, a husband with two wives killed the younger one for allegedly having an affair during a period of his prolonged absence. In the ensuing settlement, the tribunal did not impose any punishment on the perpetrator. Instead, the tribunal

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272. *Id.* at 4 (citing U.N. Comm’n on Human Rights, *Report of the Special Rapporteur on Violence Against Women*, U.N. Doc. E/CN.4/2002/83 (Jan. 31, 2002)).

273. AMNESTY, IRAQ, *supra* note 22, at 16 (citing KWAHK, *Honour Killing—A Catalogue of Horror*, May 2000 (reporting hundreds of instances of honor killing in northern Iraq alone)).

274. Spolar, *supra* note 216.

275. HRW, Brief, *supra* note 265, at 4.

276. *See* AMNESTY, IRAQ, *supra* note 22, at 18.

277. *Id.*

278. *See id.* at 19.

279. *See* Vivienne Walt, *Marked Women*, TIME, July 26, 2004, at 42.

280. *See* CLIMATE OF FEAR, *supra* note 264, at 1; Walt, *supra* note 279, at 42.

281. *See, e.g.*, CLIMATE OF FEAR, *supra* note 264, at 3-7.

282. Walt, *supra* note 279, at 43.

283. AMNESTY, IRAQ, *supra* note 22, at 19.

284. *Id.*

required the family of the victim to pay the husband.<sup>285</sup>

Vivienne Walt, reporting from Baghdad, wrote that there had been a dramatic increase in honor crimes following the U.S.-U.K.-led occupation, citing Iraqi professionals who “believe that women are now being murdered by their kin at an unprecedented rate.”<sup>286</sup> Amnesty International, however, reported that there was not enough evidence available to determine whether the number of killings has increased.<sup>287</sup> However, there is agreement that honor killings do occur and that prosecution of the perpetrators does not.<sup>288</sup> Furthermore, honor crimes encompass many more violations of women’s rights in Iraq than murder alone—honor crimes do not just consist of honor killings.<sup>289</sup> Iraqi victims of honor crimes are often subject to mutilation rather than outright murder and they are forced to live in fear once suspicions of sexual misconduct are made known because there are not adequate shelters in Iraq.<sup>290</sup>

Additionally, the practice of virginity testing is widespread in Iraq.<sup>291</sup> It is common, even more so following the war, for a woman to be brought to the virginity-testing room of a place like the Baghdad Forensics Institute where her genitals are examined by three male doctors who then conclude whether or not the woman is a virgin. For many Iraqi women, the results of this “test” mean the difference between life and death.<sup>292</sup> If an honor crime case arises later on, the results serve as evidence for the defense if the woman is found not to be a virgin.<sup>293</sup> Police and judges continue to be widely sympathetic to the perpetrators of honor crimes.<sup>294</sup>

There are a number of parallels between the occurrence of these crimes in Iraq and in Turkey. The fact that these crimes are often attributed to the Kurdish minority in both of these countries has created a sense of solidarity between some Iraqi and Turkish Kurdish women and has prompted joint discussions of this problem.<sup>295</sup> The idea that honor crimes are so ingrained in culture and tradition that the problem is insurmountable is also prevalent in both societies. As one Iraqi put it:

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285. *Id.*

286. Walt, *supra* note 279, at 42.

287. AMNESTY, IRAQ, *supra* note 22, at 19.

288. *See id.*; Walt, *supra* note 279, at 44.

289. *See* Walt, *supra* note 279, at 44.

290. *Id.* at 45; *see also* AMNESTY, IRAQ, *supra* note 22, at 17.

291. Walt, *supra* note 279, at 44.

292. *Id.*

293. *Id.*

294. *Id.*

295. *See, e.g.*, Kurdish Media, *supra* note 187.

“The idea of honor is in our cultural backyard. Ethnically and culturally, we believe it.”<sup>296</sup>

Cultural, ethnic and religious ties, when combined with the practice of honor killings in both societies, breed potential commonalities in targeting this problem. Shared American and European goals of creating a model Arab state in Iraq and Turkey, respectively, should facilitate mutual support and encouragement of these projects. Thus, the United States does have something to gain by supporting the movement to combat honor killings in Turkey: It can learn lessons that may prove useful to its own democracy project in Iraq, a project in which the United States has invested an incredible amount of time, money, manpower and American lives.

## VII. CONCLUSION

*“I think now I have the power to fight with injustice. And my family cannot oppress me as before. They are aware that I’m not alone, I have friends and an organization behind me . . . .”*<sup>297</sup>

In order for Turkey to fulfill the Copenhagen Criteria, a necessity for its accession into the EU, honor killings must be effectively targeted and eliminated in Turkey. This practice should not be dismissed as an infallible part of “tradition” or written off as a remote practice of a particular, stigmatized ethnic group. Rather, Turks and the EU need to acknowledge that not only are honor crimes pervasive throughout the country, but that they reflect a broader societal practice of disrespecting women’s rights due to ignorance and lack of education or even overt denial.

While legal reforms that promote women’s equality and changes to the penal code that eliminate the mitigation defense are a step in the right direction, without a broader grassroots movement that addresses the socioeconomic and institutional factors that contribute to the pervasiveness of the crime and the ability of the perpetrators to avoid legal consequences, this problem will not go away. As Abdulkерim Adem observed: “It will take more than a pronouncement from Ankara to change the structures that led to this death.”<sup>298</sup>

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296. Spolar, *supra* note 216 (quoting Mohammed Ahmed).

297. Kardam & Kardam, *supra* note 255, at 82 (quoting thirty-seven year old Zeliha from Ka-Mer, which is the Women’s Center in Diyarbakir—an organization established to help victims of domestic violence). Zeliha suffered abuse at the hands of her husband and his family as well as her own parents, when she returned to their home after her husband’s abandonment. *Id.*

298. Yackley, *supra* note 253 (quoting Adem’s response to Semse Allak’s honor killing). Allak was raped and impregnated and then forced to marry the perpetrator in a southeastern Turkish town.



Because the problem of honor crimes is acute in both Turkey and Iraq, Turkish and Iraqi victims and Kurdish minorities find solidarity in the collective experiences of these killings. Both the United States and the EU share a concrete interest in making Iraq and Turkey, respectively, models for the rest of the Arab world. Americans and Europeans should make the elimination of honor crimes in these countries a top priority and even a joint effort. The United States would benefit greatly if effective strategies used in Turkey could also be applied to Iraq. There is no question that the Bush Administration wants to see its democracy project succeed and that women's rights are a core part of this project. The frequency with which honor crimes continue to occur in Iraq make claims of the success of women's equality seem like hollow fantasies rather than accurate characterizations of the state of women's rights in the country. With so many resources at their disposal and so much to gain by this goal's achievement, the EU and the United States should forge a relationship of mutual support in their individual and collective efforts to fund grassroots movements, which are dominated by women in a position to understand the problem, that could successfully combat the prevalence of honor killings in both Turkey and Iraq.

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Upon order by a tribal council, she was subsequently stoned to death. *Id.*

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